The President,
Institute of Company Secretaries of India
Lodhi Road, New Delhi,


Sub: Release of new e-Forms by Ministry of Corporate Affairs (“MCA”) on 28th April, 2014 and issues related thereto.

Dear Sir,

This is in reference to the above notification and release of new e-forms by MCA on 28th April, 2014, wherein pre-certification of e-forms by the Practising Company Secretaries (PCS) among others, has been restored in most of the e-forms. We are indeed thankful for your efforts for bringing back this recognition for PCS and are optimistic that rest of the recognitions will also be brought back in coming days with dedicated efforts of Central Council spearheaded by you.

However, I wish to share the sentiments of the members on the notification dated 28th April, 2014 issued by MCA, regarding amendment of The Companies (Registration Offices & Fees) Rules, 2014 (ROF Rules), wherein 2 (two) major dilutions has been made by MCA with regard to pre-certification of e-forms.

1. **Rule 12** has been inserted after **Rule 11**, which is as under:

   "(12)(a) The following e-forms filed by Companies, other than One Person Companies and small Companies, under sub-rule (1) of ‘Rule 9, shall be pre-certified by the Chartered Accountant or the Company Secretary or as the case may be the Cost Accountant, in whole-time practice, namely:–

   INC-21, INC-22, INC-28, PAS.3, SH.7, CHG-1, CHG-4, CHG-9, MGT-14, DIR-6, DIR-12, MR-1, MR-2, MSC-1, MSC-3, MSC-4, GNL.3, ADT-1, NDH-I, NDH-2, NDH-3;"

   The above rule has taken away pre-certification of above listed e-forms from the PCS, in case of OPC and Small Companies. The exclusion of Small Companies form the ambit of pre-certification came as a shock and surprise for all the PCS. This will lead to the non-compliances and serious governance issues in the Small Companies, which cannot be the intent of the Lawmakers.

2. Newly introduced **Rule 12(b)(iv)** prescribes certification of **Form AOC-4 (Form for filing of financial statement and other documents with the Registrar)** by Chartered Accountant in whole time practice, exclusively despite knowing the fact that most of the Annual e-filing, which is presently know as Form 23AC and Form 23ACA, are done by the PCS in past year(s). Certification of the annual e-filing documents by the PCS has been a fortay of PCS community at large. This was a very big recognition to the PCS, which is now proposed to be taken away by the MCA.
With the exclusion of PCS from certification of Form AOC-4, MCA has already given clear indication that pre-certification and filing XBRL, may also be taken away from the Company Secretaries. As you may be aware that more than 70% of the XBRL filing are presently being done by PCS, hence it will be a great loss to the PCS fraternity in terms of professional opportunity.

Further, e-Forms, which requires pre-certification has a specific heading “Certificate by Practising Professional” read as follows:

“I declare that I have been duly engaged for the purpose of certification of this form. It is hereby certified that I have gone through the provisions of the Companies Act, 2013 and Rules thereunder for the subject matter of this form and matters incidental thereto and I have verified the above particulars (including attachment(s)) from the original/certified records maintained by the Company/applicant which is subject matter of this form and found them to be true, correct and complete and no information material to this form has been suppressed. I further certify that:

i) The said records have been properly prepared, signed by the required officers of the Company and maintained as per the relevant provisions of the Companies Act, 2013 and were found to be in order;

ii) All the required attachments have been completely and legibly attached to this form;”

The above certification requires greater diligence and care from the practising members and they will be exposed to higher responsibilities such as liability of being prosecuted for Fraud under section 447 and 449 of the Companies Act, 2013. Therefore, an immediate action will be required from the ICSI on the following:

1. Request should be made to MCA for allowing insertion / deletion in the above statement in order to provide independence to practicing professionals. There should also be scope for giving qualification / remarks by PCS
2. Immediate publication of Guidance note on “Pre-certification of e-Forms”;
3. Nation wide Capacity Building measures for updating / creating awareness among the members on various e-forms.

I hereby request you to kindly take-up the above sentiments of the members, particularly the waiver of requirement of pre-certification of above listed e-forms in Small Company and accordingly, providing for pre-certification of Form AOC-4 by PCS, on urgent basis with Ministry of Corporate Affairs.

Sir, your Regional Council (North) is conscious of its responsibilities towards the profession and committed to provide all quality inputs for necessary and timely action in regard to above and any other steps for development of profession.

Regards

CS Shyam Agarwal
Chairman, NIRC