May 13, 2014

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

Sub: Suggestions on provisions relating to Registered Valuer and Internal Audit under Companies Act, 2013 and rules made thereunder.

Dear Sir,

This has reference to the various notifications and release of new Companies Rules, 2014 issued by Ministry of Corporate Affairs (“the MCA”) on 1st April, 2014, wherein provisions relating to Registered Valuer has not been notified though provisional arrangement for carrying out valuation till notification of section 247 and related rules has been made applicable under the Companies (Prospectus and Allotment of Securities) Rules, 2014. Further, provisions relating to Internal Auditors has also notified and made applicable on the Companies.

Registered Valuer:

In regard to provisions relating to Registered Valuer, we wish to submit that:

Sub-section (1) of Section 247 of the Companies Act, 2013 states as under:

“Where a valuation is required to be made in respect of any property, stocks, shares, debentures, securities or goodwill or any other assets (herein referred to as the assets) or net worth of a company or its liabilities under the provision of this Act, it shall be valued by a person having such qualifications and experience and registered as a valuer in such manner, on such terms and conditions as may be prescribed and appointed by the audit committee or in its absence by the Board of Directors of that company.”

Accordingly, in the month of September, 2013, MCA has released the Draft Rules relating to Registered Valuer and in terms of Rule 17.2(2)(a) of the Registered Valuers Rules, following persons are made eligible to apply for being registered as a valuer:

“2(a) a chartered accountant, company secretary or cost accountant who is in whole-time practice, or any person holding equivalent Indian or foreign qualification as the Ministry of Corporate Affairs may recognise by an order.”
However, explanation to Rule 12 of Companies (Prospectus and Allotment of Securities) Rules, 2014, w.e.f. 1st April, 2014, provides provisional arrangement for carrying out valuation till notification of section 247 and related rules and does not recognise the profession of Company Secretaries. The said explanation is as under:

“Pending notification of sub-section (1) of section 247 of the Act and finalisation of qualifications and experience of valuers, valuation of stocks, shares, debentures, securities etc. shall be conducted by an independent merchant banker who is registered with the Securities and Exchange Board of India or an independent chartered accountant in practice having a minimum experience of ten years.”

We have received number of suggestions from the members in this regard and they are of the view that explanation to Rule 12 of Companies (Prospectus and Allotment of Securities) Rules, 2014 are taking away the first mover advantage from the profession of Company Secretaries and is against the right of equality among the professional included in the Draft Rules. In view of suggestions received from the members, we are of the view that:

i) As an immediate measure, pending notification of section 247, we should make a representation to MCA either for inclusion of similar provisions in Companies (Prospectus and Allotment of Securities) Rules, 2014, allowing Company Secretaries in Practice to conduct valuation and issue report thereon or to request for withdrawal of the explanation.

ii) Our members are competent to conduct valuation and the ICSI has already conducted certification course on valuation and having numbers for conducting valuation assignment.

iii) We may bring out detailed Referencer / Course Curriculum in line with the provisions of Draft Rules and may consider reducing existing fees of Rs. 15,000/- fixed for valuation course.

Internal Audit:

We have also received various suggestions from the members on the provisions relating to appointment of Internal Auditors as prescribed under section 138 of the Companies Act, 2013. In terms of explanation to Rule 13 of the Companies (Accounts) Rules, 2014, w.e.f. 1st April, 2014, the term “Chartered Accountant” has been defined, whereas nowhere in the said rules term “Chartered Accountant” has been used, which create doubt in the mind of Corporate that only Chartered Accountants are eligible to be appointed as Internal Auditors.

The members are of the view that since term “Chartered Accountant” has not been used under the Rules, hence need no clarification. If any of the terms specified under section 138, which should be clarified / prescribed under the Rules is “Such other Professional”. In view of above sentiments, we hereby submit as under:
We should make a representation to the MCA regarding inclusion of name of the Practising Company Secretaries by way of the similar provisions in the Companies (Accounts) Rules, 2014. As per the provisions of the Act, Internal Audit is not an audit of financials or accounts but it is relating to the functions and policies of the Board. In this connection, the same should be highlighted in all our representations as we Company Secretaries are expert in the same.

We should bring out detailed Referencer/ Course Curriculum in line with the provisions of Act to build the capacity of the members;

I hereby request you to kindly take-up the above matters on urgent basis with Ministry of Corporate Affairs in the best interest of the members of the ICSI.

Regards

CS Shyam Agarwal
Chairman, NIRC