

**“CERTIFICATION OF ANNUAL RETURN UNDER SECTION 92 (2) OF COMPANIES ACT, 2013”**

**IS IT A COME BACK OF COMPLIANCE CERTIFICATE ISSUED UNDER SECTION 383 A OF COMPANIES ACT, 1956?**

**A DETAILED ANALYSIS**

**By: P.Sriram, Practising Company Secretary**

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**INTRODUCTION:**

As we all know that the concept of issue of Compliance Certificate under Proviso to Section 383 A (1) of Companies Act 1956 (“Act 1956”) read with The Companies (Compliance Certificate) Rules, 2001 which *inter alia*provides that:

“every company not required to employ a whole-time secretary under Section 383 A(1) and having paid up share capital of ten lakh rupees or more shall file with Registrar a certificate from a secretary in whole-time practice in such form and within such time and subject to such conditions as may be prescribed as to whether company has complied with all the provisions of this Act and a copy of such certificate shall be attached with Board’s report referred to in Section 217”

Whereas, on introduction of Companies Act, 2013 & enforcement of Section 92 of Companies Act, 2013 (“Act 2013”) & repealing of Section 383 A of Act 1956 w.e.f. 1st April 2014, the issue of Compliance Certificate by the Whole-time Company Secretary is no more in existence.

Though the concept of Compliance Certificate is not available, Section 92 (2) of Act 2013 provides that:

“The Annual Return, filed by a **LISTED COMPANY** or by a company having such paid up capital & Turnover **as may be prescribed, shall be CERTIFIED by a COMPANY SECRETARY IN PRACTICE in prescribed form, stating that the annual return** *discloses the facts correctly & adequately & that the company has complied with all the provisions of this Act.*

***Rule 11(2) of Companies (Management and Administration) Rules, 2014 Provides that: “The Annual return, filed by a listed company or a company having PAID-UP SHARE CAPITAL OF TEN CRORE RUPPES OR MORE OR TURNOVER OF FIFTY CRORE RUPEES OR MORE shall be certified by Company Secretary in Practice & certificate shall be in Form No: MGT 8.***

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| 1. **Pre-arranged checklist for the company & Company Secretary in Practice certifying the Annual Return:** |

To arrange for a checklist for the Company whose annual return needs to be certified containing the details/documents required beforehand for commencing the Verification/certification process viz., MOA/AOA, Financial Statements, Disclosures of Directors, Minutes of Board / General meetings/Registers & various e-forms/documents filed Registrar of Companies, Regional Director, Central Government, the Tribunal , Court or other authorities

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| 1. **Independent Checks** |

To carry out an inspection with Ministry of Corporate Affairs on the forms filed, Master data, Directors Details including their other directorship with the Director Identification Numbers. In case of other authorities/regulatory bodies documentation may be taken by the company as duly certified by Director. Independent scrutiny of Balance Sheet/ Annual returns filed with MCA shall also be made.

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| 1. **Verification of Records & Registers** |

To carry out the verification (audit) process with the records & registers produced by the company for verification including Statutory Registers, Minutes of Board & General Meetings, Various forms/Documents filed with Registrar of Companies, Regional Director, Central Government, the Tribunal , Court or other authorities, Bank statements wherein the company has allotted shares, paid dividends, transferred funds to Investor Protection fund etc.,

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| 1. **Advisory, rectification of issues** |

After verification process advice the company for rectification of issues by filing documents/forms or compounding of offences under the Act for various non- compliances, maintenance of registers & records in compliance with the Act & Rules made thereunder

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| 1. **Finalization of certification process** |

After the above process finalize the report, qualify on non-compliances wherever necessary along with the rectification process carried out by the company (viz., filing of forms/returns belatedly, filing of compounding application etc.,) and sign the Annual Return. Also ensure by independent check with MCA whether the filed Annual Return is the same that was issued by such Practising Company Secretaries.

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| 1. **Maintenance of back up documentation for Peer Review and future:** |

Keep copy of all documents/declarations given/produced by the company for verification and issue of compliance certificate including the inspection slip, documents verified. Wherever documents are sent by mail ensure that it is from the mail of the concerned Company/director with which regular mails are being sent and to keep the copy of the same.

Compliance Certificate

 **VS**

**COMPARITIVE STUDY:** To have better understanding of major differences between the Certification of Annual Return under Companies Act 2013 & Issue of Compliance Certificate under Companies Act 1956 and to know the nuances involved in such certification of Annual Return, we have made a brief comparison chart on the applicability of the Annual Return certification vis-a-vis the Compliance certificate along with a parawise comparison & comment.

***Comparison on Applicability:*** The following chart shall give a brief comparison for a better understanding:

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| *Criteria* | *Applicability of issue of Compliance Certificate Under CA 1956* | *Applicability of Certification of Annual Return under CA 2013* | *Comments* |
| *Listed Company* | Only if the Paid up share capital is more than Rs.10.00 lac & less than exceeding Rs.200.00 Lac/ or Rs.500.00 lac as the case may be depending on whether the company secretary has been appointed or not. | Irrespective of the Paid up Share capital it applies to Listed Companies | Mandatory Certification of Annual Return was existing in Act 1956 for listed companies |
| *Private / Public Limited Companies* | Applies to both Private / Public subject to paid up share capital criteria | Applies to both Private / Public subject to paid up share capital criteria or Turnover criteria | There is no concept of applicability on Turnover criteria |
| *Paid Up share capital* | Paid Up share capital of Rs.10.00 lac or less than Rs.200.00 lac/Rs.500.00 lac as the case may be | Paid up Share Capital of Rs.10.00 Crore or more | The limit has been increased. For the companies with paid up share capital of more than Rs.10.00 Crore the company has to obtain the certification of Annual Return apart from the mandatory requirement of Appointment of Company Secretary which is not the case in case of Compliance Certificate wherein it is required only based on the paid up share capital. |
| *Turnover* | No Turnover Criteria was existing | Company with a turnover of Rs.50.00 Crore or More (private or public) | In any FY if the Turnover is below the amount prescribed the certification shall not be applicable |

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| *Criteria* | *Applicability of issue of Compliance Certificate Under CA 1956* | *Applicability of Certification of Annual Return under CA 2013* | *Comments* |
| *Applicability* | Cos.’ whose financial year is ending up to 31st March 2014 shall obtain Compliance Certificate | Cos.’ Whose financial year is ending after 31st March 2014 shall obtain Annual Return Certification | The Annual return under Companies Act 1956 is made up to the date of AGM whereas under Companies Act 2013 shall be close of financial year |
| *PENAL PROVISION:* | No such explicit penal provision under the Companies Act 1956. | Pursuant to section 92 (6) “If a company secretary in practice certifies the annual return other than in conformity with the requirements of this section or the rules made thereunder, he shall be punishable with fine which shall not be less than fifty thousand but which may extend to five lakh rupees. | With the above, it is explicitly clear that more reliability and accountability has been placed & vested with the Practising company secretaries apart from our professional responsibility to ensure strict compliance in law and spirit. |

**With the above, let us examine parawise comparison between the Secretarial Compliance Certificate & Annual return to have a brief description of what we certify.**

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| **Para No.** | FORM NO. MGT.8  *[section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014]* | **Para No**. | ***Pursuant to Section 383 A read with read with The Companies (Compliance Certificate) Rules, 2001*** |
| **--** | I/We have examined the registers, records and books and papers of ……………… **Limited/Private Limited** (the Company) as required to be maintained under the Companies Act, 2013 (the Act) and the rules made thereunder for the financial year ended on ………………, 20……. In my/our opinion and to the best of my information and according to the examinations carried out by me/us and explanations furnished to me/us by the company, its officers and agents, I/we certify that: | -- | I/We have examined the registers, records, books and papers of \_\_\_\_\_\_\_\_\_\_\_ Limited (the Company) as required to be maintained under the Companies Act, 1956, (the Act) and the rules made thereunder and also the provisions contained in the Memorandum and Articles of Association of the Company for the financial year ended on 31st March, 20\_\_. In my/our opinion and to the best of my/our information and according to the examinations carried out by me/us and explanations furnished to me/us by the company, its officers and agents, I/we certify that in respect of the aforesaid financial year: |
| **A.** | The Annual Return states the facts as at the close of the aforesaid financial year correctly and adequately.  **Comment**: Apart from certification on the following matters given in **Para** **B,** also ensure that the Annual Return in MGT 7 Which contains more disclosures/ details than Schedule V (Annual return) under Companies Act 1956 including date of Board Meeting , Attendance of Directors, Details of KMP, Remuneration to KMP, penalties/compounding, Filings (similar to Annexure B of Compliance Certificate), Disclosures etc., has been **stated correctly and adequately** | -- | Not required to be certified under Companies Act 1956 |

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| **B** | During the aforesaid financial year the Company has complied with provisions of the Act & Rules made there under in respect of: |  |  |
| 1 | its status under the Act;  **Comment** : Public (Listed/Unlisted) or Private. Need not necessary to mention the number of shareholders or about acceptance of deposits etc., | 3 | the company being private limited company has the minimum prescribed paid-up capital and its maximum number of members during the said financial year was \_\_\_\_\_\_\_\_ excluding its present and past employees and the company during the year under scrutiny:  (i) has not invited public to subscribe for its shares or debentures; and  (ii) has not invited or accepted any deposits from persons other than its members, directors or their relatives. |
| 2 | Maintenance of registers/records & making entries therein within the time prescribed there for; | 1 | The company has kept and maintained all registers as stated in Annexure `A’ to this certificate, as per the provisions and the rules made there under and all entries therein have been duly recorded. |
| 3 | filing of forms and returns as stated in the annual return, with the Registrar of Companies, Regional Director, Central Government, the Tribunal , Court or other authorities within/beyond the prescribed time; | 2 | The company has duly filed the forms and returns as stated in Annexure `B’ to this certificate, with the Registrar of Companies, Regional Director, Central Government. Company Law Board or other authorities within the time prescribed under the Act and the rules made there under. |

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| **Para No.** | | FORM NO. MGT.8  *[section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014]* | | **Para No**. | ***Pursuant to Section 383 A read with read with The Companies (Compliance Certificate) Rules, 2001*** |
| 4 | calling/convening/holding meetings of Board of Directors or its committees, if any, and the meetings of the members of the company on due dates **as stated in the annual return** in respect of which meetings, proper notices were given and the proceedings including the circular resolutions and resolutions passed by postal ballot, if any, have been properly recorded in the Minute Book/registers maintained for the purpose and the same have been signed;  **Comments:** Also to check on Secretarial Standards on BM & GM, Circular resolutions, Maintenance of Minutes/Registers etc., | | 4  6  7 | | the Board of Directors duly met \_\_\_\_\_\_\_times on \_\_\_\_\_\_\_\_(dates) in respect of which meetings proper notices were given and the proceedings were properly recorded and signed including the circular resolutions passed in the Minutes Book maintained for the purpose.  the annual general meeting for the financial year ended on \_\_\_\_\_\_\_ was held on \_\_\_\_\_\_ after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in Minutes Book maintained for the purpose.  .\_\_\_\_\_\_\_ extra ordinary meeting(s) was/were held during the financial year after giving due notice to the members of the company and the resolutions passed thereat were duly recorded in the Minutes Book maintained for the purpose. |
| 5 | Closure of Register of Members**/Security holders**, as the case may be. | | 5 | | the company closed its Register of Members, and/or Debenture holders from \_\_\_\_\_\_ to \_\_\_\_\_\_\_ and necessary compliance of section 154 of the Act has been made. |
| 6 | Advances/loans to its directors and/or persons or firms or companies referred in section 185 of the Act; | | 8 | | The company has advanced loan amounting to Rs.\_\_\_\_\_\_\_\_\_ to its directors and/or persons or firms or companies referred in the section 295 of the Act after complying with the provisions of the Act. |

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| 7 | contracts/arrangements with related parties as specified in section 188 of the Act;  **Comment**: Ensure presence of **Disinterested** Quorum in case of approval by the Board / voting of Special resolution by non-interested parties in case of General Meeting **whether** **Private or Public and other disclosure requirements as mentioned under the Rules made thereunder Section 188. Make good of earlier years non-compliances by compounding** and compliances on the existing contracts. | | 9  11  16 | | the company has duly complied with the provisions of section 297 of the Act in respect of contracts specified in that section.  the company has obtained necessary approvals from the Board of Directors, members and previous approval of the Central Government pursuant to section 314 of the Act wherever applicable.  the appointment of sole-selling agents was made in compliance of the provisions of the Act. |
| 8 | Issue or allotment or transfer or transmission or buy back of securities/redemption of preference shares or debentures/alteration or reduction of share capital/conversion of shares/securities and issue of security certificates in all instances;  **Comment:** Ensure compliance of Section 42, 54, 55, 56, 62, 63, 68 of Companies Act 2013 read with rules made thereunder including disclosures, valuations etc., | | 13(i)  19  20  21  12 | | Delivered all the certificates on allotment of securities and on lodgement thereof for transfer/transmission or any other purpose in accordance with the provisions of the Act;  the company has issued\_\_\_\_\_\_\_\_ shares/debentures/other securities during the financial year and complied with the provisions of the Act.  the company has bought back\_\_\_\_\_\_\_\_\_\_\_ shares during the financial year ending \_\_\_\_\_\_\_ after complying with the provisions of the Act.  the company has redeemed \_\_\_\_\_\_\_\_preference shares/debentures during the year after complying with the provisions of the Act.  the Board of Directors or duly constituted Committee of Directors has approved the issue of duplicate share certificates. |
| **Para No.** | | FORM NO. MGT.8  *[section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014]* | | **Para No**. | ***Pursuant to Section 383 A read with read with The Companies (Compliance Certificate) Rules, 2001*** |
| 9 | keeping in abeyance the rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act  **Comment: Compliance of Chapter VIII, Section 126 & rules made thereunder** | | 22 | | the company wherever necessary has kept in abeyance rights to dividend, rights shares and bonus shares pending registration of transfer of shares in compliance with the provisions of the Act. |
| 10 | declaration/payment of dividend; transfer of unpaid/unclaimed dividend/other amounts as applicable to the Investor Education and Protection Fund in accordance with section 125 of the Act;  **Comment: Compliance of Chapter VIII, Sections123, 124, 125 & 126 & the rules made thereunder** | | 13(ii)  13(iii)  13(iv) | | Deposited the amount of dividend declared including interim dividend in a separate Bank Account on \_\_\_\_\_\_\_\_\_\_which is within five days from the date of declaration of such dividend.  Paid/posted warrants for dividends to all the members within a period of 30 (Thirty) days from the date of declaration and that all unclaimed/unpaid dividend has been transferred to Unpaid Dividend Account of the Company with \_\_\_\_\_\_\_\_\_Bank on \_\_\_\_\_\_\_\_\_\_\_\_\_.  Transferred the amounts in unpaid dividend account, application money due for refund, matured deposits, matured debentures and the interest accrued thereon which have remained unclaimed or unpaid for a period of seven years to Investor Education and Protection Fund. |

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| 11 | **Signing of audited financial statement** as per the provisions of section 134 of the Act and report of directors is as per sub - sections (3), (4) and (5) thereof;  **Comment:** There is no necessity to certify on signing of Financial Statement in Secretarial Compliance report. More disclosure requirement in Directors report has been prescribed under the Act & Rules at various places hence care should be taken on this aspect. | | 13(V) | | Duly complied with the requirements of section 217 of the Act. |
| 12 | constitution/appointment/re-appointments/ retirement/filling up casual vacancies/disclosures of the Directors, Key Managerial Personnel and the remuneration paid to them;  **Comment:** Since the concept of KMP has been included in CA 2013, appointment of KMP (in Board/General Meeting), disclosures by KMP and their remuneration paid to them shall be in compliance apart from the filing requirements. | | 14  15  10  18 | | the Board of Directors of the company is duly constituted and the appointment of directors, additional directors, alternate directors and directors to fill casual vacancies have been duly made.  the appointment of Managing Director/ Whole-time Director/Manager has been made in compliance with the provisions of section 269 read with Schedule XIII to the Act and approval of the Central Government has been obtained in respect of appointment of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ not being in terms of Schedule XIII.  the company has made necessary entries in the register maintained under section 301 of the Act.  the directors have disclosed their interest in other firms/companies to the Board of Directors pursuant to the provisions of the Act and the rules made there under. |
| **Para No.** | | FORM NO. MGT.8  *[section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014]* | | **Para No**. | ***Pursuant to Section 383 A read with read with The Companies (Compliance Certificate) Rules, 2001*** |
| 13 | appointment/reappointment/filling up casual vacancies of auditors as per the provisions of section 139 of the Act; | |  | | Not available under Companies Act 1956 |
| 14 | approvals required to be taken from the Central Government, Tribunal, Regional Director, Registrar, Court or such other authorities under the various provisions of the Act; | | 17 | | the company has obtained all necessary approvals of the Central Government, Company Law Board, Regional Director, Registrar or such other authorities as may be prescribed under the various provisions of the Act as detailed below:- |
| 15 | Acceptance/renewal/repayment of deposits;  **Comment:** Since the acceptance of loans from Shareholders/ relatives has been removed under CA 2013, the same shall have impact on Private Limited Companies. Further, the Deposit Rules prescribes more stringent norms on the Trade advances and other advances accepted by the companies which if not complied shall be treated as deposits, hence due verification on compliance shall be made and more particularly to decide on existing loansand transactions | | 23 | | the company has complied with the provisions of sections 58A and 58AA read with Companies (Acceptance of Deposit) Rules, 1975/ the applicable directions issued by the Reserve Bank of India/ any other authority in respect of deposits accepted including unsecured loans taken, amounting to Rs.\_\_\_\_\_\_\_\_ raised by the company during the year and the company has filed the copy of Advertisement/Statement in lieu of Advertisement/ necessary particulars as required with the Registrar of Companies \_\_\_\_\_\_\_\_ on \_\_\_\_\_\_\_\_\_\_.The company has also filed return of deposit with the Registrar of Companies/Reserve Bank of India/other authorities. |
| 16 | Borrowings from its directors, members, public financial institutions, banks and others and creation/modification/satisfaction of charges in that respect, wherever applicable;  **Comment**: Since the Private Limited company is also roped into the applicability of this section w.e.f. 12th September 2013 passing of special resolution under section 180 (Wherever borrowing limits exceeds) by the existing Public limited companies & Private companies within one year shall be made. | | 24 | | the amount borrowed by the Company from directors, members, public, financial institutions, banks and others during the financial year ending \_\_\_\_\_\_\_\_ is/are within the borrowing limits of the company and that necessary resolutions as per section 293(1)(d) of the Act have been passed in duly convened annual/extraordinary general meeting. |

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| 17 | Loans and investments or guarantees given or providing of securities to other bodies corporate or persons falling under the provisions of section 186 of the Act ;  **Comment**: Since the Private Limited company is also roped into the applicability of this section w.e.f. 1st April 2014 passing of special resolution under section 186 (Wherever limits exceeds) by the existing Private companies within one year shall be made. | | 25 | the company has made loans and investments, or given guarantees or provided securities to other bodies corporate in compliance with the provisions of the Act and has made necessary entries in the register kept for the purpose. |
| 18 | alteration of the provisions of the Memorandum and/or Articles of Association of the Company; | | 26  27  28  29  30 | the company has altered the provisions of the memorandum with respect to situation of the company’s registered office from one state to another during the year under scrutiny after complying with the provisions of the Act.  the company has altered the provisions of the memorandum with respect to the objects of the company during the year under scrutiny and complied with provisions of the Act  the company has altered the provisions of the memorandum with respect to name of the company during the year under scrutiny and complied with the provisions of the Act.  the company has altered the provisions of the memorandum with respect to share capital of the company during the year under scrutiny and complied with the provisions of the Act.  the company has altered its articles of association after obtaining approval of members in the general meeting held on \_\_\_\_\_\_\_\_ and the amendments to the articles of association have been duly registered with the Registrar of Companies. |
| **Para No.** | | FORM NO. MGT.8  *[section 92(2) of the Companies Act, 2013 and rule 11(2) of Companies (Management and Administration) Rules, 2014]* | **Para No**. | ***Pursuant to Section 383 A read with read with The Companies (Compliance Certificate) Rules, 2001*** |
|  | Other points that are not provided under the Rule under Companies Act 2013 | | 31 | a list of prosecution initiated against or show cause notices received by the company for alleged offences under the Act and also the fines and penalties or any other punishment imposed on the company in such cases is attached. |
|  | Other points that are not provided under the Rule under Companies Act 2013 | | 32 | the company has received Rs. \_\_\_\_\_\_\_\_ as security from its employees during the year under certification and the same has been deposited as per provisions of section 417(1) of the Act. |
|  | Other points that are not provided under the Rule under Companies Act 2013 | | 33 | the company has deposited both employee’s and employer’s contribution to Provident Fund with prescribed authorities pursuant to section 418 of the Act. |