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THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

MCA/PD:2019

8th July, 2019

Shri Injeti Srinivas, IAS
Secretary
Ministry of Corporate Affairs
Government of India
Shastri Bhawan
Dr. Rajendra Prasad Road,
New Delhi – 110 001

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09/7/19

Sir,

Ref: Letter No. 17/33/2019- CL-V dated 17th June, 2019, received on 19th June, 2019

With reference to the above captioned letter, the Institute of Company Secretaries of India (ICSI) respectfully submits as under:

1. The ICSI welcomes the initiatives of Ministry of Corporate Affairs (MCA) to weed out inactive companies & disqualified directors, protect the public money, overcome the financial irregularities and increase the effectiveness of the governance mechanism. India is perhaps the only country where a form like INC-22A (ACTIVE) is introduced. Clearly, the Ministry of Corporate Affairs (MCA) is expecting to achieve significantly high level of governance norms and compliance mechanism. With this move, MCA has indicated that there is no room for inactive companies in the Registry of MCA.

2. That, upon receipt of the above mentioned letter dated 17th June 2019 from MCA alongwith representation of stakeholders, a Special Meeting of the Council of ICSI was convened on 27th June, 2019 to have detailed deliberations on the matter. Each of the said representations that were annexed to the said letter were deliberated threadbare. The individual responses to each representation are separately enclosed herewith and marked as 'Annexure A'. Further, the views of the Council of ICSI are submitted in the paragraphs herein below for your kind consideration.The concerns raised in the representations primarily relate to various issues like providing exemption to private companies, small companies, government companies, sick companies and dormant companies from filing Form INC-22A (ACTIVE). In some of the cases, it is noted that non-appointment of Company Secretary has been cited as an impediment in filing the Form INC- 22A (ACTIVE).

3. That in all the said letters, there is criticism of various initiatives of the Government, citing one difficulty or the other, whereas such initiatives viz. DIR-3 KYC, INC-22A (ACTIVE), DPT-3, SBO provisions etc., arc focused to promote governance and transparency in corporate India. There was a recent drive by the MCA to carry out director's KYC and the MCA has taken a firm stand whereby non-compliant directors were disqualified and non-compliant companies were struck off from the registry of MCA. Similarly, to make a compliant corporate India, Company KYC drive by way of Form INC-22A (ACTIVE) has been initiated by the MCA, which every Company is

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required to comply. In case any of the Company could not comply with such initiatives of the government, such non-compliant Company should get marked as inactive.

4. That, such defiant attitude was witnessed at the time of launch of MCA-21 e-governance programme and also the history repeated itself when the Companies Act, 2013 was introduced. But the MCA has been constantly strengthening the compliance and governance framework. It can be observed that the persons who have made representations are all approaching with a negative mindset, and pleading ignorance of law as an excuse.

5. That those companies which are citing paid up capital as an issue have an option of reduction of paid up capital but they have not chosen to reduce their paid up capital in last 5 years, since introduction of the Companies Act, 2013. The companies having paid up share capital of Rs. 5 crore or more, there is a requirement of appointment of a whole-time Company Secretary, as the very idea of the Government is to graduate such companies to a compliance driven and a far more governed platform, so that such companies could be benchmarked vis-à-vis best governed companies, globally. By doing so, the government seeks to have better corporate governance standards for such companies.

6. That, these companies have also requested the MCA to drop all the new forms introduced by MCA in view of ease of doing business. As you are already aware that the World Bank has released its latest Doing Business Report (DBR, 2019) on 31st October, 2018, wherein India has recorded a jump of 23 positions against its rank of 100 in 2017 to be placed now at 77thrank among 190 countries assessed by the World Bank. This itself proves that the compliances introduced by the MCA have not been a hurdle in the Ease of Doing Business but has been an enabler for the same. That, if we closely look at the parameters on which the ranking is based, it aims at simplifying the procedure and time involved in carrying out the compliances, whereas the appointment of Company Secretary is to ensure the compliances as an 'Officer in Default' and also a 'Key Managerial Personnel' under the Companies Act, 2013 and the Rules made thereunder.

7. That, MCA has been initiating the Ease of Doing Business by making events online and reducing the overall time taken and by making e-forms dynamic to the extent that various forms have even been categorised in STP mode and now the stakeholders get approval at the click of the button. But, despite such initiatives, there has been a tendency by handful of non-compliant persons to criticise and blame the system. In the past few years, the MCA has proposed various amendments in view of Ease of Doing Business and kept only essential requirements which every corporate must follow.

8. That, out of total active companies, i.e. approximately, 11 lakh companies, only 39,805 companies are required to appoint a whole-time Company Secretary. We wish to submit that as on 1st July 2019, ICSI has 58,690 Company Secretaries on its register out of which only 10,644 are in practice. Accordingly, sufficient numbers of Company Secretaries are available to serve the Corporate India. Further, ICSI through its dedicated placement cell provides placement services to corporate to meet the demand and supply of the Company Secretaries across the country.

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9. That, in view of the aforesaid, keeping in mind the role of Company Secretaries in enhancing governance standards internally within the corporate, we wish to submit that the present parameters for appointment of Company Secretary which are framed by MCA after a lot of public debate and deliberations are absolutely aligned with the present requirements; and therefore, need to be kept intact. Needless to mention that the level of compliance as envisaged by the Government is rising day by day.

We shall be pleased to provide any further information or clarification in this regard on hearing from your good self.

Thanking you,

Yours faithfully,

(CS Ashok Kumar Dixit)
Officiating Secretary
The Institute of Company Secretaries of India