

General Circular- 10/2014

File No MCA21/28/2014-E-gov
Government of India
Ministry of Corporate Affairs

"A" Wing, 5th Floor, Shastri Bhawan
Dr R. P. Road, New Delhi-110001

Date: - 07.05.2014

To,

All Regional Director
All Registrars of Companies

Sub: - Certification of E-forms/non e-forms under the Companies Act, 2013 by the Practicing Professionals: - regarding..

Sir,

The Ministry has allowed registered Members of the professionals bodies (the ICAI, ICSI and the ICAI) to authenticate correctness and integrity of documents being filed by them with the MCA in electronic mode. Details of documents required to be certified have been given in the notification dated 28/04/2014 available on the MCA portal.

2. In this regard attention is invited towards the requirement of authentication of documents prescribed under the Companies (Registration Offices and Fees) Rules, 2014 which elaborate on the responsibility. Further, Rule 10 of ibid the Registrar is to examine e-forms or non e-forms attached and filed with general forms on MCA portal viz. to verify whether all the requirements have been complied with and all the attachment to the forms have been duly scanned and attached in accordance with the requirement of above said rules.

3. Where any instance of filing of documents, application or return or petition etc. containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules; 15 days notice may be given for the purpose.


4. The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action u/s 447 and 448 of the Companies Act, 2013 wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

5. The E-Gov cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action u/s 448 and 449 of the Act wherever prima facie cases have been made out. The E-Gov cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future.

6. The Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Gov Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month as per the prescribed proforma (copy enclosed).

7. This issues with the approval of the Secretary.

Yours faithfully,


(KMS. Narayanan)
Assistant Director
23387263

1. PPS to Secretary
2. PPS to Additional Secretary
3. PPS to JS(R) / JS(B)/ JS(M)/ DII(UCN)/DII(BNH)
4. PS to DIR(AB)

General Circular- 10/2014 dated 07.05.2014

PROFORMA FOR FORTNIGHTLY REPORT BY ROC

For the period from..... to

SL NO	NAME OF THE PROFESSIONAL	MEMBER OF THE INSTITUTE	MEMBERSHIP NO /CP NO.	DETAILS OF THE CASE	REMARKS

PROFORMA FOR MONTHLY REPORT BY RD

FOR THE MONTH OF

Sl no	Name of the ROC	Details of the professional	Membership no / CP no.	Fact of the case	remarks

Mediation and Conciliation Panel.

442. (1) The Central Government shall maintain a panel of experts to be called as the Mediation and Conciliation Panel consisting of such number of experts having such qualifications as may be prescribed for mediation between the parties during the pendency of any proceedings before the Central Government or the Tribunal or the Appellate Tribunal under this Act.

(2) Any of the parties to the proceedings may, at any time during the proceedings before the Central Government or the Tribunal or the Appellate Tribunal, apply to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, in such form along with such fees as may be prescribed, for referring the matter pertaining to such proceedings to the Mediation and Conciliation Panel and the Central Government or Tribunal or the Appellate Tribunal, as the case may be, shall appoint one or more experts from the panel referred to in sub-section (1).

(3) The Central Government or the Tribunal or the Appellate Tribunal before which any proceeding is pending may, *suo motu*, refer any matter pertaining to such proceeding to such number of experts from the Mediation and Conciliation Panel as the Central Government or the Tribunal or the Appellate Tribunal, as the case may be, deems fit.

(4) The fee and other terms and conditions of experts of the Mediation and Conciliation Panel shall be such as may be prescribed.

(5) The Mediation and Conciliation Panel shall follow such procedure as may be prescribed and dispose of the matter referred to it within a period of three months from the date of such reference and forward its recommendations to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

(6) Any party aggrieved by the recommendation of the Mediation and Conciliation Panel may file objections to the Central Government or the Tribunal or the Appellate Tribunal, as the case may be.

Power of Central Government to appoint company prosecutors.

443. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may appoint generally, or for any case, or in any case, or for any specified class of cases in any local area, one or more persons, as company prosecutors for the conduct of prosecutions arising out of this Act and the persons so appointed as company prosecutors shall have all the powers and privileges conferred by the Code on Public Prosecutors appointed under section 24 of the Code.

2 of 1974.

Appeal against acquittal.

444. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Central Government may, in any case arising under this Act, direct any company prosecutor or authorise any other person either by name or by virtue of his office, to present an appeal from an order of acquittal passed by any court, other than a High Court, and an appeal presented by such prosecutor or other person shall be deemed to have been validly presented to the appellate court.

2 of 1974.

Compensation for accusation without reasonable cause.

445. The provisions of section 250 of the Code of Criminal Procedure, 1973 shall apply *mutatis mutandis* to compensation for accusation without reasonable cause before the Special Court or the Court of Session.

2 of 1974.

Application of fines.

446. The court imposing any fine under this Act may direct that the whole or any part thereof shall be applied in or towards payment of the costs of the proceedings, or in or towards the payment of a reward to the person on whose information the proceedings were instituted.

CHAPTER XXIX

MISCELLANEOUS

Punishment for fraud.

447. Without prejudice to any liability including repayment of any debt under this Act or any other law for the time being in force, any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.

Explanation.—For the purposes of this section—

(i) “fraud” in relation to affairs of a company or any body corporate, includes any act, omission, concealment of any fact or abuse of position committed by any person or any other person with the connivance in any manner, with intent to deceive, to gain undue advantage from, or to injure the interests of, the company or its shareholders or its creditors or any other person, whether or not there is any wrongful gain or wrongful loss;

(ii) “wrongful gain” means the gain by unlawful means of property to which the person gaining is not legally entitled;

(iii) “wrongful loss” means the loss by unlawful means of property to which the person losing is legally entitled.

448. Save as otherwise provided in this Act, if in any return, report, certificate, financial statement, prospectus, statement or other document required by, or for, the purposes of any of the provisions of this Act or the rules made thereunder, any person makes a statement,—

Punishment
for false
statement.

(a) which is false in any material particulars, knowing it to be false; or

(b) which omits any material fact, knowing it to be material,

he shall be liable under section 447.

449. Save as otherwise provided in this Act, if any person intentionally gives false evidence—

Punishment
for false
evidence.

(a) upon any examination on oath or solemn affirmation, authorised under this Act; or

(b) in any affidavit, deposition or solemn affirmation, in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act,

he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to seven years and with fine which may extend to ten lakh rupees.

450. If a company or any officer of a company or any other person contravenes any of the provisions of this Act or the rules made thereunder, or any condition, limitation or restriction subject to which any approval, sanction, consent, confirmation, recognition, direction or exemption in relation to any matter has been accorded, given or granted, and for which no penalty or punishment is provided elsewhere in this Act, the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to ten thousand rupees, and where the contravention is continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the contravention continues.

Punishment
where no
specific
penalty or
punishment is
provided.

451. If a company or an officer of a company commits an offence punishable either with fine or with imprisonment and where the same offence is committed for the second or subsequent occasions within a period of three years, then, that company and every officer thereof who is in default shall be punishable with twice the amount of fine for such offence in addition to any imprisonment provided for that offence.

Punishment
in case of
repeated
default.

452. (1) If any officer or employee of a company—

Punishment
for wrongful
withholding
of property.

(a) wrongfully obtains possession of any property, including cash of the company; or

(b) having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,