

Editorial 844

## Precautions need to be taken by professionals while Certifying Forms.

Section 448 of Companies Act, 2013

(26<sup>th</sup> July 2023)

### SHORT SUMMARY:

In this editorial author shall discuss specifically for the professionals like Company Secretaries, Chartered Accountants, And Cost Accountants. We are all aware that the Companies Act 2013 came into force on April 1, 2014. There are many changes in the Companies Act 2013 in comparison to the Companies Act 1956. We are required to do work more carefully than before for compliance with the provisions of the Companies Act 2013 and to check many points before filling out any form.

We are professionals authorized by the government to digitally sign forms. Our Digital Signature on the e-form is proof of Authentication of that form. Recently we have seen so many adjudications order for penalty against the certifying professional by ROC's.

Directors & Certifying Professional certifying the form with Incorrect Information, shall be liable for the penalty and other actions.

### A. IMPLICATION OF WRONG CERTIFICATION:

- i. ROC can issue notice for adjudication of penalties u/s 450 of Companies Act, 2013.
- ii. Certificate of Practice can be cancelled by our respected institute.
- iii. Penalties can be imposed on professionals as per Companies Act-2013. (Section-447 & 448- given below).

**B. LEGAL PROVISION:**

**a) Rule 8 - the Companies (Registration Offices and Fees) Rules, 2014:**

Sub Rule (3) The authorized signatory and the professional, if any, who certify form shall be responsible for the correctness of the contents of e-form and correctness of the enclosures attached with the electronic form.

Sub rule (9) Where any instance of filing document, application or return etc, containing a false or misleading information or omission of material fact, requiring action under section 448 or section 449 is observed, the person shall be liable under section 448 and 449 of the Act.

**Note:** As such there is no specific penalty under these rules. Hence, provision of section 450 of the Companies Act, 2013 gets attracted.

**b) Section 450- Penalty for Wrong certification:**

As per Section 450 (Punishment where no specific penalty or punishment is provided) of Companies Act 2013: 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, 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 liable to a penalty of ten thousand rupees, and in case of continuing contravention, with a further penalty of one thousand rupees for each day after the first during which the contravention continues, subject to a maximum of two lakh rupees in case of a company and fifty thousand rupees in case of an officer who is in default or any other person.

**c) Section 448- Punishment for False Statement:**

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,—

- (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.

C. QUESTION:

Whether ROC can impose penalties on professionals certifying the form If there is any mistake in the information in the form.

D. DISCLOSURE BY PROFESSIONAL IN FORMS:

- i. I declare that I have been duly engaged for the purpose of certification of this form.
- ii. 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
- iii. I have verified the above particulars [including attachments] 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
- iv. 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.
- iii. It is understood that I shall be liable for action under Section 448 of The Companies Act, 2013 for wrong certification, if any found at any stage.

**E. DISCUSSION:**

There is a very heavy penalty on professionals along with directors. Professionals should work very carefully/ diligently under the Companies Act-2013. Professionals should put their DSC after being satisfied that all provisions of Companies Act-2013 have been followed.

**I. Check point for professionals before certification of form:**

- Whether Company has authorized director for certification of the form.  
[Take copy of CTC for your records]
- Whether Company has authorized director for certification of the form.  
[Take copy of CTC for your records]
- Check the Resolution No. and Date mentioned in form for authorization of director to digitally sign such e-form.  
[check the same from the copy of original minutes].
- Check the Attachment of forms from original documents.
- Check the Letter Head on the documents attached in the form. {According to Section 12 (3) (c)}
- Get Confirmation from company of correctness of form.

**II. Documentation for record of professional:**

A professional should maintain the following documents in their record while certifying any form. It will help the professional in peer review also. Otherwise peer reviewers can issue remark on the same.

- Certified true copy of Board Resolution to Engage Practicing Professional for Certification of form.
- Engagement letter from Company for certification of e-form.
- Singed Copy of Notice, Agenda, Attendance Sheet and Minutes of Board Meeting relating to that form and Authorization for filling of that form.

**CONCLUSION:**

Certification of forms is very crucial work for professionals. They should take proper care while certifying any form.

Recently, there is an order passed by ROC Delhi & Haryana in case of AT & T Communication Services India Private Limited u/s 454 for wrong certification of form. ROC imposed the following penalty on the Company

Violation Section	Penalty imposed on Signatories	Penalty Imposed (Rs.)
Rule 8(3) of Chapter XXIV, The Companies (The Registration Offices and Fees) Rules, 2014.	Director	10,000
	Certifying Professional	10,000
	<b>Total</b>	<b>20,000</b>

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