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Need of Compliance certificate

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Neha Gupta (PCS) 10 August 2010

Hi.....

Can any one advise me in this situation:

There is a public limited Company having paid up 3 Crore and the Company Secretary of the Company has resigned on 1st March, 2010. Now question is this

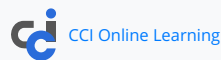
" Is it necessary for the Company to take Compliance Certificate for the F.Y. 2009-2010 ? "

In my opinion yes it is necessary because the Company Secretary has resigned before signing the balance sheet of the Company for the F.Y. 2009-10.....

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• CS Ankur Srivastava (Company Secretary & Compliance Officer) [10 August 2010](#)

Dear Neha,

The paid up capital of the Company is 3 crores and the company has appointed Company Secretary throughout the year.

W.e.f. 15/09/2009 the Company having paid up capital of Rs. 2 to 5 Crores has an option to appoint full time Company Secretary or to obtain Compliance Certificate. If the company has appointed full time company secretary, it is not required to obtain the Certificate from the Practicing Company Secretary under rule 3 of the companies (Compliance Certificate) Rules, 2001.

However, in your case the Company Secretary has resigned only on 01st March, 2010 therefore the intention of law for the appointment of Company Secretary has been complied with. Because the compliance of law has already been confirmed by the appointment of company secretary throughout the year, which in other cases is to be certified by the Compliance Certificate.

Therefore, in my opinion there is no need for the Compliance Certificate for the Financial Year 2009-10.

Further, contrary views are welcome.

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• Neha Gupta (PCS) [10 August 2010](#)

But, Ankur the C.S. is not in the Company throughout the year it resigns on 1st March and even it does not sign the Balance Sheet of the Company as on 31st March, 2010.....

Now as per my opinion the Company is in need of the Compliance Certificate from a PCS in order to comply with the provisions of Section 383A(1)..

Further views are most welcome.....



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• CS Ankur Srivastava (Company Secretary & Compliance Officer) 10 August 2010

Dear Neha,

Signing of Balance Sheet is not the deciding criterion. If he resigned after 31st March, 2010, there may be the circumstances that he would not sign the Balance Sheet..

However, you **may** obtain Compliance Certificate. But if you asked for the need, then there is no need.

Wait for other comments.



• vivek (CS) 10 August 2010

I have asked more or less similar question and the reply was in below thread:- </forum/compliance-certificate-90192.asp>

1 Like



• Neha Gupta (PCS) 10 August 2010

Thanks Vivek Sir,

I have gone through the whole conversation but still one point I think is not clear yet, in this case the company has not appointed any Company secretary till date and as per Section 383A either company has a C.S. in full time employment or get a Compliance Certificate from PCS..... for the F.Y. 2009-10

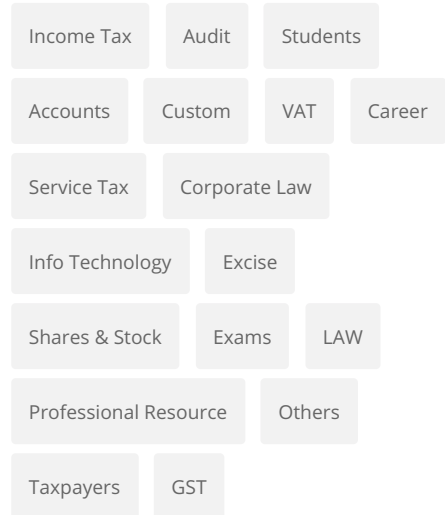
So I think we should take a Compliance certificate..... to comply with the provisions of 383A of the Companies act, 1956.



• CS Ankur Srivastava (Company Secretary & Compliance Officer) 10 August 2010

Dear Vivek,

In your case the paid up capital wa 5 Crores, and in that case the appointment of Company Secretary is must. There is no provision of filing Compliance Certificate.





• [vivek](#) (CS) [🕒 10 August 2010](#)

Ankur sir, in our case after 2 months, we have appointed CS too. In case of Ms. Neha, it seems no requirement of Compliance Certificate but on safer side they can get it to avoid any kind of future non compliance notice. Regards,



• [CS Ankur Srivastava](#) (Company Secretary & Compliance Officer) [🕒 10 August 2010](#)

Agree with Mr. Vivek.....



• [Vaibhav Shukla](#) (Company Secretary) [🕒 10 August 2010](#)

Dear neha,

The requirement for obtaining compliance certificate is mandatory for a company to which proviso to sub-section (1) of section 383A applies even if it has employed a whole time secretary.

thus every Company which is not required to employ a whole time secretary and whose paid up share capital is ten lakh rupees or more at any point of time during the financial year. shall be required to obtain Compliance Certificate from a PCS in respect of that financial year.

For clarification See ICSI Guidance Note on Compliance Certificate.

Regards

ACS Vaibhav



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