

news flash

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MCA SIMPLIFIES COMPANY LAW PROCEDURES

The Ministry of Corporate Affairs (“MCA”) has recently issued circulars for simplifying procedures and shortening timelines for certain procedures under the Companies Act, 1956 (“Act”). The circulars issued deal with:

- Online incorporation of companies within 24 hours;
- Simplified procedure for:
 - disclosures of contract with directors under Section 297 of the Act;
 - rectification of charges; and
 - confirmation of shifting of registered office to another state.

ONLINE INCORPORATION OF COMPANIES

MCA is introducing a system that will help companies submit all the required forms online and enable the Registrar of Companies (“RoC”) to process applications and issue a digital certificate of incorporation within 24 hours.

➤ Online applications/approvals

Online approval of certain e-forms is available if certified by a practicing professional¹. Such forms are approval of: (a) Director’s Identification Number, (b) names for a proposed company, and (c) issue of the digital certificate of incorporation by the RoC. The certifying professional is required to follow the guidelines formulated by MCA in this regard.

➤ Certification of practising professionals

MCA has decided to approve the e-forms required for incorporation (i.e. e-form 1 (application for incorporation of a company), e-form 18 (intimation regarding registered office of the company), and e-form 32 (intimation regarding the directors of the company)), MOA and AOA (“the Incorporation Documents”) immediately, if certified by practising professionals in respect of the correctness of information and declarations given by the subscribers. If the documents have been appropriately certified, the application will be electronically processed and the digital certificate of incorporation will be immediately issued online by the RoC.

The online process is **optional**. The existing backend processing of applications by the RoC will continue to remain.

As per the Circular, the simplified online process was to be implemented from 11th August, 2011. However, there has been no further communication from the MCA in this regard.

¹ Following are the eligible Practising professionals for the purposes of certifying the e-forms:

1. Company Secretary (in Whole time practice);
2. Cost Accountant (in Whole time practice);
3. Chartered Accountant (in Whole time practice)

OTHER SIMPLIFIED PROCEDURES

➤ **Contract with Interested Directors**

Section 297 of the Act requires a company having a paid up capital of Rupees One Crore or more to take central government approval in addition to board of directors' approval before entering into certain types of contract with other companies (except a contract between two public companies), firms, etc. in which a director is interested.

It has now been decided by the MCA that online approval under Section 297 of the Act will be given if the proposed contract has been approved by the shareholders by way of special resolution, in a general meeting.

The company while seeking approval of the directors and shareholders in their meetings shall specifically take approval to the effect that:

- (a) the proposed contract is competitive, at an arm's length, without conflict of interest and is not less advantageous to it as compared to similar contracts with other parties.
- (b) The company has not made any default in repayment of any of its debts, debentures or interest payable thereon and has filed its up to date balance sheets and annual returns with the RoC.
- (c) The proposed contract is falling within the provisions of Section 297 of the Act and the company and its directors have complied with certain provisions of Act as applicable.

Applications in this regard will be made in new e-forms with a prescribed fee. The e-form is required to be certified by a practising professional for the correctness of the information and declaration made by the company. The application and the approval from the Central Government will then be made available online.

This process is likely to be implemented from 24th September, 2011.

➤ **Rectification of register of charges and shifting of registered office**

In a move that is likely to significantly reduce the procedure and procedural hassles, the following matters will now be approved by the RoC under whose jurisdiction the registered office of the company is situated:

- Rectification of register of charges.
- Shifting of registered office of a company from one state to another.

Revised e-forms and business re-engineering processes are being developed for the said purpose.

The petitions filed with the Company Law Board for shifting of registered office pending as on the effective date of notification shall be transferred to respective RoC.

The process is likely to be implemented from 24th September, 2011.

PENALTIES FOR IMPROPER/ WRONG CERTIFICATION-

The circulars for the sake of ease confer wide responsibilities at the hand of the practising professionals and prescribe penalties in case any false information is certified by such practising professional.

➤ **Penal actions for wrong or false information**

Subscribers, professionals and declarants shall be liable for imprisonment and penalty under Section 628 and Section 629 of the Act for any wrong, false or illegal information or declaration given by the company or the certificate given by the professional in the e-forms or the attachments thereto. These liabilities will be in addition to the prescribed penalties in the regulations of respective professional institutes.

➤ **Revocation of Registration of the Company**

If the company is registered online through the new procedure, and it is later found that the company ought not to have been so registered under the provisions of the Act, the RoC shall put the company in a suspended state of animation and initiate process of revocation of the company's registration.

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