

**SYNOPSIS OF RECENT CIRCULARS AND NOTIFICATIONS BY MCA**
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**INDEX OF AMENDMENTS BY MINISTRY OF CORPORATE AFFAIRS – CIRCULARS, NOTIFICATIONS ETC.,**

| SL. NO | REF NO                              | DATE OF CIRCULAR / NOTIFICATION | DESCRIPTION OF AMENDMENT                                                                                                                                                           |
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| 1.     | <b>General Circular No: 40/2011</b> | <b>23.06.2011</b>               | Special Drive to clear pendency of e-forms filed with Registrar of Companies prior to implementation of revised Regulation 17 of the Companies Regulation, 1956                    |
| 2.     | <b>General Circular No: 38/2011</b> | <b>20.06.2011</b>               | Clarification on circular No 33/2011 dated 01.06.2011 with regard to Compliance of provisions of the Companies Act, 1956 and Rules made there under                                |
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| 5.     | <b>General Circular No: 37/2011</b> | <b>07.06.2011</b>               | Filing of Balance Sheet & Profit & Loss Account in eXtensible Business Reporting Language (XBRL) mode.                                                                             |
| 6.     | <b>General Circular No: 36/2011</b> | <b>07.06.2011</b>               | Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956                                                                             |
| 7.     | <b>General Circular No: 35/2011</b> | <b>06.06.2011</b>               | Green Initiatives in the Corporate Governance-Clarification regarding participation by shareholders or Directors in meetings under the Companies Act, 1956 through Electronic mode |
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| 33. | <b>General Circular No. 21/2011</b> | <b>02.05.2011</b> | Green Initiative in the Corporate Governance- Approval of Ministry of Corporate Affairs for appointment of agency for providing electronic platform for electronic voting under the Companies Act, 1956.                                        |
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| 45. | <b>G.S.R. 304(E)</b>                | <b>06.04.2011</b> | Amendment in Companies Regulations, 1956                                                                                                                        |
| 46. | <b>G.S.R. 303(E)</b>                | <b>06.04.2011</b> | Amendment in Director's Relatives (Office or Place of Profit) Rules, 2003.                                                                                      |
| 47. | <b>G.S.R.</b>                       | <b>31.03.2011</b> | Amendment to Companies (Particulars of Employees) Rules, 1975                                                                                                   |
| 48. | <b>General Circular</b>             | <b>31.03.2011</b> | Filing of Balance Sheet and profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode.                                                      |
| 49. | <b>G.S.R. 289(E)</b>                | <b>31.03.2011</b> | Amendment in Companies (Particulars of Employees) Rules, 1975.                                                                                                  |
| 50. | <b>G.S.R.</b>                       | <b>28.03.2011</b> | Amendment to Schedule VI.                                                                                                                                       |
| 51. | <b>G.S.R.</b>                       | <b>26.03.2011</b> | Rules to amend the Companies (Central Government's) General Rules and Forms, 1956.                                                                              |
| 52. | <b>G.S.R.</b>                       | <b>26.03.2011</b> | Rules to amend the Companies (Director Identification Number) Rules, 2006.                                                                                      |
| 53. | <b>General Circular</b>             | <b>25.03.2011</b> | Prosecution of Directors.                                                                                                                                       |
| 54. | <b>G.S.R. 222(E)</b>                | <b>18.03.2011</b> | Delegation of powers and functions to Registrars of Companies on selective provisions.                                                                          |
| 55. | <b>G.S.R. 223(E)</b>                | <b>18.03.2011</b> | Delegation of powers and functions to Regional Directors on selective provisions.                                                                               |
| 56. | <b>S.O. 591(E)</b>                  | <b>18.03.2011</b> | Amendments in the notification number, SRO dated 7th January, 1957.                                                                                             |
| 57. | <b>General Circular</b>             | <b>15.03.2011</b> | Companies Name availability (Draft) Rules, 2011                                                                                                                 |
| 58. | <b>General Circular No. 7A/2011</b> | <b>11.03.2011</b> | Easy Exit Scheme-2011                                                                                                                                           |
| 59. | <b>General Circular</b>             | <b>09.03.2011</b> | Payment of MCA fees –electronic mode-regarding.                                                                                                                 |
| 60. | <b>General Circular No:6/2011</b>   | <b>08.03.2011</b> | Process of incorporation of Companies (Form-1) and establishment of principal place of business in India by Foreign Companies (Form-44) – Procedure simplified. |
| 61. | <b>GSR 196(E)</b>                   | <b>08.03.2011</b> | Corrigendum to Notification GSR 112(E) dated 25 Feb, 2011                                                                                                       |
| 62. | <b>General Circular No:5/2011</b>   | <b>04.03.2011</b> | Simplification of DIN rules                                                                                                                                     |

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| 63. | <b>General Circular No:4/2011</b>   | <b>04.03.2011</b> | Payment of Commission to Non-Whole Time Directors of the Company under Section 309(4)(b) of the Companies Act, 1956.                          |
| 64. | <b>General Circular No:3/2011</b>   | <b>21.02.2011</b> | Clarification in respect of Circular No. 2/2011 dated 8th February, 2011 regarding direction under Section 212(8) of the Companies Act, 1956. |
| 65. | <b>G.S.R. 78(E)</b>                 | <b>10.02.2011</b> | Amendments in Companies (Central Government's) General Rules and Forms, 1956                                                                  |
| 66. | <b>GSR 70(E)</b>                    | <b>08.02.2011</b> | Amendments in Schedule XIII to the Companies Act 1956                                                                                         |
| 67. | <b>S.O. 301(E)</b>                  | <b>08.02.2011</b> | Exemption under Section 211 of Companies Act 1956                                                                                             |
| 68. | <b>S.O. 300(E)</b>                  | <b>08.02.2011</b> | Exemption under Section 211 of Companies Act 1956                                                                                             |
| 69. | <b>S.O. 107(E)</b>                  | <b>19.01.2011</b> | Appointment of National Advisory Committee on Accounting Standards.                                                                           |
| 70. | <b>General Circular No:2/2011</b>   | <b>08.02.2011</b> | Direction under Section 212(8) of the Companies Act, 1956                                                                                     |
| 71. | <b>General Circular – EES -2011</b> | <b>03.02.2011</b> | Easy Exit Scheme, 2011                                                                                                                        |

#### DETAILS ON AMENDMENTS

#### General Circular No: 40/2011 dated 23.06.2011

#### Special Drive to clear pendency of e-forms filed with Registrar of Companies prior to implementation of revised Regulation 17 of the Companies Regulation, 1956

1. It is noticed that a large number of e-forms filed by the companies with the ROCs prior to implementation of revised regulation 17 of the Companies Regulation, 1956 i.e. 15.02.2(09) are still pending in folders like RESUB. PUCL etc. for want of action on the part of stake holders. Unless the companies respond to this. ROC's are unable to process the said forms.
2. As per the existing process, the companies have to resubmit or furnish their clarification in Form 67 within the stipulated period of 30 days failing which such forms filed prior to 15.02.2009 will lie pending in MCA21.
3. In order to reduce the pendency of such e-forms. Ministry has decided to reopen all such pending forms and the same have been placed in the category "Held in Abeyance" (HIAB) so that ROCs can review the same. Therefore, all ROCs are hereby advised to review such pending work items with them and dispose it by 7<sup>th</sup> July, 2011 .
4. This is the last opportunity provided by the Ministry to clear the pendency.
5. All the stakeholders are also requested to track the work items in MCA21 Portal and contact the concerned ROCs to help them clear the pendency.

## Synopsis

- ❖ Initiative taken by MCA to clear forms pending for resubmission/user clarification etc.
- ❖ All such forms will be marked as “held in abeyance”
- ❖ Last date for ROCs to dispose such forms is 07.07.2011.
- ❖ Stake holders to review the status on MCA and take action accordingly.

### General Circular No:38/2011 dated 20.06.2011

#### Clarification on Circular No. 33/ 2011 dated 01.06.2011 with regard to compliance of provisions of the Companies Act, 1956 and Rules made there under

The Ministry has issued General Circulars No. 33/ 2011 dated 01.06.2011 wherein it was informed that in order to ensure corporate governance and proper compliances of provisions of Companies Act, 1956, no request, whether oral, in writing or through e-forms, for recording any event based information / changes shall be accepted by the Registrar of Companies from such defaulting companies, unless they file their updated Balance Sheet and Profit & Loss Accounts and Annual Return with the Registrar of Companies.

In order to have better understanding of the circular, it is further clarified that the above circular shall be applicable to those defaulting companies and their Directors which have not filed Balance Sheet or Annual Return for any of the financial year's 2006-07, 2007-08, 2008-09 and 2009-10 with the Registrar of Companies as required under sections 220 and/ or 159 of the Companies Act, 1956.

It is again reiterated that the above circular shall be effective from 3rd July, 2011.

## Synopsis:

- ❖ Present circular is in continuation to General Circular No. 33/2011
- ❖ The earlier circular mentioned that companies in default of annual filing will not be permitted to file any event based forms.
- ❖ The current circular notifies the FYs in respect of which circular 33/2011 will be applicable, which are: 2006-07, 2007-08, 2008-09 and 2009-10.
- ❖ Applicable w.e.f. 03.07.2011.

### Notification G.S.R dated 14.06.2011

#### Companies (Amendment) Regulations, 2011

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R\\_14jun2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R_14jun2011.pdf)

In exercise of the powers conferred by sub-sections (1),(2),(5) and (8) of Section 25 and Sub-section (2) of Section 609 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following Regulations further to amend the Companies Regulations, 1956, namely:-

1. (1) These Regulations may be called the Companies (Amendment) Regulations, 2011.  
(2) They shall come into force on the date of their publication in the official Gazette.
2. In the Companies Regulations, 1956.

In Regulation 2, after clause I the following clause shall be substituted, namely:-

“(d) “Regional Director” means the person appointed by the Central Government in the Ministry of Corporate Affairs as a Regional Director for the respective regions as per the notification.

## *S ynopsis:*

### **Companies Amendment Regulations, 2011. Regulation 2 of Companies Regulations, 1956 modified.**

- **North Eastern region clubbed with the Eastern Region.**
- **New South East Region notified, Directorate at Hyderabad.**
- **States of Karnataka, Kerala, Andhra Pradesh and Union Territory of Lakshdweep brought under the above new Region.**

**Notification S.O.1355 (E) dated 10.06.2011**

**The Ministry of Corporate Affairs has come out with a notification on Amendment in Notification No S.O. 1329 (E) dated 8<sup>th</sup> May 1978 and last amended by S.O. 143 (E) dated 14.01.2009.**

**Copy of Notification is available at [http://mca.gov.in/Ministry/notification/pdf/S.O.1355\(E\)\\_10jun2011.pdf](http://mca.gov.in/Ministry/notification/pdf/S.O.1355(E)_10jun2011.pdf)**

In exercise of the powers conferred by sub-section (2) of section 4A of the Companies Act, 1956 (1 of 1956), the Central Government hereby further makes the amendment in the notification of the Government of India, published in the Gazette of India, Part II, section 3, sub-section (ii), dated the 13th May, 1978 in the erstwhile Ministry of Law, Justice and Company Affairs, (Department of Company Affairs) vide number S.O. 1329, dated the 8th May, 1978, namely :—

In the said notification, after serial number 54, the following serial number and entry relating thereto shall be inserted, namely:—

- “55. Gujarat Industrial Investment Corporation Limited.
- 56. Andhra Pradesh Industrial Development Corporation Limited.
- 57. Karnataka Urban Infrastructure Development and Finance Corporation Limited.
- 58. L&T Infrastructure Finance Company Limited.”

## *S ynopsis:*

### **Insertion of 4 more companies in List of Financial Corporations as Follows:**

- 55. Gujarat Industrial Investment Corporation Limited.**
- 56. Andhra Pradesh Industrial Development Corporation Limited.**
- 57. Karnataka Urban Infrastructure Development and Finance Corporation Limited.**
- 58. L&T Infrastructure Finance Company Limited.**

### **12 Cases of Wrong E-Filing Detected**

MCA Directs Regional Directors to Initiate Inquiry against Those Practicing Professionals Who Certified the Particulars Furnished by Listed Companies

The Ministry of Corporate Affairs has directed its Regional Directors to initiate inquiry against those practicing professionals who had certified 12 cases of wrong e-filing by certain listed companies in their e-forms. During the examination it was found that the data furnished in the e-forms were totally different as compared to the records of the company.

As per the Ministry of Corporate Affairs these are public documents and by furnishing false information to the government as well as to the other stakeholders of the company, the practicing professionals have neglected in discharging their duties and have rendered themselves liable for penal action under Companies Act, 1956 as well as professional misconduct.

If found guilty in preliminary enquiry by the Regional Director, the concerned professional institute will be informed to initiate an enquiry under their regulations. Simultaneously, the concerned professional shall be debarred to submit any document on MCA portal till final enquiry report is received from the respective professional institutes.

It may be noted that the MCA has been pushing the cause of electronic filing and approval regime. Objective is to do away with human intervention in MCA approvals to the maximum extent possible.

For this purpose, Ministry of Corporate Affairs has entrusted practicing professionals registered as members of the professional bodies namely, ICAI, ICSI & ICWAI with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. Professionals are now to be responsible for submitting /certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry.

Also, the practicing professionals certify that they have verified the particulars given in the e-forms from the records of the companies and found them to be true and correct.

#### **S ynopsis:**

- ◆ **12 Cases of Wrong E-Filing Detected.**
- ◆ **Ministry has brought many forms under STP mode to keep away the human intervention in Approval.**
- ◆ **Onus is on the professionals who have certified the forms.**

**General Circular No: 37/2011 dated 07.06.2011**

**Filing of Balance Sheets and Profit and Loss Account through XBRL mode.**

In supersession of this Ministry's Circular no. 9/ 2011 dated 31.03.2011 and 25/2011 dated 12.05.2011, Ministry of Corporate Affairs hereby mandated certain class of companies to file Balance sheets and Profit and loss Account alongwith Director's and Auditor's Report for the year 2010-11 onwards by using XBRL **taxonomy. The Taxonomy Business Rules, Validity tools etc required for preparation the above documents in XBRL format as the existing Schedule VI and Accounting Standards** notified under the Companies (Accounting Standards) Rules, 2006 have **been prepared and hosted on the website of the Ministry at [www.mca.gov.in](http://www.mca.gov.in). The Frequently Asked Questions ( FAQs )** about XBRL have been framed by the **Ministry and they are being annexed as Annexure I with this circular for the** information and easy understanding of the stakeholders. To enable filing on XBRL by stakeholders, MCA-21 portal will have XBRL filing module by July, 2011. Actual date **will be informed separately.**

Complete copy of the Circular is available at [http://www.mca.gov.in/Ministry/pdf/Circular\\_37-2011\\_07jun2011.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_37-2011_07jun2011.pdf)

### Synopsis:

- ◆ This circular is in supercession to circulars 25/2011 dated 12.05.2011 and Circular 9/2011, dated 31.3.2011.
- ◆ As per the current circular, XBRL is applicable to
  - All listed companies and their Indian subsidiaries,
  - All companies with paid capital of Rs. 5 Crore and above
  - All companies with turnover of Rs. 100 Crore or above.
- ◆ Following companies are exempted:
  - \*\* Banking Companies
  - \*\* Insurance companies
  - \*\* Power companies
  - \*\* NBFCs
- ◆ XBRL taxonomy and FAQs hosted on MCA website.
- ◆ Filing Module to be hosted by July 2011.
- ◆ Actual date to be notified later.

**General Circular No: 36/2011 dated 07.06.2011.**

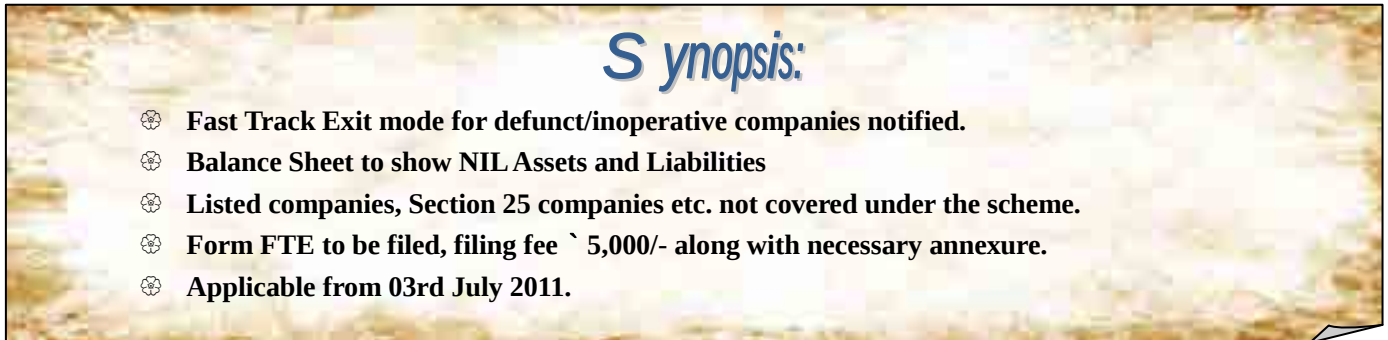
**Guidelines for Fast Track Exit mode for defunct companies under section 560 of the Companies Act, 1956**

1. There are a number of companies, which are registered under the Companies Act, 1956, but due to various reasons they are inoperative since incorporation or commenced business but became inoperative or defunct later on. Such companies may be desirous of getting their names strike off from the Register of Companies maintained by Registrar of Companies.

2. As per section 560 of the Companies Act, 1956, Registrar of Companies may strike off the name of companies on satisfying the conditions therein. As per present practice, a company desirous of getting its name struck off, has to apply to Registrar of companies in e-form 61. All pending statutory returns are required to be filed along with e-form 61.

3. In order to give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry has decided to modify the existing route through e-form – 61 and has prescribed the new Guidelines. The Guidelines for “Fast Track Exit mode” for defunct companies under section 560 of the Companies Act, 1956 are enclosed herewith.

4. These Guidelines will be implemented w.e.f. 3rd July, 2011.



**S ynopsis:**

- ⊗ **Fast Track Exit mode for defunct/inoperative companies notified.**
- ⊗ **Balance Sheet to show NIL Assets and Liabilities**
- ⊗ **Listed companies, Section 25 companies etc. not covered under the scheme.**
- ⊗ **Form FTE to be filed, filing fee ` 5,000/- along with necessary annexure.**
- ⊗ **Applicable from 03rd July 2011.**

**General Circular No: 35/2011 dated 06.06.2011**

**Green Initiatives in the Corporate Governance – Clarification regarding participation by shareholders or Directors in meetings under the Companies Act, 1956 through electronic mode.**

1. The Ministry has issued General Circulars No. 27/2011 and 28/2011 dated 20.05.2011 whereby it was clarified that a shareholder or a director of the company may participate in meetings under the provisions of the Companies Act, 1956 through electronic mode.

In order to have better understanding of the circular, it is further clarified as under: --

(i) It is not mandatory for companies to provide its directors, the facility to attend meetings through video conferencing.

(ii) In respect of shareholders meetings to be held during financial year 2011-12, video conferencing facility for shareholders is optional. Thereafter, it is mandatory for all listed companies.

(iii) Where the company opts to provide video conferencing facility, they have to comply with the procedures prescribed in the Circular no. 27/2011 & 28/2011 dated 20.05.2011 in this regard.

(iv) The company is free to select Video Conferencing facility of any agency but the chairman of the meeting and Secretary of the company has to ensure that there is a proper Video Conferencing equipment/facility which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

(v) In the case of e-voting in general meetings, the Ministry of Corporate Affairs are presently authorizing only National Security Depository Ltd and Central Depository Services (India) Ltd as agencies for providing and supervising electronic platforms for electronic voting subject to the conditions that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi.

## Synopsis:

- ✧ Clarification issued regarding Board/general meetings through video-conferencing.
- ✧ Companies not under obligation to provide video-conferencing for Board meetings.
- ✧ For general meetings:
  - Ø For FY 2011-2012, facility optional.
  - Ø From FY 2012-2013 onwards mandatory for listed companies.

**No 17/143/2011-CL.V dated 06.06.2011**

### Companies (Dematerialization of Certificates) Rules, 2011

The Ministry of Corporate Affairs is considering to issue Companies (Dematerialization of Certificates) Rules, 2011 so that all public Companies and their subsidiaries which have raised money by issue of shares, debentures, by accepting public deposits, stock, bond or any other financial instruments from public, other than from directors of the company, shall be required to issue and keep such share certificates, debenture certificates and certificates issued for receipt of deposits, stock, bond or any other financial instruments in dematerialized form only, in the manner prescribed in the Depositories Act, 1996 and regulation made there under.

You are requested to examine the draft rules and furnish your comments / recommendations to the Ministry latest by 30th June, 2011 by e-mail on the following e-mail addresses.

monika.gupta@mca.gov.in

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In exercise of the powers conferred by clause (b) of sub-section (1) of section 642 read with section 84, 58(A), 610B & 610C of the Companies Act, 1956, the Central Government hereby makes the following rules, namely:-

#### 1. Short title and commencement:-

- (1) These rules may be called the Companies (Dematerialization of Certificates) Rules, 2011
- (2) They shall come into force from 1<sup>st</sup> October, 2011.

#### 2. In these rules, unless the context otherwise requires.-

- (a) "Act" means the Companies Act, 1956 (1 of 1956);
- (b) "certificate" means share certificate, debenture certificate, deposit certificate, stock, bond or any other certificate or financial instrument through which money has been raised from the public;
- (c) The words & expressions used in these rules but not defined in these rules shall have the same meanings respectively assigned to them in the Act or Depositories Act, 1996.

3. All public Companies and their subsidiaries which have raised money by issue of shares, debentures, by accepting public deposits, stock, bond or any other financial instruments from public, other than from directors of the company, shall issue and keep such share certificates, debenture certificates and certificates issued for receipt of deposits, stock, bond or any other financial instruments in dematerialized form only, in the manner prescribed in the Depositories Act, 1996 and regulation made there under.

4. The companies falling in above categories shall convert their existing such certificates mentioned in para (3) above

into dematerialized form by 30<sup>th</sup> September, 2011.

### Synopsis:

- ✦ Draft Companies (Dematerialization of Certificates) Rules, 2011 notified.
- ✦ Comments can be sent to MCA till 30.06.2011 on the above draft.
- ✦ Shall come into force from 1<sup>st</sup> October 2011.
- ✦ Applicable to All Public Limited Companies which raise money by issue of shares, Debentures, accepting public deposits, stock, bond etc., shall issue certificate for receipt of such deposit in Dematerialised form only.
- ✦ Companies falling in above category have to convert their existing certificates in Demat form by 30.09.2011.

**GSR 429(E) dated 03.06.2011**

The Ministry of Corporate Affairs has come with a Notification on The Companies (Cost Accounting Records) Rules, 2011.

Copy of Notification is available at [http://mca.gov.in/Ministry/notification/pdf/Common\\_Record\\_Rules\\_03jun11.pdf](http://mca.gov.in/Ministry/notification/pdf/Common_Record_Rules_03jun11.pdf)

### Synopsis:

**Companies (Cost Accounting Records) Rules, 2011 notified.**

**Applicable to following cos. –**

- ◆ Cos. engaged in production, processing, manufacturing, or mining activities, and
- ◆ Networth exceeds Rs. 5 Crores or Turnover exceed Rs. 20 Crores or Listed cos.

- \*\* Above companies to obtain compliance report from Cost Auditor (member of ICWAI)
- \*\* Format of report has been provided
- \*\* Report to be filed within 180 days of close of FY to CG.
- \*\* Proper cost accounting records to be maintained.

**GSR 430(E) dated 03.06.2011**

The Ministry of Corporate Affairs has come with a Notification on The Companies (Cost Audit Report) Rules, 2011.

Copy of Notification is available at [http://mca.gov.in/Ministry/notification/pdf/Revised\\_Report\\_Rules\\_03jun11.pdf](http://mca.gov.in/Ministry/notification/pdf/Revised_Report_Rules_03jun11.pdf)

### Synopsis:

- Companies (Cost Audit Report) Rules, 2011 notified.
- Applicable to all cos. for which Cost Audit has been ordered by CG under Section 233B
- Procedure for appointment of Cost Auditor notified vide General Circular No. 15/2011
- Form of Audit Report notified vide this circular.
- Report to be filed by auditor within 180 days of close of FY to CG.

**General Circular dated 03.06.2011****Settlement of Prosecutions Cases**

While reviewing prosecution cases it was decided to review pending prosecution cases. Ministry of Corporate Affairs has decided following actions to be taken by RDs and ROCs immediately.

1. Lok Adalats should be organized on 9th, 16th, 23rd & 30th June by RDs in the offices of concerned ROCs within your jurisdiction between 10.00 AM to 1.00 P.M by giving an advance advertisement in the local Newspapers to this effect through DAVP. The chapters of ICSI, ICWAI, ICAI and Bar Council may be used for wide publicity and efforts should be made to dispose off compoundable offences there itself. In next month, two Lok Adalats will be held by each RD per month. These would be held on Saturdays.
2. The object of organizing Lok Adalats should be to ascertain the legal cases where the companies and their officers in default are inclined to get the offences compounded so that necessary applications may be moved by the companies for this purpose and on payment of compoundable fees, the prosecutions may be withdrawn.
3. The advertisement must contain invitation to:
  - i) Applicants of pending application for compounding within the jurisdiction of concerned ROC.
  - ii) Companies and their officers in default against whom cases have already been filed and are compoundable under the provisions of Sec. 621A of the Companies Act, 1956.
  - iii) Company's Director/Key Management Personnel who feels that a case has wrongly been filed against him and has requested to withdraw the case on his own or through authorized representative.
4. These cases should be cleared then and there by taking report from ROC & RD and if compoundable by the RD, the orders will be passed there itself. Cases for withdrawal shall be sent to MCA for approval.
5. All ROCs be advised to review pending prosecution cases with reference to circulars issued by the Ministry available at MCA Portal and to submit report with their recommendation through Regional Director.
6. All ROCs be advised to review prosecutions filed against nominee/independent directors so as to withdraw the cases where nominee/independent directors were not liable.
7. All ROCs be advised to review all the prosecutions filed for non-filing of statutory returns/reports u/s 159, 162, 220 of the Act where the companies/directors are not available/traceable and no public interest is involved in defaulting companies. For this purpose, public interest is presumed to be involved where the company is listed or public deposits have been accepted, debentures have been issued, or secured loans issued to banks or financial institutions.
8. All ROCs be also advised to review the prosecutions against the companies which have applied for striking off their names under EES-2010. After review of prosecutions cases, necessary report may be submitted by regional directors on monthly basis.
9. Further, you are requested to confirm how many ROC offices under your jurisdiction had updated prosecution module and if any ROC has not yet updated the prosecution module, the same should be got done within next 3 working days and to submit a compliance report.

This issues with the approval of Secretary, MCA.

## Synopsis:

The Ministry has decided to settle off the disputes as early as possible.

- ✿ To Organize Lok Adalats.
- ✿ To Review all pending cases with Regional Director.
- ✿ To advise RoC to review pending prosecution cases with reference to circulars issued by the Ministry available at MCA Portal and to submit report with their recommendation through Regional Director.
- ✿ To Advise ROCs be advised to review prosecutions filed against nominee/independent directors so as to withdraw the cases where nominee/independent directors were not liable.
- ✿ All ROCs be advised to review all the prosecutions filed for non-filing of statutory returns/reports u/s 159, 162, 220 of the Act where the companies/directors are not available/traceable and no public interest is involved in defaulting companies. For this purpose, public interest is presumed to be involved where the company is listed or public deposits have been accepted, debentures have been issued, or secured loans issued to banks or financial institutions etc.,

### Notification GSR (E) dated 02.06.2011

In exercise of the powers conferred by clause (A) and (b) of sub-section (1) of section 642 read with sections 266A, 266B and 266E of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, further to amend the Companies (Director Identification Number) Rules, 2006 namely:-

#### 1. Short title and commencement

- (1) These rules may be called the Companies Director Identification Number (Second Amendment) Rules, 2011.
- (2) They shall come into force with effect from 12th June, 2011.

#### 2. In rule 3,-

- (i) In sub-rule (3), para (b), the word 'can' after the words 'the form', shall be substituted by the word 'shall';
- (ii) In sub-rule (3), para (b), the words 'or by the Managing Director or Director of the company in which the applicant intends to be a Director' after the words 'full time employment of the company' to be deleted;
- (iii) In sub-rule (3), para (d) to be deleted.

#### 3. For rule 4, para (b), the following para (b) shall be substituted, namely:-

"(b) after successful payment of fee, the system after processing, shall automatically generate the approved DIN, except for cases where potential duplicates are identified. In potential duplicate cases, the provisional DIN shall be generated by the system."

#### 4. In rule 7,-

- (i) In sub-rule (2), para (b), the word 'needs' after the word the form, shall be substituted by the word 'shall';
- (ii) In sub-rule (2), after para (b), the following para (c) shall be inserted, namely:-  
"(c) the form can also be digitally signed by a Company Secretary in full time employment of the company."
- (iii) For sub-rule (4)' following sub-rule shall be inserted, namely:-

"(4) after successful uploading of Form No. DIN-4, the system after processing, shall automatically incorporate the changes in the particulars of the Director in the DIN database maintained by the Ministry, except for cases where potential duplicates are identified. In potential duplicate cases, the Central Government, shall examine the application as per procedure adopted in case of provisional DIN as given in rule 3, sub-rule 6,7 and 8."

5. For Forms DIN-1 and DIN-4, the following Forms shall be substituted as per the Notification.

Copy of Notification is available at [http://mca.gov.in/Ministry/notification/pdf/DIN\\_GSR\\_02jun2011.pdf](http://mca.gov.in/Ministry/notification/pdf/DIN_GSR_02jun2011.pdf)

## Synopsis:

**The Notification has enunciated changes in DIN notification already issued with regard to replacement and insertion of certain words.**

**General Circular No: 34/2011 dated 02.06.2011**

### **Guidelines for Declaring financial institution as Public Financial Institutions under Section 4A of the Companies Act, 1956.**

Section 4A of the Companies Act, 1956 was inserted by the Companies (Amendment) Act, 1974 (41 of 1974) with effect from 01<sup>st</sup> February 1975. Sub-section (2) of Section 4A of the Act empowers the Central Government that subject to the provisions of sub section (1) of the Act, to notify in the Official Gazette such other institutions as it may think fit to be a public financial institution (PFI).

In the past, the Ministry was declaring an institution as PFI if it meets any one of Clause (i) and (ii) of sub-section (2) of Section 4A of the Act. Now, the Central Government has framed following criteria for declaring any financial institution as PFI under section 4A of the Companies Act, 1956.

- (a) A Company or corporation should be established under a special act or the companies Act being Central Act;
- (b) Main Business of the Company should be industrial / infrastructural financing.
- (c) The Company must be in existence for at least 3 years and their financial statement should show that their income from industrial / infrastructural financing exceeds 50% of their income.
- (d) The net-worth of the Company should be Rs one thousand crore;
- (e) Company is registered as infrastructure finance company with RBI or as an Housing Finance Company (HFC) with National Housing Bank;
- (f) In case of CPSUs/ SPSUs, no restriction shall apply with respect to financing specific sectors and net-worth.

In view of above any financial institution applying for declaration as PFI shall fulfill the aforesaid criteria.

## Synopsis:

Revised criteria for declaration Public Financial Institutions u/s 4A(2) of CA, 1956 notified.

| PRESENT CRITERIA                                                  | REVISED CRITERIA                                                        |
|-------------------------------------------------------------------|-------------------------------------------------------------------------|
| Institution to be established under any Central Act, or           | Company/Corporation to be established under a Special Act/Companies Act |
| At least 51% of the paid up capital to held by Central Government | Main business to be industrial/infrastructure financing                 |
|                                                                   | Company to be in existence for more than 3 years                        |
|                                                                   | Income from main business to be at least 50% of total income            |
|                                                                   | Minimum Net worth of Rs. 1,000 Crore.                                   |

**General Circular No: 33/2011 dated 01.06.2011**

**Section 610 of the Companies Act, 1956** confers a right to any person to inspect any document kept with the Registrar of Companies under the Act. The Balance Sheet and Profit & Loss Accounts and Annual Return of any company are the basic documents which are required to be filed with Registrar of Companies annually as required under section 220 and 159 of the Companies Act, 1956.

It has been observed that some companies are filing only their event based information with the Registrar of Companies without filing their upto date Balance Sheet and Profit & Loss Accounts and Annual Return. Therefore, such companies are depriving the right of the public to inspect these basic documents In order to ensure corporate governance and proper compliances of provisions of Companies Act, 1956, it has been decided that no request, whether oral, in writing or through e-forms, for recording any event based information / changes shall be accepted by the Registrar of Companies from such defaulting companies, unless they file their updated Balance Sheet and Profit & Loss Accounts and Annual Return with the Registrar of Companies.

However, in the interest of other stakeholders following event based information / changes will continue to be accepted by the Registrar of Companies from such defaulting companies

| Forms             | Subject                                                                                                                                                                                                                                                                                                                                                                          |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Form 32           | Particulars of appointment of Managing Director, director, Manager and Secretary and the changes among them or consent of candidate to act as a managing director or director or manager or secretary of a company and / or undertaking to take and pay for qualification shares. (Pursuant to sections 303 (2) or 266(1) (a) and 266 (1) (b) (iii) of the Companies Act, 1956.) |
| Form 20B          | Form for filing annual return by a company having share capital with the Registrar. (Pursuant to Section 159 of the Companies Act, 1956.)                                                                                                                                                                                                                                        |
| Form 21A          | Particulars of annual return for the company not having share capital. (Pursuant to Section 160 of Companies Act, 1956.)                                                                                                                                                                                                                                                         |
| Form 23AC & 23ACA | Form for filing Balance Sheet and Profit and Loss Account and other documents with the Registrar. (Pursuant to section 220 of the Companies Act, 1956.)                                                                                                                                                                                                                          |
| Form 1 INV        | Forms for deposit of Money into IEPF                                                                                                                                                                                                                                                                                                                                             |
| Form 23B          | Intimation by Auditor to Registrar                                                                                                                                                                                                                                                                                                                                               |

|         |                                                                  |
|---------|------------------------------------------------------------------|
| Form 66 | Form for submission of Compliance Certificate with the Registrar |
|         | Form related to Cost Audit Branch                                |
|         | Investor Complaint Form                                          |

It may be further noted that Forms for deposit of money into IEPF. Information by Auditor to Registrar Form for submission of compliance certificate with the Registrar:

- a)** No e-filing shall be accepted by the Registrar of Companies from Directors of these defaulting companies for any other company also.
- b)** Company Secretaries and Auditors of these companies will also not be allowed to sign and certify the filing with MCA-21 system, in respect of these defaulting Companies, till the defect is rectified.
- c)** Members of ICAI, ICSI and ICWAI must not issue any certificates to such defaulting companies other than above mentioned e-forms.
- d)** Action will be taken against the defaulting companies and their Directors officers in default in co-ordination with RBI and SEBI.
- e)** This circular will not apply to such companies where the Balance Sheet and Annual Return could not be filed due to order of court/company law board or any other competent authority and concerned ROC has marked this company as having management dispute.
- f)** This circular shall be effective from **3rd July, 2011**.

**Synopsis:**

- \*\* Notification regarding companies in default of Annual Filing.**
- \*\* No event based forms will be accepted for such companies except a few like Form 32, DIN 3 etc.**
- \*\* No filing by directors of these companies will be accepted for other companies as well.**
- \*\* Professional not to certify/issue certificates to such cos. till defect is rectified.**
- \*\* Circular applicable w.e.f. 03.07.2011.**

**General Circular No: 32/2011 dated 31.05.2011**

1. The Ministry of Corporate Affairs vide its General Circular No.1.11.2011 dated 07.04.2011 has already informed that the Ministry is considering to allot all DIN applications online and to examine the DIN-1 and DIN-4 e-form through the system, following fields in the DIN e-form will be mandatory : --

- (i) Name of Applicant
- (ii) Father's name of the Applicant
- (iii) Date of Birth
- (iv) Income Tax Permanent Account Number (PAN) in case of all Indian Nationals.
- (v) Passport in case of all Foreign Nationals.

2. It has been decided that with effect from 12 June, 2011, all DIN-1 & DIN-4 applications has to be digitally signed by the practicing Chartered Accountants, Company Secretaries or Cost Accountants who shall also verify the particulars of the applicant given in the applications. All these applications will be approved online.

3. At present, the PAN of the applicant is not a mandatory field in DIN eform-1. In order to examine DIN e-forms through the system and to avoid duplicate DIN, it has been decided that all existing DIN holders who have not furnished their PAN

earlier at the time of obtaining DIN, are required to furnish their PAN by filing DIN-4 e-form by 30th September, 2011 failing which their DIN will be disabled and they shall also be liable for heavy penalty.

### *S ynopsis:*

- Y **Time limit for PAN up dation of DIN extended till 30.09.2011.**
- Y **In case of non-compliance, DIN may be disabled and heavy penalty levied on DIN holder.**

#### **General Circular No.31/2011 dated 31.05.2011**

#### **Depreciation for the purpose of declaration of Dividend under Section 205 in case of companies referred to in Section 616 (C) of the Companies Act, 1956 (the Act).**

It has been noticed that despite having clear provision in section 616 (C) of the Companies Act, 1956, the companies engaged in the generation or supply of electricity are approaching Ministry of Corporate Affairs for fixing rate of depreciation in individual cases. The Ministry has, considered the whole matter and it is hereby clarified that Section 616 (C) the Companies Act, 1956 provides that the same shall apply to companies engaged in the generation or supply of electricity, except in so far as the said provision is inconsistent with the provisions of the Indian Electricity Act, 1910 or the Electricity Supply Act, 1948 as repealed by enactment of the Electricity Act, 2003.

Govt. of India, Ministry of Power vide resolution dated 6th January 2006 has notified Tariff Policy in terms of section 3 of the Electricity Act, 2003. The said Tariff Policy inter-alia provides that rates of depreciation as notified by Central Electricity Regulatory Commission (CERC) would be applicable for the purpose of tariffs as well as accounting. CERC, while notifying regulation vide notification dated 19.01.2009, in exercise of power conferred under section 178 of the Electricity Act, 2003, has also notified the rates of depreciation as well methodology for computing such depreciation and Depreciation is to be provided up to 90% of the cost of asset.

Since the rates of depreciation and methodology notified under Electricity Act, 2003 are inconsistent with the rates given in Schedule XIV of the Act and the former being special Act, the former shall prevail over rates notified under Schedule XIV of the Companies Act by virtue of section 616(c) of the Companies Act. Accordingly, it is clarified that companies referred to in Section 616(c) of the Companies Act can distribute dividend out of profit arrived at after providing for depreciation following the rates as well as methodology notified by CERC and the same shall be sufficient compliance of section 205 of the Companies Act, 1956.

### *S ynopsis:*

- ✦ **Clarification issued in respect of method of providing depreciation u/s 205 for companies u/s 616(C) – Companies engaged in generation/distribution of electricity.**
- ✦ **Companies permitted to follow rates and methodology provided by CERC – Central Electricity Regulatory Commission for purpose of section 205.**

**Notification - GSR (E) dated 30.05.2011****POSATL BALLOT – E-POLLING**

In exercise of the powers conferred by section 192A read with clauses (a) and (b) of sub-section (1) of section 642 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules, in supersession of Companies (passing of the resolution by postal ballot) Rules, 2001 namely:-

**1. Short title and commencement**

(1) These rules may be called the Companies (passing of the resolution by postal ballot) Rules, 2011.

(2) They shall come into force on the date of their publication in the official gazette.

**2. Definitions:-**

In these rules unless the context otherwise requires -

(a) "Act" means the Companies Act, 1956 (1 of 1956);

(b) "Agency" means agency appointed for providing and supervising electronic platform for voting by electronic platform shall be an agency approved by the Ministry of Corporate Affairs.

(c) "Postal Ballot" includes voting by share holders by postal or electronic mode instead of voting personally by presenting for transacting businesses in a general meeting of the company;

(d) "Requisite majority" with regard to Special Resolution means votes cast in favour of the business is three times more than the votes cast against, with regard to ordinary resolution, votes cast in favour is more than the votes cast against.

(e) "Voting by electronic mode" means a process for recording votes by the members using a computer based machine to display an electronic ballot and to record the vote and also the number of votes polled in favour or against such that the entire voting gets registered and counted in a electronic registry in a centralised server;

(f) Words and expressions used herein but not defined shall, unless the context otherwise requires, bear the meaning, if any, as assigned to them under the Act and Information Technology Act, 2000.

**3. Notice:-**

(a) The company may issue notices either,-

(i) under Registered Post Acknowledgement Due; or

(ii) through any other secured mode of posting provided by Department of Post; or

(iii) through electronic mail provided the company has obtained email address of its member for sending the notices through e-mail, after giving an advance opportunity to the member to register his email address and changes therein from time to time with the concerned depository; and

(b) The notice shall clearly mention that whether the company is providing voting through postal ballot or by electronic mode. If the company is opting for providing voting by electronic mode, then the notice shall clearly indicate the process and manner for voting by electronic mode provided by the agency.

(c) The company shall cause an advertisement to be published in a leading English Newspaper and in one vernacular Newspaper circulating in the State in which the registered office of the company is situated, about having dispatched the ballot papers duly specifying therein, inter alia, the following matters:-"

(i) The date of completion of despatch of notices;

(ii) The date of commencement of voting through postal ballot or by electronic mode;

(iii) The date of end of voting through postal ballot or by electronic mode;

(iv) The notice shall further state that any postal ballot received from member beyond the said date will not be valid.

(v) That members, who have not received postal ballot forms may apply to the Company and obtain a duplicate thereof.

#### 4. Applications:-

These Rules shall be applicable to listed companies and in case of resolutions relating to such businesses as are specified under rule 5.

#### 5. List of businesses in which the resolutions shall be passed through Postal Ballot.

- (a) Alteration in the Object Clause of Memorandum;
- (b) Alteration of Articles of Associations in relation to insertion of provisions defining private company;
- (c) Buy-back of own shares by the company under sub-section (1) of section 77A;
- (d) Issue of shares with differential voting rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of section 86;
- (e) Change in place of Registered Office outside local limits of any city, town or village as specified in sub-section (2) of section 146;
- (f) Sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (l) of section 293;
- (g) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A;
- (h) Election of a director under proviso to sub-section (1) of section 252 of the Act;
- (i) Variation in the rights attached to a class of shares or debentures or other securities as specified under section 106.

#### 6. Procedure to be followed for conducting business through Postal Ballot:-

- (a) The company may make a note below the notice of General Meeting for understanding of members that the transaction(s) at Sl. No. requires consent of shareholders through postal ballot;
- (b) The board of directors shall appoint one scrutinizer, who is not in employment of the company, may be a retired judge or any person of repute who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner;
- (c) The scrutinizer shall submit his report as soon as possible after the last date of receipt of Postal Ballots;
- (d) The scrutinizer will be willing to be appointed and he is available at the Registered Office of the company for the purpose of ascertaining the requisite majority;
- (e) The scrutinizer shall maintain a register to record the consent or otherwise received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-voting rights and the Scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form. The Postal Ballot and all other papers relating to postal ballot will be under the safe custody of the Scrutinizer till the Chairman considers, approves and sign the minutes of the meeting. Thereafter, the Scrutinizer shall return the ballot papers and other related papers / register to the company so as to preserve such ballot papers and other related papers / register safely till the resolution is given effect to;
- (f) The consent or otherwise received after thirty days from the completion of dispatch of notice shall be treated as if reply from the member has not been received;

#### 7. Procedure to be followed for conducting business by electronic mode:-

The company shall follow the procedure for voting by electronic mode as recommended by agency.

### Synopsis:

- \*\* Continuation of “Green Initiatives”
- \*\* Postal Ballot procedure permitted through electronic mode.
- \*\* Procedure notified in detail.

**General Circular – dated 27.05.2011**

**PAYMENT OF MCA FEES - ELECTRONIC MODE**

In partial modification of Circular even number dated 09.03.2011 regarding acceptance of payment of value above Rs. 50000/- for MCA services, only in electronic mode w.e.f March, 2011.

With effect from 29.05.2011, in the following cases challan mode for payment is allowed for amount less than Rs. 50,000/-

- a. Payment to 'Investor Education and protection Fund' through 'Pay Misc. Fee' functionality
- b. Any payment made by user having category as 'Official liquidator (OL) office.'
- c. Any payment made by user having category as 'MCA employee'

This issue with the approval of competent authority.

**S ynopsis:**

**MCA has allowed the following cases to pay fee in “Challan Mode” if the denomination is less than `50,000/- with effect from 29.05.2011:**

- ✧ Payment to 'Investor Education and protection Fund' through 'Pay Misc. Fee' functionality
- ✧ Any payment made by user having category as 'Official liquidator (OL) office.'
- ✧ Any payment made by user having category as 'MCA employee'

**General Circular No.30A/2011 – dated 26.05.2011**

**Clarification regarding ‘Body Corporate’ for the purpose of section 226(3)(a) of the Companies Act, 1956.**

The Ministry of Corporate Affairs has received representation from the Institute of Chartered Accountants of India wherein they have stated that under section 226(3) (a) of the Companies Act, 1956 a body corporate is disqualified from appointment as auditor by a company. Since LLP is a body corporate as per section 3(1) of the Limited Liability Partnership Act, 2008, LLP among Chartered Accountants will not be qualified for appointment as auditor under section 226(3) (a) of the Companies Act, 1956.

It is hereby clarified that Limited Liability Partnership of chartered accountants will not be treated as body corporate for the limited purpose of Section 226(3)(a) of the Companies Act, 1956 and notification in this respect has been sent for publication in the Gazette of India.

Copy of Circular is available at [http://mca.gov.in/Ministry/pdf/Circular\\_30A-2011\\_26may2011.pdf](http://mca.gov.in/Ministry/pdf/Circular_30A-2011_26may2011.pdf)

**S ynopsis:**

**Limited Liability Partnership of Chartered Accountants can be appointed as Auditors of the Company.  
LLP of Chartered Accountants shall not be a Body Corporate for this Particular Scenario.**

**Notification G.S.R.407(E) – dated 26.05.2011**

The Ministry of Corporate Affairs has come out with a notification on Companies (Central Government's) General Rules and Forms (Second Amendment) , 2011 - New Form No. 23D inserted effective from 29-05-2011.

Copy of Notification is Available at [http://mca.gov.in/Ministry/notification/pdf/G.S.R\\_407\(E\)\\_26may2011.pdf](http://mca.gov.in/Ministry/notification/pdf/G.S.R_407(E)_26may2011.pdf)

**S ynopsis:**

New Form 23D has been introduced with effect from 29.05.2011 with regard to Changes in Annexure A.

**Notification GSR (E) dated 26.05.2011**

Ministry came out with a notification on Companies (Central Government's) General Rules and Forms (Amendment), 2011 - revision of Form No. 8 and 17, effective from 29-05-2011.

Copy of Notification is available at [http://mca.gov.in/Ministry/notification/pdf/GSR\(E\)\\_Form8\\_17\\_26may2011.pdf](http://mca.gov.in/Ministry/notification/pdf/GSR(E)_Form8_17_26may2011.pdf)

**S ynopsis:**

Revised Form No.8 and Form No.17 shall be used with effect from 29.05.2011.  
It is mandated that Practising Professional (Whole time Practising CS/CWA/CA).

**Notification GSR 396 (E) dated 23.05.2011**

Ministry of Corporate Affairs has notified the Amendment in Schedule XIII of the Companies Act, 1956 vide a notification on 23<sup>rd</sup> May 2011.

Copy of Notification is available at [http://mca.gov.in/Ministry/pdf/Circular\\_27may2011.pdf](http://mca.gov.in/Ministry/pdf/Circular_27may2011.pdf)

**S ynopsis:**

In Schedule-XIII, in Part 11, in Section 2-(i) in sub-Para (C), after fourth proviso, the following proviso shall be inserted, namely :-

- \*\* "Provided further that approval of the Central Government is not required for a subsidiary of a listed company,
- \*\* The Remuneration Committee and Board of Directors of the Holding Company give their consent for the amount of remuneration of the applicant and for the said amount to be deemed as remuneration paid by the Holding Company for the purpose of Section 198 of the Companies Act, 1956;
- \*\* The remuneration of the applicant is approved by the Holding Company in the general meeting;
- \*\* If the remuneration of the applicant is deemed to be remuneration paid by the Holding Company; and
- \*\* All the members of the subsidiary are bodies corporate.
- \*\* Provided that a listed company or a subsidiary of a listed company shall not require Central Government approval for payment of remuneration to its managerial personnel, if the remuneration is fixed by Board of Industrial and Financial Reconstruction."

**Notification – S.O. (E) dated 23.05.2011****Clarification on applicability of provisions of Section 108A to 108I of the Companies Act, 1956**

Sections 108A to 108I of the Companies Act, 1956 were inserted in the Companies Act, 1956 through Monopolies and Restrictive Trade Practices (Amendment) Act, 1991. Section 108G (applicability of sections 108A to 108F) and Section 108H (construction of certain expressions used in sections 108A to 108G) of Companies Act, 1956 refer to applicability of provisions of sections 108A to 108F in reference to various requirements under the MRTP Act, 1969. As MRTP Act, 1969 stands repealed, the legal validity of these provisions i.e sections 108A to 108H of Companies Act, 1956 has been examined in this Ministry in consultation with Ministry of Law & Justice and it has been observed that after repeal of the MRTP Act, 1969, the provisions of Section 108A to 108I of the Companies Act, 1956 have become redundant and will have no legal force.

These issues with the approval of Competent Authority.

**S ynopsis:**

- ⊙ **Sections 108A to 108I of the companies Act, 1956 repealed.**
- ⊙ **The said sections dealt with Restrictions on acquisition/transferability of shares in certain cases.**
- ⊙ **Sections repealed as MRTP Act repealed.**

**Circular – General Circular No: 30/2011****Ministry of Corporate Affairs Notification, New Delhi the 23/05/2011**

S.O.(E). – In exercise of the powers conferred by clause (c) of sub-section (7) of section 2 of the Companies Act, 1956 (1 of 1956), the Central Government hereby specifies, for the purpose of the said clause, the Limited Liability Partnership, a body corporate, incorporated under clause (1) of section 3 of Limited Liability Partnership Act, 2008 (6 of 2009), for the limited purpose of clause (a) of sub-section (3) of section 226 of the Companies Act, 1956.

**S ynopsis:**

- **LLP Designated as Body Corporate**
- **Only for the limited purpose of Section 223(3)(a) and therefore LLP can be appointed as Statutory Auditors of the Company**

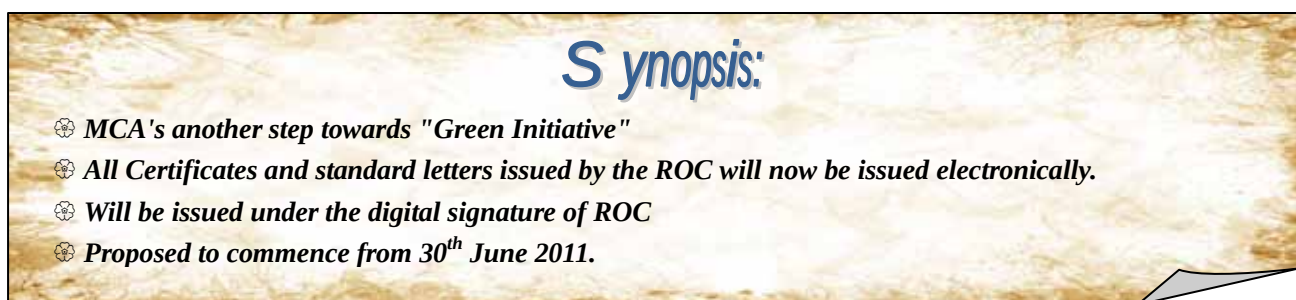
**Circular – General Circular No: 29/2011****Green Initiative in the Corporate Governance - Issue of Certificate by Digital Signature**

The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5, and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act, 1956 through electronic mode.

The Registrar of Companies has to issue a number of certificates to the companies and other stakeholders as required under the provisions of Companies Act, 1956 read with Companies Regulation, 1956. As per Companies Regulation 24 of Companies Regulation, 1956 every certificate or copy granted under the provisions of the Companies Act, 1956 shall be signed and dated by Registrar and shall bear his official seal. At present these certificates are issued physically under the manual signature of Registrar of Companies and issued by post.

In order to cut timelines and an another step towards "Green Initiative" it has been decided that all certificates and standard letters issued by the Registrar of Companies will now be issued electronically under the Digital Signature of the Registrar of Companies.

The Digital Certificates are being developed and will be available for issue by 30th June, 2011 in phased manner



**Circular – General Circular No: 28/2011**

**Green Initiative in the Corporate Governance - Participation by directors in meetings of Board/Committee of directors under the Companies Act, 1956 through electronic mode**

1. The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5, 13 and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act, 1956 through electronic mode.
2. The Ministry has been receiving representations from various Industry bodies to recognize participation by directors in meetings of Board/Committee of directors under the Companies Act, 1956 through electronic mode.
3. Section 13 of the Information Technology Act, 2000, inter alia provides time and place of dispatch of notices in electronic mode, which may be applicable for the purpose of notice period provided in the Companies Act, 1956 or in the Article of Association of the company.
4. In the light of the above provisions and circumstances, it is hereby clarified that directors of a company may participate in a meeting of Board/Committee of directors under the provisions of Companies Act, 1956 through electronic mode.

For this purpose, the company shall also comply with the following requirements and procedures, in addition to the normal procedures required under the Companies Act, 1956 for holding meetings of Board/Committee of directors : –

(a) Electronic mode means video conference facility i.e. audio-visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.

(b) Every director of the company must attend the meeting of Board/Committee of directors personally at least one meeting a financial year of the company.

(c) The Chairman of the meeting and Secretary shall assume the following responsibilities:

(i) to safeguard the integrity of the meeting via video conferencing.

(ii) to ensure proper video conference equipment/facilities.

(iii) to prepare the minutes of the meeting.

(iv) to ensure that no one other than the concerned director or other authorized participants are attending the meeting through electronic mode.

(v) If a statement of a participant in the meeting via video conferencing is interrupted or garbled, the Chairman or Secretary shall request for a repeat or reiteration, and if need be, the Chairman or Secretary shall repeat what he heard the participant was saying for confirmation or correction.

5. (a) The notice of the meeting must inform directors regarding availability of participation through video conference, and provide necessary information to enable directors to access the available facility of video conferencing.

(b) The notice of the meeting shall also seek confirmation from the director as to whether he will attend the meeting physically or through electronic mode and shall also contain the contact number(s)/e-mail addresses of the Secretary/designated officer to whom the director shall confirm in this regard.

(c) In the absence of any confirmation from the Director, it will be presumed that he will physically attend the Board meeting.

6. At the start of the scheduled meeting through electronic mode, a roll call shall be made by the Chairman/Secretary. Every director and authorized participant shall state, for the record, the following:—

(i) Full Name

(ii) Location

(iii) that he can completely and clearly see and communicate with each of other participants.

(iv) and will ensure that no one other than the concerned director or authorized participant is attending the meeting through electronic mode.

Thereafter, the Chairman/Secretary shall confirm the participation of the directors in the meeting who are not physically present. After the roll call, the Chairman or Secretary may certify the existence of a quorum.

It is clarified that a director participating in a meeting through use of video conference shall be counted for the purpose of quorum. A roll call should also be made at the conclusion of the meeting or at re-commencement of the meeting after every break to ensure presence of quorum throughout the meeting.

7. The place where the Chairman or Secretary is sitting during the Board meeting shall be taken as place of meeting in terms of section 288 of the Act, and all recordings will be made at this place. The other statutory registers which are required to be placed in the Board meeting as per the provisions of the Act, shall be placed before the Chairman for compliance of the Act. The statutory registers required to be signed by the other directors shall be deemed to have been signed by directors participating through electronic mode if they have given their consent to this effect in that meeting.

8. If a motion is objected to and there is a need to vote, the Chairman/Secretary should call the roll and note the vote of each director who should identify himself.

9. (a) In the end of the meeting, Chairman of the meeting shall announce the summary of the decisions taken in that meeting in respect of each agenda item and names of the directors who have consented or dissented to those decisions. Video recording of that part of the meeting shall be preserved by the company for one year from the conclusion of that meeting.

(b) In the minutes, chairman shall also confirm the mode of attendance of every director of the company during last three

meetings whether personally or through electronic mode.

(c) Draft minutes of the meeting shall be circulated in soft copy not later than 7 days of the meeting for comments/confirmation to the directors who attended the meeting to dispel all doubts on matters taken up during the meeting. Thereafter, the minutes shall be entered in the minute books as prescribed under section 193 of the Act. The minutes shall also disclose the particulars of the Directors who attended the meeting through electronic mode.

## Synopsis:

- ✿ *After General Meetings, Board/Committee meetings also made electronic*
- ✿ *Directors can participate in Board/Committee meetings electronically*
- ✿ *Conditions to be complied:*
  - ⊙ *Company and all participants to have video conferencing facility*
  - ⊙ *Every director to attend at least one meeting personally in a financial year,*
  - ⊙ *Chairman and Secretary to assume all responsibilities for safeguarding the integrity and maintenance of the facility and records*
  - ⊙ *Notice to contain information about video conferencing and seek confirmation from directors for participation in electronic/physical mode.*
  - ⊙ *Roll Call to be made at the start of the meeting by Chairman/Secretary*
  - ⊙ *Venue of the meeting will be taken as the place where Chairman/Secretary is sitting*
  - ⊙ *The Chairman/Secretary to assume responsibility and roll call in case voting is required*
  - ⊙ *Chairman to summarize the decisions taken in the meeting*
  - ⊙ *Video recording to be preserved for at least a year.*
  - ⊙ *Registers requiring signature of directors will be deemed to be signed if consent of the respective director is accorded*
  - ⊙ *Minutes to contain mode of participation of each director*

**Circular – General Circular No: 27/2011**

### **Green Initiative in the Corporate Governance - Participation by shareholders in general meetings under the Companies Act, 1956 through electronic mode**

1. The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5, 13 and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act, 1956 through electronic mode.
  2. The Ministry has been receiving representations from various Industry bodies to recognize participation by shareholders in meetings under the Companies Act, 1956 through electronic mode.
  3. Section 13 of the Information Technology Act, 2000, *inter alia* provides time and place of dispatch of notices in electronic mode, which may be applicable for the purpose of notice period provided in the Companies Act, 1956 or in the Article of Association of the company.
  4. In the light of the above provisions and circumstances, it is hereby clarified that a shareholder of the company may participate in a general meeting under the provisions of Companies Act, 1956 through electronic mode.
- For this purpose, the company shall also comply with the following requirements and procedures, in addition to the normal procedures required under the Companies Act, 1956 for holding general meeting :—
- (a) Electronic mode means video conference facility *i.e.*, audio-visual electronic communication facility employed which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary,

and to participate effectively in the meeting.

(b) The notice of the meeting must inform shareholders regarding availability of participation through video conference, and provide necessary information to enable shareholders to access the available facility of video conferencing.

(c) The Chairman of the meeting and Secretary shall assume the following responsibilities :

(i) to safeguard the integrity of the meeting via video conferencing.

(ii) to ensure proper video conference equipment/facilities.

(iii) to prepare the minutes of the meeting.

(iv) to ensure that no one other than the concerned shareholder or proxy to the shareholder is attending the meeting through electronic mode.

(v) If a statement of a participant in the meeting via video conferencing is interrupted or garbled, the Chairman of the meeting or Secretary shall request for a repeat or reiteration, and if need be, the Chairman or Secretary shall repeat what he heard the participant was saying for confirmation or correction.

5. (a) Section 166 of the Companies Act, 1956 *inter alia* provides that a company is required to have its Annual General Meeting either at the registered office of the company or at place within the city, town or the village in which registered office of the company is situated.

(b) Section 174 of the Companies Act, 1956 *inter alia* provides that at least five members in case of public company and two members in case of other company have to be personally present and shall be the quorum for the general meeting.

(c) In a general meeting, where shareholders are allowed to participate through electronic mode, the quorum as required under section 174 of the Companies Act, 1956 as well as chairman of the meeting shall have to be physically present at the place of the meeting.

6. To provide larger participation and for curbing the cost borne by the shareholders to attend general meetings, listed companies may provide video conferencing connectivity during such meetings at least five places in India. It is recommended that these places would be situated all over India in such a way that it covers top five States/UTs based on maximum number of members or at least 1000 members, whichever is more, residing as per the address registered with the depositories.

7. In order to have secured electronic platform for capturing accurate electronic voting processes, the necessary clarification has already been issued vide Circular No. 21/2011, dated 2-5-2011.

## S ynopsis:

✿ ***Shareholders permitted to attend general meetings through video conferencing.***

***Conditions to be complied:***

✿ ***Company and all participants to have video conferencing facility***

✿ ***Chairman and Secretary to assume all responsibilities for safeguarding the integrity and maintenance of the facility and records***

✿ ***Notice to contain information about video conferencing facility***

✿ ***Chairman and quorum to be physically present at the venue of AGM***

✿ ***Section 166 to be complied regarding venue of the general meeting***

✿ ***Listed companies to provide video conferring facility in at least five places in India covering the top five States/UTs (based on maximum number of members) or covering 1000 members, whichever is more.***

**Circular – General Circular No: 26/2011**

**Certification of E-Forms under Companies Act, 1956 by Practicing Professionals  
Corrigendum to Circular No. 14/2011 dated 08<sup>th</sup> April 2011**

1. The undersigned is to draw the attention on **the Circular No. 14/2011, dated 8-4-2011** of this Ministry on the subject cited above. The following errata has been noticed which is rectified as under :—
2. In the said circular in line 4 (Four) of Paragraph 2, the words should be inserted "including filing of Financial Statements in the Extensible Business Reporting Language (XBRL) mode from the year 2011-12 onwards" after the words "MCA in electronic mode".
3. This issues with approval of Competent Authority.

**S ynopsis:**

- ✿ *Insertion made in circular 14/2011, dated 8.4.2011*
- ✿ *Circular 14/2011 speaks about responsibility of professionals in certifying forms electronically and acceptance of these forms by the system without approval of ROC.*
- ✿ *Professionals responsibility is also extended to documents filed under the XBRL mode vide this circular.*

**Circular – General Circular No: 25/2011**

**Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode.  
Corrigendum to the Circular No. 09/2011, Dated 31<sup>st</sup> March 2011.**

1. The undersigned is to draw the attention on the Circular No. 9/2011 dated 31-3-2011 of this Ministry on the subject cited above. The following erratum has been noticed which is rectified as under:-
2. In the said circular for clauses (i) and (ii) of paragraph 2 under the Heading Coverage in Phase I, the following shall be substituted and read as :-

"(i) All companies listed in India and their subsidiaries, having paid up capital of Rs. 5 crore and above or a turnover of Rs. 100 crore or above, excluding banking companies, insurance companies, power companies, Non-Banking Financial Companies (NBFCs) and overseas subsidiaries of these companies."

**S ynopsis:**

- ◆ **Insertion made in circular 9/2011, dated 31.3.2011**
- ◆ **Circular 9/2011 speaks about filing of Balance Sheet and Profit & Loss Account in XBRL Mode.**
- ◆ **As per the earlier circular, XBRL was made applicable to all listed companies and their subsidiaries and all other companies with paid capital of Rs. 5 Crore and above and turnover of Rs. 100 Crore or above.**
- ◆ **As per the current circular, XBRL is made applicable only to "All companies listed in India and their subsidiaries, having paid up capital of Rs. 5 crore and above or a turnover of Rs. 100 crore or above".**
- ◆ **Following companies are exempted:**
  - \*\* **Banking Companies**
  - \*\* **Insurance companies**
  - \*\* **Power companies**
  - \*\* **NBFCs**
  - \*\* **Overseas subsidiaries of these companies.**

**Circular – General Circular No: 24/2011**

**Loan to Public Limited Companies under Section 295 of the Companies Act, 1956**

1. It has come to the notice of the Ministry that some companies are making applications for getting prior approval of Central Government when they propose to make any loan to, or give any guarantee or provide any security in connection with a loan made by any other person to a Public Limited Company of which any such Director is a Director or a member even when the proposal does not fall under section 295(d) and section 295(e) of the Companies Act, 1956.
2. Companies are requested to note that when the beneficiary of the loan/guarantee/security is a Public Limited Company, approval of Central Government should only be sought if the provisions of sub-section (d) or (e) of section 295 of the Companies Act, 1956 are attracted. The application should also clearly bring out the facts in this regard.

**Synopsis:**

- Clarification issued regarding Section 295 1(d) and (e).
- Approval required only is conditions specified in the said sections are triggered.
- Facts of the case to be clearly stated in the application for approval.
- Section 295(1)(d) and (e) contains the following conditions:  
Public Company to obtain previous approval of Central Government before making any loan/giving guarantee/providing security in connection with loan made by or to any other person by:
- Any Body corporate of which at least 25% voting rights is held by any director(s)
- Any Body corporate, the BOD of which is under instructions of the Boards of the lending company

**Notification – G.S.R. 368(E) dated 09.05.2011**

**Companies (Amendment) Regulations, 2011**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R-368\(E\)\\_9may2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R-368(E)_9may2011.pdf)

**Synopsis:**

- ◆ Power of RD delegated to the RoC in respect of licensing of Companies under section 25 of the Companies Act, 1956.
- ◆ Replacements made in Regulations 3,5,7,9 and 14 of part B of the Companies Regulations, 1956, and in annexure III and IV
- ◆ Regulation 11, 12 and Annexure II shall be omitted.

**Circular – General Circular No: 23/2011**

**Effective Date of Companies (Particulars of Employees) Amendment Rules, 2011.**

1. The Ministry had notified Companies (Particulars of Employees) Amendment Rules, 2011 vide GSR 289 (E), dated 31-3-2011 raising the limit of employee's salary to be disclosed in Directors Report.
2. In this regard, it is clarified that the said notification shall be applicable to all Director's Reports under section 217 of the

Companies Act, 1956 approved by the Board of Directors on or after 1-4-2011, irrespective of the accounting year of the annual account, being approved by the Board.

### *S ynopsis:*

- **Clarification regarding notification GSR 289(E), dated 31.03.2011.**
- **The said notification raised the limit of employee's salary to be disclosed in director's report to Rs.5,00,000/- per month.**
- **Notification applicable to all directors' report approved by the Board after 01.04.2011 irrespective of the accounting year.**

#### **Circular – General Circular No: 22/2011**

#### **Clarification in respect of General Circular No: 2 /2011 dated 8<sup>th</sup> February, 2011**

1. It has been observed that certain companies are seeking clarification in respect of circular No. 2/11, dated 8-2-2011 issued by the Ministry in respect of exemption u/s 212(8) of the Companies Act, 1956. The point raised is in respect of applicability of condition No. (ii) of the circular, requesting the Ministry to delete the condition in respect of unlisted companies as this condition is applicable to listed companies as per SEBI guidelines.
2. The Ministry is aware of the limited scope of the SEBI Rule. However, the decision has been taken to ensure transparency in those cases where balance sheets of subsidiaries are not attached.
3. In this regard, it is clarified that companies which desire to take benefit of exemption allowed under this circular would have to fulfill the conditions stipulated therein even if they are unlisted.

### *S ynopsis:*

- **Clarification regarding Circular No. 2/2011, dated 08.02.2011.**
- **The said circular exempted companies from compliance of Section 212(8) subject to fulfillment of certain conditions.**
- **Request was received by MCA to delete the conditions in case unlisted companies.**

#### **Circular – General Circular No: 21/2011**

#### **Green Initiative in the Corporate Governance – Approval of Ministry of Corporate Affairs for appointment of agency for providing electronic platform for electronic voting under the Companies Act, 1956.**

The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5 and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act, 1956 through electronic mode.

Section 192A of the Companies Act, 1956 read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 already recognizes voting by electronic mode for postal ballot. Some of the listed company has already started using electronic platform of certain agencies for providing and supervising the electronic platform for electronic voting.

In order to have secured electronic platform for capturing accurate electronic voting processes. It is hereby clarified that the agency appointed for providing and supervising electronic platform for electronic voting shall be an agency duly approved by the Ministry of Corporate Affairs.

It is further clarified that for the above purpose, National Securities Depository Limited (NSDL) and Central Depository Services (India) Ltd. (CDSL) are being approved by the Ministry of Corporate Affairs subject to the condition that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Govt. of India, Electronics Niketan, 6 CGO Complex, New Delhi - 110 003, INDIA. Once they obtain the same and inform the Ministry, they will be authorized to undertake these activities.

### Synopsis:

- ❁ **Another Step towards paper less compliance.**
- ❁ **Secured Electronic voting promoted through this circular.**
- ❁ **Agency appointed by a company for electronic voting should be approved by MCA.**
- ❁ **NSDL and CDSL approved by MCA subject to their obtaining certificate from STQC Directorate.**

#### Circular – General Circular No. 20/2011

**Regarding E-Form 32 – Intimation to Registrar of Companies regarding particulars of appointment of Directors etc., and changes therein the company pursuant to Section 303(2) of Companies Act, 1956 – Filing of Conflicting return by contesting Parties.**

1. The Ministry had earlier clarified *vide* Circular dated 4.05.1993 that it is neither desirable nor possible for the Registrar to sit in judgment to ascertain the rightful claims of the Directors in case of a dispute and it is for the parties concerned to settle their disputes by approaching the court. In case conflicting documents are filed by the contesting group of Directors, Registrar may take the document on record, if the same are otherwise in order by informing the parties concerned, (contesting group of Directors), in writing, that the documents have been taken on records without prejudice to the rights of the parties to settle the dispute in the court of competent authority.
2. In order to cut timelines and bring more transparency in the working of office of Registrar of Companies, the Form 32 will also be taken on records under Straight Through Process (STP) mode *i.e.*, the information given in the e-form 32 is being taken on file maintained by the Registrar of Companies through electronic mode on the basis of statement of correctness given by the filing company and further verification by the practicing professional *i.e.*, Chartered Accountants, Cost Accountants and Company Secretaries.
3. The above instructions are being hereby revised to the extent that all particulars filed by the companies in e-form 32 are being placed on records of the Registrar of Companies through the STP process as filed by the company and verified by the practicing professional, without prejudice to the rights of the parties to settle the dispute, if any, in a court of competent jurisdiction.

### Synopsis:

- ❁ **Form 32 brought under STP mode.**
- ❁ **Certifying professional under responsibility for correctness of data provided in the form.**
- ❁ **Dispute, if any, to be settled in a court of competent jurisdiction.**

**Circular – General Circular No: 19 / 2011**

**Marking a Company as having Management Dispute by Registrar of Companies  
under MCA 21 system**

In the present electronic MCA-21 system, there is a facility with the Registrar of Companies to mark a company "marked as having management dispute" on the basis of complaints received in his office. This marking creates an alert and the documents are not approved and remain in the registry as work in process till it is demarked by the Registrar. In order to bring uniformity of practices by all Registrar of Companies it is clarified that the Registrar of Companies shall use this facility as under: -

- (i) The Registrar of Companies shall mark a company as having management dispute in only those cases where the court or Company Law Board has directed to maintain the *status quo* with reference to any e-forms including status of Directors in the company, or
- (ii) The Court or Company Law Board has granted any injunction or stay in taking the document on record and Registrar of Companies is a party in such court cases and/or the directions have been issued to the Registrar of Companies.
- (iii) In other matter, where the Registrar of Companies is not a party and such orders have been passed and has not been served to the Registrar of Companies, it is for the parties to comply to such orders and in case of non-compliances, the law shall take its own course.

**Synopsis:**

- ☐ ROC to mark company as having management dispute only on reference by Court/CLB.
- ☐ ROC is party to the case and stay/injunction has been ordered by Court/CLB.
- ☐ In case ROC is not a party and no order copy has not been served on ROC – Parties' responsibility to comply with the order

**Circular – General Circular No.18/2011**

**GREEN INITIATIVES IN THE CORPORATE GOVERNANCE - CLARIFICATION REGARDING SENDING COPIES OF BALANCE SHEETS AND AUDITORS REPORT ETC., TO THE MEMBERS OF THE COMPANY AS REQUIRED UNDER SECTION 219 OF THE COMPANIES ACT, 1956 THROUGH ELECTRONIC MODE**

1. The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5, and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act, 1956 through electronic mode.

2. The Ministry has been receiving representations from various Industry bodies to dispense with sending physical Annual report of a Company comprising of Balance Sheet, Profit & Loss Account, Director's Report, Auditor's Report etc. to its Members as required under section 219 of the Companies Act, 1956 and in lieu of the same the companies may be permitted to send the aforesaid documents by E-Mail to its Members.

3. Section 4 of the Information Technology Act, 2000, provides as under:

"Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such

information or matter is (a) rendered or made available in an electronic form and (b) accessible so as to be usable for a subsequent reference."

4. In the light of the above provisions and circumstances it is hereby clarified that the company would be in compliance of sections 219(1) of Companies Act, 1956, in case, a copy of Balance Sheet etc., is sent by electronic mail to its member subject to the fact that company has obtained —

(a) e-mail address of its member for sending the Notice with Balance sheet, Profit & Loss Account, Auditor's Report, Director's Report, and Explanatory Statement etc. through e-mail, after giving an advance opportunity to the member to register his e-mail address and changes therein from time to time with the company or with the concerned depository.

(b) Company's website display full text of these documents well in advance prior to mandatory period and issue advertisement in prominent newspapers in both vernacular and English stating that the copies of aforesaid documents are available in the website and for inspection at the Registered Office of the company during office hours. Website must be designed in a way so that document can be opened easily and quickly.

(c) In cases where any member(s) has not registered his e-mail address for receiving the Balance Sheet etc. through e-mail, the Balance Sheet etc., will be sent by other modes of services as provided under section 53 of the Companies Act, 1956.

(d) In case any member(s) insist for physical copies of above documents, the same should be sent to him physically, by post free of cost.

## Synopsis:

- ✿ **Sending of Annual reports through e-mail permitted.**
- ✿ **Conditions to be satisfied:**
  - ✓ **Company to obtain email address of all shareholders**
  - ✓ **Annual report to be displayed on website of the company and published in two newspapers – one in English and one in vernacular language.**
  - ✓ **In case e-mail of any share holder not registered, then annual report to be served through other modes specified u/s 53.**
  - ✓ **Physical copy to be sent free of cost in case any member insists for the same.**

**Notification – G.S.R(E)dated 29.04.2011**

**Notification with respect of change in eforms 2, 3, 18, 23C, 24A and 32**

**Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/Notification\\_29apr2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/Notification_29apr2011.pdf)**

## Synopsis:

- ✿ **E-Forms 2, 3, 18, 23C and 32 stand revised w.e.f. 01.05.2011 as per this circular.**
- ✿ **Change in Form 2 – Point No. 9 has been inserted which reads as “Whether copy of valuation report or properties/rights and shares has been enclosed as an attachment.”**
- ✿ **Changes in Form 3 – In last page, verification column, provision has been created for providing Board Resolution Number, DIN of the person signing the form on behalf of the company and membership/CP no. of the practicing professional certifying the form.**
- ✿ **Change in form 18 – The provision of choosing language – Hindi/English has been removed.**
- ✿ **Changes in form 32 - The provision of choosing language – Hindi/English has been removed. The category independent**

**Circular - General Circular No:17/2011****Green Initiatives in Corporate Governance – Clarifications regarding service of documents by e-made instead of Under Posting Certificate (UPC)**

The Ministry of Corporate Affairs has taken a "Green Initiative in the Corporate Governance" by allowing paperless compliances by the Companies after considering sections 2, 4, 5, and 81 of the Information Technology Act, 2000 for legal validity of compliances under Companies Act through electronic mode.

Section 53 of the Companies Act, 1956 provides service of documents under 'Certificate of posting' as one of the accepted mode of service. Whereas the Department of posts has recently discontinued the postal facility under 'Certificate of posting' vide their letter dated 23-2-2011. The Information Technology Act, 2000 also permits service of documents etc., in electronic mode.

Keeping in view of above, it is hereby clarified that a company would have complied with section 53 of the Companies Act, if the service of document has been made through electronic mode provided the company has obtained e-mail addresses of its members for sending the notice/documents through e-mail by giving an advance opportunity to every shareholders to register their e-mail address and changes therein from time to time with the company.

In cases where any member has not registered his e-mail address with the company, the service of document etc. will be effected by other modes of service as provided under section 53 of the Companies Act, 1956.

**S ynopsis:**

- ✿ **Sending of Notice/other documents through e-mail permitted.**
- ✿ **Conditions to be satisfied:**
  - ✓ **Company to obtain email address of all shareholders**
  - ✓ **In case e-mail of any share holder not registered, then notice to be served through other modes specified u/s 53.**

**Circular - General Circular No:16/2011****Simplified Procedure for amalgamation of Government Companies U/s 396 of the Companies Act, 1956.**

The Ministry of Corporate Affairs have been dealing with the amalgamation of Government Companies in the Public Interest under section 396 of the Companies Act, 1956 by following the procedures prescribed under Companies (Court) Rules, 1959 which are applicable to amalgamation under sections 391-394 of the Companies Act, 1956. Without prejudice to the generality of section 396, it has now been decided that, in appropriate cases, simpler procedures shall be adopted for the amalgamation of Government Companies under section 396 of the Companies Act, 1956 as given below :—

(1) (a) Every Central Government Company which is applying to the Central Government for amalgamation with any other Government Company or Companies under the simplified procedure prescribed in this circular, shall obtain approval of the Cabinet i.e., Union Council of Ministers to the effect that the proposed amalgamation is essential in the 'public interest'.

- (b) In the case of State Government companies, the approval of the State Council of Ministers would be required.
- (c) Where both Central and State Government companies are involved, approval of both State Cabinet(s) and Central Cabinet shall be necessary.
- (2) (i) A Government Company may, by a resolution passed at its general meeting decide to amalgamate with any other Government Company, which agrees to such transfer by a resolution passed at its general meeting ;
- (ii) Any two or more Government Companies may, by a resolution passed at any general meetings of its Members, decide to amalgamate and with a new Government Company.
- (3) Every resolution of a Government Company under this section shall be passed at its general meeting by members holding 100% of the voting power and such resolution shall contain all particulars of the assets and liabilities of amalgamating Government companies.
- (4) Before passing a resolution under this section, the Government Company shall give notice thereof of not less than 30 days in writing together with a copy of the proposed resolution to all the Members and creditors.
- (5) A resolution passed by a Government Company under this section shall not take effect until (i) the assent of all creditors has been obtained, or (ii) the assent of 90% of the creditors by value has been received and the company certifies that there is no objection from any other creditor.
- (6) The resolutions passed by the transferor and transferee companies along with written confirmation of the Cabinet decision referred to in para (i) shall then be submitted to the Central Government which shall, if it is satisfied that all the requirements of section 396 and of this circular, have been fulfilled, order by notification in the Gazette that the said amalgamation shall take effect.
- (7) The order of the Central Government shall provide:—
- (a) for the transfer to the transferee company of the whole or any part of the undertaking, property or liabilities of any transferor company.
- (b) that the amalgamation of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, may be continued or commenced by, or against, the concerned resulting company, or transferee company, as the case may be.
- (c) for such incidental, consequential and supplemental matters as are necessary to secure that the amalgamation shall be fully and effectively carried out
- (8) The Cabinet decision referred to in para (1) above may precede or follow the passing of the resolution referred to in para (2).
- (9) When an order has been passed by the Central Government under this section, it shall be a sufficient conveyance to vest the assets and liabilities in the transferee.
- (10) Where one Government company is amalgamated with another Government company, under these provisions, the registration of the first-mentioned Company *i.e.*, transferor company, shall stand cancelled and that Company shall be deemed to have been dissolved and shall cease to exist forthwith as a corporate body.
- (11) Where two or more Government Companies are amalgamated into a new Government Company in accordance with these provisions and the Government Company so formed is duly registered by the Registrar, the registration of each of the amalgamating companies shall stand cancelled forthwith on such registration and each of the Companies shall thereupon cease to exist as a corporate body.
- (12) The amalgamation of companies under the foregoing sub-sections shall not in any manner whatsoever affect the pre-existing rights or obligations, and any legal proceedings that might have been continued or commenced by or against any erstwhile company before the amalgamation, may be continued or commenced by, or against, the concerned resulting company, or transferee company, as the case may be.
- (13) The Registrar shall strike off the names of every Government Company deemed to have been dissolved under sub-sections (10) to (11).

(14) Nothing in this Circular shall prevent Government companies from applying for amalgamation before the Central Government under sections 391-394 of the Companies Act.

## Synopsis:

- ✎ **Procedure for amalgamation of Government companies simplified.**
- ✎ **Conditions to be satisfied:**
  - **Cabinet approval to be obtained by the Govt. Company applying for amalgamation.**
  - **Unanimous approval of all shareholders required for passing resolution for amalgamation.**
  - **30 days Notice (in writing) of the general meeting to be served on all members and creditors**
  - **All creditors to assent for the amalgamation or at least 90% to assent and others to provide NOC for amalgamation.**
  - **Copy of resolution passed by both the companies and copy of cabinet decision to be submitted to CG.**
- ✎ **Govt. order to be sufficient conveyance of transfer of assets and liabilities.**
- ✎ **ROC to strike off name of the dissolved company as applicable.**
- ✎ **Circular not to prevent Govt. Companies from applying for amalgamation u/s 391-394 to CG.**

### Circular - General Circular No:15/2011

#### Revised procedure for Appointment of Cost Auditor by the Companies

Ministry has reviewed the existing procedure followed by the companies for seeking prior approval of the Central Government for appointment of cost auditor under section 233B(2) of the Companies Act, 1956. In supersession of any earlier order/circular issued in this regard, the revised procedure to be followed by the companies and cost auditor shall be as under:

- (a) The company required to get its cost records audited under section 233B(1) of the Companies Act, 1956 shall appoint a cost auditor who is a cost accountant as defined in clause (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and includes a firm of cost accountants.
- (b) The Audit Committee of the Board shall be the first point of reference regarding the appointment of cost auditors.
- (c) The Audit Committee shall ensure that the cost auditor is free from any disqualifications as specified under section 233B(5) read with section 224 and sub-section (3) or sub-section (4) of section 226 of the Companies Act, 1956.
- (d) While a cost auditor shall have prime responsibility to ensure that he does not violate the limits specified under section 224(1-B) of the Companies Act, 1956, the Audit Committee shall also be responsible for such compliance by the cost auditor.
- (e) The Audit Committee shall obtain a certificate from the cost auditor certifying his/its independence and arm's length relationship with the company.
- (f) The company shall e-file its application with the Central Government on [www.mca.gov.in](http://www.mca.gov.in) portal, in the prescribed Form 23C within ninety days from the date of commencement of each financial year, along with the prescribed fee as per the Companies (Fees on Applications) Rules, 1999 as amended from time-to-time and other documents as per existing practice i.e., (i) certified copy of the Board Resolution proposing appointment of the cost auditor; and (ii) copy of the certificate obtained from the cost auditor regarding compliance of section 224(1B) of the Companies Act, 1956.
- (g) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is

heard within thirty days from the date of filing such application.

(h) If within thirty days from the date of filing such application, the Central Government directs the company to re-submit the said application with such additional information or explanation, as may be specified in that direction, the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.

(i) After expiry of thirty days, as the case may be, the company shall issue formal letter of appointment to the cost auditor, as approved by the Board.

(j) Within thirty days of receipt of formal letter of appointment from the company, the cost auditor shall inform the Central Government in the prescribed form, along with a copy of such appointment. An e-form for the same is being developed and will be notified shortly.

(k) The company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost audit report by the cost auditor, in its Annual Report for each relevant financial year.

(l) In those companies where constitution of an Audit Committee of the Board is not required by law, the words "Audit Committee" shall stand substituted by the words "Board of Directors".

2. If a company contravenes any provisions of this circular, the company and every officer thereof who is in default, including the persons referred to in sub-section (6) of section 209 of the Act, shall be punishable as provided under sub-section (2) of section 642 read with sub-sections (5) and (7) of section 209 and sub-section (11) of section 233B of Companies Act, 1956.

3. If default is made by the cost auditor in complying with the aforesaid provisions, he shall be punishable with fine, which may extend to five thousand rupees.

4. The modified procedure contained in this circular shall be effective from the financial year commencing on or after the 1st day of April, 2011.

5. The Institute is requested to bring this to the general information of all Members in practice, and of the corporate sector.

## Synopsis:

- ☞ **Procedure for appointment of cost auditor revised w.e.f 01.04.2011.**
- ☞ **Cost auditor appointed to be a member of ICWA institute.**
- ☞ **Audit Committee/Board of directors (for cos. Where audit committee is not mandatory) to assume complete responsibility for appointment of cost auditor.**
- ☞ **E-form 23C to be filed within 90 days of appointment.**
- ☞ **Form deemed to be approved if no objection raised by CG within 30 days**
- ☞ **Company to communicate appointment to the auditor within 30 days of approval of e-form 23C.**
- ☞ **Auditor to confirm appointment to CG within days of receipt of appointment letter. E-form for this is under development.**
- ☞ **Details about the cost audit and auditor to be disclosed in annual report.**
- ☞ **Penalty:**
  - **For company and officers in default – As per section 642 and 209**
  - **For Cost Auditor – Rs. 5000/-**

**Circular - General Circular No:14/2011 – 08th April 2011****Certification of e-forms under the Companies Act, 1956 by the Practicing professionals**

1. Ministry of Corporate Affairs has been steadily progressing towards total electronic filing and approval regime. Objective is to do away with human intervention in MCA approvals to the maximum extent possible.
2. For this purpose, Ministry of Corporate Affairs has entrusted practicing professionals registered as Members of the professional bodies namely, ICAI, ICSI & ICWAI with the responsibility of ensuring integrity of documents filed by them with MCA in electronic mode. Professionals are now to be responsible for submitting/certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry.
3. However, to ensure that the data integrity is maintained at all times, there will be checking of such submissions to guard against fraudulent filing. In addition to the penal actions against the companies and their officers in default for furnishing incorrect or false information in the documents as provided under the Companies Act, 1956, action would also be taken on receipt of any complaint, anonymous or otherwise, against such professionals in the following manner :—
  - (a) Alleged wrong submissions: In such cases, quick enquiry will be conducted by the concerned RD who will be assessing *prima facie*, cases of wrong doing by the professionals. Concerned professionals will be given time for furnishing explanation before conveying to a cancellation.
  - (b) This report will be submitted to e-Governance Cell of MCA. The Cell will inform in the concerned Professional Institute to initiate an enquiry and complete the same within a month's time.
  - (c) Simultaneously, the concerned professional shall be debarred and shall not be allowed to enter to submit any document on MCA Portal. This debarment will be for a period of 30 days or till the final enquiry report is received from the respective Professional Institute.
  - (d) MCA will take a final decision after considering the report so received.

## Synopsis:

- ❖ **Number of e-forms brought under STP mode.**
- ❖ **Professionals submitting/certifying the form will be held responsible.**
- ❖ **Action will be taken on professionals on the basis of complaints received for alleged wrong submissions:**
  - ⌘ **Quick enquiry by RD.**
  - ⌘ **Professional will be given time for explanation.**
  - ⌘ **Report will be submitted to E-governance cell of MCA.**
  - ⌘ **Cell will inform the concerned institute to complete enquiry within 1 month.**
  - ⌘ **Professional will be debarred from entering MCA for 30 days.**
  - ⌘ **MCA to take final decision.**

**Circular - General Circular No:12/2011**

**SIMPLIFICATION OF PROCEDURE OF EASY EXIT SCHEME 2011**

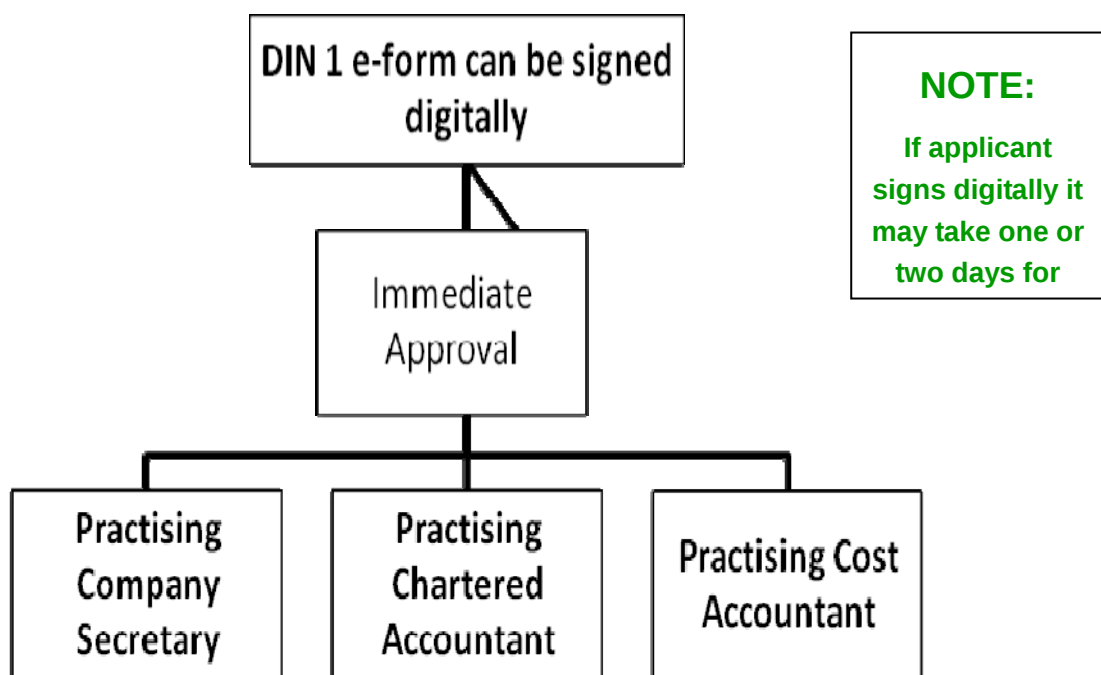
Since the scheme is no more operational, we have not covered the circular.

**CIRCULAR - General Circular No:11/2011**

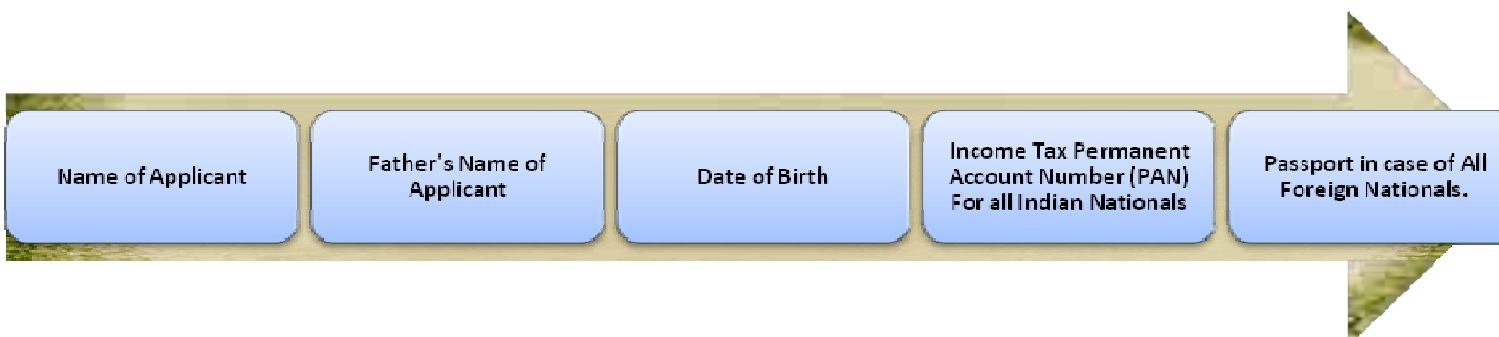
Circular copy is available [http://www.mca.gov.in/Ministry/pdf/Circular\\_11\\_2011\\_7apr2011.pdf](http://www.mca.gov.in/Ministry/pdf/Circular_11_2011_7apr2011.pdf)

**DIN - 4 FOR PAN UPDATION - BEFORE 31.05.2011**

**ALLOTMENT OF DIN UNDER COMPANIES ACT, 1956:**



**MANDATORY FIELDS**



**PAN MANDATORY**

At present, the PAN of the applicant is not mandatory in field in DIN eform-1. In order to examine DIN-4 e-form through the system and to avoid duplicate DIN, it has been decided that all existing DIN Holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN by filing DIN-4 e-form by 31<sup>st</sup> May, 2011.

HOW TO CHECK WHETHER PAN IS UPDATED OR NOT????

2 WAYS

1. Prefill DIN in Form 1A if PAN Column gets pre-filled it means PAN is updated.
2. Use option "Get DIN Application" where the DIN Application reveals whether the Director has given PAN while applying DIN.

**Notification - G.S.R. 614(B) dated 06.04.2011**

**Amendment in Director's Relatives (Office or Place of Profit) Rules, 2003.**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/GSR\\_614\(b\)\\_6apr2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/GSR_614(b)_6apr2011.pdf)

## Synopsis:

**Director's Relatives (Office or Place of Profit) Amendment Rules, 2011.**

**Rule 3 of Director's Relatives (Office or Place of Profit) Rules modified.**

**Monthly Remuneration, in case of appointment of relatives of directors with approval of CG, raised from Rs. 50,000/- to Rs. 2,50,000/-**

**Rule 7 of Director's Relatives (Office or Place of Profit) Rules modified.**

- ↓ The requirement of approval by a "Selection Committee" in case of Public
- ↓ Company confined only to LISTED COMPANIES.

**Notification- G.S.R. 304(E) dated 06.04.2011**

**Amendment in Companies Regulations, 1956 in Regulation 2 Clause (d).**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.304\(E\)\\_06apr2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.304(E)_06apr2011.pdf)

## Synopsis:

**Companies Amendment Regulations, 2011.**

**Regulation 2(d) of Companies Regulations, 1956 modified.**

- ◆ UT of "Andaman & Nicobar Islands" shifted from Eastern to Southern Region.
- ◆ Name of UT Pondicherry changed to "Puducherry".
- ◆ The following States of "Assam", "Arunachal Pradesh", "Nagaland", "Meghalaya", "Mizoram", "Manipur", "Tripura" have been shifted under the NEW North Eastern Region Directorate, headquarter at Guwahati. Earlier these were under the Eastern Region.
- ◆ The following States of "Gujarat", "Rajasthan", "Madhya Pradesh", "Chattisgarh" and UT of "Dadra and Nagar Haveli" have been shifted under the NEW North Western Region Directorate, headquarter at Ahmedabad. Earlier these were under the Western Region.

**Notification- G.S.R. 303(E) dated 06.04.2011**

**Amendment in Director's Relatives (Office or Place of Profit) Rules, 2003**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.303\(E\)\\_06apr2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.303(E)_06apr2011.pdf)

The Change in the said rules notified vide Notification No. 614(B) has been **published in the official Gazette.**

**Notification - G.S.R. dated 31.03.2011**

**Amendment in Companies (Particulars of Employees) Rules, 1975**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/Notification2\\_31mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/Notification2_31mar2011.pdf)

**S ynopsis:**

**Section 217 (2A) read with 642 (1) (a) of Companies Act, 1956.**

Present limit u/s 217 (2a) w.r.t providing employees detail in directors' report has been enhanced to Rupees Sixty Lakhs per financial year or Rupees Five Lakhs per month:

Prior to notification it was:

In clause (a) "rupees twenty four lakhs per financial year"

Or

In clause (b) "rupees two lakhs per month"

Now revised to:

In clause (a) "rupees sixty lakhs rupees per financial year"

Or

In clause (b) "rupees five lakhs per month"

**Circular – General Circular**

**Filing of Balance Sheet and Profit and Loss Account in extensible Business Reporting Language (XBRL) mode:**

1. It has been decided by the Ministry of Corporate Affairs to mandate certain class of companies to file balance sheets and profit and loss account for the year 2010-11 onwards by using XBRL taxonomy. The Financial Statements required to be filed in XBRL format would be based upon the Taxonomy on XBRL developed for the existing Schedule VI, as per the existing, (non converged) Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006. The said Taxonomy is being hosted on the website of the Ministry at [www.mca.gov.in](http://www.mca.gov.in) shortly. The Frequently Asked Questions (FAQs) about XBRL have been framed by the Ministry and they are being annexed as Annexure I with this circular for the information and easy understanding of the stakeholders.

**Coverage in Phase I**

2. The following class of companies have to file the Financial Statements in XBRL Form only from the year 2010-2011:-

- (i) All companies listed in India and their subsidiaries, including overseas subsidiaries;
- (ii) All companies having a paid up capital of Rs. 5 Crore and above or a Turnover of Rs 100 crore or above.

### Additional Fee Exemption

3. All companies falling in Phase -I are permitted to file upto 30-09-2011 without any additional filing fee.

### Training Requirement

4. Stakeholders desirous to have training on the XBRL or on taxonomy related issues may contact the persons as mentioned in Annexure II.

## Synopsis:

- ❖ XBRL introduced for filing of Annual Report.
- ❖ XBRL made mandatory for following companies (Phase I):
  - ⊙ All Indian listed companies and their subsidiaries (including overseas subs)
  - ⊙ All cos. having paid up capital of Rs. 5 Crore/Turnover of 100 Crore and above.  
(These conditions have been modified vide circular No. 25/2011, dated 12.05.2011.)
  - ⊙ For filing up to 30.09.2011, no additional fee (Phase I Cos.)

### Notification – G.S.R. 289(E) dated 31.03.2011

### Amendment in Companies (Particulars of Employees) Rules, 1975.

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.289\(E\)\\_31mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.289(E)_31mar2011.pdf)

The Change notified vide Notification - G.S.R. dated 31.03.2011 has been **published in the official Gazette** as on this date.

### Notification – S.O. 653(E) dated 30.03.2011

Amendment to paragraph 2 of notification no S.O. 447(E) dated 28.2.2011 regarding Schedule VI.

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/SO\\_653\(E\)\\_30mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/SO_653(E)_30mar2011.pdf)

The Change notified vide Notification - G.S.R. dated 28.03.2011 has been **published in the official Gazette** as on this date.

### Notification – G.S.R. dated 28.03.2011

### Amendment to Schedule VI

In exercise of the powers conferred by clause(a) of sub-section(1) of section 642 read with sub-section(1) of section 210A and sub-section (3C) of section 211 of the Companies Act, 1956, (1 of 1956), the Central Government hereby makes the following amendment to paragraph 2 of the notification No.447(E) dated the 28th February, 2011.:-

'The notification shall come into force for the Balance Sheet and Profit and Loss Account to be prepared for the financial year commencing on or after 1-4-2011.'

## Synopsis:

- ❖ Amendment to notification No.447 (E) dated the 28.02.2011.
- ❖ Revised schedule VI made applicable w.e.f 01.04.2011.

**Notification – G.S.R. 259(E) dated 26.03.2011**

**Amendment to Companies (Central Government's) General Rules & Forms, 1956.**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.259\(E\)\\_26mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.259(E)_26mar2011.pdf)

**S ynopsis:**

- ❖ Amendment made to E-Form 61.
- ❖ “Normalizing a dormant company” included as one of the reason for filing form 61.
- ❖ *(In a press release earlier, MCA announced “Implementation of enhanced regulatory framework on Annual Statutory filings” wherein companies which have defaulted in Annual Filing for the years 06-07, 07-08 and 08-09 will be marked as dormant).*

**Notification – G. S. R. Dated 26.03.2011**

**Rules to amend the Companies (Director Identification Number) Rules, 2006**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/Notification\\_english\\_26mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/Notification_english_26mar2011.pdf)

**S ynopsis:**

- ✓ Provision of Certification of DIN forms by MD/Director removed.
- ✓ CS in Whole time employment can certify the DIN form.
- ✓ New DIN 1 and DIN 4 forms notified.

**Circular – General Circular No. 08/2011**

**Prosecution of Directors**

1. Penal actions for defaults committed under the Companies Act, 1956 are either to be taken against an “officer in default” or a “director(s)” or “persons” as provided in the relevant penal provisions of the Act. Section 5 of the Companies Act, 1956, defines officer in default and the Directors are also liable for compliance of various provisions of the Act.

2. It is noticed that penal actions are also initiated against certain Directors who are not charge with the responsibility, particularly in following cases: --

(a) For listed companies Securities and Exchange Board of India (SEBI) requires nomination of certain Directors designated as Independent Directors.

(b) For public sector undertakings, respective Government nominates Directors on behalf of the respective Government.

(c) Various public sector financial institutions having participation in equity of a company also nominate Directors to the Board of such companies.

(d) Directors nominated by the Government u/s 408 of the Companies Act, 1956. In super session of all earlier circulars, it is clarified that Registrar of Companies should take extra care in examining the cases where above Directors are also identified as Officer in default. No such Directors as indicated above shall be held liable for any act of omission or commission by the company or by any officers of the company which constitute a breach or violation of any provision of the Companies Act, 1956, and which occurred without his knowledge attributable through Board process and without his consent or connivance or where he has acted diligently in the Board process. The Board process includes meeting of any committee of the Board and any information which the Director was authorised to receive as Director of the Board as per the decision of the Board.

3. It is further clarified that before taking penal action under the Companies Act, 1956 against the Directors the following compliances should be verified by Registrar of Companies: -

(a) A director resigns and the company does not file Form 32 as required in terms of Section 302(2) of the Act. In case, the director concerned has informed/endorsed a copy of his resignation to the Registrar of Companies, the Registrar should enquire into such cases and try to find out whether such director has actually resigned or not.

(b) In case the status of a director, i.e. whether he is a nominee director or not, is not reflected in the Annual Return or other documents of the company, available with Registrar, the same should be cross checked with the Annual Report filed by the company;

(c) The timing of the commission of offence is also material to identify the director's responsibility; and Form 1AB should also be checked in case any person has been charged by the Board under Section 5(f) with the responsibility of complying with some particular provision or in case any director has been specified by the Board under Section 5(g) of the Act.

(d) Special Directors appointed by BIFR under section 16 (6)(b) of SICA 1985, shall not incur any obligation or liability for anything done or omitted to be done in good faith and in discharge of duties. Hence they shall be excluded in the list of officers in default

4. For default u/s 209(5), 209(6), 211 and 212 of the Act, the following persons shall be the 'officers in default for the purpose of prosecution under these provisions:-

(a) Where there is a Managing Director or Manager, the Managing Director or the Manager as the case may be and in addition, the Company Secretary appointed u/s 383A or the person who has been charged with work of maintenance and preparation of Annual Accounts in compliance with aforesaid provisions.

(b) Where there is no Managing Director or Manager, every director and the Company Secretary appointed u/s 383A of the Act.

(c) Any persons amongst officers and employees other than Managing Director/Manager/Directors who has been charged by the Managing Director/Manager or Board of Directors with specific responsibility of complying with aforesaid provisions, in addition to Managing Director/Manager/Board of Directors as the case may be.

(d) Directors including Non-Executive Directors, officers and employees not connected with responsibility with the above provisions should not be arrayed as delinquent directors.

(e) While considering the non-executive directors for including in the list of officers in default for a particular violation of

the Companies Act, it should be examined whether the violation has taken place with his knowledge attributable through board process, with his consent or connivance and whether he acted diligently or not.

(f) Where prosecution is required to be filed against any Government company, its directors/officers and Member of Parliament and Member of Legislature under the Companies Act, 1956, Registrar of Companies should seek prior authorization of Central Government in terms of Section 621 of the Act.

5. There should be proper application of mind on the part of Registrar of Companies in deciding whether a person to be implicated is an 'officer in default' by examining the Annual Return, Form 32(s) and DIN database available in the Registry. The guidelines issued herein above should be applied and wrongful prosecution should be avoided. Wherever the Registrar of Companies has doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to Regional Director, who shall guide Registrar of Companies in the matter.

6. All cases which are pending against Directors of companies above must be relooked at, based on these parameters and a report must be sent by each Regional Director with specific recommendation in case the proceedings are proposed to be discontinued.

### Synopsis:

- ◆ Clarification regarding prosecution of Independent and nominee directors.
- ◆ Directors not to be held liable for any violation by company without their knowledge/where he has acted diligently.
- ◆ Special care and vigilance to be exercised in prosecution of these directors by ROC.
- ◆ Form 32, DIN database and Annual Returns to be scrutinized for verification.
- ◆ "Officers in Default" for Sections 209, 211 and 212 clarified.

**Notification – G.S.R. 222(E) dated 18.03.2011**

**Delegation of powers and functions to Registrars of Companies on selective provisions**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/GSR\\_222E\\_18mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/GSR_222E_18mar2011.pdf)

### Synopsis:

**Powers under following sections delegated from RD to ROC**

- ✓ Section 21, 25, 31(1) proviso, 108(1D), 572
- ✓ 108(1D) – Either by ROC of the State of R.O. OR ROC of State of transferee's residence.

**Notification – G.S.R. 223 (E) dated 18.03.2011**

**Delegation of powers and functions to Regional Directors on selective provisions**

Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/GSR\\_223E\\_18mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/GSR_223E_18mar2011.pdf)

## Synopsis:

**Powers and following sections delegated from CG to RD**

✓ Section 22, 224(3), 224(4), 224(7), 224(8)(a), 297(1) Proviso, 394-A, 400, 439(5)<sup>2nd</sup> Proviso, 439(6), 496(1)(a), 508(1)(a), 551(1), 555(7)(b), 555(9)(a) Proviso, 610(1) Proviso, 627

**Notification – S.O. 591(E) dated 18.03.2011**

**Amendments in the notification number, SRO dated 7th January, 1957**

**Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/SO\\_591E\\_18mar2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/SO_591E_18mar2011.pdf)**

**Circular – General Circular**

### **Companies Name availability (Draft) Rules, 2011**

In exercise of the power conferred by clause (a) of sub-section (1) of section 642 read with sections 20 and 21 of the Companies Act, 1956 (1 of 1956), the Central Government hereby makes the following rules:

1.(i) These Rules may be called “Companies (Name Availability) Rules, 2011”;

(ii) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. As per provisions contained in Section 20 of the Companies Act, 1956, no company is to be registered with undesirable name. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

(i) Name of a company in existence; or

(ii) A registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

3. After notification of these Rules, while applying for a name in the prescribed e-form-1A, using Digital Signature Certificate (DSC), the applicant shall be required to furnish a declaration to the effect that:

(i) he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved.

(ii) the proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;

(iii) the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;

(iv) The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;

(v) he has gone through all the prescribed guidelines, given in these Rules, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;

(vi) he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.

4. Where, the proposed name is containing more than one word, there will be an option in the e-form 1A for certification by the practicing Chartered Accountants, Company Secretaries and Cost Accountants, who will certify that he has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., [www.mca.gov.in/MCA21](http://www.mca.gov.in/MCA21) for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved and the search report is attached with the application form. The professional will also certify that the proposed name is not an undesirable name under the provisions of section 20 of the Companies Act, 1956 and also is in conformity with Companies (Name Availability) Rules, 2011 and Guidelines made therein.

5(i). Where e-form 1A has been certified by the professional in the manner stated at '4' above, the name will be made available by the system online to the applicant without backend processing by the Registrar of Companies (ROC). This facility is not available for applications for change of name of existing companies.

(ii) Where a name has been made available online on the basis of certification of practicing professional in the manner stated above, if it is found later on that the name ought not to have been allowed under provisions of section 20 of the Companies Act read with these Rules, the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulations of respective professional Institutes.

(iii) Where e-form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

6. The name if made available is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, ROC will pass an specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.

7. The name if made available to the applicant shall be reserved for sixty days from the date of approval and further extension of thirty days with revalidation application and fees. If, the proposed company has not been incorporated within such period, the name shall be lapsed and will be available for other applicants.

8. Even after incorporation of the company, the Central Government has the power to direct the company to change the name under section 22 of the Companies Act, 1956, if it comes to his notice or is brought to his notice through an application that the name too nearly resembles that of another existing company or a registered trademark.

9. In determining whether a proposed name is identical with another, the following shall be disregarded:

(i) The words Private, Pvt, Pvt., (P), Limited, Ltd, Ltd., LLP, Limited Liability Partnership;

- (ii) The words appearing at the end of the names – company, and company, co., co, corporation, corp, corpn, corp.;
  - (iii) The plural version of any of the words appearing in the name;
  - (iv) The type and case of letters, spacing between letters and punctuation marks;
  - (v) Joining words together or separating the words does not make a name distinguishable from a name that uses the similar, separated or joined words;
  - (vi) The use of a different tense or number of the same word does not distinguish one name from another;
  - (vii) Using different phonetic spellings or spelling variations does not distinguish one name from another. For example, J.K. Industries limited is existing then J and K Industries or Jay Kay Industries or J n K Industries or J & K Industries will not be allowed. Similarly if a name contains numeric character like 3, resemblance shall be checked with 'Three' also;
  - (viii) Misspelled words, whether intentionally misspelled or not, do not conflict with the similar, properly spelled words;
  - (ix) The addition of an internet related designation, such as .COM, .NET, .EDU, .GOV, .ORG, .IN does not make a name distinguishable from another, even where (.) is written as 'dot';
  - (x) The addition of words like New, Modern, Nav, Shri, Sri, Shree, Sree, Om, Jai, Sai, The, etc. does not make a name distinguishable from an existing name such as New Bata Shoe Company, Nav Bharat Electronic etc. Similarly, if it is different from the name of the existing company only to the extent of adding the name of the place, the same shall not be allowed. For example, 'Unique Marbles Delhi Limited' cannot be allowed if 'Unique Marbles Limited' already exists;
- Such names may be allowed only if no objection from the existing company by way of Board resolution is produced/ submitted;
- (xi) Different combination of the same words does not make a name distinguishable from an existing name, e.g., if there is a company in existence by the name of "Builders and Contractors Limited", the name "Contractors and Builders Limited" should not be allowed;
  - (xii) If the proposed name is an exact Hindi translation of the name of an existing company in English especially an existing company with a reputation, e.g., Hindustan Steel Industries Ltd. will not be allowed if there exists a company with name 'Hindustan IspatUdyog Limited';

#### 10. Guidelines for availability of name

In supersession of all the previous circulars and instructions regarding name availability, the applicants and Registrar of Companies are also advised to adhere following guidelines while applying or approving the proposed name:

- (i) It is not necessary that the proposed name should be indicative of the main object. However, in case the proposed name is indicative of any activity, the same will be appropriately reflected in the main object clause of the Memorandum of Association;

(ii) If the Company's main business is finance, housing finance, chit fund, leasing, investments, securities or combination thereof, such name shall not be allowed unless the name is indicative of such related financial activities, viz., Chit Fund/ Investment/ Loan, etc.;

(iii) If it includes the words indicative of a separate type of business constitution or legal person or any connotation thereof, the same shall not be allowed. For eg: co-operative, sehkari, trust, LLP, partnership, society, proprietor, HUF, firm, Inc., PLC, GmbH, SA, PTE, Sdn, AG etc.;

(iv) Abbreviated name such as 'ABC limited' or '23K limited' cannot be given to a new company. However the companies well known in their respective field by abbreviated names are allowed to change their names to abbreviation of their existing name (for Delhi Cloth Mills limited to DCM Limited, Hindustan Machine Tools limited to HMT limited) after following the requirement of Section 21 of the Companies Act, 1956;

(v) If the proposed name is identical to the name of a company dissolved as a result of liquidation proceeding should not be allowed for a period of 2 years from the date of such dissolution since the dissolution of the company could be declared void within the period aforesaid by an order of the Court under section 559 of the Act. Moreover, if the proposed name is identical with the name of a company which is struck off in pursuance of action under section 560 of the Act, then the same shall not be allowed before the expiry of 20 years from the publication in the Official Gazette being so struck off since the company can be restored anytime within such period by the competent authority;

(vi) If the proposed names include words such as 'Insurance', 'Bank', 'Stock Exchange', 'Venture Capital', 'Asset Management', 'Nidhi', 'Mutual fund' etc., the name may be allowed with a declaration by the applicant that the requirements mandated by the respective regulator, such as IRDA, RBI, SEBI, MCA etc. have been complied with by the applicant;

(vii) If the proposed name includes the word "State", the same shall be allowed only in case the company is a government company. Also, if the proposed name is containing only the name of a continent, country, state, city such as Asia limited, Germany Limited, Haryana Limited, Mysore Limited, the same shall not be allowed;

(viii) If a foreign company is incorporating its subsidiary company, then the original name of the holding company as it is may be allowed with the addition of word India or name of any Indian state or city, if otherwise available;

(ix) Change of name shall not be allowed to a company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentures and/or interest thereon;

| S.No | Key Words                                                                                                                                                           | Required authorized capital (in Rs.) |
|------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| 1    | Corporation, Corp, Corpn, corp.                                                                                                                                     | 25 crore                             |
| 2    | international, Globe, Global, World, Overseas, Universe, Universal, Continent, Continental, InterContinental, Asiatic, Asia, Asian being the first word of the name | 5 crore                              |
| 3    | If any of the words at (2) above is used within the name (with or without brackets)                                                                                 | 2 crore                              |
| 4    | Hindustan, India, Indo, Indian, Bharat, Bharatvarsh, Bhartiya or any other country's name being first word of the name                                              | 2 crore                              |

|   |                                                                                     |         |
|---|-------------------------------------------------------------------------------------|---------|
| 5 | If any of the words at (4) above is used within the name (with or without brackets) | 25 lakh |
| 6 | Industries/ Udyog                                                                   | 5 crore |
| 7 | Enterprises, Products, Business, Manufacturing, Venture.                            | 50 lakh |

(x) With a view to maintain uniformity, the following guidelines may be followed in the use of keywords, as part of name, while making available the proposed names under section 20 and 21 of the Companies Act, 1956:

**Circular – General Circular No. 7A/2011**

The said circular has been excluded as the scheme is no more operational.

**Circular – General Circular**

**Payment of MCA fees –electronic mode-regarding**

**S ynopsis:**

- Ø **Mode of payment of fee on MCA reviewed to cut timelines.**
- Ø **Offline Challans banned for amounts below Rs. 50,000/-**
- Ø **For payments above Rs. 50,000/- all existing modes available till 01.10.2011.**

**After 01.10.2011, all payments to be made online only.**

- ◆ Ministry has reviewed the processes involved in delivery of important services to stakeholders, with a view to identify and improve the components causing delay in disposal of applications. Payment confirmation is found to be a major bottleneck in delivery of services in respect of offline payment made by physical challans.
- ◆ It was found that often there was a delay in confirmation of payments by physical challans, as banks have been given a reporting time of 'T'+3 days, as per payment procedure approved by C&AG, 'T' being the transaction date. This leads to delay in creation of work item for disposal of an application/e-form, leading to inconvenience of stakeholders.
- ◆ On the other hand, it was found that wherever fees were paid online in the system, the work item was created faster and the approvals were speedier as banks are following 'T'+1 for reporting online payments.
- ◆ In the interest of stakeholders, with a view to improving service delivery time, Ministry has decided to accept payments of value upto Rs.50,000, for MCA 21 services only in electronic mode w.e.f 27th March, 2011.
- ◆ For the payments of value above Rs. 50,000, stakeholders would have the option to either make the payment in electronic mode, or paper challan. However such payments would also be made in electronic mode w.e.f .1st October'2011.

**Circular – General Circular No.6/2011**

**Simplified Process of incorporation of Companies (Form-1) and establishment of principal place of business in India by Foreign Companies (Form-44)**

I am directed to inform that Ministry has received various representations regarding time taken by the Registrar of Companies for registration of Form-1 and Form-44.

The Ministry has got the issue examined by Business Process Re-engineering Group under MCA-21 and in order to speed up and simplify the process of incorporation of Companies and establishment of principal place of business in India by Foreign Companies for reduction in time taken by Registrar of Companies, the below mentioned procedure have been recommended :

1. Only Form-1 shall be approved by the RoC Office. Form 18 and 32 shall be processed by the system online.
2. There shall be one more category, i.e., Incorporation Forms (Form 1A, Form 37, 39, 44 and 68) which will have the highest priority for approval.
3. Average time taken for incorporation of company should be reduced to one (1) day only.
4. A Notification to notify minor changes in e-forms 18 and 32 to enable them to be taken on record through STP mode for aforesaid procedure is being issued separately.

**S ynopsis:**

- Steps initiated for reducing timelines for approval of incorporation.
- Form 18 and 32 put under STP mode.
- Incorporations forms to be given highest priority for approval.
- Average time to approve incorporation proposed to be ONE DAY!

**Notification – GSR 196(E) dated 08.03.2011**

**Corrigendum to Notification GSR 112(E) dated 25 Feb, 2011**

In the notification of the Government of India Ministry of Corporate Affairs, published in the Gazette of India, vide G.S.R. 112(E) dated the 25<sup>th</sup> February, 2011, page 2, in line 14, for “in clause 7, the second proviso”, read “in rule 7, clause (ii).”

**S ynopsis:**

- Notification G.S.R. 112(E) dated the 25<sup>th</sup> February, 2011 was about Chartered Accountants (Election to the Council) Rules, 2006.
- In the said notification, instead of “Second Proviso”, “Clause ii” has to be replaced.

**Circular – General Circular No.5/2011**

**Simplification of DIN rules**

I am directed to inform that the Ministry's has re-examined the process of allotment of Directors Identification Number (DIN) to be obtained u/s 266B of the Companies Act, 1956. The present process is cumbersome and time consuming. Representations have been received in the Ministry that the documents required to be submitted should be simple to prove the existence/residence of a person, who intend to become a director of a company.

The Ministry has constituted a Group to examine the business process re-engineering under MCA-21. In order to speed up and simplify the process to obtain a DIN, the below mentioned procedure have been recommended.

1. Application for DIN will be made on eForm; No physical submission of documents shall be accepted and for this purpose Scanned documents along with verification by the applicant will be attached with the eForm. Only online fee payment will be allowed i.e. No challan payment.
2. The application can also be submitted online by the applicant himself using his DSC.
3. DIN 1 eForm can be digitally signed by the professional who shall also confirm that he has verified the particulars of the Applicant given in the application.
4. Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online.
5. In other cases the DIN cell will examine the application and same shall be disposed of within one or two days.
6. Companies (Directors Identification Number) Rules, 2006 are being amended on the above lines.
7. Penal action against the applicant and professional certifying the DIN application in case of false information / certification as per provisions of section 628 of the Act will be taken in addition to action for professional misconduct and revocation of DIN, allotted on false information.
8. The above procedures are expected to enable allotment of DIN on the same day.
9. The above procedures apply to filing of DIN 4 intimating changes in particulars of Directors.

**S ynopsis:**

- **NOTIFICATION ISSUED ON 26.03.2011.**
- **NEW DIN RULES EXAMINED UNDER THE ABOVE DATED NOTIFICATION.**

**Circular – General Circular No. 4/2011**

**Payment of Commission to Non-Whole Time Directors of the Company under Section 309(4)(b) of the Companies Act, 1956**

Companies are making applications to the Central Government for payment of remuneration in the form of commission to their Non-whole time Director even when the total commission to be paid to all the Non-whole time director taken together falls within the limit of 1% of net profit of the company under Section 198 of the Act (when the Company does not have a Managing Director or a Non-whole Time Director) in addition to the sitting fee. This is based on the decision of this

Ministry taken in File No. 6 (a) CL – I / 66 issued long back.

It has now been decided that a company shall not require approval of the Central Government for making payment of remuneration by way of commission to its Non-whole time Directors in addition to the sitting fee if the total commission to be paid to all those Non-Whole time Directors does not exceed 1% of Net profits of the Company if it has a whole time Directors or 3% of Net Profits of the Company if does not have a Managing Director or Whole time Directors.

### Synopsis:

- ◆ **Clarification provided regarding payment of commission to non-whole time directors u/s 198.**
- ◆ **Commission within the following limits not to require CG approval:**
  - ✓ **3% in case in company does not have MD/WTD.**
  - ✓ **1% in case company has a MD/WTD.**

### Circular – General Circular

#### Revised Schedule VI (shall be effective from 01.04.2011)

The Ministry of Corporate Affairs has revised Schedule VI pertaining to the preparation of Balance Sheet and Profit & Loss Account to the Companies Act, 1956.

This revised Schedule VI has been framed as per the existing non-converged Indian Accounting Standards notified under the Companies (Accounting Standards), Rules, 2006 and has nothing to do with the converged Indian Accounting Standards. This will apply to all the companies uniformly for the financial statements to be prepared for the financial year **2010-11** and onwards.

Complete circular available at [http://www.mca.gov.in/Ministry/pdf/Schedule\\_VI\\_28feb2011.pdf](http://www.mca.gov.in/Ministry/pdf/Schedule_VI_28feb2011.pdf)

| S.No. | Particulars                                              | Revised Schedule VI                                                                                                                                                                                                                   | Old Schedule VI                                                                                                                                                                                                                                                                                                                                                  |
|-------|----------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1     | Rounding off of Figures appearing in financial statement | <p>Turnover of less than Rs. 100 Crs - R/off to the nearest Hundreds, thousands, lakhs or millions or decimal thereof</p> <p>Turnover of Rs. 100 Crs or more - R/off to the nearest lakhs, millions or crores, or decimal thereof</p> | <p>If Turnover below 100 Crs - R/off to the nearest Hundreds, thousands or decimal thereof</p> <p>If Turnover 100 Crs but less than 500 Crs - R/off to the nearest Hundreds, thousands, lakhs or millions or decimal thereof</p> <p>If Turnover 500 Crs and above - R/off to the nearest Hundreds, thousands, lakhs, millions or crores, or decimal thereof.</p> |

|    |                                   |                                                                                                                                                                                                                                                                                                                                 |                                                                                                                               |
|----|-----------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------|
| 2  | Net Working Capital               | Assets & Liabilities are to be bifurcated in to current & Non-current and to be shown separately. Hence, net working capital will not be appearing in Balance sheet.                                                                                                                                                            | Current assets & Liabilities are shown together under application of funds. The net working capital appears on balance sheet. |
| 3  | Fixed Assets                      | Fixed assets to be shown under non-current assets and it has to be bifurcated in to Tangible & intangible assets.                                                                                                                                                                                                               | There was no bifurcation required in to tangible & intangible assets.                                                         |
| 4  | Borrowings                        | Long term borrowings to be shown under non-current liabilities and short term borrowings to be shown under current liabilities with separate disclosure of secured / unsecured loans.<br><br>Period and amount of continuing default as on the balance sheet date in repayment of loans and interest to be separately specified | Short term & long term borrowings are grouped together under the head Loan funds sub-head Secured / Unsecured                 |
| 5  | Finance lease obligation          | Finance lease obligations are to be grouped under the head non-current liabilities                                                                                                                                                                                                                                              | Finance lease obligations are included in current liabilities                                                                 |
| 6  | Deposits                          | Lease deposits to be disclosed as long term loans & advances under the head non-current assets                                                                                                                                                                                                                                  | Lease deposits are part of loans & advances                                                                                   |
| 7  | Investments                       | Current and non-current investments are to be disclosed separately under current assets & non-current assets respectively.                                                                                                                                                                                                      | Both current & non-current investments to be disclosed under the head investments                                             |
| 8  | Loans & Advances                  | Loans & Advances to be broken up in long term & short term and to be disclosed under non-current & current assets respectively.                                                                                                                                                                                                 | Loans & Advance are disclosed along with current assets                                                                       |
| 9  | Deferred Tax Assets / Liabilities | Deferred Tax assets / liabilities to be disclosed under non-current assets / liabilities as the case may be.                                                                                                                                                                                                                    | Deferred Tax assets / liabilities to be disclosed separately                                                                  |
| 10 | Cash & Bank Balances              | Bank balances in relation to earmarked balances, held as margin money against borrowings, deposits with more than 12 months maturity, each of these to be shown separately.                                                                                                                                                     | Bank balance to be bifurcated in scheduled banks & others                                                                     |

|    |                                        |                                                                                                                                                              |                                                                                                                                                                                          |
|----|----------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 11 | Profit & Loss (Dr Balance)             | Debit balance of Profit and Loss Account to be shown as negative figure under the head Surplus. Therefore, reserve & surplus balance can be negative.        | P&L debit balance to be shown under the head Miscellaneous expenditure & losses.                                                                                                         |
| 12 | Sundry Creditors                       | It is named as Trade payables and there is no mention of micro & small enterprise disclosure.                                                                | Creditors to be broken up in to micro & small suppliers and other creditors.                                                                                                             |
| 13 | Other current liabilities              | Current maturities of long term debt to be disclosed under other current liabilities.<br><br>Current maturities of finance lease obligation to be disclosed. | No specific mention for separate disclosure of Current maturities of long term debt<br><br>No specific mention for separate disclosure of Current maturities of finance lease obligation |
| 14 | Separate line item Disclosure criteria | any item of income / expense which exceeds one per cent of the revenue from operations or Rs. 1,00,000, whichever is higher; to be disclosed separately      | any item under which expense exceeds one per cent of the total revenue of the company or Rs. 5,000 whichever is higher; shall be disclosed separately                                    |
| 15 | Expense classification                 | Expenses in Statement of Profit and Loss to be classified based on nature of expenses                                                                        | Function wise & nature wise                                                                                                                                                              |
| 16 | Finance Cost                           | Finance cost shall be classified as interest expense, other borrowing costs & Gain / Loss on foreign currency transaction & translation.                     | Finance cost to be classified in fixed loans & other loans                                                                                                                               |
| 17 | Foreign exchange gain / loss           | Gain / Loss on foreign currency transaction to be separated into finance costs and other expenses                                                            | Gain / Loss on foreign currency transaction to be shown under finance cost                                                                                                               |
| 18 | Purchases                              | Goods traded in by the company to be disclosed in broad heads in notes. Disclosure of quantitative details of goods is diluted                               | The purchase made and the opening & closing stock, giving break up in respect of each class of goods traded in by the company and indicating the quantities thereof.                     |

**Circular – General Circular No. 3/2011**

**Clarification in respect of Circular No. 2/2011 dated 8th February, 2011 regarding direction under Section 212(8) of the Companies Act, 1956**

It is clarified that this Ministry Circular No. 2/2011 dated 8<sup>th</sup> February, 2011 shall be effective in respect of balance sheet and profit and loss accounts prepared regarding the financial year ending on or after the 31<sup>st</sup> March, 2011.

**CIRCULAR 2/2011 DEALS WITH EXEMPTION U/S 212(8) IN CERTAIN CASES**

**Notification – G.S.R. 78(E) dated 10.02.2011**

**Amendments in Companies (Central Government's) General Rules and Forms, 1956**

Copy of notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.78\(E\)\\_10feb2011.pdf](http://www.mca.gov.in/Ministry/notification/pdf/G.S.R.78(E)_10feb2011.pdf)

**Synopsis:**

**Amendment made in E-form 2.**

**Provision of language – Hindi/English has been removed**

**Notification – GSR 70(E) dated 08.02.2011**

**Amendments in Schedule XIII to the Companies Act 1956**

In exercise of the powers conferred by sub-section (1) of Section 641 of the Companies Act, 1956(1 of 1956), the Central Government hereby makes the following further amendments in Schedule XIII to the Companies Act, 1956, as follows:-

**1. The Schedule II in Section II**

(i) In sub para (c) in third proviso after the word, scale occurring at the end the following words shall be inserted:

“If the Company is a listed company or a subsidiary of a listed company”

(ii) For Explanation IV to the Section II the following explanation shall be substituted:

“For the purposes of this section, “Remuneration Committee” means-

(i) In respect of a listed Company a committee which consists of at least three non –executive independent directors including nominee director or nominee directors, if any; and

(ii) In respect of any other company, a Remuneration Committee of Directors.

**Synopsis:**

**AMENDMENT IN SCHEDULE XIII**

**Prior approval of Central Government required for payment of remuneration exceeding the ceiling limit of Rs. 48,00,000/- p.a. or Rs. 4,00,000/- p.m. only in case of**

**LISTED COMPANIES/SUBSIDIARIES OF LISTED COMPANIES.**

*Separate meaning of remuneration committee for listed and non listed cos.*

*Prior to the amendment approval was required for all public companies and there was only singly explanation for remuneration committee.*

**Notification – SO 301(E) Dated 08.02.2011**
**Exemption under Section 211 of Companies Act 1956**

In exercise of the powers conferred by sub-section (3) of section 211 of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that it is necessary to grant exemption in the public interest, hereby exempts following classes of companies from disclosing in their profit and loss account the information mentioned under column (3), against each class of companies mentioned under column (2) of the table given below subject to fulfillment of the conditions stipulated in paragraph 2 of this notification namely:-

**TABLE**

| Sl. No. | Class of companies                                                       | Exemptions from paragraphs of Part-II of Schedule VI                    |
|---------|--------------------------------------------------------------------------|-------------------------------------------------------------------------|
| 1.      | Companies producing Defence Equipments including Space Research;         | Paragraphs 3(i)(a), 3(ii)(a), 3(ii)(d), 4-C, 4-D (a) to (e) except (d). |
| 2.      | Export Oriented company (whose export is more than 20% of the turnover); | paragraphs 3(i)(a) 3(ii)(a), 3(ii)(b), 3(ii)(d).                        |
| 3.      | Shipping companies (Including Airlines);                                 | Paragraphs 4-D (a) to (e) except (d).                                   |
| 4.      | Hotel companies (including Restaurants);                                 | paragraphs 3(i)(a) and 3(ii)(d)                                         |
| 5.      | Manufacturing companies/multi-product companies;                         | paragraphs 3(i)(a) and 3(ii)(a).                                        |
| 6.      | Trading companies;                                                       | paragraphs 3(i)(a) and 3(ii)(b).                                        |

**2. Conditions**

- The Board of Directors of the Company has given consent with regard to non disclosure of information referred to in paragraph 1;
- The Company shall disclose in the Notes forming part of the balance sheet and profit and loss account, the fact of grant of the exemption under this notification;
- The company shall conform to the prescribed Accounting Standards;
- The company shall ensure that its financial documents represent a true and fair state of affairs of its finances;
- The company shall maintain and file such information as may be prescribed or called for or required by the government or the Reserve Bank of India or any regulator;
- For representation of foreign currency holdings, if any, exchange rate as on date of closing of accounts shall be applicable;

3. The exemption in respect of the companies referred to in serial numbers 5 and 6 of the Table shall be applicable only for those goods which form less than ten percent of the total value of turnover, purchase, consumption of raw material etc, as the case may be;

4. This notification shall be applicable in respect of balance sheet and profit and loss accounts prepared in respect of the financial year ending on or after the 31<sup>st</sup> March, 2011.

## Synopsis:

**Exemption granted to certain class of companies for disclosing certain information in their P&L A/c.**

- ◆ **Changes applicable w.e.f. 31.03.2011**
- ◆ **Conditions to be satisfied:**
  - ✓ **Consent of BoD to be obtained.**
  - ✓ **Notes to contain that “Exemption has been granted”.**
  - ✓ **Accounts to present true and fair view.**

### **Notification – SO 300(E) Dated 08.02.2011**

#### **Exemption under Section 211 of Companies Act 1956**

In exercise of the powers conferred by sub-section (3) of section 211 of the Companies Act, 1956 (1 of 1956), the Central Government, being of the opinion that it is necessary to grant exemption in the public interest, hereby exempts Public Financial Institutions as specified under section 4A of the Companies Act, 1956 from disclosing Investments as required under paragraph (1) of Note (1) of Part-I of Schedule VI in their balance sheet subject to fulfillment of the following conditions, namely:-

(i) the Public Financial Institutions shall make the complete disclosures about investments in the balance sheet in respect of the following, namely: -

- \* Immovable property;
- \* Capital of Partnership firms;
- \* All unquoted investments and;
- \* Investments in subsidiary companies.

(ii) the Public Financial Institutions shall disclose the total value of quoted investments in each of the following respective categories, namely:-

- (a) Government and trusts securities;
- (b) shares;
- (c) debentures;
- (d) bonds; and
- (e) other securities.

(iii) In each of the above categories referred to in sub-paragraphs (i) and (ii), investments where value exceeds two percent of total value in each category or one crore rupees, whichever is lower, shall be disclosed fully provided that where disclosures do not result in disclosure of at least fifty percent of total value of investment in a particular category, additional disclosure of investments in descending order of value shall be made so that specific disclosures account for at least fifty percent of the total value of investments in that category;

(iv) the Public Financial Institutions shall also give an undertaking to the effect that as and when any of the shareholders ask for specific particulars the same shall be provided;

- (v) all unquoted investments shall be separately shown;
- (vi) the company shall undertake to file with any other authorities, whenever necessary, all the relevant particulars as may be required by the Government or other regulatory bodies;
- (vii) the Investments in subsidiary companies or in any company such that it becomes a subsidiary, shall be fully disclosed.

2. This notification shall be applicable in respect of balance sheet and profit and loss accounts prepared in respect of the financial year ending on or after the 31<sup>st</sup> March, 2011.

## Synopsis:

- ◆ **Exemption granted to PUBLIC FINANCIAL INSTITUTIONS from disclosing INVESTMENTS in Balance Sheet.**
- ◆ **Changes applicable w.e.f. 31.03.2011**
- ◆ **Conditions to be satisfied:**
  - ✓ **Investment in immovable property, Partnership firms, sub cos. and unquoted investment to be completely disclosed.**
  - ✓ **Value of quoted investment to be provided category wise.**

**Circular – General Circular No. 2/2011 Dated 08.02.2011**

### Direction under Section 212(8) of the Companies Act, 1956

1. It has been noticed that a large number of companies are approaching the Ministry for exemption under Section 212(8) of the Companies Act, 1956. The matter was examined in the context of the globalizing Indian economy, the increased number of subsidiaries, and the introduction of accounting standards on consolidated financial statements. It has been decided to grant a general exemption provided certain conditions are fulfilled.

The Central Government hereby directs that provisions of Section 212 shall not apply in relation to subsidiaries of those companies which fulfill the following conditions:-

- (i) The Board of Directors of the Company has by resolution given consent for not attaching the balance sheet of the subsidiary concerned;
- (ii) The company shall present in the annual report, the consolidated financial statements of holding company and all subsidiaries duly audited by its statutory auditors;
- (iii) The consolidated financial statement shall be prepared in strict compliance with applicable Accounting Standards and, where applicable, Listing Agreement as prescribed by the Security and Exchange Board of India;
- (iv) The company shall disclose in the consolidated balance sheet the following information in aggregate for each subsidiary including subsidiaries of subsidiaries:- (a) capital (b) reserves (c) total assets (d) total liabilities (e) details of investment (except in case of investment in the subsidiaries) (f) turnover (g) profit before taxation (h) provision for taxation (i) profit after taxation (j) proposed dividend;
- (v) The holding company shall undertake in its annual report that annual accounts of the subsidiary companies and the related detailed information shall be made available to shareholders of the holding and subsidiary companies seeking such information at any point of time. The annual accounts of the subsidiary companies shall also be kept for inspection by any shareholders in the head office of the holding company and of the subsidiary companies concerned and a note to the above effect will be included in the annual report of the holding company. The holding company shall furnish a hard copy of details of accounts of subsidiaries to any shareholder on demand;

(vi) The holding as well as subsidiary companies in question shall regularly file such data to the various regulatory and Government authorities as may be required by them;

(vii) The company shall give Indian rupee equivalent of the figures given in foreign currency appearing in the accounts of the subsidiary companies along with exchange rate as on closing day of the financial year.

### **S ynopsis:**

**Exemption granted U/S 212(8) - Balance Sheet of Holding Company to include certain particulars in respect of subsidiary companies.**

**CONDITIONS TO BE SATISFIED:**

- ✓ **BR approving non-application of provisions of section 212**
- ✓ **Consolidated financial statements to be provided.**
- ✓ **Annual accounts of the subsidiary companies to be kept for inspection by any shareholders in the head office of the holding company.**
- ✓ **Holding as well as subsidiary companies to regularly file such data to the various regulatory and Government authorities as may be required by them.**
- ✓ **Indian rupee equivalent of foreign currencies to be given.**

**Notification – SO 107(E) Dated 19.01.2011**

**Appointment of National Advisory Committee on Accounting Standards**

**Copy of Notification is available at [http://www.mca.gov.in/Ministry/notification/pdf/SO\\_107\(E\).pdf](http://www.mca.gov.in/Ministry/notification/pdf/SO_107(E).pdf)**

### **S ynopsis:**

- **National Advisory Committee on Accounting Standards constituted.**
- **Committee to advise CG on formulation/laying down of policies.**

**Circular – General Circular EES 2011**

**Omitted as the Scheme is no more operational.**