

MCA Initiatives During 2011

Year End Review MCA

The Indian economy has expanded at a rapid rate during the current decade and the corporate sector has been the biggest contributor in this growth story. While the Ministry of Corporate Affairs is working towards reforming the enabling environment for effective functioning of the corporate sector, simultaneously, there is a strong argument for fostering sensitivity to community and social concerns as a part of the broader objective of inclusive growth. It has been our constant endeavor at the Ministry to consult all the stakeholders in true spirit of our democratic values while undertaking these reform initiatives. The Ministry is also encouraging the corporate sector to take into account the concerns of stakeholders beyond their investors and to demonstrate that responsible business governance can generate value for all the stakeholders.

In order to streamline its initiatives accordingly, steps taken up by the Ministry of Corporate Affairs during the calendar year 2011 are as under:

(i) Companies Bill, 2011:

The Companies Bill, 2011 (“the Bill”) was presented before the Lok Sabha on December 14, 2011, withdrawing the Companies Bill, 2009. The Bill, proposes significant changes to the existing corporate law provisions dealing with mergers and acquisitions (‘M&A’) and corporate restructuring with some modifications to the Companies Bill, 2009 .

(ii) MCA21 e-Governance:

Successful Peak Filing: The Ministry took several proactive steps to ensure smooth filing of balance sheets and annual returns electronically on MCA21 portal in the peak filing months of October and November. As mentioned earlier, the month of October passed off peacefully with 9 lakh filings against 7.6 lakh filings in October 2010. During the month of November 2011 also, the Ministry continued with its proactive efforts including monitoring the filing position on day-to-day basis. During the month of November 5.91 lakh filings have been received against 5.36 lakh filings in November 2010. In the whole exercise no adverse report from anywhere has been received. These figures indicate increased regulatory compliance by the companies.

Introduction of Extensible Business Reporting Language [XBRL]: The XBRL filings of financial statements for financial year 2010-11 by select class of companies [totaling approx. 30,000] are being regularly monitored by the Ministry. This being a new initiative – requiring detailed information to be filed by corporate and with several validation checks by the MCA21 system – an extensive awareness campaign has been launched. More than 9000 companies have so far filed their XBRL documents. For greater convenience of stakeholders and corporate, a decision was taken to extend the last date of filing for such companies to 31st December, 2011.

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(iii) Limited Liability Partnership (LLP):

A decision has been taken to bring the LLP e-Governance Programme on the same platform as MCA21 to ensure better governance. The work of software development has been entrusted to M/s TCS who are expected to find a solution by end-January 2012. NIC will continue to maintain the LLP e-Governance system till then. To facilitate the stakeholders who will now have a common Code [DIN] for both companies as well as LLPs, the time for filing the statement of account by LLPs was extended by another 30 days.

(iv) Company Law Settlement Scheme [CLSS]:

This was introduced in August 2011 to give a chance to companies who have failed to file the balance sheets and annual returns earlier, to complete their filings to avoid prosecution. This measure has elicited a good response and so far about 1.25 lakh documents have been filed, yielding a revenue of Rs.15.37 crore. The Scheme is now valid till January 15, 2012.

(v) Competition Commission of India:

There is a proposal for signing of Memorandum of Understanding on ‘Competition’ related matters between the Competition Commission of India and the Federal Antimonopoly Service [FAS], Russia. The draft Memorandum of Understanding agreed to between the two sides has been considered in this Ministry and approved at the level of Minister for Corporate Affairs. The draft MoU has been sent to the Ministry of External Affairs for their consideration and approval and for forwarding the same to the Russian side.

(vi) International Cooperation:

The Minister for Corporate Affairs led a delegation to USA from 7th to 11th November 2011. During the visit, discussions were held, at length, between the Indian delegation and the US delegation (Department of Justice and Federal Trade Commission) on signing of an MoU on “Competition” related matters and on matters relating to India’s proposed National Competition Policy and other Competition related matters. The draft MoU proposed to be signed between the Ministry of Corporate Affairs (MCA) and the Competition Commission of India (CCI) on the

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Indian side with the US Department of Justice (DoJ) and the Federal Trade Commission (FTC), has been sent to the Ministry of External Affairs for their consideration and approval.

(b) Dr Henk Bleker, Minister for Agriculture and Foreign Trade, Kingdom of Netherlands, along with his delegation, had a meeting with Shri RPN Singh, Minister of State for Corporate Affairs, on 8th November 2011 to discuss the areas of Corporate Governance and the Corporate Social Responsibility, as formalized in the Letter of Intent signed between the Ministry of Corporate Affairs, Government of India and the Ministry of Economic Affairs of the Kingdom of Netherlands on June 7, 2011.

(vii) Investor Awareness:

One hundred sixty two (162) Investor Awareness Programmes have been conducted through the Professional Institutes in various cities of the country during November 2011. So far, 540 programmes have been conducted through the Professional Institutes in different parts of the country during the year 2011.

(viii) Establishment of four new offices of RoCs-cum-OLs:

The Ministry took a decision to establish four new offices of RoCs-cum-OLs at Nainital, Bilaspur, Ranchi and Shimla to cover the States, which had not been covered so far, with independent offices. A decision was also taken to merge the separate office of RoCs and OLs in the States of Orissa, Bihar and Rajasthan to ensure better focus on liquidation activities.

CSR initiatives:

The Ministry has formulated “National Voluntary Guidelines on Social, Environmental and Economic responsibilities of Business” that will mainstream the subject of business responsibilities. The guidelines are a refinement over the Corporate Social Responsibility Voluntary Guidelines 2009. These guidelines have been formulated keeping in view the diverse sectors within which businesses operate, as well as the wide variety of business organizations that exist in India today – from the small and medium enterprises to large corporate organizations. The Guidelines are applicable to all such entities, and are intended to be adopted

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by them comprehensively, as they raise the bar in a manner that makes their value-creating operations sustainable.

The other Recent initiatives on legislative, regulatory, service delivery:

(1) **Green Initiatives in the Corporate Governance :** The Ministry has allowed paperless compliances by the companies and Registrar of Companies under the provisions of the Companies Act, 1956 such as : -

(a) **Allowing service of Documents including Balance Sheets and Auditors report etc through e-mail addresses :** In order to reduce cost of posting and speedy delivery of documents, service of documents through electronic mode has been permitted under section 53 of the Companies Act, 1956 in place of service of document under certificate of posting. Similarly, to reduce the consumption of papers and speedy secure delivery, service of copies of Balance Sheets and Auditors Report etc., to the members of the company as required under section 219 of the Companies Act, 1956 has been allowed to be served through electronic mode by capturing their e-mail addresses available with the depositories or by obtaining directly from the shareholders.

(b) **Participation by Directors and shareholders in meetings through video conferencing :** In order to provide larger participation and for curbing the cost borne by the Company, Directors, and shareholders to attend various meetings under the provisions of the Companies Act, 1956, participation through video conferencing has been permitted subject to certain compliances.

(c) **Voting in General Meeting of Companies through electronic mode :** In order to have secured electronic platform for capturing accurate electronic processes, Central Depository Services (India) Ltd (CDSL) and National Securities Depositories Limited (NSDL) are being given approval by the Ministry of Corporate Affairs to provide their electronic platform for capturing accurate electronic voting in General meetings of the company.

(d) **Issue of Digital Certificates by Registrar of Companies:** The Registrar of Companies has to issue a number of certificates to the companies and other stakeholders as required under the provisions of the Companies Act, 1956. 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

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Registrar of Companies will now be issued electronically under the Digital Signatures of the Registrar of Companies.

(2) Simplification in Procedures and Process under Companies Act, 1956: The Ministry has taken following steps to simplify the procedures for the corporate are as under : --

(a) Incorporation of new Company within 24 hours by end of July, 2011

(i) Allotment of Director Identification Number (DIN) has been made online by the system once the particulars of the applicant are verified by the practicing professionals.

(ii) The Ministry is issuing revised guidelines for allotment of name of the company. The name shall be made available online, if the application has been certified by the practicing professional that the proposed name is in conformity with the guidelines. The guidelines shall be implemented by end of July, 2011.

(iii) A separate e-form is being developed for the Memorandum and Articles of Association and incorporation process will be totally paperless.

(b) Issue of License under section 25 (non profit companies) of the Companies Act, 1956
: - Work relating to issue of license under section 25 (non profit companies) has been delegated to ROCs and condition for publication of notice for 30 days in the newspapers before issue of license have been dispensed with.

(c) The Director's Relatives (Office or Place of Profit) Amendment Rules, 2011:- Limit of Directors relatives salary has been enhanced from Rs. 50,000/- per month to Rs. 2,50,000/- per month. Now onwards, for remuneration for relatives of the Directors within the enhanced limit, company need not to approach Ministry for approval.

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(d) Marking a company as having management dispute by Registrar of Companies under MCA-21 system : In order to have uniform practice in all Office of ROCs, clarification has been issued that unless there is a order of the court or the Company Law Board, no company is to be marked as having management dispute by the ROCs.

(e) **Various E-forms are approved online :** A number of e-forms which are informative in nature have been processed and approved/ recorded by the Registrar of Companies online and are made available for inspection to the public immediately.

(f) **Registration of place of business by a foreign company:** Registration of place of business by a foreign company has been made priority item and it is registered by ROC on same day.

(g) **Appointment of LLPs of chartered accountants as auditor:** After making amendment in definitions of body corporates, Limited Liability Partnerships of chartered accountants will not be treated as body corporate for the limited purpose of section 226(3A) of the Companies Act, 1956, hence they can be appointed as auditor of a company.

(h) **Allotment of Designated Partner Identification Number (DPIN) :** Designated Partner Identification Number issued under Limited Liability Partnership (LLP) Act, 2008 has been integrated with DIN. Now (w.e.f. 09.07.2011) only DIN will be allotted under Companies Act, 1956 and the same will be used as DPIN for LLP Act, 2008.

(i) **New Guidelines for Fast Track Exit of defunct Companies :** The Ministry has issued guidelines for Fast Track Exit mode to give opportunity to the defunct companies to get their names struck off from the Register under section 560 of the Companies Act, 1956 in time bound manner.

(j) **Special drive to clear pendency:** A large number of e-forms filed prior to implementation of revised Regulation 17 are pending for want of action by the companies/stakeholders. Without any response from the companies, ROCs cannot process the said forms. As per Regulation 17, these forms

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have become time barred. To reduce the pendency of such e-forms, Ministry has decided to re-open all such pending forms for reviewing by ROCs and disposing them by 7th July, 2011.

(k) **To improve compliances by the company :** In order to ensure corporate governance and proper compliances by the companies, it has been decided that w.e.f. 3rd July, 2011, no e-forms shall be accepted by ROC from such companies which have not filed their updated Balance Sheets and Annual Returns since 2006-07. The Directors of such defaulting company shall also be debarred for filing any document unless they make the default good.

(3) **e-Payments in the Ministry:** The payment of filing fee by the companies has been made completely online.

(4) **International Financial Reporting Standards (IFRS) :** In the field of financial reforms, convergence of Indian Accounting Standards called Indian AS's with International Financial Reporting Standards (IFRS) has been approved by the Ministry in February, 2011. The date of coming in force of Indian Accounting Standards will be notified shortly.

(5) **Investor awareness programmes :** In order to channelize the significant household savings available with the Indian households into the corporate economy, the Ministry has decided to launch investor awareness programmes in 300 districts in association with ICAI, ICWAI ICSI, Stock Exchanges, RBI, SEBI, Trade Chambers, etc.

(6) **Reorganisation of field offices :** For better administration and faster service delivery, the Ministry created a new office in the form of Regional Director (SER), Hyderabad in May 2011. The field offices of the Ministry are now organized in six regions. Similarly, it is planned to restructure the cadres in the Ministry for better service delivery to public and better promotional prospects to existing personnel.

(7) **Easy Exit Scheme, 2011 :** With a view to reduce the number of defunct /inoperative companies, we launched Easy Exit Scheme, 2011 providing them an easy route for closure. Under the scheme, till now, more than 29,000 defunct /inoperative companies have been struck off.

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(8) **Indian Institute of Corporate Affairs (IICA)** : The Indian Institute of Corporate Affairs (IICA) has started functioning from its new office and building at Manesar. A large number of new initiatives, capacity building etc. are planned at IICA.

(9) **Integration of Director's Identification Number (DIN) with PAN data base:** The MCA has already simplified the procedure of online allotment of DIN on the basis of verification with PAN data base through a practicing professional. To remove duplicate DINs, the existing DIN holders have been called upon to update their PAN details, and the time limit has for the purpose has been extended till 15th December, 2011.

(10) **Reducing Delay in approval of e-forms by Registrar of Companies:** Earlier, the Registrar of Companies (ROCs) were allowed a period of 120 days for approval of e-forms, inclusive of time taken, if any, for seeking clarifications from the companies concerned. To reduce the pendency and to expedite approvals, the time limit has been reduced to 60 days.

(11) **Improvements in the LLP e-Governance Service:** Filing of annual statement of accounts by Limited Liability Partnership has now been brought up under the 'Straight Through Process' (STP) procedure. Further, documents filed by LLP are now available for public viewing.
