

# Article

VINOD KOTHARI & COMPANY

## Compliances were mandatory- But now imposed

*-For better Corporate Governance*

Bijoyeta Chakrabarty

[bijoyeta@vinodkothari.com](mailto:bijoyeta@vinodkothari.com)

Aditi Jhunjunwala

[aditi@vinodkothari.com](mailto:aditi@vinodkothari.com)

Vinod Kothari & Company

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## *Article*

As per circular no. 17/146/2011-CL-V dated 12<sup>th</sup> May, 2011 Ministry has now made it mandatory for all the companies to comply with annual filing requirements within the due date. It was a common practice of all the companies to delay the annual filing under section 220 of the Companies Act, i.e. balance sheet, profit and loss account, annual return. Payment of additional fees was the only penalty to the non-compliance. However, since 2008 Ministry took active action on launching prosecution against the companies not filing their returns on time.

### **Statistics:**

The number of prosecution in the past are gradually decreasing and after implementation of this notification it is expected the number of prosecution related to non-filing of annual returns will reduce to a considerable level. There has been significant turn around in terms of compliances. Below is a synopsis of the number of inspections conducted, which includes the figures in relation to non-compliance with annual filing within the due date:

**Number of inspections conducted during  
2005-06 to 2010-11 (upto December, 2010):**

<b>Year</b>	<b>No. of Inspections</b>
2005-06	253
2006- 07	220
2007- 08	189
2008- 09	207
2009-10	204
1.04.2010 – 31.12.2010	168

\*\*Source: 54<sup>th</sup> Annual Report on MCA

## *Article*

The data of filing of Annual Reports of last year can be extracted from the below sheet:

### **Filing Status as on December 31, 2010**

<b>Sl. No.</b>	<b>Particulars</b>	<b>Number</b>
<b>(1)</b>	<b>(2)</b>	<b>(3)</b>
1	Average portal hits per day	101.46 Lakhs
2	Total filings through the system till 31.12.2010	119.57 Lakhs
3	Maximum number of documents filed on a day (29-10-2010)	70034

4	Number of companies registered online	307556
5	Total DIN issued till date	19.19 Lakhs
6	Company records viewed online	15.51 Lakhs
7	Number of Balance Sheets filed	20.22 Lakhs
8	Number of Annual Returns filed	20.24 Lakhs
9	Amount of E-stamp collected upto 31.12.2010	18884.78 Lakhs
10	Number of E-form revised during the year	All Hindi forms were revised and Form CLSS, 68, EES2011, CSR were introduced.

\*\*Source: 54<sup>th</sup> Annual Report on MCA

## *Article*

### **Efforts by the Ministry to reduce non-compliance:**

#### **Introduction of Company Law Settlement Scheme (CLSS) Scheme in 2009-10**

**About the Scheme:** CLSS was a scheme to give opportunity to the defaulting Companies to enable them to make their default good by filing belated documents and to become a regular compliant in future. The Scheme came into force on the 30th May, 2010 and remained effective up to 31st August, 2010.

**Effects of the Scheme:** The scheme was an opportunity given by the Ministry to file belated documents and the companies were required to pay only an additional fee of 25% of the actual additional fee i.e. there was a waiver of 75% of the actual additional fee.

Further, after closure of Scheme, the companies were allowed to file application for seeking immunity in respect of belated documents filed under the Scheme and the Registrar, upon being satisfied would have granted the immunity from prosecution in respect of documents filed in the Scheme.

As per various records it is seen that Ministry had repeatedly given the opportunity to the companies to reduce non compliances in relation to annual filing but it only increased the laid back attitude of the companies. The repercussions of the same are the recent circular of Ministry.

#### **Amendment as per new Circular:**

As per the new circular the companies who have not filed their Annual Reports i.e. Balance Sheets, Profit & Loss Accounts and Annual Return with the Registrar they will not be allowed to file any other forms except certain forms like- Form 32, 20B, 21A, Din 3, 21, 1AA, 62, 23AC, 23ACA, Forms for deposit of money in IEPF and forms related to Cost Audit Branch.

The important feature of the Circular is that the Director(s), Company Secretary and Auditor of such companies will be restricted to sign and certify any documents which are to be filed with MCA. This brings us to the conclusion that the companies will not be able to file any document with the MCA as the same are to be authenticated either by the Director, Company Secretary or the Auditor of the Company.

## *Article*

The Ministry further reserves the right to initiate action against the defaulting companies in co-ordination with RBI and SEBI. Thus, this brings us to a conclusion that compliances with regards to RBI and SEBI should also be complied with so that no adverse remark is drawn by these authorities.

### **Impact of the Amendment:**

It is to be noted that certain e-Forms are disallowed to file as per the notification like Form 2, 5 and 18 which will be a blow to the working of the companies. Before this circular came up the companies, irrelevant of whether they filed Annual Reports or not the companies allotted the shares and increased the authorised capital which was certified by the Directors, CS and Auditors of the companies.

### **Likely Impact:**

#### **On Companies and its Directors:**

Section 274(1) (g) states

*A person shall not be capable of being appointed director of a company, if such person who is already a director of a public company which;*

- a) Has not filed the annual accounts and annual returns for any continuous three financial years commencing on and after the first day of April 1999*

*\*\**

*Provided that such person shall not be eligible to be appointed as a director of any other public company for a period of five years from the date on which such public company in which he is a director has failed to file annual accounts and annual return under sub clause (a)\*\*\**

Such non-compliance is expected to come down which shall ultimately also bring down the numbers of the directors being disqualified under section 274(1) (g) because of the non-filing. Further, Companies will surely be relieved of the cost involved in delayed filing and the after effects.



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### **On Ministry:**

This will also facilitate the Ministry to have a continuous and stable flow of revenue each year and in the long run will reduce effort on part of the Ministry to undergo the complex procedure of analysis and prosecutions due to the improved compliance structure expected.

Thus, we can see the serious action taken by the Ministry only out of reasons to increase the compliance and reduce the non-compliances. And it's not long when we expect better Corporate Governance in our legal system. There seems to be a long way to go with the upcoming steps taken by the Ministry recently.