

Note

MCA making operations easier through delegation of powers to RD and RoC

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This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.

Note

In the corporate world change is constant day in and out. Most of the operational changes, amendments, decisions are subject to government approvals apart from taking shareholders' consent as prescribed in the Companies Act, 1956 (the Act) and other relevant Rules and Regulations framed thereunder. In the event of Company shifting its registered office from jurisdiction of one Registrar of Companies (RoC) to another, change in the object clause, capital change, condonation of delay, registration, alteration in articles/memorandum etc are all subject to approvals. The powers of Government are vested with regional RoCs and Regional Directors (RDs). However, seeking such approvals is a task in itself. Apart from the approval seeking what major comes in the way is the technical requirements required by the government authorities though these are few of the routine matters. One of the steps suggested by Ministry of Corporate Affairs (MCA) last year in March 2011 was delegation of certain powers to RD and RoC. Some of those had however not come into effect.

Now Ministry vide notifications dated July 10, 2012ⁱⁱⁱ has finally delegated certain powers to RDs and RoCs and the same shall come into force from August 12, 2012.

Delegation of Powers to RD and RoC

Powers delegated to Regional Director (RD)

Powers under the below mentioned sections were previously vested with RoC and/or Ministry and/or Company Law Board (CLB) and the same have been now delegated to the RDs.

- (a) section 17, 18, 19
- (b) section 22,
- (c) sub-section (3),(4),(7) and clause (a) of sub-section (8) of section 224,
- (d) section 141,
- (e) section 188,
- (f) section 297(1) proviso,
- (g) section 394-A,
- (h) section 400,
- (i) second proviso to sub-section (5) of section 439 and sub-section (6) of the said section.
- (j) clause (a) of sub-section (1) of section 496,
- (k) clause (a) of sub-section (1) of section 508,
- (l) sub-section (1) of section 551,

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- (m) clause (b) of sub-section (7) of section 555 and the proviso to clause (a) of sub-section (9) of the said section,
- (n) proviso to subsection (1) of section 610, and
- (o) section 627.

Currently the powers exercised by RD are those under section 297 and/or providing merger/demerge reports, carrying on inspection. Some of the above powers are already under the ambit of the RDs. The additional powers now brought under the purview is justified as they are more regular nature work and can be more expeditiously handled as the above really do not require such technicalities as are demand in the courts.

Powers delegated to Registrar of Companies (RoC)

- (a) section 21,
- (b) section 25,
- (c) proviso to sub-section (1) of section 31,
- (d) sub-section (1D) of section 108,
- (e) section 572.

The power under section 25 is already being carried out by RoCs after the introduction of the circular in March 2011. The powers and functions under sub-section (1D) of section 108 shall be exercised and performed either by the RoC of the State in which the registered office of the Company is situated, or by the RoC of the State in which the applicant ordinarily resides.

The above powers to RD and RoC are subject to condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sections, if in its opinion such a course of action is necessary in the public interest.

Consequential required amendments

The consequential amendments in the Company Law Board (Fees on Application and Petitions) Rules, 1991 have been made. Serial nos. 1, 2, 3, 13 and 18 related to the fees on application under section 17, 18, 19, 141 and 188 have been omitted. The Rules are now called the Company Law Board (Fees on Application and Petitions) (Amendment) Rules, 2012ⁱⁱⁱ.

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Similarly, Central Government has appointed 12th day of August of 2012 as the date on which the provisions of sections 7, 8 (in relation to section 18 & 19 of the Companies Act, 1956), 20 and 25 (in relation to section 188 of the Companies Act, 1956) of the said Act shall come into force^{iv}.

The Ministry has further promptly notified the various forms and procedures under which the above applications are to be made vide notification dated July 10, 2012^v amending the Companies (Central Government's) General Rules and Forms, 1956 by Companies (Central Government's) General Rules and Forms (Amendment) Rules, 2012. Following Rules are inserted:

Rule	Particulars
Rule 4BBB	Prescribing procedures for petition under section 17
Rule 6C	Prescribing procedures for petition under section 141
Rule 6D	Prescribing procedures for petition under section 188
6E	Contents of all the Petition
6F	Documents to accompany the Petition

The Petitions are to be e-filed in e-form 24AAA as appended to the above notification. Therefore there would be reduction of paper work piled up in departments and we expect a easier processing system. All the procedural aspects prescribed under the Rules seem to be the same but are surely with much more clarity unlike the present applications being made. Also, easily available data on the website for any Company.

A detailed procedure for filing of petitions with the RD, section wise is provided as an annexure to this note.

Any relaxation for government office, companies and professionals?

Major boon is the passing of applications under section 17 and 141. They are routine matters for the companies. The applications under the above sections were a task in itself. Apart from being tedious it is time consuming, harassing at times as the work in the lower level in the department was not carried expeditiously. In the event of filing of "No Objection Certificates" by RoC to CLB under section 17, 141 etc use to further take time as there were many a times inter departmental issues and the professionals use to run from one office to another for want of documents. Practically, the documentation required for such applications barely take a day but

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the application itself takes 2-3 months. With the transfer of such applications to RD and RoC at least one step is eliminated and the execution of applications is expected to be speedier. That apart since the government offices are piled up with such routine applications it takes processing time. Moreover as the applications are still in physical form it increases paperwork and also occupies unnecessary space.

Moreover with the growing complications in corporate world and the legal system every day it is expected that the quasi judicial bodies will be discharging requirements related to legal and judicial system and such routine matters can be transferred to RD and RoC who seem to be more competent in handling such daily matters. Further, it is commendable that Ministry came up with all the related changes on the same day, though it took almost a year and a half for Ministry to finally get the circulars effected in full force. Another welcome step by the Ministry.

Confusion underlying

The notification is silent whether the above provisions are to be effective for present pending applications as well with CLB or for fresh applications to be made post August 12, 2012. The departments too will have the similar confusion as to whether they are to pass the file to the respective RDs. Since, the notification is silent it may be assumed that the same is applicable for all fresh applications to be made on or after August 12, 2012 and all the applications present pending are to be disposed off by CLB.

ⁱ http://www.mca.gov.in/Ministry/pdf/S.O_10_07_2012_02.pdf

ⁱⁱ http://www.mca.gov.in/Ministry/pdf/S.O_10_07_2012_01.pdf

ⁱⁱⁱ [http://www.mca.gov.in/Ministry/pdf/G.S.R\(E\)_01_10_07_2012.pdf](http://www.mca.gov.in/Ministry/pdf/G.S.R(E)_01_10_07_2012.pdf)

^{iv} http://www.mca.gov.in/Ministry/pdf/S.O_10_07_2012_03.pdf

^v [http://www.mca.gov.in/Ministry/pdf/G.S.R\(E\)_011_10_07_2012.pdf](http://www.mca.gov.in/Ministry/pdf/G.S.R(E)_011_10_07_2012.pdf)

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Annexure

Procedure for filing petition u/s 17 of the Companies Act, 1956

Petition

- Format of petition same as before.
- Documents to be provided as enclosures modified to exclude MOA and DD.
- Attachments to be attested by party or authorized representative or the advocate.
- Memorandum of Appearance now to be filed as Form No. 2.

Newspaper advertisement

- Publish in daily newspaper in English and in local newspaper in the principal language of the state where the registered office is situated.
- Advertisement to be published not less than one month before filing of petition.
- Advertisement to indicate that any person objecting to change in MOA may intimate within 21 days along with nature of interest and grounds of opposition.

Serving of Notice

- Individual notices to each debenture holder and creditor on the same lines as in newspaper advertisement.
- Since Certificate of Posting has been abolished, notices to be sent by Registered AD.
- Notice to be served on Chief Secretary/ Administrator by registered post.
- Company to prove dispatch by way of an affidavit and attach the same to the petition.

Response from person opposing the shift of RO

- Person opposing the shift to serve within 21 days from date of service of notice or publication in newspaper, deliver the same along with an affidavit in original to RD and a copy to the company at the RO of the company.
- If no response is received, within the stipulated time, then all persons would be deemed to have consented.

Contents of petition

- List containing the names, addresses and amounts due from the creditors and debenture holders upto the latest practicable date before the date of filing. This should not precede the date of filing of petition by more than *one month*.
- Secretary and two directors, one of them being the MD, shall file an affidavit to verify the contents of above.
- Duly authenticated copy of the list of creditors and debenture holders with their names, addresses and amounts due shall be kept at the RO and be available for inspection during normal working hours of the company.
- Person desirous of inspecting can do so and also take extracts of the same on payment of Rs. 50.00

Order of RD

- If no objection is raised, RD may pass orders with or without hearing.

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Procedure for filing petition u/s 141 and 188 of the Companies Act, 1956

Petition

To be served on respondents (s) and produce evidence of such service

Accompanied by an affidavit signed by the deponent and sworn before a person as in Section 558 of the Act.

If deponent is not known personally to the person before whom the affidavit is sworn, he shall be identified by a person who is known to the person before whom the affidavit is being sworn,

Affidavit

Shall clearly indicate the following that which information is the :

1. knowledge of the deponent
2. received by the deponent
3. belief of the deponent
4. based on legal advice

If information is received by the deponent, affidavit to clearly indicate:

1. Name and complete residential address of person from whom information has been received by deponent.
2. Whether the deponent believes the same to be true.

Other key points

As attachments to the petition, following not required any more:

1. Copy of the agreement/modifying the charge for petition u/s 141
2. Bank draft evidencing the payment

Copy of the resolution envisaged by Section 292(1) (b) or (c) and section 293(1) (d) to be attached to Form 24AAA for petition u/s 141

Attachments to be attested by party or authorized representative or the advocate.

Memorandum of Appearance to be filed as Form No. 2.

Also, format of petition same as before.