

Legal Updates

VINOD KOTHARI & COMPANY

**Zooom! MCA goes into space jet mode
Sheds controls, simplifies procedures,
speeds up everything**

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ZZZZoom, zzzip, pssst,, phhhht... are these recordings of latest fireworks? No, that is recording of what is lately happening at Ministry of Corporate Affairs. The last sound is possibly that of age-old controls. Ever since the beginning of this year (any clues as to connection with the change at secretarial level?), the MCA began the process of dismantling controls and automatic approvals for several things for which corporate India depended on government sanctions. Managerial remuneration, subsidiary accounts, disclosures in balance sheet, name approvals, DIN numbers, e-voting, video-conferencing for board of directors meetings, and so on. And now, the landmark circulars that came in the 3rd week of July permit birth of companies in just 24 hours, approvals for related party contracts etc being simplified, condonation of delays for filing of charges and shifting of registered offices being simplified, and so on. Practitioners in corporate laws may be shedding tears, as almost everything for which professional services were needed are being replaced by automatic processes. Not just formation of companies, but the crying mark in the face of corporate laws is death of companies – the winding up process over which the Eradi Committee, N L Mitra Committee and who all have spent volumes – also seems to be getting simplified, fortifying the impression that all you need for shedding unnecessary delays and procedures is strong will. Quite often, there are vested interests that thrive on these unproductive controls and procedures.

Since we have seen corporate law practice in India over the last quarter century, and we are well aware of the corporate laws practice in international domain as well, we may confidently say that the level of activity that MCA has shown over the last 7 months is unparalleled in the history of this country, and would arguably not have peers elsewhere in the world too. With the changes that have taken place recently, corporate laws in India are almost as simple and procedures as fast as some of the lightly regulated countries like Cayman Islands would boast of. Some of the recent amendments that have come are as below:

Incorporate a company within 24 hours

First the online approval of DIN, availability of names, issuance of digital certificate of incorporation and now incorporating a company, the ministry has modified the incorporation procedures to enable promoters to incorporate their companies within 24 hours.

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The circular mentions that if the forms have been certified by a practicing professional regarding correctness of the information and appropriate declaration are given by subscribers, the Registrar of Companies shall issue the certificate of incorporation online. The existing procedure shall continue to be followed in cases where the forms have not been certified by the practicing professionals.

With online registration of Forms 1, 18, 32, MoA and AoA the entire incorporation procedure may be completed within 24 hours. The procedure shall be implemented from 11th August, 2011.

The text of the General Circular No. 49/ 2011 dated 23rd July, 2011 can be availed [here](#).

Shifting of registered office made simpler

The Ministry has decided to notify Section 8 of the Companies (Second Amendment) Act of 2002 with regard to the shifting of the registered office whereby the jurisdiction of shifting of registered office u/s 17 of the Companies Act, 1956 has been shifted from the Company Law Board to the Central Government. Vide this notification; the power shall be delegated to the Registrar of Companies under whose jurisdiction the registered office of the company is situated. The changed procedure is still under development, but it is expected that the cost and the time taken for confirmation and alteration of the memorandum shall stand reduced. This is to take effect from 24th September, 2011.

The text of the General Circular No. 50/ 2011 dated 25th July, 2011, can be availed [here](#)

Rectification of register of charges

The Ministry has notified section 20 of the Companies (Second Amendment) Act of 2002, whereby the jurisdiction for rectification of register charges u/s 141 of the Companies Act, 1956 has been shifted from Company Law Board to Central Government and shall now rest with the Registrar of Companies in whose jurisdiction the registered office of the company is situated. The form filing and other procedural requirement are yet to come, however all pending petitions before the Company Law Board are to be shifted to the requisite registrar of companies. This is to take effect from 24th September, 2011.

To see the text of the General Circular No. 51/ 2011 dated 25th July, 2011, click [here](#)

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Online Approval of Central Government u/s 297 of the Companies Act, 1956

In order to cut the time required to obtain approvals u/s 297 of the Companies Act, 1956, the Ministry has proposed that if the proposed contract has been approved by the board and the shareholders and is validated and certified by a practicing professional, the application shall be processed online and the approval shall be made available online.

However, the approval sought from the directors and the shareholders should specify the following:

- The proposed contract is at arm's length, without any conflict of interest
- The company has not defaulted in making repayment of any debt, debenture or interest upto the date of filing of the balance sheet and annual returns
- The provisions of section 198, 269, 309, 314 and 295 are not applicable to such contract
- The directors have complied with the provisions of sections 173, 287, 299, 300, 301 and other applicable provisions of the Companies Act, 1956 with regard to the proposed contract.

This online approval would be implemented from 24th September, 2011.

To see the text of the General Circular No. 52/ 2011 dated 25th July, 2011, click [here](#).

Sigh of relief for speedy winding up

Winding up petitions in India are known to take years and the Ministry has woken up to the needs of speedy completion of winding up process by introducing best international practices. For quick disbursal of cases, the Official Liquidator (OL) is required to post one staff member to the Company Court to track the winding up applications and pursue them. The OL shall take from the High Court the institution register and take action on all pending and future cases as well and shall also apply to the court requiring the companies to submit present standing of the company certified by a chartered accountant. The circular directs the Regional Directors as well to expedite reports before the High Court through the OL. The effective date for implementation of the circular is not provided for.

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To see the text of the General Circular No. 54/ 2011 dated 26th July, 2011, click [here](#)

RD/ RoCs reports streamlined in case of arrangements/ amalgamations

In case of arrangement/ amalgamation process u/s 391/ 394 of the Companies Act, 1956, the RDs/ RoCs are required to place their comments before the High Court on the scheme of arrangement/ amalgamation. It has been seen that there is some clog in the processing of such reports and different practices are followed while sending comments to the High Court due to which the matters do not get disposed as on the stated hearing dates.

Hence the circular provides for the timeline that RDs and RoCs should follow once an arrangement/ amalgamation case is lodged with them. The circular also provides guidelines on the issues to be examined by the RoC and the RD in such matters which is indicative of the scope of the diligence to be carried out while submitting their report before the Hon'ble High Court. This is a welcomed circular as would enable companies to cut down on the time involved in completing the procedures. The effective date for implementation of the circular is not provided for.

To see the text of the General Circular No. 53/ 2011 dated 26th July, 2011, click [here](#)