

Update



Chapter XXI of Companies Act, 2013 – note on draft rules issued by MCA

Munmi Phukon
sikha@vinodkothari.com

Vinod Kothari & Company
corplaw@vinodkothari.com

September 20, 2013

Check at:
<http://india-financing.com/staff-publications.html>
for more write ups.

Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

Disclaimer:

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

The Ministry of Corporate Affairs (“MCA”) had come up with draft rules on a number of chapters on September 9, 2013. With 416 occurrences of the word “prescribed” in the Companies Act, 2013 (“Act, 2013”) it was obvious that the Ministry would have to come up with rules well in advance before the commencement of the Act to make it complete. The rules are still in the draft stage and are open for public comments till October 8, 2013. The MCA came up with second set of rules on September 20, 2013.

We present below a brief discussion on the draft rules under Chapter XXI, which pertains to ***Companies authorised to register under this Act.***

Applicability of the provisions of name availability and incorporation to those companies incorporated under any law other than this Act (Draft Rule No. 21.1)

This draft rule states that for “companies” seeking to register under section 366(2) of the Act, 2013, all the provisions related to availability of name and incorporation shall mutatis mutandis apply to them unless exempted under Section 371. The application shall be made by seven or more than seven members.

After obtaining availability of name such documents, information and certificates mentioned under this rule, depending upon the type of the company, shall attached to the Registrar with Form No 21.1. The draft rule also lays down the documents to be submitted registration as a company limited by guarantee or as an unlimited company.

The draft rules also require a certificate from a practicing company secretary or Chartered Accountant or Cost Accountant signifying compliance with all provisions of the stamp duty. Further, for registration of an LLP as company under this Act, a no objection certificate from the Registrar of Firms or Registrar of Companies is to be also provided.

Publication of Advertisement about registration (Draft Rule No. 21.2)

This draft rule relates to Clause (b) of Section 374 of the Act relating to publication of advertisement about registration by companies seeking registration. This draft rule requires the advertisement to be in Form 21.2 in English and vernacular language circulating in the district of proposed registered office. The draft rule uses the word “once”, which gives an impression that such an advertisement has to be published more than *once*. On a reading of section 374(b) of the Act, 2013 it is apparent that such an advertisement needs to be published only once. The use of the word “once” thus, seems to be a typographical error. A copy of this published notice to be attached with Form 21.1.

The Registrar shall decide within 30 days of publication whether to register or not and issue certificate of incorporation in Form 21.12. a certificate of incorporation



Note

Intimation about registration to the Registrar of Firms or Registrar of Companies(LLP) in case of Partnership Firm or LLP (Para 21.3)

Section 367 of the Act, 2013 provides that the Registrar shall certify the registration of a company under this chapter and as per Section 374(d) of the Act, 2013 read with this draft rule, any such company on obtaining a certificate of registration by a partnership Firm or an LLP, shall within 15 days of registration intimate to the concerned Registrar of Firms or Registrar of Companies (LLP) under which it was originally registered alongwith necessary documents evidencing its dissolution.

Read our other articles on:

Draft rules issued on Chapter XIII of the Companies Act, 2013 at: [https://india-financing.com/Chapter XIII of Companies Act 2013 note on draft rules issued by MC A.pdf](https://india-financing.com/Chapter_XIII_of_Companies_Act_2013_note_on_draft_rules_issued_by_MC_A.pdf)

MCA notifies 98 sections of Companies Act, 2013 w.e.f. September 12, 2013 – an analysis at : [https://india-financing.com/MCA notifies 98 sections of Companies Act 2013 wef September 12 2013 an analysis.pdf](https://india-financing.com/MCA_notifies_98_sections_of_Companies_Act_2013_wef_September_12_2013_an_analysis.pdf)

Read other articles on Companies act, 2013 at : <https://india-financing.com/component/content/article/281.html>