



Monthly Newsletter

Volume - 3

July - 2011



From The Secretary's Desk:

I am happy to be Secretary in the Ministry of Corporate Affairs (MCA) at a very exciting time when many initiatives to improve the content and delivery of regulatory and growth aspects of corporate affairs have been set in motion.

While Ministry of Corporate Affairs is working towards providing convenient and transparent registry and e-filing services to one set of stakeholders, viz, the corporate and the professionals, we are also aware of our responsibilities to protect the interest of millions of investors from losses arising out of financial frauds and related business irregularities including misgovernance. We do realize that at times our pro-active role to improve quality of corporate governance does cause misgivings in the corporate world, there is no doubt that we require a watch dog regime without affecting flexibility, autonomy and enterprise- it is our constant endeavor to keep this equilibrium.

MCA faces the challenges caused by the enormity of the data emanating from over a million registered companies, over hundred online services offered to them, over sixty e-forms, hundreds of data fields and crores of pages of pdf attachments and various other compliance requirements which heavily burden the corporate sector with an ever increasing compliance cost.

Though technological advancements in recent decades have given us a digital platform for financial information of companies, data generation and its availability in different format (pdf, xls, html, doc etc.), does not give a uniform and reliable result as one software application cannot read the data directly by another software application. To mitigate such constraints we have mandated the filing of financial statements of select class of companies in XBRL from FY 2010-11 with a proposal to expand its coverage from next year learning from the experience.

Let me conclude by sharing the happy news that the Ministry has planned extensive orientation and awareness training programmes all over the country for all segments of stakeholders. We hope that with better familiarisation and simplification of procedures without compromising on standards of regulatory compliance, data quality and financial transparency, the corporate world will go from strength to strength.



“we are also aware of our responsibilities to protect the interest of millions of investors from losses arising out of financial frauds and related business irregularities including misgovernance.”



Hon'ble Cabinet Minister and Secretary Assume Charge in the Ministry: Dr. M. Veerappa Moily has taken over as Hon'ble Minister for Corporate Affairs on 13.07.2011 and Shri Naved Masood, IAS (MT:77) has taken over as Secretary, Ministry of Corporate Affairs on 01.08.2011.

Companies Bill, 2011: Final touches have been given to prepare the draft Company Bill, 2011 which incorporates amendments to Company Bill 2009 in the light of the recommendations of Parliamentary Standing Committee on Finance and other inputs. The proposed Bill is being sent to PMO as a prelude to obtain Cabinet approval for its introduction.

Draft National Competition Policy for India: The Ministry of corporate Affairs has released the Draft National Competition Policy for India for discussion among the masses and create awareness in this regard.

The Competition Commission of India (CCI) was established under the Competition Act, 2002 for the administration, implementation and enforcement of the Act, and was duly constituted in March, 2009. The Competition Act has essentially four components.

- It prohibits anti-competitive agreements like cartels, which restrict freedom of trade and cause consumer harm by way of limiting production and distribution of goods and services and fixing prices higher than normal;
- It prohibits abusive behavior of a dominant firm, who through its position of dominance may restrict markets and set unfair and discriminatory conditions;
- It regulates mergers and acquisitions of large corporations in order to safeguard competitive markets;
- Mandates competition advocacy.

All four components are interrelated and form an integrated whole. The first three essentially relate to enforcement, while the last one is related to the mandate for promoting competition enshrined in Section 49 of the Act. The release of the Draft National Competition Policy for India by the Ministry in July 2011 is therefore another milestone in this direction.

Guidelines on Responsibilities of Business: With a view to facilitate and enable the 'Aam Aadmi' to participate in India's growth process, the Ministry of Corporate Affairs has embarked on a collaborative effort between Government and corporate sector. This involves consultation with all stakeholders, looking beyond the investors, while undertaking reform initiatives. The Ministry is also encouraging corporate sector to demonstrate that *responsible business governance* can generate value for all stakeholders. In pursuance of the above, Hon'ble Minister has released the "National Voluntary Guidelines on Social, Environmental and

Economic Responsibilities of Business", formulated by the Ministry as a refinement over the Corporate Social Responsibility Voluntary Guidelines 2009, that is expected to mainstream the subject of *Business Responsibilities*, in a manner that makes their value-creating operations sustainable.

Circulars and Notifications on Simplification in Administrative Procedures continues: The Ministry of Corporate Affairs has issued a series of Circulars concerning administration of the Companies Act, 1956 (for further details, visit our website: <http://mca.gov.in>). These broadly relate to —

a) The process of (i) Allotment of Director Identification Number, (ii) Allotment of name of the company in conformity with the guidelines for this purpose, and (iii) Registration of Memorandum and Articles of Association has been made *Online*. The incorporation process will be wholly *online* and totally a paperless procedure which can be completed within twenty-four hours, duly certified by the practising professional. (see **Circular No. 49 of 2011, dated 23.07.2011**).

b) Approval under section 297 for contracts has been simplified and made online, to be effective from 24.09.2011, provided the proposal has been approved in a general meeting of the shareholders by a Special Resolution (see **Circular No. 52 of 2011, dated 25.07.2011**).

c) The Ministry has decided to streamline the procedure for strict compliance of the provisions for arrangement/amalgamation u/s 391-394 of the Companies Act. Specific issues, to be considered by the concerned Registrar of Companies and Regional Director before finalization of their comments, have been specified with strict timelines fixed for action by all authorities concerned (see **Circular No. 53 of 2011, dated 26.07.2011**).

d) Requirement of Government approval for payment of remuneration to professional managerial person by companies has been done away with in respect of entities having no profit or inadequate profit. However, person should have no direct or indirect interest in the management or in the capital of the company (see **Circular No. 46 of 2011, dated 14.07.2011**).

e) The Ministry of Corporate Affairs has mandated certain procedures to be followed in a time-bound manner by the concerned **Official Liquidator** to obtain orders of the Court for winding up business setups. This has been done with a view to adopt fair and speedy international practices, and to curb malpractices involving major violations of Companies Act, 1956 and misappropriation of funds. This includes supply of information about assets of the company, its public offers, public deposits and quantum of unsecured loans obtained by it etc. (see **Circular Nos. 53 of 2011, dated 26.07.2011, 54 of 2011, dated 26.07.2011 and 55 of 2011, dated 26.07.2011**).

f) The Ministry has issued new Guidelines for availability of name which has been implemented w.e.f. 24.07.2011. Now a name can be obtained online if an application form has been certified by the prescribed categories of professional confirming that such professional has used the search facility for checking the resemblance of the proposed name and on that basis certifies that the name is not an undesirable name under the provisions of section 20 of the Act and is also in conformity with the guidelines. In such cases name will be made available by the system online (see **Circular No. 45 of 2011, dated 08.07.2011**).

g) Ministry has simplified procedures for online allotment of DIN on the basis of certification by a practicing professional of the specified categories. DIN has been integrated with Permanent Account Number (PAN) under Income Tax. Further, DIN will be used as Designated Partner Identification Number (DPIN) under Limited Liability Partnership Act.

MCA21 e-Governance Project emerging as a Reference Model for Joint-Services: E-Stamping for MCA services has further been extended to the States of Goa, Nagaland and UTs of Daman & Diu and Dadra & Nagar Haveli. The Ministry will generate and collect Stamp Duty on behalf of these governments. With these extensions, companies registered in all States and UTs will have the facility of availing online e-stamping for MCA services. Emerging as a reference model for joint-services, MCA21 appears to be the first project in the country where a service covered under the State subject is rendered by a Central Ministry on behalf of the States/UTs and funds are promptly transferred to the eligible governments. This also ensures the process is speedier, cleaner and transparent.

Filing in eXtensible Business Reporting Language (XBRL) mode: In a slight modification of the existing guidelines, the Ministry has directed that the filing on MCA 21 in the XBRL mode will be effective in respect of financial statements closing on or after 31.03.2011 instead of the year 2011-12. The Statutory Auditor has to certify the financial statements prepared in XBRL mode for filing on MCA-21 portal, apart from the authorized signatories. Companies in Power sector, Insurance sector, NBFC and Banking sector who are unable to file their financial statements would be exempted from additional fee due to delay in filing up to 30.09.2011, as they were later on exempted from XBRL filing in Phase – I.

Public Financial Institutions: The Ministry of Corporate Affairs has framed new criteria for declaring any financial institution as a Public Financial Institution (PFI) under the Companies Act, 1956 and has issued guidelines relating to DIN-1 and DIN-4 e-forms. This includes verification and digital signatures by practising Chartered Accountants, Company Secretaries or Cost Accountants and submission of PAN numbers by Directors who have obtained DIN earlier, latest by 30.09.2011.

Investor Awareness Programmes: Investor Awareness Programmes are being conducted in partnership with the three professional Institutes, as per a detailed work plan published in the earlier edition of this Newsletter. During the month of July, 2011, 58 such programmes were conducted.

Exemption from Prosecution for Nominated Directors: Vide Ministry's Circular No. 47/2011 dated 14.07.2011, Nominated Directors from Public Financial Institutions, Financial Institutions and Banks, on the board of companies have also been exempted from prosecution, provided the breach or violation of Companies Act, 1956 occurred without his knowledge and without his consent or where he acted diligently in the Board process. This is a sequel to the exemption granted for Directors, nominated by SEBI, by Government (both in PSUs and u/s 408) and by public sector financial institutions participating in equity, under similar conditions.

Transfer of Functions of Company Law Board to Registrars of Companies: The functions of the Company Law Board relating to confirmation of shifting of registered office from one state to another state and consequent alteration to Memorandum of Association of the company, and relating to rectification of register of charges under the Companies Act, 1956 have been entrusted to the Central Government. All such pending petitions will be transferred to the Central Government, thereby reducing the time consumed and cost incurred in this behalf. Further, the Ministry of Corporate Affairs has delegated this function to the Registrar of Companies. Steps are being taken to convert these activities to the *online* mode under the MCA21 System, with effect from 24.09.2011 (see **Circular Nos. 50 of 2011, dated 25.07.2011 and 51 of 2011, dated 25.07.2011**).

ICWAI National Award for Excellence in Cost Management: Hon'ble Minister of Corporate Affairs Dr. M. Veerappa Moily on 18th July 2011 presented the



'**ICWAI 8th National Awards for excellence in Cost Management 2010**' to the representatives of leading industrial organisations both in the public sector as well as the private sector at Vigyan Bhawan, New Delhi. The aim of the award is to promote the culture of Cost Management practices in wider scale in Indian Corporate sector and the immense participation of Indian Industry in ICWAI National Award indicates a positive trend undertaken by the industry towards cost management. The award recognizes the qualitative cost management practices adopted by the industry. A total of twenty-five awardees were felicitated by the ICWAI on 18.07.2011 on the occasion.

Investigation Ordered Against Company Suspected to be indulging in Serious Fraud : The Ministry of Corporate Affairs has appointed a three-member panel to inspect and investigate into the affairs of M/s Speakasiaonline, as the said company has reportedly indulged in collection huge sums of money and transferred them abroad, without having registered its place of business in India. It had not obtained a registration certificate from the Registrar of Companies, leading to exercise of the powers under Section 235 of the Companies Act, 1956.

Initiatives of Institute of Chartered Accountants of India (ICAI):

a) In view of public interest attached to the ongoing demand to bring the black money stashed in the overseas market, ICAI has constituted a Group to provide necessary inputs/suggestions on effectively addressing the issue of menace of black money, benami transactions and related issues. The Institute will submit its suggestions to Central Board of Direct Taxes by September and the report would cover amendment of relevant laws.

b) A special group was constituted by the Institute to study the Guidelines of *Member of Parliament Local Area Development Scheme (MPLADS)* with an objective to recommend areas for improvement with reference to the accounts and audit part of the Scheme. The recommendations made by this special group on accounting and auditing aspects of the Scheme have been approved by the Government.

International Agreement with Netherlands on CSR:

The Ministry of Corporate Affairs has inked an agreement with the Ministry of Economic Affairs, Agriculture and Innovation of Netherlands on Corporate Governance and Corporate Social Responsibility. A Working Group in the areas of Corporate Governance, Corporate Social Responsibility and other aspects of Corporate Affairs has been constituted by the Ministry with Additional Secretary, MCA as the Chairman, with representatives from ICAI, Tata Services Ltd., NTPC Ltd and three other Institutes.

Meetings, Seminars and Training Programmes Organised by MCA: A Meeting of the Regional Directors was held on 19.07.2011 in MCA Conference Room.

Training programme on "*Inspections & Investigations under Companies Act, 1956*" for ICLS officers was held at Indian Institute of Corporate Affairs (IICA), 2nd Floor, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi from 11th to 15th July, 2011. A half-day Workshop for non-ICLS officers was organized on 04.07.2011 from 10:00 AM to 01:00 PM in MCA Conference Room to familiarize the officers of the Ministry of the rank of Director/Deputy Secretary/ Under Secretary and Section Officer at MCA Headquarters. A training session was organized on "New Complaint Monitoring System" on 27.07.2011 at 3:00 PM in MCA Conference Room for the officers of the Ministry of the rank of Director/Deputy Secretary/ Under Secretary and Section Officer at MCA Headquarters.

International experience exchange, initiatives, etc by Competition Commission of India:

- Commission has received 5 news cases under section 19 of the Competition Act for alleged violation of section 3 & 4 during July, 2011.
- Shri Anurag Goel, Member, CCI and Dr. Seema Gaur, Adviser (Economics) participated in the Xth Session of the Intergovernmental Group of expertise (IGE) on Competition Law and Policy organized by UNCATD Geneva.
- Shri G.R. Wadhwa, Adviser participated in 15th International Workshop on Competition organized by Korea For Trade Commission (KFTC) on July 7-8, 2011 at Seoul (Korea).
- Shri P.K. Purwar, Adviser and Shri Shyamal Misra. Director participated in training and exchange programme with US Federal trade Commission (US-FTC)/US Department of Justice (US DOJ) from July 18-19, 2011 at Washington D.C. USA.
- Shri S.L Bunker, Secretary, CCI participated for making contribution as recourse person, in an induction workshop, arranged by UNCTAD for officers of Malaysian Competition Authority during 29-30, July, 2011 at Kuala Lumpur, (Malaysia).
- As a part of Advocacy programme an interactive Meeting with industry was organized in collaboration Gujarat Chamber of Commerce and Industry at Ahmedabad on 25.07.2011 and was briefed about Indian competition Law.
- The Commission initiated Market Study on "Unusual hike in onion prices".
- On completion of his tenure, Shri P.N. Parashar, Member, demitted office on 27.07.2011.

Progressive Use of Hindi: Inspections regarding progressive use of Hindi in offices of Registrar of Companies and Official Liquidator in Bangalore were undertaken and completed by Shri K. Gurusurthy, Deputy Secretary in the Ministry of Corporate Affairs during 25-26 July, 2011.