

Update

VINOD KOTHARI & COMPANY

Consolidated note on MCA Circulars: Since Jan, 2011 till 25th Sept, 2011

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Update

Consolidated Note on the Circulars of Ministry issued since January 2011 till 25th September, 2011

-Team Vinod Kothari & Company

Table of Contents

Table of Contents

1. Circulars on Easy Exit Scheme, 2011	7
2. Circulars regarding Direction under Section 212(8) of The Companies Act, 1956	8
3. Circular regarding Payment of Commission to Non-Whole Time Directors of the Company under Section 309(4) (b) of The Companies Act, 1956	11
4. Circular regarding DIN process simplified	12
Additional amendment in process of Allotment of DIN under Companies Act, 1956 vide General Circular No. 11/2011 dated 7.04.2011	13
5. Circular regarding process of incorporation of Companies (Form-1) and establishment of principal place of business in India by Foreign Companies (Form-44) – Procedure Simplified.....	13
6. Circulars regarding Payment of MCA fees – electronic mode.....	14
Modification in the Circular vide General Circular dated 27.05.2011.....	15
7. Circulars regarding Prosecution of Directors.....	15



Update

Additional amendment in prosecution of Directors – Regarding vide General Circular No. 47/2011 dated 14.07.2011	16
8. Circulars regarding Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode	17
Additional circular in regard to Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode vide General Circular No. 26/2011 dated 18.05.2011.....	19
Additional circular in regard to Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode vide General Circular No. 43/2011 dated 07.07.2011.....	19
Additional circular in regard to Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode vide General Circular No. 57/2011 dated 28.07.2011.....	20
9. Certification of E-Forms under the Companies Act, 1956 by the Practicing Professionals	20
10. Appointment of Cost Auditor by Companies.....	21
11. Simplified Procedure for amalgamation of Government Companies u/s 396 of the Companies Act, 1956.....	23
12. Green Initiatives by the Ministry	24
Green Initiative in the Corporate Governance – Clarification regarding service of documents by e-mode instead of Under Posting Certificate (UPC).....	24
Green Initiative in the Corporate Governance – Clarification regarding sending copies of Balance Sheets and Auditors Report etc., to the members of the company as required under section 219 of the Companies Act, 1956 through electronic mode	25
Green Initiative in the Corporate Governance – Approval of Ministry of Corporate Affairs for appointment of agency for providing electronic platform for electronic voting under the Companies Act, 1956.....	26



Update

Green Initiative in the Corporate Governance – Participation by shareholders in general meetings under the Companies Act, 1956 through electronic mode	26
Green Initiative in the Corporate Governance – Participation by directors in meetings of Board / Committee of directors under the Companies Act, 1956 through electronic mode	27
Green Initiative in the Corporate Governance – Issue of Certificate by Digital Signature.	29
13. Marking a Company as Having Management Dispute by Registrar of Companies under MCA-21 System	30
14. E-form No. 32 – Intimation to Registrar of Companies regarding particulars of appointment of Directors etc and changes therein in the company pursuant to section 303(2) of the Companies Act, 1956 – filing of conflicting return by contesting parties	31
15. Clarification regarding effective date of Companies (Particulars of Employees) Amendment Rules, 2011	31
16. Clarification regarding Loan to Public Companies under Section 295 of the Companies Act, 1956	32
17. Clarification on applicability of provisions of Section 108A to 108I of the Companies Act, 1956	32
18. Clarification regarding 'Body Corporate' for the purpose of section 226(3)(a) of the Companies Act,1956	32
19. Depreciation for the purpose of declaration of Dividend under Section 205 in case of companies referred to in Section 616 (C) of the Companies Act, 1956 (the Act).....	33
20. Compliance of provisions of the Companies Act, 1956 and Rules made there under	34
Exempted forms i.e forms which can be filed by the defaulting Companies	34
Restriction on the Defaulting Companies and their Directors/ Professionals etc.	35

Update

21. Guidelines for declaring financial institution as Public Financial Institution under Section 4A of the Companies Act, 1956	36
22. Guidelines for Fast Track Exit mode for defunct companies under Section 560 of the Companies Act, 1956.....	37
23. Special drive to clear pendency of e-forms filed with the Registrar of Companies prior to implementation of revised Regulation 17 of the Companies Regulation, 1956.....	40
24. E-filing of Income Tax return in respect of companies under liquidation.....	40
25. Payment of fees to CAs in cases where funds are not permitted from Common Pool Fund	41
26. Integration of Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008.....	42
27. Circulars regarding Name Availability Guidelines, 2011	43
Continuation vide General Circular No. 48/2011 dated 22.07.2011.....	44
28. Waiver of approval of Central Government for payment of remuneration to professional managerial person by companies having no profits or inadequate profits	45
29. Online Incorporation of Companies within 24 Hours	46
30. Simplified procedure for obtaining confirmation of shifting of registered office from one state to another state under section 17 of the Companies Act, 1956	47
31. Simplified procedure for rectification of register of charges under section 141 of the Companies Act, 1956	48
32. Simplified procedure for obtaining online approval of Central Government under section 297 of the Companies Act, 1956	49
33. Guidelines for RDs/ROCs in the matter of scheme of arrangement /amalgamation under section 391-394.....	50



Update

34.	Pro-active action in case of winding up petitions	54
35.	Scrutiny inspection and investigation in all winding up cases.....	55
36.	Blocking of DIN consequent to non-filing of Statement of Affairs (SOA)	57
37.	Circulars regarding Company Law Settlement Scheme, 2011	58
	Corrigendum to Company Law Settlement Scheme, 2011 vide General Circular No. 60/2011 dated 10.08.2011	60

Update

1. Circulars on Easy Exit Scheme, 2011

- On huge demand from the Corporate Sector, Ministry of Corporate Affairs have re-launched the Easy Exit Scheme, 2011 on 3rd December, 2010 vide **General Circular No. 6/2010** valid for a period of 1 month i.e. from 1st January to 31st January, 2011
- Through **General Circular no. 1/2011 dated 3rd February, 2011¹**, Ministry extended this period for another three months i.e. up to 30th April, 2011
- Salient features of the scheme are:
 - Applies to Defunct Company, i.e. A Company which is not carrying over any business activity or operation on or after the 1st April, 2008
 - Not to apply to:
 - Listed Companies
 - Companies that have been de-listed
 - Section 25 Companies
 - Vanishing Companies – Companies registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.
 - Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court
 - Companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court

¹ http://mca.gov.in/Ministry/pdf/Circular_EES2011_03feb2011.pdf

Update

- Companies against which prosecution for a non-compoundable offence is pending in court;
 - Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
 - Company having secured loan
 - Company having management dispute
 - Company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority
 - Company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.
- **Further Clarifications:**
 - Vide **General Circular No. 7A/2011 dated 11th March, 2011²** , Ministry further clarified on the class of companies to which this scheme may apply.
 - Vide **General Circular No. 12/2011 dated 7th April, 2011³**, Ministry introduced Revised Simplified Procedure for Easy Exit Scheme/Strike off under Section 560 of the Companies Act, 1956.
- 2. Circulars regarding Direction under Section 212(8) of The Companies Act, 1956**
- Vide **circular no. 2/2011 dated 8th February, 2011⁴**, Ministry directed that provisions of Section 212 shall not apply in relation to subsidiaries of those companies which fulfill the following conditions and general exemption has been granted to these companies:

² http://mca.gov.in/Ministry/pdf/Circular_7A-2011_11mar2011.pdf

³ http://mca.gov.in/Ministry/pdf/Circular_12-2011_7apr2011.pdf

⁴ http://mca.gov.in/Ministry/pdf/Circular_08feb2011.pdf

Update

- Board resolution has been passed giving consent for not attaching the balance sheet
- Presentation of consolidated financial statements of holding and all subsidiaries companies in the annual report duly audited by its statutory auditors
- The consolidated financial statements shall be in compliance with Listing Agreements and Accounting Standards
- The company shall disclose in the consolidated balance sheet the following information in aggregate for each subsidiary including subsidiaries of subsidiaries:- (a) capital (b) reserves (c) total assets (d) total liabilities (e) details of investment (except in case of investment in the subsidiaries) (f) turnover (g) profit before taxation (h) provision for taxation (i) profit after taxation (j) proposed dividend
- The holding company shall undertake that in the annual report that annual accounts of the subsidiary companies and the related detailed information shall be made available to shareholders of the holding and subsidiary companies seeking such information at any point of time
- The annual accounts of the subsidiary companies shall also be kept for inspection by any shareholders in the head office of the holding company and of the subsidiary companies concerned and a note to the above effect will be included in the annual report of the holding company. The holding company shall furnish a hard copy of details of accounts of subsidiaries to any shareholder on demand
- The holding as well as subsidiary companies in question shall regularly file such data to the various regulatory and Government authorities as may be required by them
- The company shall give Indian rupee equivalent of the figures given in foreign currency appearing in the accounts of the subsidiary companies along with exchange rate as on closing day of the financial year

Update

- **Further Clarifications:**

- Vide **circular no. 3/2011 dated 21st February, 2011⁵**, it was further clarified that the above Circular shall be effective in respect of the Balance Sheet and Profit and Loss Accounts prepared regarding the Financial Year ending on or after the 31st March, 2011
- Further clarification came vide **circular no. 22/2011 dated 2nd May, 2011⁶** that Companies which desire to take the benefit of the exemption, Companies would have to fulfill the conditions stipulated therein, even if they are unlisted.

Review of exemption:

- The conditions prescribed are such that the Central Government was anyways laying while granting specific case by case approvals. Thus, the only relieve is from making the application and awaiting the approval.
- However, it is unclear if the general exemption is also under sub section (3) and (5) of sec 212
 - Disclose the holding Company's interest in the subsidiary
 - Any change between the end of financial year or last financial years of the subsidiary and the end of holding Company's financial year
- As per SEBI guidelines the condition no. (ii) in the notification is applicable only to listed companies. However, Ministry came up with a clarification vide **General Circular No.22/2011 dated 02.05.2011⁷**, that the scope of SEBI guidelines is limited, and hence, to ensure transparency in cases where balance sheets of subsidiary are not attached, the conditions stipulated are both for listed and unlisted companies
- **Circular 3/2011 dated 21st February, 2011⁸** clarifies that exemption under sec 212(8) shall be effective in respect of the Balance Sheet and Profit and Loss Accounts prepared regarding the Financial Year ending on or after the 31st March, 2011.

⁵ http://mca.gov.in/Ministry/pdf/Circular_21feb2011.pdf

⁶ http://mca.gov.in/Ministry/pdf/Circular_22-2011_02may2011.pdf

⁷ http://www.mca.gov.in/Ministry/pdf/Circular_22-2011_02may2011.pdf

⁸ http://www.mca.gov.in/Ministry/pdf/Circular_21feb2011.pdf

Update

- Was a cumbersome procedure and lot of show cause notices were issued if companies missed minutest of details. This will now be relieved.
- Cost and time effective
- Though a general exemption yet companies need to ensure the compliances as was considered earlier for approvals. Hence, more responsibility on companies.
- However, there is no clarification in regards to application being already made prior to the date of notification in regard to exemption u/s 212(8)

It is further interesting to note that accounting consolidation rules require consolidation of accounts and that requirement is not done away by section 212

3. Circular regarding Payment of Commission to Non-Whole Time Directors of the Company under Section 309(4) (b) of The Companies Act, 1956

Features of the Circular

The ministry vide **General Circular No. 4/2011 dated 04.03.2011**⁹, clarified that Company shall not require the approval of Central Government for making payment of remuneration by way of Commission to its Non - Whole Time Director(s) in addition to the Sitting Fees, if the Total Commission to be paid to all those Non - Whole Time Directors does not exceed 1% of net profit [when the Company has a Whole Time Director(s) or a Managing Director(s)] or within the limit of 3% [when the Company does not have a Whole Time Director(s) or a Managing Director(s)].

This step has been taken because the central government received applications from Companies for payment of remuneration to the Non - Whole Time Directors in the form of Commission even when the Total Commission to be paid to their Non - Whole Time Director(s) falls within the limit of 1% of net profit [when the Company has a Whole Time Director(s) or a Managing Director(s)] or within the limit of 3% [when the Company does not have a Whole Time Director(s) or a Managing Director(s)] in addition to the Sitting Fees.

⁹ http://www.mca.gov.in/Ministry/pdf/Circular_04Mar2011.pdf

Update

4. Circular regarding DIN process simplified

Representations were made to the Ministry regarding prevalent process of obtaining DIN being Cumbersome and Time Consuming. Hence the ministry came up with simplified process as under:

- Application for DIN will be made on eForm; No physical submission of documents shall be accepted and for this purpose scanned documents along with verification by the applicant will be attached with the eForm. Only online fee payment will be allowed i.e. no challan payment
- Vide **General Circular No. 32/2011 dated 31.05.2011**¹⁰, the Ministry stated that the application can also be submitted online by the applicant himself using his DSC. Applications have to be digitally signed by the practicing Chartered Accountants, Company Secretaries or Cost Accountants, who shall also verify the particulars of the applicants.
- Further DIN 1 eForm can be digitally signed by the professional [practicing Chartered Accountants, Company Secretaries or Cost Accountants] who shall also confirm that he has verified the particulars of the Applicant given in the application.
 - Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online.
 - In other cases the DIN cell will examine the application and same shall be disposed of within one or two days.
- To avoid duplicate DIN, it has been decided that all existing DIN holders who have not furnished their PAN earlier, are required to furnish their PAN by filing DIN-4 e-form by 30th September 2011, failing which their DIN will be disabled and they shall be liable for heavy penalty.

¹⁰ http://www.mca.gov.in/Ministry/pdf/Circular_32-2011_31may2011.pdf

Update

Features:

- Companies (Directors Identification Number) Rules, 2006 are being amended on the above lines.
- Penal action against the applicant and professional certifying the DIN application in case of false information / certification as per provisions of section 628 of the Act will be taken in addition to action for professional misconduct and revocation of DIN, allotted on false information
- The above procedures applies to filing of DIN 4 intimating changes in particulars of Directors

Additional amendment in process of Allotment of DIN under Companies Act, 1956 vide General Circular No. 11/2011 dated 7.04.2011¹¹

- Mandatory fields in the DIN-1 eform are as follows:
 - Name of the Applicant; name of the Applicant's Father; Date of Birth; Income Tax Permanent Account Number (PAN) in case of all Indian Nationals; Passport in case of all Foreign Nationals;

Ministry is recognizing the need for efficiency keeping in mind the development and growth of the corporate sector. Proposed amendment is heartily welcomed. However, on close scrutiny by the Ministry, it is observed that the professionals are doing the certification without exercising any due diligence and strict action is being taken against each certification

5. Circular regarding process of incorporation of Companies (Form-1) and establishment of principal place of business in India by Foreign Companies (Form-44) – Procedure Simplified

In order to reduce the time taken by the Registrar of Companies in Incorporation of Companies and speed up and simplify the process of incorporation and establishment of principal place of business in India by Foreign Companies, the

¹¹ http://www.mca.gov.in/Ministry/pdf/Circular_11-2011_7apr2011.pdf

Update

Ministry came up with the following recommendations vide **General Circular No. 6/2011 dated 08.03.2011**¹²:

Recommendations

- Only Form-1 shall be approved by the RoC Office. Form 18 and 32 shall be processed by the system online.
- There shall be one more category, i.e., Incorporation Forms (Form 1A, Form 37, 39, 44 and 68) which will have the highest priority for approval.
- Average time taken for incorporation of company should be reduced to one (1) day only.
- A Notification to notify minor changes in e-forms 18 and 32 to enable them to be taken on record through STP mode for aforesaid procedure is being issued separately.

Clarification regarding clearance of incorporation eForms through STP mode vide General Circular No. 62/2011 dated 5th September, 2011¹³

Vide the above circular, the online processing of incorporation forms (Form 1, 18 and 32) certified by professional has been taken off by the Ministry.

6. Circulars regarding Payment of MCA fees – electronic mode

With a view to improve the components causing delay in disposal of applications for delivering important services to the Stakeholders, like payment confirmation in respect of offline payment made by physical challans, the Ministry came up with the following recommendation.

Features of the Circular

¹² http://www.mca.gov.in/Ministry/pdf/Circular_6-2011_8mar2011.pdf

¹³ http://mca.gov.in/Ministry/pdf/Circular_62-2011_05sept2011.pdf

Update

- Accept payments of value upto Rs.50, 000 for MCA 21 services , only in electronic mode w.e.f 27th March, 2011
- For the payments of value above Rs. 50,000, stakeholders would have the option to either make the payment in electronic mode, or paper challan. However such payments would also be required to be made in electronic mode w.e.f .1st October 2011.

Modification in the Circular vide General Circular dated 27.05.2011¹⁴

- With effect from 29.05.2011, in following cases challan mode for payment is allowed for amount less than Rs. 50,000/-:
 - Payment to 'Investor Education and Protection Fund' through 'Pay Misc. fee' functionality.
 - Any payment made by user having category as 'Official Liquidator (OL) office'.
 - Any payment made by user having category as 'MCA employee'

7. Circulars regarding Prosecution of Directors

- **Circular no. 8/2011 dated 25th March, 2011¹⁵**, is in super session of all earlier circulars
- Board of director acts as a whole and although some of its members may be given additional powers by the articles or by resolution, the general duties and responsibilities are the same for each director. There is no distinction between the position of executive and non executive directors
- Penal actions for defaults committed under the Act either to be taken against either 'officers in default' or 'director(s)' or persons as provided in relevant penal provisions

¹⁴ http://www.mca.gov.in/Ministry/pdf/Circular_27may2011.pdf

¹⁵ http://www.mca.gov.in/Ministry/pdf/Circular_08-2011_25mar2011.pdf

Update

- Penal actions were also taken against directors who are not charged with the responsibility in case of-
 - Independent directors
 - Directors on behalf of respective Government
 - Nominee Directors
 - Directors nominated by Govt u/s 408 of the Act

- RoC to take due care now in examining cases involving above mentioned directors. Thus, the onus of proving the default of above directors lies on the RoC after all verifications and examinations required above mentioned directors not to be held liable for any act of omission or commission by the company which occurred:
 - Without his knowledge attributable through board process
 - Without his consent or connivance
 - Where he has acted diligently in the board process

- Cases which are pending against Director of Companies to be relooked.
- A report to be sent by each Regional Director with specific recommendation in case the proceedings are proposed to be discontinued.
- This also suggests that not only in case of prosecution but also in case of compounding, similar view and steps need to be taken and cases to be relooked. The circular is silent on the issue and thus, it can be interpreted as above. Alternatively, the Bench can ask for token money as penalty. As it seems prudent to apply the above provisions not only in case of prosecutions but also in cases of compounding. The rationale behind both shall be the same of course
- Further, the above circular deals with omissions and commissions only under the Companies Act. The question lies that if such directors are also to be liable for any acts and omissions under laws as well.

Additional amendment in prosecution of Directors – Regarding vide General Circular No. 47/2011 dated 14.07.2011¹⁶

¹⁶ http://www.mca.gov.in/Ministry/pdf/Circular_47-2011_14july2011.pdf

Update

The Nominee Directors on behalf of Public Financial Institutions, Financial Institutions and banks on the Board of Companies should also be treated in same manner as provided in the Para 2 of the Circular.

Issue of Master Circular on Prosecution of Independent Directors¹⁷

On the footsteps of RBI and SEBI, MCA has also started the practice of issuing Master Circulars combining all the circulars issued so far. The first master circular no. 1/2011 dated 29th July, 2011 is on the prosecution of independent directors.

8. Circulars regarding Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode

It has been decided by the Ministry of Corporate Affairs to mandate certain class of Companies to file Balance Sheet and Profit and Loss Account for the year 2010-2011 onwards by using XBRL taxonomy with a view to provide major benefits in preparation, analysis and communication of Business Information and to offer Cost Savings, Greater Efficiency, and improved accuracy and reliability.

It would be based upon the Taxonomy on XBRL developed for the existing Schedule VI, as per the existing, (non converged) Accounting Standards notified under the Companies (Accounting Standards) Rules, 2006.

Applicability

- All Companies listed in India and their Subsidiaries;
- All Companies having a Paid Up Capital of Rs. 5 Crore and above
- All Companies having a Turnover of Rs. 100 Crore and above

[Earlier in the **General Circular No. 09/2011 dated 31.03.2011¹⁸**, Phase 1 was read as below; *Only for the financial year 2010-2011*

¹⁷ http://mca.gov.in/Ministry/pdf/Circular_1-2011_28july2011.pdf

¹⁸ http://www.mca.gov.in/Ministry/pdf/xbrl_31mar2011.pdf

Update

- *All Companies listed in India and their Subsidiaries, including overseas subsidiaries.*
- *All Companies having a Paid Up Capital of Rs. 5 Crore and above or a turnover of Rs. 100 Crore or above]*

[Later in the **General Circular No. 25/2011 dated 12.05.2011**¹⁹, Phase 1 was read as below;

All the Companies Listed in India and their Subsidiaries, having paid up capital of Rs, 5 Crore and above or a Turnover of Rs. 100 Crore or above, excluding Banking Companies, Insurance Companies, Power Companies, Non Banking Financial Companies (NBFCs) and Overseas Subsidiaries of these Companies]

Exempted Companies

- Banking Companies
- Insurance Companies
- Power Companies
- Non Banking Financial Companies (NBFCs)

Additional Fees Exemption

Phase 1 class of Companies are permitted to file their Financial Statements without any additional fees upto 30.11.2011 or within 60 days of their due date, whichever is later.

[Earlier as per **General Circular 09/2011 dated 31.03.2011**, Additional Fees Exemption was read as; "*All Companies falling in Phase – 1 are permitted to file upto 30-09-2011 without any additional filing fees*"]

¹⁹ http://www.mca.gov.in/Ministry/pdf/Circular_25-2011_12may2011.pdf

Update

[Later, vide **general Circular 37/2011 dated 07.06.2011**²⁰, Additional Fees Exemption was read as; *“All companies falling in Phase-1 whose Balance Sheets are adopted in the Annual General Meeting held before 30.09.2011 are permitted to file upto 30-09-2011 without any additional filing fee. However, where companies hold the Annual General Meeting in the month of September 2011, they will file the Balance Sheet within 30 days from the date of adoption in the General Meeting as per Section 220 of the Companies Act, 1956.”*

[Later, vide **General Circular 43/2011 dated 07.07.2011**²¹, Additional Fees Exemption was read as; *“Phase-1 class of Companies as per Circular 9/2011 dated 31.03.2011 and later exempted from BRL filing (under 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 upto 30.09.2011.”*

Additional circular in regard to Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode vide General Circular No. 26/2011 dated 18.05.2011²²

- Practicing Professionals registered as Members of the Professional Bodies namely, ICAI, ICSI & ICWAI with responsibility of ensuring integrity of documents filed by them with MCA in electronic mode including filing of Financial Statements in the eXtensible Business Reporting Language (XBRL) mode from the year 2011-12 onwards.

Additional circular in regard to Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode vide General Circular No. 43/2011 dated 07.07.2011

- Filing of Financial Statements in XBRL mode on MCA 21 shall be effective in respect of the financial statement closing on or after 31.03.2011 instead of the year 2011-12.

²⁰ http://www.mca.gov.in/Ministry/pdf/Circular_37-2011_07jun2011.pdf

²¹ http://www.mca.gov.in/Ministry/pdf/Circular_43-2011_07july2011.pdf

²² http://www.mca.gov.in/Ministry/pdf/Circular_26-2011_18may2011.pdf

Update

- Besides signing by the Signatories, the Statutory Auditor has to certify the Financial Statements prepared in XBRL mode.

Additional circular in regard to Filing of Balance Sheet and Profit and Loss Account in eXtensible Business Reporting Language (XBRL) mode vide General Circular No. 57/2011 dated 28.07.2011²³

- Verification and Certification of the XBRL document of Financial Statements on the e-forms would continue to be done by Authorised Signatory of the Company as well as professional like Chartered Accountant, Company Secretary or Cost Accountant in whole time practice.

9. Certification of E-Forms under the Companies Act, 1956 by the Practicing Professionals

Ministry of Corporate Affairs has been steadily progressing towards total electronic filing and approval regime with its objective to do away with human intervention in MCA approvals to the maximum extent possible. For this purpose, Ministry has issued this Circular on 8th April, 2011 regarding certification of e-forms under the Companies Act, 1956 by the Practicing professionals.

Features of the circular:

- Practicing professionals registered as Members of the professional bodies namely, ICAI, ICSI & ICWAI are now to be responsible for submitting /certifying documents (to be signed digitally by them) and system would accept most of these documents online without approval by Registrar of Companies or other officers of the Ministry.
- To ensure the data integrity, there will be checking of such submissions to guard against fraudulent filing.

²³ http://www.mca.gov.in/Ministry/pdf/Circular_57-2011_28july2011.pdf

Update

- In addition to the penal actions against the companies and their officers in default for furnishing incorrect or false information in the documents as provided under the Companies Act, 1956, action would also be taken on receipt of any complaint, anonymous or otherwise, against such professionals in the following manner:-
 - ***Alleged wrong submissions:*** In such cases, quick enquiry will be conducted by the concerned RD who will be assessing prima facie, cases of wrong doing by the professionals. Concerned professionals will be given time for furnishing explanation before conveying to a cancellation.
 - This report will be submitted to e-Governance Cell of MCA. The Cell will inform in the concerned Professional Institute to initiate an enquiry and complete the same within a month's time.
 - Simultaneously, the concerned professional shall be debarred and shall not be allowed to enter to submit any document on MCA Portal. This debarment will be for a period of 30 days or till the final enquiry report is received from the respective Professional Institute.
 - MCA will take a final decision after considering the report so received.

10.Appointment of Cost Auditor by Companies

Revised Procedure

Ministry vide **General Circular No. 15/2011 dated 11.04.2011**²⁴, reviewed the procedure to be followed by the Company for seeking prior approval of the Central Government for appointment of Cost Auditor u/s 233B (2) of the Companies Act, 1956. The revised procedure is as follows:

- The Company required to get its cost records audited u/s 233B (1) of the Companies Act, 1956 shall appoint a cost auditor who is a cost accountant as defined In clause (b) of sub-section (1) of section 2 of the Cost and Works

²⁴ http://www.mca.gov.in/Ministry/mcaoffices/CAB_Circular_15-2011_11Apr2011.pdf

Update

Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and includes a firm of cost accountants.

- The Audit Committee of the Board shall be the first point of reference regarding the appointment of cost auditors.
- The Audit Committee shall ensure that the cost auditor is free from any disqualifications as specified u/s 233B (5) read with section 224 and sub-section (3) or sub-section (4) of section 226 of the Companies Act, 1956.
- While a cost auditor shall have prime responsibility to ensure that he does not violate the limits specified u/s 224 (1-B) of the Companies Act, 1956, the Audit Committee shall also be responsible for such compliance by the cost auditor.
- The Audit Committee shall obtain a certificate from the cost auditor certifying his/its independence and arm's length relationship with the company.
- The company shall e-file its application with the Central Government on www.mca.gov.in portal, in the prescribed form 23C within 90(ninety) days from the date of commencement of each financial year, along with the prescribed fee as per the Companies (Fees on Application) Rules, 1999 as amended from time-to-time and other documents as per existing practice i.e. (i) certified copy of the Board Resolution proposing appointment of the cost auditor; and (ii) copy of the certificate obtained from the cost auditor regarding compliance of section 224 (1-B) of the Companies Act, 1956.
- On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within thirty days from the date of filing such application.
- If within thirty days from the date of filing such application, the Central Government directs the company to re-submit the said application with such additional information or explanation, as may be specified in that direction,

Update

- the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.
- After expiry of thirty days, as the case may be, the company shall issue formal letter of appointment to the cost auditor, as approved by the Board.
 - Within thirty days of receipt of formal letter of appointment from the company, the cost auditor shall inform the Central Government in the prescribed form, along with a copy of such appointment. An e-form for the same is being developed and will be notified shortly.
 - The Company shall disclose full particulars of the cost auditor, along with the due date and actual date of filing of the cost auditor report by the cost auditor, in its Annual Report for each relevant financial year.
 - In those companies, where constitution of an Audit Committee of the Board is not required by law, the words "Audit Committee" shall stand substituted by the words "Board of Directors".
 - If a Company contravenes any provisions of this circular, the company and every officer thereof who is in default, including the persons referred to in sub-section (6) of section 209 of the Act, shall be punishable as provided under sub-section (2) of section 642 read with sub-sections (5) and (7) of section 209 and sub-section (11) of section 233B of Companies Act, 1956.
 - If default is made by the cost auditor in complying with the aforesaid provisions, he shall be punishable with fine, which may extend to five thousand rupees.
 - Procedure effective from the financial year commencing on or after the 1st day of April, 2011.

11. Simplified Procedure for amalgamation of Government Companies u/s 396 of the Companies Act, 1956

Update

The Ministry vide **Circular no. 16/2011 dated April 20, 2011**²⁵, has simplified the procedure for amalgamation of Government Companies u/s 396 of the Companies Act, 1956

Procedure

- Every Central Government Company applying to Central Government for amalgamation to obtain the approval of cabinet
 - To the effect that the amalgamation is in public interest
- In case of State Government Companies, approval of State Council of Ministers is required
 - Where both Central and State Companies are involved then approval of both State and Central Cabinet is necessary
- The Government Company. may by a resolution passed at General Meeting decide to amalgamate with another Government Company
 - Resolution shall be passed by members holding 100% of the voting power
 - Company to give notice of not less than 30 days in writing of the proposed resolution to its members and creditors
- A resolution passed by a Government Company shall not be effected unless
 - Assent of all creditors has been obtained and company shall be deemed to have been dissolved
 - Assent of 90% of creditors by value has been received
 - Company certifies that there is no objection from any other creditor
- Where one Government Company is amalgamated with another Government Company, the registration of transferor company to stand cancelled and company shall be deemed to have been dissolved

12. Green Initiatives by the Ministry

Green Initiative in the Corporate Governance – Clarification regarding service of documents by e-mode instead of Under Posting Certificate (UPC)

²⁵ http://www.mca.gov.in/Ministry/pdf/Circular_16-2011_20apr2011.pdf

Update

As a measure of Green Initiative in the Corporate Governance in compliance with sections 2, 4, 5 and 81 of the Information Technology Act, 2000, the Ministry of Corporate Affairs has issued **General Circular No. 17/2011 dated 21.04.2011**²⁶ and clarified that the Company would be in compliance of Section 53 of the Companies Act, 1956 if the service of document has been made through electronic mode.

Green Initiative in the Corporate Governance – Clarification regarding sending copies of Balance Sheets and Auditors Report etc., to the members of the company as required under section 219 of the Companies Act, 1956 through electronic mode

As a measure of Green Initiative in the Corporate Governance in compliance with sections 2, 4, 5 and 81 of the Information Technology Act, 2000, the Ministry of Corporate Affairs has issued **General Circular No. 18/2011 dated 29.04.2011**²⁷, and clarified that the Company would be in compliance of section 219 (1) of the Companies Act, 1956, in case, a copy of Balance Sheet etc., is sent by electronic mail to its member subject to the fact that company has obtained-

- e-mail address of its member for sending the Notice with Balance Sheet, Profit & Loss Account, Auditor's Report, Director's Report, and Explanatory Statement etc through e-mail, after giving an advance opportunity to the member to register his e-mail address and changes therein from time to time with the company or with the concerned depository.
- Company's website display full text of these documents well in advance prior to mandatory period and issue advertisement in prominent newspapers in both vernacular and English stating that the copies of aforesaid documents are available in the website and for inspection at the Registered Office of the Company during office hours.

²⁶ http://www.mca.gov.in/Ministry/pdf/Circular_17-2011_21apr2011.pdf

²⁷ http://www.mca.gov.in/Ministry/pdf/Circular_18-2011_29apr2011.pdf

Update

- In cases where any member(s) has not registered his e-mail address for receiving the Balance Sheet etc through e-mail, the Balance Sheet etc., will be sent by other modes of services as provided under section 53 of the Companies Act, 1956.
- In case any member(s) insist for physical copies of above documents, the same should be sent to him physically, by post free of cost.

Green Initiative in the Corporate Governance - Approval of Ministry of Corporate Affairs for appointment of agency for providing electronic platform for electronic voting under the Companies Act, 1956

In order to have secured electronic platform for capturing accurate electronic voting processes, **National Securities Depository Limited (NSDL)** and **Central Depository Services (India) Ltd. (CDSL)** are being approved by the Ministry of Corporate Affairs vide **General Circular No. 21/2011 dated 02.05.2011**²⁸, for providing and supervising electronic platform for electronic voting subject to the condition that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communications & IT, Government of India, Electronics Niketan, 6 CGO Complex, New Delhi - 110003, India.

Green Initiative in the Corporate Governance - Participation by shareholders in general meetings under the Companies Act, 1956 through electronic mode

- The Ministry of Corporate Affairs vide **General Circular No. 27/2011 dated 20.05.2011**²⁹, has clarified that a Shareholder of the Company may participate in a general meeting under the provisions of Companies Act, 1956 through electronic mode.
- For this purpose, the Company shall also comply with the following requirements and procedures in addition to the normal procedures required under the Companies Act for holding general meeting:

²⁸ http://www.mca.gov.in/Ministry/pdf/Circular_21-2011_02may2011.pdf

²⁹ http://www.mca.gov.in/Ministry/pdf/Circular_27-2011_20may2011.pdf

Update

- proper audio visual electronic communication facilities to be provided for participation,
 - proper communication through notice to the Shareholders for availability to participate through video conferencing
 - ensuring proper facilities and recording and to take care of technical challenges that can be faced during such a process
- To provide larger participation of shareholders to attend General Meetings, Listed Companies may provide video conferencing connectivity during such meetings at least top five States/UTs on the basis of maximum number of members or at least 1000 members, whichever is more as per the address registered with the depositories.

However, in a general meeting, where shareholders are allowed to participate through electronic mode, the quorum as required u/s 174 of the Companies Act, 1956 as well as Chairman of the meeting shall have to be physically present at the place of the meeting.

Green Initiative in the Corporate Governance - Participation by directors in meetings of Board / Committee of directors under the Companies Act, 1956 through electronic mode

- The Ministry of Corporate Affairs vide **General Circular No. 28/2011 dated 20.05.2011**³⁰, has clarified that Directors of the Company may participate in a meeting of Board / Committee of Directors under the provisions of Companies Act, 1956 through electronic mode.
- For this purpose, the Company shall also comply with the following requirements and procedures in addition to the normal procedures required under the Companies Act for holding meeting of Board / Committee of Directors:

³⁰ http://www.mca.gov.in/Ministry/pdf/Circular_28-2011_20may2011.pdf

Update

- proper audio visual electronic communication facilities to be provided for participation,
 - proper communication through notice to the Directors for availability to participate through video conferencing
 - ensuring proper facilities and recording and to take care of technical challenges that can be faced during such a process.
 - every director of the Company must attend the meeting of Board/Committee of Directors personally at least one meeting in a financial year of the Company
- The notice of the meeting to the Director shall seek the confirmation from him as to whether he will attend the meeting physically or through electronic mode. In the absence of any confirmation, it will be presumed that he will physically attend the Board meeting.
 - A Director participating in a meeting through video conferencing shall be counted for the purpose of quorum.
 - Video recording of that part of the meeting in which the Chairman announces the summary of the decisions taken in that meeting in respect of each agenda item and names of directors who have consented or dissented to those decisions shall be preserved by the Company for one year from the conclusion of that meeting.
 - Draft minutes of the meeting shall be circulated in soft copy not later than 7 days of the meeting for comments/confirmation to the directors who attended the meeting to dispel all doubts on matters taken up during the meeting.
 - The minutes shall also disclose the mode of attendance of every Director of the Company during last three meetings whether personally or through electronic mode. The particulars of those Directors shall also be disclosed who attended the meeting through electronic mode.

Update

Further, the Ministry vide **Circular No.: 35/2011 dated 6th June, 2011**³¹, has given the clarification regarding participation by shareholders or Directors in meetings under the Companies Act, 1956 through electronic mode such as:

- It is not mandatory for companies to provide its directors, the facility to attend meetings through video conferencing.
- In respect of shareholders meetings to be held during financial year 2011-12, video conferencing facility for shareholders is optional. Thereafter, it is mandatory for all listed companies.
- Where the company opts to provide video conferencing facility, they have to comply with the procedures prescribed in the **Circular no. 27/2011 & 28/2011 dated 20.05.2011** in this regard.
- The company is free to select Video Conferencing facility of any agency but the chairman of the meeting and Secretary of the company has to ensure that there is a proper Video Conferencing equipment/facility which enables all persons participating in that meeting to communicate concurrently with each other without an intermediary, and to participate effectively in the meeting.
- In the case of e-voting in general meetings, the Ministry of Corporate Affairs are presently authorizing only National Security Depository Ltd and Central Depository Services (India) Ltd as agencies for providing and supervising electronic platforms for electronic voting subject to the conditions that they obtain a certificate from Standardization Testing and Quality Certification (STQC) Directorate, Department of Information Technology, Ministry of Communication and IT, Government of India, New Delhi.

Green Initiative in the Corporate Governance – Issue of Certificate by Digital Signature

In order to cut timeliness and an another step towards “Green Initiative”, the Ministry vide **General Circular No. 29/2011 dated 20.05.2011**³², has decided that

³¹ http://www.mca.gov.in/Ministry/pdf/Circular_35-2011_06jun2011.pdf

Update

all the Certificates and standard letters to be issued by the Registrar of Companies will now be issued electronically under the Digital Signature of the Registrar of Companies.

The Digital Certificates have been made available for issue from 30th June, 2011 in phased manner.

Further, in continuation to this Circular, the Ministry has issued one more **Circular 39/2011 dated 21st June, 2011**³³, intimating that the Ministry has already developed 13 such digitally signed certificates and planning to complete the remaining certificates by 3rd July, 2011.

13. Marking a Company as Having Management Dispute by Registrar of Companies under MCA-21 System

With a view to utilize the facility to mark a company “marked as having management dispute” on the basis of complaints received by the Registrar of Companies, the Ministry has issued **General Circular No. 19/2011 dated 02.05.2011**³⁴, having the below-stated features:

- The Registrar of Companies shall mark a company as having management dispute in only those cases where the Court or Company Law Board has directed to maintain the status-quo with reference to any e-forms including status of Directors in the company; or
- The Court or Company Law Board has granted any injunction or stay in taking the document on record and Registrar of Companies is a party in such court cases and/or the directions have been issued to the Registrar of Companies.
- In other matter, where the Registrar of Companies is not a party and such orders have been passed and has not been served to the Registrar of

³² http://www.mca.gov.in/Ministry/pdf/Circular_29-2011_20may2011.pdf

³³ http://www.mca.gov.in/Ministry/pdf/Circular_39-2011_028jun2011.pdf

³⁴ http://www.mca.gov.in/Ministry/pdf/Circular_19-2011_02may2011.pdf

Update

Companies, it is for the parties to comply to such orders and in case of non-compliances, the law shall take its own course.

14.E-form No. 32 - Intimation to Registrar of Companies regarding particulars of appointment of Directors etc and changes therein in the company pursuant to section 303(2) of the Companies Act, 1956 - filing of conflicting return by contesting parties

General Circular No. 20/2011 dated 02.05.2011³⁵, was issued in order to cut timeliness and bring more transparency in the working of office of Registrar of Companies (ROC), it states that the Form 32 will also be taken on records under Straight Through Process (STP) mode i.e., the information given in the e-form 32 is being taken on file maintained by the ROC through electronic mode on the basis of statement of correctness given by the filing company and further verification by the practicing professional i.e., Chartered Accountants, Cost Accountants and Company Secretaries.

15. Clarification regarding effective date of Companies (Particulars of Employees) Amendment Rules, 2011

The Ministry of Corporate Affairs on 3rd May, 2011 in furtherance to the notification issued vide notification dated 31st March, 2011 regarding amendment in Companies (Particulars of Employees) Rules, 2011 which includes:

Amendment in Rule 1A wherein the limit of employee's salary to be disclosed in Directors Report was raised from Rs. 24 lakh to Rs. 60 lakh per annum; and

Amendment in Rule 2A wherein for the words "particulars of employees of companies", the words "particulars of Government companies and companies shall be substituted.

In this regard, Ministry has issued **Circular No. 23/2011**³⁶, clarified that the above stated notification shall be applicable to all Director's report under Section 217 of

³⁵ http://www.mca.gov.in/Ministry/pdf/Circular_20-2011_02may2011.pdf

³⁶ http://www.mca.gov.in/Ministry/pdf/Circular_23-2011_03may2011.pdf

Update

the Companies Act, 1956 approved by the Board of Directors on or after 1.4.2011, irrespective of the accounting year of the annual account, being approved by the Board.

16. Clarification regarding Loan to Public Companies under Section 295 of the Companies Act, 1956

With a view to restrict the unnecessary filing of applications for getting prior approval of Central Government u/s 295 of the Companies Act, 1956, the Ministry of Corporate Affairs has clarified vide **General Circular No.: 24/2011 dated 12.05.2011**³⁷, that the Companies are requested to note that when the beneficiary of the loan/guarantee/security is a Public Limited Company, approval of Central Government should only be sought if the provisions of sub-section (d) or (e) of section 295 of the Companies Act, 1956 are attracted. The application should also clearly bring out the facts in this regard.

17. Clarification on applicability of provisions of Section 108A to 108I of the Companies Act, 1956

As the Monopolies and Restrictive Trade Practices Act, 1969 stands repealed, the legal validity of the provisions of sections 108A to 108I of the Companies Act, 1956 has been examined in this Ministry vide **General Circular 30/2011 dated 23.05.2011**³⁸, in consultation with Ministry of Law & Justice and it has been observed that the provisions of stated sections have become redundant and will have no legal force.

18. Clarification regarding 'Body Corporate' for the purpose of section 226(3)(a) of the Companies Act, 1956

A Body Corporate is disqualified from appointment as Auditor by a Company. Therefore, representations were made regarding Limited Liability Partnership among Chartered Accountants without not be qualified as Auditor under Section 226(3)(a) of the Companies Act, 1956 .

³⁷ http://www.mca.gov.in/Ministry/pdf/Circular_24-2011_12may2011.pdf

³⁸ http://www.mca.gov.in/Ministry/pdf/Circular_30-2011_23may2011.pdf

Update

Vide **General Circular No. 30A dated 26.05.2011**³⁹, it has been clarified that LLP of Chartered Accountant will not be treated as a Body Corporate for the limited purpose of Section 226(3)(a) of the Companies Act, 1956 .

19. Depreciation for the purpose of declaration of Dividend under Section 205 in case of companies referred to in Section 616 (C) of the Companies Act, 1956 (the Act)

Companies engaged in the generation or supply of electricity is approaching for fixing rate of depreciation in individual cases.

Features of the Circular

- The Ministry has considered the whole matter and it is has vide **General Circular No. 31/2011 dated 31.05.2011**⁴⁰, clarified that Section 616 (C) the Companies Act, 1956 provides that the same shall apply to Companies engaged in the generation or supply of electricity, except in so far as the said provision is inconsistent with the provisions of the Indian Electricity Act, 1910 or the Electricity Supply Act, 1948 as repealed by enactment of the Electricity Act, 2003.
- The rates of depreciation and methodology notified under Electricity Act, 2003 are inconsistent with the rates given in Schedule XIV of the Act and the former being special Act, the former shall prevail over rates notified under Schedule XIV of the Companies Act by virtue of section 616(c) of the Companies Act.
- Accordingly, the Ministry has clarified that companies referred to in Section 616(c) of the Companies Act can distribute dividend out of profit arrived at after providing for depreciation following the rates as well as methodology notified by Central Electricity Regulatory Commission (CERC) and the same shall be sufficient compliance of section 205 of the Companies Act, 1956.

³⁹ http://www.mca.gov.in/Ministry/pdf/Circular_30A-2011_26may2011.pdf

⁴⁰ http://www.mca.gov.in/Ministry/pdf/Circular_31-2011_31may2011.pdf

Update

20. Compliance of provisions of the Companies Act, 1956 and Rules made there under

Background

The Ministry observed that some companies are filing only their event based information with the ROC without filing their up to date Balance Sheet and Profit & Loss Account and Annual Return and thereby depriving the right of the public to inspect these basic documents.

In order to ensure Corporate Governance and proper compliances of provisions of Companies Act, 1956, it has been decided vide **General Circular No. 33/2011 dated 01.06.2011**⁴¹, that no request whether oral or in writing or through e-forms for recording any event based information/ changes shall be accepted by the Registrar of Companies from such defaulting Companies unless they file their updated Balance Sheet and Profit and loss Account and Annual Return with the Registrar of Companies.

Exempted forms i.e forms which can be filed by the defaulting Companies

- Form 32, Form 20B, Form 21A, Form DIN 3, Form 21, Form 23AC, Form 23ACA, Form 1 INV, Form 23B, Form 66, Forms related to Cost Audit Branch and Investor Complaint Form.
- Vide general circular no. 63/2011 dated 6th September, 2011, the following forms were also allowed for filing by the defaulting companies:
Form 2, Form 3, Form 5, Form 23, Form 61
- Forms allowed to be filed by the dormant companies are:
Form 61, DIN 3, Form 32, Form 21, Form FTE

Further clarification on circular 63/2011 vide circular 64/2011 dated 20th September, 2011

The effective date of circular 63/2011 to be implemented is 25th September, 2011.

⁴¹ http://www.mca.gov.in/Ministry/pdf/Circular_33-2011_01jun2011.pdf

Update

Restriction on the Defaulting Companies and their Directors/ Professionals etc.

- No e-filing shall be accepted by the Registrar of Companies from Directors of these defaulting Companies for any other Company also.
- Company Secretaries and Auditors of these companies will also not be allowed to sign and certify the filing with MCA-21 system, in respect of these defaulting companies, till the defect is rectified.
- Members of ICAI, ICSI and ICWAI must not issue any certificates to such defaulting companies other than above mentioned e-forms.
- Action will be taken against the defaulting companies and their Directors/officers in default in co-ordination with SEBI and RBI.
- The circular will not apply to the following companies:
 - Where Balance Sheet and Annual Return could not be filed due to order of Court/ Company Law Board or any other competent authority; and
 - Concerned ROC has marked this company as having management dispute
- This circular shall be effective from 3rd July, 2011

However, in order to have better understanding of this circular, it is further clarified vide **circular no. 38/2011**⁴², that the above circular shall be applicable to those defaulting companies and their Directors which have not filed Balance Sheet or Annual Return for any of the financial year's 2006-07, 2007-08, 2008-09 and 2009-10 with the Registrar of Companies as required under sections 220 and/ or 159 of the Companies Act, 1956.

⁴² http://www.mca.gov.in/Ministry/pdf/Circular_38-2011_021jun2011.pdf

Update

21.Guidelines for declaring financial institution as Public Financial Institution under Section 4A of the Companies Act, 1956

Section 4A of the Companies Act, 1956 was inserted by the Companies (Amendment) Act, 1974 with effect from 1st February 1975.

Sub Section 2of Section 4A empowers the Central Government to notify in the Official Gazette such other institutions as it may think fit to be a Public Financial Institution (PFI).

Features of the Circular

- The Central Government vide **General Circular No. 34/2011⁴³, dated 02.06.2011** has now framed the criteria for declaring any Financial Institution as PFI under Section 4A of the Companies Act, 1956. These criteria are:-
 - A Company or Corporation should be established under a Special Act or the Companies Act being Central Act
 - Main business of the Company should be Industrial/Infrastructural Financing.
 - The Company must be in existence for at least 3 years and their financial statement should show that their income from Industrial/Infrastructural financing exceeds 50% of their income
 - The net worth of the Company should be Rs. One thousand crore
 - The Company is registered as Infrastructure Finance Company (IFC) with RBI or as an Housing Finance Company (HFC) with National Housing Bank
 - In the case of CPSUs/SPSUs, no restriction shall apply with respect to financing specific sector(s) and net worth

⁴³ http://www.mca.gov.in/Ministry/pdf/Circular_34-2011_02jun2011.pdf

Update

- Any financial institution applying for declaration as PFI shall fulfill the aforesaid criteria.

22. Guidelines for Fast Track Exit mode for defunct companies under Section 560 of the Companies Act, 1956

To give an opportunity for fast track exit by a defunct company, for getting its name struck off from the register of companies, the Ministry has decided to modify the existing route through e-form – 61 and has prescribed the new Guidelines vide **General Circular No. 36/2011 dated 07.06.2011⁴⁴** called Fast Track Exit (FTE).

Applicability

Defunct Companies which has active status or identified as dormant by MCA

“Defunct Company” is a Company which has nil asset and liability and

- *Has not commenced any business activity or operation since incorporation*
- *Is not carrying over any business activity or operation for last one year before making application under FTE*

Non Applicability

- Listed Companies
- Companies that have been de-listed
- Section 25 Companies
- Vanishing Companies – Companies registered under the Companies Act, 1956 and listed with Stock Exchange which, has failed to file its returns with Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its Directors are traceable.

⁴⁴ http://www.mca.gov.in/Ministry/pdf/Circular_36-2011_07jun2011.pdf

Update

- Companies where inspection or investigation is ordered and being carried out or yet to be taken up or where completed prosecutions arising out of such inspection or investigation are pending in the court
- Companies where order under section 234 of the Companies Act, 1956 has been issued by the Registrar and reply thereto is pending or where prosecution if any, is pending in the court
- Companies against which prosecution for a non-compoundable offence is pending in court;
- Companies accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- Company having secured loan
- Company having management dispute
- Company in respect of which filing of documents have been stayed by court or Company Law Board (CLB) or Central Government or any other competent authority
- Company having dues towards income tax or sales tax or central excise or banks and financial institutions or any other Central Government or State Government Departments or authorities or any local authorities.

Features of the Guidelines

- An application in form FTE is to be made electronically with fees of INR 5,000/- certified by Practicing Chartered Accountant or Practicing Company Secretary or Practicing Cost Accountant;
- In case, the application in Form FTE, is not being digitally signed by any of the director or Manager or Secretary, a physical copy of the Form duly filled in, shall be signed manually by a director authorised by the Board of Directors of the company and shall be attached with the application Form at the time of its filing electronically;

Update

- In all cases, the Form FTE, shall be certified by a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice;
- In case, the applicant name is not available in the database of directors maintained by the Ministry, the application shall be accompanied by certificate from a Chartered Accountant in whole time practice or Company Secretary in whole time practice or Cost Accountant in whole time practice alongwith their membership number, certifying that the applicants are present directors of the company. In such cases, the applicants shall not be asked to file Form 32 and Form DIN 3.
- The company shall disclose pending litigations if any, involving the company while applying under FTE;
- If the pending prosecutions are only for non-filing of Annual Returns under section 159 and Balance Sheet under section 220 of the Companies Act, 1956, such application may be accepted provided the applicants have already filed the compounding application. However, steps for final strike of the name of the company will be taken only after disposal of compounding application by the competent authority
- The Form FTE shall be accompanied by an affidavit annexed at Annexure- A, which should be sworn by each of the existing director(s) of the company before a First Class Judicial Magistrate or Executive Magistrate or Oath Commissioner or Notary, to the effect that the company has not
- carried on any business since incorporation or that the company did some business for a period up to a date (which should be specified) and then discontinued its operations, as the case may be;
- Form FTE shall further be accompanied by an Indemnity Bond, duly notarized, as annexed at Annexure B, to be given by every director individually or collectively, to the effect that any losses, claim and liabilities on the company, will be met in full by every director individually or collectively, even after the name of the company is struck off the register of Companies;
- In case of foreign nationals and NRIs, Indemnity Bond and Affidavit shall be notarized as per their respective country's law.
- The Company shall also file a Statement of Account annexed at Annexure C, prepared as on date not prior to more than one month preceding the date of

Update

- filing of application in Form FTE, duly certified by a statutory auditor or Chartered Accountant in whole time practice, as the case may be.
- In the case of 100% Government companies, if no Board is in existence, an officer not below the rank of Deputy Secretary of the concerned administrative Ministry may be authorized to enter his name and other details in Form FTE and in Annexure A, B and C in place of name and other details of the directors and also to sign the said documents before filing.

23. Special drive to clear pendency of e-forms filed with the Registrar of Companies prior to implementation of revised Regulation 17 of the Companies Regulation, 1956

The Ministry in order to reduce the pendency of e-forms with the Registrar of Companies by re-opening of all such pending forms issued **General Circular No. 40/2011 dated 23.06.2011**⁴⁵. The same have been placed in the category: 'Held in abeyance' so that ROC can review the same.

Therefore, all ROCs are hereby advised to review such pending work items with them and dispose it by 7th July, 2011

24. E-filing of Income Tax return in respect of companies under liquidation

The Ministry of Corporate Affairs have been reported by the Official Liquidators that they are facing problem in e-filing of Income Tax Returns in compliance as they are required to mention PAN No. of the person who files the return, representing the company in liquidation.

This issue has been observed by the Ministry and it has issued **General Circular No. 41/2011 dated 06.07.2011**⁴⁶, in this regards, bearing the below stated salient feature of the steps to be taken by the Official Liquidators:

- To check whether the company which has come in liquidation has a PAN and takes possession along with other records.

⁴⁵ http://www.mca.gov.in/Ministry/pdf/Circular_40-2011_023jun2011.pdf

⁴⁶ http://www.mca.gov.in/Ministry/pdf/Circular_41-2011_06july2011.pdf

Update

- If PAN is not available in the records, the PAN No. of the company shall be obtained from concerned ITO.
- There are cases where no certificate of Registration and/or Article of Association/ Memorandum of Association is available. For this following action be taken:
 - If the company has no assets, it must be got liquidated and there is no need to apply for PAN.
 - If the company has assets, the concerned ROC be requested to send documents about the company for applying to concerned ITO for obtaining PAN.
- In the verification column of the ITR, OL will mention his personal PAN as this is only for the purpose of Verification Number obtained in official designation.
- As Representative Assessee, (OL) official address should be given in Part A – General
- Information under column No.(b).i.e. address of Official Liquidator's office would be mentioned as the address of the company under Liquidation.\ Since this is a regular activity, following actions be taken:
- Staff be trained to prepare and file application for PAN with outsourced agencies of CBDT namely NSDL and UTI;
- All IT Returns filing is now on-line. Hence staff shall be trained to do the same. No CA firms/consultants shall be employed for above tasks.

25.Payment of fees to CAs in cases where funds are not permitted from Common Pool Fund

It has been observed by the Ministry that certain courts have not allowed fees to be paid to the Chartered Accountants from Common Pool Fund in cases where petitions are filed in respect of companies under liquidation having no assets.

Update

Thereby the Ministry has decided that in all such cases following steps needs to be taken and **General Circular No. 42/2011 dated 07.07.2011**⁴⁷, has been issued in this regard:

- OL will take the permission of the Court to appoint a CA for issuing necessary certificate
- The terms and conditions of payment of fees to the CAs in such cases will be decided by a Committee consisting of concerned OL and ROC, chaired by RD.
- The payment of fees to CAs in this respect to be made out of the Budget Head "Office Expenses".

26.Integration of Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008

The Ministry of Corporate Affairs has noticed that its been issuing two separate identification numbers as DIN to an individual for becoming a director of a company under Companies Act, 1956 and DPIN for a designated partner in a Limited Liability Partnership under Limited Liability Partnership (LLP) Act, 2008 and in order to avoid this duplicity and to give ease to the stakeholders, it has decided to issue only one identification number to an individual for both the purpose, therefore, **General Circular No. 44/2011 dated 08.07.2011**⁴⁸, was issued and circulated with a concept of integrating the Director's Identification Number (DIN) issued under Companies Act, 1956 with Designated Partnership Identification Number (DPIN) issued under Limited Liability Partnership (LLP) Act, 2008 with effect from 9.7.2011.

Effects of this Circular:-

⁴⁷ http://www.mca.gov.in/Ministry/pdf/Circular_42-2011_07july2011.pdf

⁴⁸ http://www.mca.gov.in/Ministry/pdf/Circular_44-2011_08july2011.pdf

Update

- With effect from 9.7.2011, no fresh DPIN will be issued.
- Any person, who desires to become a designated partner in a Limited Liability Partnership, has to obtain DIN by filing e-form DIN-1.
- If a person has been allotted DIN, the said DIN shall also be used as DPIN for all purposes under Limited Liability Partnership Act, 2008.
- If a person has been allotted DPIN, the said DPIN will also be used as DIN for all the purposes under Companies Act, 1956.
- If a person has been allotted both DIN and DPIN, his DPIN will stand cancelled and his DIN will be used as DIN as well as DPIN for all purposes under Limited Liability Partnership Act, 2008 and Companies Act, 1956.
- As per **Circular no. 32/2011 dated 31.05.2011**⁴⁹, the Ministry has made Income Tax Permanent Account Number (PAN) mandatory for obtaining DIN for Indian nationals. Further, all existing DIN holders, who have not furnished their PAN at the time of obtaining DIN, are required to furnish their PAN to the Ministry by filing e-form DIN-4 by 30th September, 2011.
- Similarly, all DPIN holders, who had not furnished their PAN at the time of obtaining DPIN, are required to furnish their PAN to the Ministry by filing e-form DIN-4 by 30th September, 2011, failing which their DPIN/DIN will be disabled and they will also be liable for heavy penalty.

27. Circulars regarding Name Availability Guidelines, 2011⁵⁰

New Features included in the existing Guidelines

- In the form 1A, practicing Chartered Accountants, Company Secretaries and Cost Accountants will certify that he has used the search facilities available on the

⁴⁹ http://www.mca.gov.in/Ministry/pdf/Circular_32-2011_31may2011.pdf

⁵⁰ http://www.mca.gov.in/Ministry/pdf/Circular_45-2011_08july2011.pdf

Update

MCA portal for checking the resemblance of the proposed name(s). The professional will also certify that the proposed name is not an undesirable name under the provisions of Section 20 of The Companies Act, 1956 and also is in conformity with Name Availability Guidelines, 2011.

(i) Where Form 1A has been certified by the professional in the manner stated above, the name will be made available by the System online without backend processing by the Registrar of Companies. If found later that the name made available is not to have been allowed under Section 20 of the Companies Act, 1956 read with these guidelines, the professional shall also be liable for penal actions under the Companies Act, 1956 along with the penal action of respective professional institutes.

(ii) The name, if made available, is liable to be withdrawn anytime before registration of the company, if it is found later on that the name ought not to have been allowed. However, ROC will pass a specific order giving reasons for withdrawal of name, with an opportunity to the applicant of being heard, before withdrawal of such name.

(iii) Where Form 1A has not been certified by the professional, the proposed name will be processed at the back end office of ROC and availability or non availability of name will be communicated to the applicant.

- The name, if made available to the applicant, shall be reserved for sixty days from the date of approval. Provisions of Name renewal, discontinued.
- Change of name shall not be allowed to a Company which is defaulting in filing its due Annual Returns or Balance Sheets or which has defaulted in repayment of matured deposits and debentured and/or interest thereon.
- These guidelines are likely to be implemented with effect from 24th July 2011.

Continuation vide General Circular No. 48/2011 dated 22.07.2011⁵¹

⁵¹ http://www.mca.gov.in/Ministry/pdf/Circular_48-2011_22july2011.pdf

Update

- Guidelines implemented with effect from 24th July, 2011.
- A fee of Rs. 1000 shall be charged for making an application for availability of name in revised e-form 1A.

28. Waiver of approval of Central Government for payment of remuneration to professional managerial person by companies having no profits or inadequate profits

As a step towards simplification of procedure under the Companies Act, 1956, the Ministry has decided to amend Schedule XIII to the Companies Act, 1956 and it has issued **General Circular No. 46/2011 dated 14.07.2011**⁵² in this regard:

Features of the Circular

- At present, listed companies and their subsidiaries companies, which are not having profits or having inadequate profits, have to come to the Central Government for seeking approval for payment of remunerations exceeding Rs. 4 lakh p.m. even to professional managerial person, who has no interest in the capital or any relation with the directors of the company.
- Pursuant to this amendment, no approval of Central Government will be required by the listed companies and their subsidiary companies, which are not having profits or having inadequate profits for payment of remunerations exceeding Rs. 4 lakh p.m., if the managerial person:-
 - is not having any direct or indirect interest in the capital of the company or its holding company or through any other statutory structures at any time during last two years before or on the date of appointment and
 - is having a graduate level qualification with expert and specialized knowledge in the field of his profession.

⁵² http://www.mca.gov.in/Ministry/pdf/Circular_46-2011_14july2011.pdf

Update

- The other general conditions specified in para (c) of Section II of Part II of Schedule XIII to the Act shall continue to be complied with.

29. Online Incorporation of Companies within 24 Hours

In order to give ease to the corporate world to carry business in India, the Ministry of Corporate Affairs has been simplifying the procedures under the Companies Act, 1956 and is modifying the incorporation procedures to enable promoters to get their companies incorporated online within 24 hours.

The Ministry of Corporate Affairs has decided to make it applicable for all the companies vide issuing **General Circular No. 49/ 2011 dated 23.07.2011**⁵³, having below stated salient features:

- In case the e-forms 1, 18, 32 and e-form for Memorandum of Association (MOA) and Articles of Association (AOA) have been certified by the practicing professional regarding the correctness of the information and declarations given by the subscribers, the application shall be processed electronically and the digital certificate of incorporation shall be issued immediately online by the Registrar of Companies.
- The above facility is optional to the existing process of backend processing of applications by the Registrar of Companies where no such certifications have been done by the practicing professional.
- If any of the information or declaration given by the company or certificate given by the professional in the e-forms and attachment(s) thereto is/ are, found to be wrong, false or illegal then the subscribers, declarant(s) and professional(s) shall be liable for penal action under section 628 and 629 of the Companies Act, 1956 in addition to penal action prescribed in regulations of the respective professional institutes.

⁵³ http://www.mca.gov.in/Ministry/pdf/Circular_49-2011_23july2011.pdf

Update

- Where a company has been registered online on the basis of declarations made by the subscribers, declarant(s) and certifications by the professional(s) given in the e-form, if it is found later on that the company ought not to have been registered under provisions of the Companies Act, 1956 read with Rules and Regulations made therein, the Registrar of Companies shall take necessary action to put the company in state of suspended animation and initiate the process of revocation of the registration of the company after giving an opportunity of being heard.
- The above simplified process of online incorporation of companies is likely to be implemented with effect from 11th August, 2011.

30.Simplified procedure for obtaining confirmation of shifting of registered office from one state to another state under section 17 of the Companies Act, 1956

In order to simplify the procedures and cut timelines, the Ministry vide **General Circular No. 50/ 2011 dated 25.07.2011**⁵⁴, has decided to notify section 8 of the Companies (Second Amendment) Act, 2002 (1) of 2003 thereby the work relating to confirmation of shifting of registered office from one state to another state and consequent alteration to Memorandum of Association of the company under section 17 of the Companies Act, 1956 shall be shifted from the jurisdiction of Company Law Board to the Central Government.

Features of the Circular

- The Central Government has delegated this work to the respective Registrar of Companies under whose jurisdiction the registered office of the company is situated. The petitions filed with the Company Law Board and pending as on the effective date of notification shall be transferred to respective Registrar of Companies.

⁵⁴ http://www.mca.gov.in/Ministry/pdf/Circular_50-2011_25july2011.pdf

Update

- The revised e-forms and business re-engineering process under MCA-21 system is being developed and the simplified procedures to be followed by the companies and Registrar of Companies shall be given in the modified e-forms and instruction kit thereto shortly.
- The above simplified process is likely to be implemented with effect from 24th September, 2011.

31. Simplified procedure for rectification of register of charges under section 141 of the Companies Act, 1956

In order to simplify the procedures and cut timelines, the Ministry **vide General Circular No. 51 / 2011 dated 25.07.2011**⁵⁵, has decided to notify section 20 of the Companies (Second Amendment) Act, 2002 (1) of 2003 thereby the work relating to rectification of register of charges under section 141 of the Companies Act, 1956 shall be shifted from the jurisdiction of Company Law Board to the Central Government.

Features of the Circular

- The Central Government has decided to delegate this work to the respective Registrar of Companies under whose jurisdiction the registered office of the company is situated. The petitions filed with the Company Law Board and pending as on the effective date of notification shall be transferred to respective Registrar of Companies.
- The revised e-forms and business re-engineering process under MCA-21 system is being developed and the simplified procedures to be followed by the companies and Registrar of Companies shall be given in the modified e-forms and instruction kit thereto shortly.

⁵⁵ http://www.mca.gov.in/Ministry/pdf/Circular_51-2011_25july2011.pdf

Update

- The above simplified process is likely to be implemented with effect from 24th September, 2011.

32.Simplified procedure for obtaining online approval of Central Government under section 297 of the Companies Act, 1956

The Ministry of Corporate Affairs has been in receipt of various representations from stakeholders to simplify the approval processes under section 297 of the Companies Act, 1956 and thereby vide **General Circular No. 52/2011 dated 25.07.2011**⁵⁶, it has decided to simplify the procedures and to give online approval.

Features of the Circular

- For getting this approval online, certain procedural formalities has been stated by the Ministry of Corporate Affairs through this circular, the salient features of which are as follows:
 - If the proposed contract has been approved by the shareholders by way of special resolutions in a general meeting.
 - According to new procedure, application will be made in a new e-form with the prescribed fee. The relevant information like terms of contract and details of Board resolutions and special resolutions shall be captured in the e-form. The e-form shall also be certified by the practicing professional who shall specifically certify the correctness of the information and declarations given by the company in the e-form.
 - The company while seeking approval of the directors and shareholders in their meetings shall specifically take approval to the effect that: --
 - i. Proposed contract is competitive, at an arm's length, without conflict of interest and is not less advantageous to it as compared to similar contracts with other parties.

⁵⁶ http://www.mca.gov.in/Ministry/pdf/Circular_52-2011_25july2011.pdf

Update

- ii. The company has not made any default in repayment of any of its debts (including public deposits) or debentures or interest payable thereon and has filed its up to date Balance Sheets and Annual Returns with the Registrar of Companies;
 - iii. The proposed contract is falling within the provisions of section 297 of the Act and provisions of sections 198, 269, 309, 314 and 295 are not applicable in the proposed contract.
 - iv. The company and its 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.
- The application will be processed online and approval of Central Government shall also be made available to the applicant company online on the basis of declarations made by the company and certifications by the professionals given in the e-form.
 - If any of the information or declaration given by the company or certificate given by the professional in the e-form is found to be wrong, then the applicant company, its Directors and professional shall be liable for penal action under section 297 and 628 of the Companies Act, 1956 in addition to penal action prescribed in regulations of the respective professional institutes.
 - The process of online approval of Central Government under section 297 of the Companies Act, 1956 is likely to be implemented with effect from 24th September, 2011.

33.Guidelines for RDs/ROCs in the matter of scheme of arrangement /amalgamation under section 391-394

In order to streamline the procedure the following guidelines along with timelines are issued for strict compliance vide **General Circular No. 53/2011 dated 26.07.2011**⁵⁷.

⁵⁷ http://www.mca.gov.in/Ministry/pdf/Circular_53-2011_26july2011.pdf

Update

Features of the Circular

- These guidelines supersede all previous guidelines on the matter. Issues to be examined by ROCs and RDs are given at annexure I and II respectively. The procedure to be followed and the timelines are indicated below:
 - On receipt of notice from the court u/s 394A regarding the scheme, the Regional Director should make an entry in a register or in electronic form. If the petition has already been filed with ROC in Form 61 in the system, the same can be monitored directly from the system.
 - Thereafter within three days of receipt, Regional Director shall send a mail to ROC concerned for the report.
 - ROC should furnish his report online to RD within 7 days from receipt of Form 61 without waiting for RD's communication.
 - Within seven days of receipt of notice RD should send a letter to local branch of Law Ministry / Assistant Solicitor General appointed for the state by Law Ministry as the case may be (furnishing copy of the notices received u/s 394A) requesting for nomination of an advocate.
 - Regional Director should send a letter within five days of receipt of notice to company / its Advocate to provide material of valuation report, Chairman's report regarding creditors / members meeting and on receipt of the information, the matter should be processed and finalized within a week's time.
 - The finalized affidavit should be sent to designated Standing Counsel for the particular case for signature and then to Law Ministry (local branch) for identification. This exercise should not take more than five days after which the affidavit should be filed in Court Registry.

Update

- The ROCs may examine the matter in respect of issues mentioned in Annexure „I“ and send their report to concerned RDs who would take into consideration the report of the ROC before finalizing their comment.

Annexure - I

Issues to be examined by ROCs

1. Filing Position.
2. Investor Grievances.
3. Inspection / Investigation / Technical Scrutiny.
4. Pending Prosecution.
5. Furnishes comments on the scheme

Annexure - II

Issues to be Examined by Regional Directors

Regional Director should ensure that all requisite statutory procedure for supporting the schemes has been complied with. For this he should examine the following:

- 1) Whether companies forming part of scheme are sensitive sectors categories companies such as, Defence Equipment Manufacturing Companies / Telecommunication / Insurance / Business / Companies / Media News / Channels / Television Broadcasting Companies / Aviation Section / Power, Energy, Natural Gas / Petroleum etc? If so, whether notices served on the concerned Regulatory Authorities / Ministry?
- 2) Whether any of the Transferor/ Transferee Company is listed company at any Stock Exchanges? If so, NOC from Stock Exchange is submitted?
- 3) Whether there is any NRI holding / foreign interest in any of the Transferor or Transferee Company?
- 4) Whether Petitioner Company and / or its director have prima facie contravened any provisions of Companies Act, 1956?
- 5) Whether Transferor and Transferee Company are regular in filing its statutory returns?

Update

- 6) Reports sent by concerned Registrar of Companies should be examined.
- 7) Investors/or other companies regarding affairs of the company should be examined.
- 8) In case of complicated legal/technical issues, opinion of Law Ministry/ Government Advocates should also be obtained.
- 9) Whether Transferor or Transferee Company was inspected u/s.209A of the Companies Act, 1956 by this Directorate and position of latest follow up of penal actions arising out of inspection?
- 10) Whether Valuation Report submitted, if so, whether share exchange ratio in the scheme is as per Valuation Report and as per general accepted accounting principles?
- 11) Whether transfer of employees and their interest is protected?
- 12) Whether Accounting Treatment clause is as per Accounting Standard- 14 and in tune with the provisions of sec. 211 3A / 3C of the Companies Act, 1956?
- 13) Whether meeting is conducted by the company in respect of equity shareholders/secured creditors/ unsecured creditors? If not, whether any exemption is granted by the Hon'ble High Court?
- 14) Whether details of transactions entered with related parties of directors falling u/s.295, 297 and 299 of the Act is furnished?
- 15) Whether consideration is made in cash other than of shares?
- 16) Whether provisions of sec.77 in respect of buy back of shares is attracted?
- 17) Whether any reduction of share capital is involved in the scheme of demerger and provisions of sec.100-104 is complied with?
- 18) Where no such reduction of capital is involved, it is made sure that necessary adjustment is made in the books of accounts duly incorporating in the scheme?
- 19) Whether the authorized share capital of the Transferee Company is sufficient for allotment of new shares for the shareholders of the Transferor Company?
- 20) Whether any foreign entity is involved and if so necessary permission is obtained from Regulatory Authorities?
- 21) Whether compliance of FEMA/RBI Guidelines has been done wherever applicable?
- 22) Whether any qualification has been made by the Statutory Auditor, if so, whether company has complied with sec. 217(3) of the Companies Act, 1956?
- 23) How the qualification and reservations of the Auditors are complied with by the company?

Update

24) Whether a listed company is merging with an unlisted company? In such a case he should ensure that share of unlisted company also gets listed.

25) Whether consequent to merger, the promoters holding in the listed company is substantially increased?

26) Whether the companies have come up with schemes to circumvent the Law in the garb of obtaining approval of the Hon'ble High Court under the accepted principle of "Single Window" approval and other grounds laid down by the Courts in its rulings? If so, the Regional Director should bring out his objection in his statement/report/affidavit irrespective of the fact whether Court accepts it or not.

34. Pro-active action in case of winding up petitions

The Ministry of Corporate Affairs has noticed that winding up petitions are filed by creditors, stake holders and management before Hon'ble High courts without providing full information. This leads to waste of valuable time of Hon'ble Court and also delays completion of winding up process as well. In order to speed up the winding up process and to introduce best international practices the winding up process the Ministry has issued **General Circular No. 54/2011 dated 26.07.2011**⁵⁸.

Features of the Circular

Following actions will be taken by concerned Official Liquidator (OL)-

(a) OLs shall post one of the staff members to the Company Court to keep track of all cases where applications have been filed for winding up, but orders for winding up are yet to be issued by the Court.

(b) For all cases pending till date and in future as well, information shall be obtained by OL from "institution register" maintained in High Court and action as below must be taken in all cases.

⁵⁸ http://www.mca.gov.in/Ministry/pdf/Circular_54-2011_26july2011.pdf

Update

(c) In each case the OL will file an application praying to the Court to direct the management of the company to submit following information duly verified by a chartered accountant/ a Company Secretary/ a Cost Accountant in practice (as per corrigendum to this circular vide **circular 58/2011**) :-

(i) The current addresses of the Directors, Company Secretary and Statutory Auditor of the company;

(ii) Location and physical details of each immovable asset of the company along with its current valuation;

(iii) The details of all the debtors and creditors with their complete addresses and occupations;

(iv) The details of each movable asset of the company along with value;

(v) The details of workmen/employees and any amount outstanding to them;

(vi) The details of all movable and immovable assets held in the personal names of director by providing its location, value, dates of acquisition and nature of right, title and interest therein;

(vii) Copies of last three years audited balance sheet of the company; and

(viii) The details of location of the registered office of the company.

(d) RDs will ensure that in all pending cases, the applications are moved by OL before the Court before the next date of hearing and in all new cases, these are filed before the Hon^{ble} Court before the second hearing of the case.

(e) RDs will ensure that a standard draft is prepared by them after taking legal advice and the same is used in all cases by OLs.

35. Scrutiny inspection and investigation in all winding up cases

Update

It has been noticed by the ministry that winding up petitions are being filed by management after having committed major violations under the Companies Act, 1956 as well as misappropriation of funds of the company. Winding up of such companies are also being filed by creditors. In order to curb such malpractices **General Circular No. 55/2011 dated 26.07.2011**⁵⁹, was issued so that the following procedure may be followed in all such cases:-

- a. The moment winding up petition is filed before the Court, Official Liquidator (OL) will obtain a copy of petition and forward the same to the Registrar of Companies (ROC) concerned.
- b. ROC will have a scrutiny of the details/documents available in respect of the company in MCA21 registry and will submit a preliminary report to the Ministry within a week time for inspection or investigation, if so required, containing following information for the past five years of the date of filing of petition:-
 - (i) History of the company, viz incorporation, maintenance of registered office, main object and present business activities;
 - (ii) Management pattern, including details of directors/nominee directors and their directorship in other companies;
 - (iii) Capital structure and shareholding pattern;
 - (iv) Financial position and working results;
 - (v) Comments on filing position and compliances of Schedule VI read with Accounting Standards;
 - (vi) Nature of complaints registered on MCA-21, their nature and any noticeable findings;
 - (vii) Whether any complaint was received alleging that the company is involved in fraudulent activities, siphoning of funds etc. If so, the details thereof.
 - (viii) Whether any scrutiny/inspection was carried out, if so, the details thereof;
 - (ix) Whether the company is having any holding or subsidiary company, if so, details thereof;

⁵⁹ http://www.mca.gov.in/Ministry/pdf/Circular_55-2011_26july2011.pdf

Update

- (x) Whether company has raised funds through IPO, if so, the utilization of amount collected, compliance of provisions of the Act for deviation from the object stated in Prospectus/Offer Document; transactions with related parties;
 - (xi) In case of public company, whether it has accepted public deposit. If so, whether the payment of matured amount including interest was made as per schedule. In case any amount is still pending, the details of amount and interest thereon.
 - (xii) The quantum of unsecured loan amount and related party transactions thereto.
 - (xiii) Secretarial reports and qualifications made by the auditors on accounts of the company;
 - (xiv) Whether company or its members/creditors have requested for investigation into the affairs of the company, if so, the details thereof.
- c. MCA will take a final view in the matter within a period of 15 days from the date of receipt of preliminary report from ROC. If any inspection under Section 209A and/or investigation under Section 235/237 of the Act is ordered, the same will be completed by the ROC and forwarded to the OL within 30 days.
- d. The OL will place the report before the Hon'ble High Courts for seeking appropriate order/action under Section 539 to 544 and other relevant provisions of the Act. Simultaneously, necessary action as per law will be initiated against the director, ex-director and key management of the company for any violation of law/ Companies Act, 1956.
- e. These cases will be monitored in the monthly staff meeting of Regional Directors

36. Blocking of DIN consequent to non-filing of Statement of Affairs (SOA)

The Ministry has observed that companies are not filing Statement of Affairs (SOA) in time in terms of section 454 of the Companies Act, 1956 and this delays the process of liquidation considerably.

Update

Hence the Ministry has issued **General Circular No.56 /2011 dated 28.07.2011**⁶⁰, with the below stated salient features:

- It has been decided to give the companies and the directors of such companies where winding up orders have been passed by the Hon'ble Court, one months notice to file SOA before action for blocking their DIN is initiated by the Ministry.
- Official Liquidators shall furnish list of all such directors who have failed to furnish SOA (giving their details) to the Ministry on 3rd working day of every month starting from 5th September, 2011 by e-mail to respective RD, ROC, e-Governance Cell and Insolvency Section of this Ministry.
- MCA 21 cell in the Ministry would block DIN of all such directors on getting information after approval of the competent authority concerned and intimate the same to all.

37. Circulars regarding Company Law Settlement Scheme, 2011

Large number of Companies are not filing their due Statutory Documents timely with Registrar of Companies, due to which records available with the registry are not updated and thereby not available to the Stakeholders for inspection.

The ministry has issued **General Circular No.59 /2011 dated 28.07.2011**⁶¹, in this regard with the following view:

- To give an opportunity to the Defaulting Companies to enable them to make their default good.
- To grant immunity to such Companies from prosecution and charging additional fee of 25% of the actual additional fee payable for filing belated documents.

Applicability

⁶⁰ http://www.mca.gov.in/Ministry/pdf/Circular_56-2011_28july2011.pdf

⁶¹ http://www.mca.gov.in/Ministry/pdf/Circular_59-2011_05aug2011.pdf

Update

- Any Defaulting Company is permitted to file belated documents, which were due for filing till 30.06.2011.

Features of the Circular

- Scheme shall come into force on 12th August 2011 and shall remain in force upto 31st October 2011.
- Defaulting Company shall pay statutory fee along with an additional fee of 25% of the actual additional fee payable in filing of each belated document.
- If Defaulting Company has filed any appeal against any notice issued or complaint filed before competent court for violation of the provisions under the Act, in respect of which application is made under this Scheme, the applicant shall before filing an application for issue of immunity certificate, withdraw the appeal and furnish the proof of such withdrawal along with the application.
- Application for seeking the immunity shall be made electronically in the Form - Application for grant of immunity certificate under CLSS 2010 available on the MCA portal, which shall be made after closure of Scheme and after the document(s) are taken on file, or on record or approved by the Registrar of Companies as the case may be, but not after the expiry of six months from the date of closure of the Scheme. No fee is payable on this form.
- After granting the immunity, Registrar of Companies shall withdraw the prosecution(s) pending if any before the concerned court(s).

Scheme not applicable to certain documents

- Scheme shall not apply to the filing of documents other than following documents:
 - ✓ Form 20B
 - ✓ Form 21A

Update

- ✓ Form 23AC and 23ACA
- ✓ Form 66
- ✓ Scheme shall not be applicable to the Companies against which action under Sub-Section (5) of Section 560 of the Act has been initiated by the Registrar of Companies.

Corrigendum to Company Law Settlement Scheme, 2011 vide General Circular No. 60/2011 dated 10.08.2011⁶²

The Ministry made further amendments to the Company Law settlement scheme by this corrigendum.

- Scheme shall be applicable to Form 52 as Foreign Companies are included in the Scheme.

⁶² http://www.mca.gov.in/Ministry/pdf/Circular_60-2011_10aug2011.pdf