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MCA takes strides towards
simplification:
Incorporation, Name Availability,
DIN procedures simplified

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Recently, Ministry has come up various circulars, simplifying the process of DIN Rules for DIN Application, the process of incorporation, name availability of companies vide General Circular dated.5/2011, 6/2011 respectively. Prior to these circulars the process involved were prolonged and complex. But with the introduction of these circulars the tiresome process are much more simplified and logical along with added responsibility on the professionals.

The Process of Incorporation prior to the introduction of this circular was:

- After the approval of name the applicant needed to file the required forms i.e E-Form 1, 18, 32, along with the stamped and signed Memorandum of Association and Articles of Association.
 - Form 1- Declaration for incorporation of a company
 - Form 18 - Notice of situation of registered office of the company
 - Form 32 - Particulars of the proposed Director's, Manager or Secretary of the new Company
- Submit the following E-Forms after attaching the digital signature, pay the requisite filing and registration fees and send the physical copy of Memorandum and Article of Association to the RoC.
- After processing of the Form is complete and Corporate Identity Number (CIN) is generated, obtain the Certificate of Incorporation from RoC.

In respect of the above stated procedures, it used to take seven – ten days approximately for the E-forms to get approved.

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After the introduction of the circular:

- After the approval of name the applicant has to file the E-form 1, 18, 32, along with the stamped and signed Memorandum of Association and Articles of Association
- **Only** E-form 1 shall be approved by the RoC Office and E-Form 18 and 32 shall be processed online.
- One more category named incorporation forms shall be introduced which includes Form 1A, Form 37, 39, 44 and 68, which will have the highest priority for approval. However, the basis for approvals is yet to be known.
- There will be minor changes in E-forms 18 and 32 to enable them to be taken on record through STP mode.

After, the above amended procedures, it is expected that the average time taken for incorporation of company will be reduced to *a day*.

In this era of economic inflation, this circular will act as boon for the corporate sector. The prior method was time consuming and tiresome while this circular will ease the load of work and in turn will speed up the whole process.

DIN Application:

Prior to this circular, DIN Application was a prolonged process and involved many complexities. Previously the application form (DIN 1) was to be deposited to the DIN Cell *physically* and it took almost 10 days to get the DIN approved. But, with the introduction of e-filing of DIN Application, the tiresome job of physical filing of Form DIN 1 has been discontinued by the Ministry and one can get his DIN approved immediately. Accordingly, the Companies (Directors Identification Number) Rules, 2006 are being amended on the above lines.

Process prior to the introduction of this circular was:

- Filling up of Form DIN 1 online for provisional DIN
- Payment of DIN Application fee by challan/credit card/internet banking

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- Sending the hard copy of the Form along with the documentary evidences to DIN Cell after attestation from a practicing professional or gazette officer
- Within 7 days of sending the form, the provisional DIN used to get approved
- On rejection of the provisional DIN on any ground, one has to apply afresh and again has to wait for the next 10 days for getting an approved DIN

DIN Application after amendments in the DIN Rules is:

- Filling up of e-Form DIN 1 along with the documentary evidences as attachments duly verified by the applicant and a practicing professional.
- DIN 1 can be digitally signed by either the applicant or the professional who shall also confirm that he has verified the particulars of the applicant given in the application.
- DIN Application fee is to be paid online only and no payment by challan will be accepted.
- *Where the DIN 1 is verified by the professional, the DIN will be approved by the system immediately online within the same day.*
- In other cases, the DIN cell will examine the application and same shall be disposed of within one or two days.
- The same process also applies in case of filing of e-Form DIN 4 for intimating any change in the particulars of the directors.

Is this simplified DIN Application process really simple?

With this simplified mechanism of DIN Application, the Ministry has given more responsibility to the professionals while certifying the DIN applications. One should carefully verify and attest the documents and the information provided by the applicant in the DIN application form as any false certification will attract penal action against the

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professional as per the provisions of section 628 of the Companies Act, 1956 and will also lead to professional misconduct.

The strict provision for providing false information also applies to the applicant. In addition to the penal action as stated above, the DIN of the applicant, if allotted will be revoked.

Companies (Name Availability) Rules, 2011

Ministry has come up with another notification dated 15th march 2011 which is in exercise of the power conferred by clause (a) of sub-section (1) of section 642 read with sections 20 and 21 of the Companies Act, 1956 (1 of 1956). The Central Government has made rules which are to be called "*Companies (Name Availability) Rules, 2011*".

Rules prior to the amendment:

As per provisions contained in Section 20 of the Companies Act, 1956, no company is to be registered with undesirable name. A proposed name is considered to be undesirable if it is identical with or too nearly resembling with:

- (i) Name of a company in existence; or
- (ii) A registered trade-mark or a trade mark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999.

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Steps to be taken to get name approval for a new company:

- At least one suitable name upto a maximum of six names, indicative of the main objects of the company was to be selected.
- Ensure that the name does not resemble the name of any other already registered company and also does not violate the provisions of emblems and names (Prevention of Improper Use Act, 1950) by availing the services of checking name availability on the portal.
- Apply to the concerned RoC to ascertain the availability of name in eForm1. The digital signature of the applicant proposing the company has to be attached in the form. If proposed name is not available, the user has to apply for a fresh name on the same application. Hence, alternative names are to be given according to the preference.
- For all the above procedure, the general time taken by an applicant to get the name finally approved use to be 7 days.

Amendment made in the rules of name availability:

- After the notification in the rules the applicant needs to furnish a declaration while applying for a name in prescribed e form1 A **using his DSC relating** the following:
 - *“He has used the search facilities available on the portal of the Ministry of Corporate Affairs (MCA) i.e., www.mca.gov.in/MCA21 for checking the resemblance of the proposed name(s) with the companies and Limited Liability Partnerships (LLPs) already registered or the names already approved.*
 - *the proposed name(s) is/are not infringing the registered trademarks or a trademark which is subject of an application for registration, of any other person under the Trade Marks Act, 1999;*

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- *the proposed name(s) is/are not in violation of the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time;*
 - *The proposed name is not offensive to any section of people, e.g., proposed name does not contain profanity or words or phrases that are generally considered a slur against an ethnic group, religion, gender or heredity;*
 - *he has gone through all the prescribed guidelines, given in these Rules, understood the meaning thereof and the proposed name(s) is/are in conformity thereof;*
 - *he undertakes to be fully responsible for the consequences, in case the name is subsequently found to be in contravention of the prescribed guidelines.”*
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- Where the proposed name is more than one word (which will be such in maximum cases), there will be an option in the e-form 1 A for getting the form certified by any practicing CA, CS or CWA.
 - In cases where the form is being certified by any practicing professional, the back office of RoC would not go for further processing but the name will get approved online.
 - Cases where the form is not being certified by any professional, the form will be scrutinized and the availability or non availability of the applied name will be communicated to the applicant later.
 - In the previous guidelines for name availability a slab was suggested based on the required authorised capital, further amendments has been made in the slab

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which is enclosed below which will facilitate the companies to select the appropriate names for the organization.

S.no	Key Words	Required authorised capital (Rs)
1	Corporation, Corp, Corpn, Corp.	25 Cr
2	International, Globe, Global, World, Overseas, Universe, Universal, Continent, Continental, Asiatic, Asia, Asian being the first word of the name	5 Cr
3	If any words at (2) above is used within the name (with or without brackets)	2 Cr
4.	Hindustan, India, Indo, Indian, Bharat, Bharatvarsh, Bhartia or any other country's name being the first word of the name	2 Cr
5	If any words at (4) above is used within the name (with or without brackets)	25 lakh
6.	Industries/Udyog	5 Cr
7.	Enterprises, Products, Business, Manufacturing, Venture	50 lakh

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Process simplified but increased responsibility:

There is no doubt in the fact that the processes are becoming simpler and less complex as well as less time consuming as the time was wasted previously for rejection of name on grounds like proposed name is not according to the activities described in Main Objects, is too general without any distinct word or identity, does not include suitable prefix by ROC,. But, no such hindrances will be faced by the applicant as the applicant will use the search facility for availability of name.

On the other hand additional responsibility has been imposed on practicing professionals as the certification of the professional will be sufficient to get the name approved. So, the professionals will have to be careful in certifying the same. If it is found later that the name ought not to have been allowed under provisions of section 20 of the Companies Act the professional shall also be liable for penal action under provisions of the Companies Act, 1956 in addition to the penal action under Regulation of the respective professional institutes. On one hand the processes are getting simplified but the other side of the coin is that the processes are adding to the cost of the companies as the payment of fees to the professionals for certifying the same will get added to the entire cost. The simplified procedures are assisting us to cope up with the developing world. There may be certain loopholes in the notification still it cannot be denied that it is a step towards improvement and we must accept it with open mind rather than criticizing. The proverb truly goes : *“Don’t look a gift horse in the mouth”*

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Steps to understand the process of incorporation after the amendments:

