

ISSUES IN MCA 21

The Registrar of Companies, Maharashtra and the Ministry of Corporate Accounts (MCA) have ever since the launch of MCA 21 played a very proactive role in addressing the users concerns. Therefore, many issues which arose at the initial stages have got resolved over a period of time. Still some issues remain and a problem persists. These issues also need to be ironed out. The purpose objective of this seminar to raise the issues and discuss them to find solutions.

ISSUE I: DIFFCULTIES IN NAME APPROVAL

Even today considerable time is spent on getting name approval. Invariably name is being rejected on several grounds, the main chief grounds for rejection are: a. Too general a name b. Does not reflect the activity c. Similar to other names.

The MCA has now taken cognizance of these difficulties and it is now being proposed that there will be auto approval of Form 1A. The MCA has on 15th March 2011 notified the draft guidelines for name approval. These are yet to be notified. The main features of these guidelines are:

1. Introduction of e Form 1A
2. Approval of Name without any verification where a search report of a professional is issued and attached to the e Form. The search report states that the suggested name meets with the notified guidelines.
3. The duty cast on the professional is extremely difficult and carries the risk of prosecution and professional misconduct.
4. Where there is no search report the ROC will approve the name.
5. There is a provision of withdrawal of name at any time by the ROC.
6. General names with no indication of nature of activity are to be allowed.

ISSUE II: PAYMENT OF UPTO RS. 50,000/- BY CREDIT CARD/ELECTRONIC MODE ONLY

The MCA has allowed payment only by credit card/electronic banking were the fees is upto Rs. 50,000/-. Payment by challan is allowed were the fees is more than Rs. 50,000/- . After 1th October 2011 all fees including more than Rs. 50,000/- will be by credit card/electronic mode. There are issues of payment were persons do not have credit card. The electronic banking facility is not operational.

ISSUE III: APPROVAL OF DIN

The MCA approves e form Din 1 online in case the details are verified by the professionals. Were no verification is done and the form is digitaly signed by the applicant the MCA approves the application in

one or two days. MCA on 7th April 2011 has issued a circular where it intends to issue even the non-verified forms online. Moreover, it has made giving PAN details mandatory for Indian Nationals (This was a non-mandatory field). The following issues would arise:

1. Even for the existing DIN holders are required to upload e form DIN 4 where they have not quoted their PAN while obtaining DIN. This has to be done before 31st May 2011.
 - a. How the DIN holders know whether they have quoted their PAN as they had relied upon passports for identity and address proof.
 - b. It is not clear whether this exercise is required to be done for all DIN holders who have not quoted their PAN or only when such DIN holders seek a change of address etc. and file e form DIN 4.

ISSUE IV: CLARIFICATION REGARDING EXIT SCHEME

MCA has on 7th April 2011 come out with clarification regarding Exit Scheme 2011 expiring on 30th April 2011. The following issues still persist:

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.

What is the position where assessments are pending which could lead to potential liability on account of Income Tax, Sales Tax, Excise etc.? What is the position of profession tax liability in case of defunct companies who are still liable to pay even though they have not commenced any business?

- Companies having large substantial income from non-operational assets whether such companies are eligible.
- Companies having assets whose market value is very high whether they are eligible is still not clear.

ISSUE V: E-FORMS BEING REJECTED ON ACCOUNT OF REGULATION 17

E-forms are being treated as invalid if not responded to within 30 days of intimation of defect. The period of 30 days needs to be extended and the overall period of 120 days also needs to be extended. The period of 30 days is insufficient as e-mails are not received many a times. Companies filing forms and not tracking them on a daily basis also suffer due to invalidation. Certain forms like form no. 21 where Court orders are filed should be excluded from Regulation 17 as it requires companies to re-approach the courts to obtain extension of time and resubmit form 21

ISSUE VI: INCORPORATION OF COMPANIES

MCA has made new changes vide its new circular dated 8th March 2011, so as to incorporate companies within one day of filing. Form No. 18 and 32 would be approved under the Straight Through Process

(STP) Form No. 1 will be approved by ROC expeditiously. There are issues regarding incorporation of companies promoted by foreign companies and foreigners.

Incorporation of Companies subscribed by foreign companies/ foreign nationals: There should be more clarity in the procedure for drafting memorandum of association and all clauses relating to whether they pertain to 100% automatic route or not should be permitted as clauses in the memorandum do not give a company permission to proceed ahead with the business unless permitted by FDI Rules/ RBI regulations. The witness should not be before the Embassy as it leads to increased cost and delays but the same should be permitted to be done by any person.

ISSUE VII: FORM NO. 23 FOR ALTERNATION OF OBJECT CLAUSE

There are several issues for change in object clause and professionals are facing difficulties. There are issues with explanatory statement, deletion of main objects vis-vis name etc. The problem is compounded as filing has to be done within 30 days of passing of resolution after which no refiling/delayed filing can be done without central government approval.