CORPORATE UPDATES

JULY 2011

For Private Circulation only

ranj & associates
company secretaries

ranj & associates
company secretaries

TABLE OF CONTENTS

ranj & associates
company secretaries

Corporate Affairs

Filing of event based forms not to be accepted until Annual forms/returns are filed

The Ministry of Corporate Affairs vide Circular No. 33/2011 dated June 01, 2011 has decided that from 3rd July, 2011 all the Companies will have to file their updated Balance Sheet and Profit & Loss Accounts and Annual Return with the Registrar of Companies before recording any event based information/changes made. This circular shall be applicable to those defaulting companies and their Directors which have not filed financials for any of the FYs 2006-07, 2007-08, 2008-09 and 2009-10 with the RoC.

Impact / Highlights:

- No request, whether oral, in writing or through e-forms will be accepted in this regard.
- No e-filing shall be accepted by the RoC from Directors of these defaulting companies for any other company also.
- In the interest of other stakeholders, eforms 32, 20B, 21A, DIN-3, 21, 23AC & ACA, Form 1-INV, 66, 23B will be continued to be accepted by RoC.
- Company Secretaries and Auditors of defaulting Companies will also not be allowed to sign and certify such company's filing with MCA-21 system, until the defect is rectified.
- Members of ICSI, ICAI 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 RBI and SEBI.

Settlement of prosecutions cases through Lok Adalats

Ministry of Corporate Affairs vide Circular No. 34/2011 dated June 03, 2011 decided to organize Lok Adalats for swift disposal of pending prosecution cases against companies/directors.

Impact / Highlights:

- The object of organizing Lok Adalats is to ascertain the legal cases where the companies and their officers in default are inclined to get the offences compounded on payment of compoundable fees.

- Such cases should be cleared then and there by taking report from ROC & RD. Cases for withdrawal shall be sent to MCA for approval.

- All ROCs be advised to review:

  a. pending prosecution cases with reference to circulars issued by the Ministry to submit report with their recommendation through Regional Director.

  b. prosecutions filed against nominee/independent directors so as to withdraw the cases where nominee/independent directors were not liable.

  c. prosecutions filed for non-filing of statutory returns/reports u/s 159, 162, 220 of the Act where the companies/directors are not available/traceable and no public interest is involved in defaulting companies.

- The chapters of ICSI, ICWAI, ICAI and Bar Council may be used for wide publicity and efforts should be made to dispose off compoundable offences there itself.

Clarification regarding participation in meetings through e-mode.

In furtherance of the MCA Circulars No. 27/2011 and 28/2011 dated 20.05.2011 which allowed shareholders/directors to participate in meetings under the provisions of the Companies Act, 1956 through electronic mode, Ministry vide Circular No. 35 issued clarifications on e-voting.

Impact / Highlights:

- It is not mandatory for companies to provide its directors, the facility to attend meetings through video conferencing.

- FY 2012-13 onwards video conferencing facilities for shareholders shall be mandatory in respect of shareholders meetings of all listed companies.

- NSDL and CDSL are the only authorized agencies for providing and supervising electronic platforms for electronic voting in general meetings.

Fast Track Exit mode for defunct companies

The Ministry of Corporate Affairs vide Circular 36/2011 dated 07th June 2011 introduced Fast Track Exit mode for defunct under section 560 of the Companies Act, 1956 for defunct companies..

Impact / Highlights:

- Companies inoperative since incorporation or commenced business but became inoperative/defunct later on may apply for getting their names strike off from the RoC.
- Application to be filed electronically in Form FTE accompanied with duly notarized affidavit, Indemnity bond from Directors, Statement of Account from a Chartered Account and filing fee of Rs. 5,000/-.
- The Form FTE shall be certified by a CS/CA/CWA in whole time practice.
- If the application is found in order, the RoC shall give a notice to the company under section 560(3) of the Companies Act, 1956 via email.
- After passage of the prescribed time and on being satisfied that the case is otherwise in order, RoC shall strike company's name off the Register and the applicant company shall stand dissolved from the date of publication of the notice in the Official Gazette.

Implementation of issue of certificates by RoC using digital signature

In pursuance of Ministry's General Circular No. 29/2011, dated 20-5-2011 wherein it was informed that in order to cut timelines all certificates and standard letters issued by the Registrar of Companies (RoC) will now be issued electronically using Digital Signature, MCA has already developed thirteen (13) such digitally signed certificates and the same has been implemented under MCA-21 system as mentioned below:

S. No.	Certificate Description	Form ID	Implementation date
1	Certificate of Registration for Modification of Mortgage, etc., under section 132 read with section 135 of the Companies Act, 1956. (STP)	Form 8	29-May-11
2	Memorandum of Satisfaction of Mortgage, etc., section 140 of the Companies Act, 1956 (STP)	Form 17	29-May-11
3	Certificate of Registration of Mortgage, etc., under section 132 of the Companies Act, 1956 (STP)	Form 8	29-May-11
4	Certificate of Incorporation	Form 1	12-Jun-11
5	Certificate for Establishment of Place of Business in India	Form 44	12-Jun-11
6	Certificate of Registration for Modification of Mortgage, etc., under section 132 read with section 135 of the Companies Act, 1956. (NON STP)	Form 8	12-Jun-11
7	Memorandum of Satisfaction of Mortgage, etc., section 140 of the Companies Act, 1956 (NON STP)	Form 17	12-Jun-11
8	Certificate of Registration of Mortgage, etc., under section 132 of the Companies Act, 1956 (NON STP)	Form 8	12-Jun-11

9	Fresh Certificate of Incorporation Consequent upon Change of name	Form 1B	12-Jun-11
10	Fresh Certificate of Incorporation Consequent upon Change of Name on Conversion to Public Limited Company	Form 62	12-Jun-11
11	Certificate of Registration of Company Law Board order for Change of State	Form 18	12-Jun-11
12	Certificate of Registration of the Special Resolution Confirming Alteration of Object Clause(s)	Form 23	12-Jun-11
13	Fresh Certificate of Incorporation Consequent upon Change of Name on Conversion to Private Limited Company	Form 1B	12-Jun-11

Clarification regarding filing of financial statements in XBRL form

In supersession of the Ministry's Circular No. 9/2011, dated 31-3-2011 and 25/2011 dated 12-5-2011, MCA vide Circular 37/2011 dated 07-06-2011 clarified that certain class of companies are required to file balance sheets and profit and loss account along with Director's and Auditor's Report for the year 2010-11 onwards by using XBRL taxonomy.

Impact / Highlights:

- In phase I the following class of companies have to file the financial statements in XBRL form only:

    a. All companies listed in India and their Indian subsidiaries;
    b. All companies having a paid up capital of Rs. 5 crore and above
    c. All companies having a turnover of Rs. 100 crore and above.

- NBFCs, banking, insurance and power companies are exempted from the above requirement.

- To enable filing in this format, the MCA-21 portal would be updated with XBRL filing module by July, 2011.

- Companies that consider March 31 as the closing day for a given fiscal can file their balance sheets in the new format by September, without paying an additional fee.

- Companies which hold the Annual general Meeting in the month of September, 2011 would have to file the balance sheet within 30 days from that date.

Special Drive to clear pendency of e-forms filed with RoC prior to implementation of revised Regulation 17

A large no. of e-forms filed by the companies with the ROCs prior to the implementation of revised regulation 17 of the Companies Regulation, 1956 (i.e. 15.02.2009) are still pending in folders like

RESUB, PUCL etc. for want of action on part of stakeholders. Unless the companies respond to this, ROCs are unable to process the said forms. In order to reduce such pendency, Ministry vide circular 40/2011 dated 23rd June 2011 has decided to re-open and clear all such pending forms.

Impact / Highlights:

- Pending forms shall be placed in the category "Held in Abeyance" (HIAB) so that ROCs can review the same and dispose it by 07.07.2011.
- It has clearly been mentioned that this is the last opportunity provided by the Ministry to clear the pendency.

The Companies (Cost Audit Report) Rules, 2011 notified

The Ministry of Corporate Affairs has notified new set of rules for Cost Audit Report which will supersede the existing Cost Audit Report Rules, 2001. The new rules may be called The Companies (Cost Audit Report) Rules, 2011.

These rules shall apply to every company in respect of which an audit of the cost records has been ordered by the Central Government under sub-section (1) of section 233B of the Act.

Impact / Highlights:

- Earlier there's only a single form for cost audit report and now 3 forms – Form I, Form II and Form III are introduced.
- The term 'product' is defined and also a new term 'Product Group' is introduced.
- Application to appoint cost auditor to be filed with the Central Government electronically within 90 days of the commencement of financial year.
- The Cost Auditor to inform his appointment within 30 days from the receipt of letter of appointment
- Every Company shall keep and maintain cost details, statements, schedules etc. for each unit and each product or activity comprised in each product group, duly authenticated by at least two Directors of the company and the cost auditor.
- Every cost auditor, who submits a report, shall also furnish performance appraisal report, duly authenticated by him, to the Board/Audit Committee of the company in form III.

The Companies (Cost Accounting Records) Rules, 2011 notified

The Ministry of Corporate Affairs has notified new set of rules called as The Companies (Cost Accounting Records) Rules, 2011.

These rules shall apply to every company:

a. Which is engaged in the production, processing, manufacturing, or mining activities and

b. wherein, the aggregate value of net worth as on the date of balance sheet exceeds Rs. 5 Crore; **or**

c. wherein, the aggregate value of the turnover made by the Company as on the date of balance sheet exceeds Rs. 20 Crore; **or**

d. wherein, the company's equity or debt securities are listed or are in the process of listing on any stock exchange, whether in India or outside India.

Impact / Highlights:

- All such cost records, cost statements and reconciliation statements, maintained under these rules, relating to a period of not less than eight financial years shall be kept in good order.
- Every company shall submit a compliance report along with annexures duly certified by a cost accountant in respect of each financial year commencing from 2011-12, to the Central Government in the form A within 180 days from the close of financial year.
- The Annexure prescribed with the compliance report shall be approved by the Board of Directors before submitting the same to the Central Government by the company.

Payment of MCA 21 Fees via NEFT

Ministry of Corporate Affairs is introducing payment of MCA fees via NEFT (National Electronic Fund Transfer) mode, in addition to already exiting payment methods i.e. via Credit Card, Internet Banking & Physical Challan. NEFT is a nation-wide system that facilitates electronic transfer of funds from any bank branch to account holder of any other bank branch.

Impact / Highlights:

- NEFT payment option will eliminate inconveniences caused due to payment processing delays,

- Transaction charges for NEFT are in addition to MCA21 filing fee.

- SRN will expire if payment doesn't reach MCA21 on time. Hence users should transfer funds well in advance taking into consideration of bank holidays and the settlement window mentioned as earlier.

- Full amount has to be transferred in single transaction for a particular SRN. Amount can't be divided into multiple payments.

Taxation

Exemption from filing of Income Tax return for persons with income up to Rs 5 lacs

The Central Board of Direct Taxes vide has notified the scheme exempting salaried taxpayers with total income up to Rs.5 lakh from filing income tax return for assessment year 2011-12, which will be due on July 31, 2011.

Impact / Highlights:

- Individuals having total income up to Rs.5,00,000 for FY 2010-11, after allowable Deductions, consisting of salary from a single employer and interest income from deposits in a saving bank account up to Rs.10,000 shall fall under this scheme of exemption.

- Such individuals must report their Permanent Account Number (PAN) and the entire income from bank interest to their employer, pay the entire tax by way of deduction of tax at source, and obtain a certificate of tax deduction in Form No.16.

- The scheme shall also not be applicable in cases wherein notices are issued for filing the income tax return under section 142(1) or section 148 or section 153A or section 153C of the Income Tax Act 1961.

- Persons receiving salary from more than one employer, having income from sources other than salary and interest income from a savings bank account, or having refund claims shall not be covered under the scheme.

Limits specified for exempted interest income received from post office saving bank account

The Central Government vide Notification No. 32/2011[F.No.173/13/2011-Ita.I] /S.O.1296 (E), dated 3-6-2011 has notified the limits for post office saving bank account certificates.

Earlier the whole of the amount of interest received from post office saving bank account were notified as tax free deposits and the whole of the interest earned through such deposits were exempted from income tax. As per the new provisions of the Income tax Act, exemption available on Interest income from Post office Savings bank account has been limited to Rs. 3,500 Per annum in case of individual, Rs. 7,000 in case of Joint account.

RBI/FEMA

Remittance of assets by foreign nationals-Opening of NRO Accounts

To facilitate foreign nationals in collecting dues in India, the Reserve Bank of India vide A.P. (DIR Series) Circular No. 70 dated June 9, 2011 stated that banks can re-designate their accounts in the country as Non-Resident Ordinary (NRO) accounts after foreign nationals leave the country for taking up employment, or for carrying on business or vocation outside India or for any other purpose indicating her / his stay outside India for an uncertain period.

Impact / Highlights:

- Banks should obtain the details of the legitimate dues expected to be received into the account from the account holder.
- The amount repatriated abroad should not exceed $1 million per financial year.
- The funds credited to the NRO account should be repatriated abroad immediately, subject to banks being satisfied about the payment of applicable taxes in India.
- The debit to these accounts should be only for repatriation to the account holder's account maintained abroad.
- Account should be closed immediately after all the dues have been received and repatriated.

Opening of branch / subsidiary / joint venture / representative office or undertaking investment abroad by NBFCs

Reserve Bank of India (RBI) vide its notification No. DNBS (PD) 229/CGM (US)/2011 dated June 14, 2011 has notified directions for opening of branch/ subsidiary/ JV/ RO which are termed as Non-

Banking Financial Companies (Opening of Branch/ Subsidiary/ Joint Venture/ Representative Office or Undertaking Investment Abroad by NBFCs) Directions, 2011.

Even earlier as per circular DNBS (PD).CC. No.173/03.10.01 /2009-10 dated May 09, 2010, "No Objection" (NoC) of the Department of Non-Banking Supervision (DNBS) was required before making such investment but the conditions subject to which "No Objection" will be issued are prescribed now through the said notification.

Impact / Highlights:

- A NoC in this regard will be issued by Reserve Bank to a NBFC, subject to the NBFC fulfilling the conditions enumerated in the Directions issued in this regard by Reserve Bank.
- The aggregate overseas investment should not exceed 100% of the NoF. The overseas investment in a single entity, including its step down subsidiaries, by way of equity or fund based commitment shall not be more than 15% of the NBFC's owned funds.
- An annual certificate from statutory auditors shall be submitted by the NBFC to the Regional Office of Department of Non-Banking Supervision (DNBS) where it is registered, certifying that it has fully complied with all the conditions stipulated under the RBI Guidelines for overseas investment;
- A quarterly return in a prescribed format shall be submitted by the NBFC to the Regional Office of DNBS and also Department of Statistics and Information Management (DSIM).

RBI hikes Repo rate by 25 BPS to 7.5%, Reverse Repo by 25 BPS to 6.5%

The Reserve Bank of India (RBI) raised interest rates for the tenth time since March 2010 to battle inflation.

The repo rate, at which RBI lends to banks, has been increased by 25 basis points to 7.5 percent, and reverse repo (rate at which it borrows) to 6.5%.

Issue of equity shares under the FDI Scheme allowed under the Government route

The extant guidelines for issue of equity shares/ preference shares under the Government route have been reviewed in consultation with the Government of India. The RBI circular No. 74 dated June 30, 2011 provides for the conditions under which an Indian company may issue equity shares/preference shares to a person resident outside India under the government route of FDI scheme in consideration of import of capital goods/ machineries / equipments (including second-hand machineries), and Pre-operative/pre-incorporation expenses (including payments of rent, etc.)

Impact / Highlights:

- In case of Import of capital goods/ machineries / equipments:
  - Independent valuation of the capital goods / machineries / equipments (including second-hand machineries) by a third party entity, preferably by an independent valuer from the country of import
  - All such conversions of import payables for capital goods into FDI should be completed within 180 days from the date of shipment of goods.
- In case of Pre-operative/pre-incorporation expenses:
  - Payments should be made directly by the foreign investor to the company. Payments made through third parties citing the absence of a bank account or similar such reasons will not be eligible for issuance of shares towards FDI; and
  - The capitalization should be completed within the stipulated period of 180 days permitted for retention of advance against equity under the extant FDI policy.

Buyback / Prepayment of Foreign Currency Convertible Bonds (FCCBs)

The existing RBI policy on the premature buyback of FCCBs has been reviewed and it has been decided to extend the time limit for such facility and liberalise the procedure. Accordingly, the apex bank of India vide circular No. 75 dated June 30, 2011 issued new norms for buyback of FCCBs by Indian companies, both under the automatic and approval routes.

Impact / Highlights:

Automatic Route:

Banks may allow Indian companies to prematurely buyback FCCBs subject to the following:

- the buyback value of the FCCB shall be at a minimum discount of 8 per cent on the book value.

- the funds used for the buyback shall be out of existing foreign currency funds held either in India (including funds held in the EEFC account) or abroad and / or out of fresh ECB raised in conformity with the current ECB norms.

Approval Route

Indian companies may be permitted to buyback FCCBs up to USD 100 million of the redemption value per company, out of their internal accruals with the prior approval of the Reserve Bank, subject to a :

- minimum discount of 10 per cent of book value for redemption value up to USD 50 million.
- minimum discount of 15 per cent of book value for the redemption value over USD 50 million and up to USD 75 million; and
- minimum discount of 20 per cent of book value for the redemption value of over USD 75 million and up to USD 100 million.

SEBI

New norms for change of name by listed companies

The Securities and Exchange Board of India, vide its Circular no. CIR/MRD/DP/07/2011 dated 16th June 2011 issued the fresh norms for change of name by listed companies.

As per the revised norms, a listed company can change its name if it satisfies either of two criteria:-

a. At least 50% of its total revenue in the preceding 1 year period should have been accounted for by the new activity suggested by the new name. **Or**

b. The amount invested in the new activity/project (Fixed Assets + Advances + Works in Progress) is at least 50% of the assets of the company. The 'Advances' shall include only those extended to contractors and suppliers towards execution of project, specific to new activity as reflected in the new name.

Impact / Highlights:

- As per the existing norms, a listed Company proposing a name change must make sure that atleast 50% of its total revenues in the preceding 1 year should have been accounted for from the new business activity.

- Under the liberalized clause the Companies will not be required to wait for the earnings from the new business activity for a name change. Now, the same can be proposed on the basis of their Investments in the new activity/ the Project.

- The new norms will relieve the companies engaged in such business activities wherein the gestation period is usually longer and the revenue stream is often delayed.

Shareholding of promoters/ promoters group in demat mode

SEBI (vide circular No Cir/ISD/ 3/2011 dated June 17, 2011) in consultation with Stock Exchanges, has decided that the securities of companies shall be traded in the normal segment of the exchange, only if, the company has achieved 100% of promoter's and promoter group's shareholding in dematerialized form.

Impact / Highlights:

- There was no mandatory requirement of promoters' holdings to be in Demat mode under the existing guidelines.

- In addition to 50% public holding being in demat mode, 100% of the promoters' holding should be held in demat mode, including pledge/ usage as collateral.

- This has to be complied with by the Quarter ended September 2011.

- In case a Company fails to comply with the same, the trading of such securities shall take place in trade to trade segment.

Processing of investor complaints against listed companies in SCORES

SEBI has circular no. CIR/OIAE/2/2011 dated June 3, 2011commenced processing of investor complaints in a centralized web based complaints redress system 'SCORES (**SEBI Complaints Redress System**').

Impact / Highlights:

- Scores will enable creation Centralized database of all complaints;

- Online movement of complaints to the concerned listed companies made possible;

ranj & associates
company secretaries

- All complaints pertaining to companies will be electronically sent through SCORES at http://scores.gov.in/Admin and the companies are required to view the complaints pending against them and upload Action Taken Reports (ATRs). Failure to do so will be treated as non redressal of investor complaints.

OTHERS

.

HUF is a "relative" for gifts exemption u/s 56(2)(v), (vi) & (vii)

Case of: **Vineetkumar Raghavjibhai Bhalodia vs. ITO (ITAT Rajkot)**

The assessee received a gift of Rs.60 lakhs from his HUF. The AO & CIT(A) held that as HUF was not covered by the definition of "relative", the gift was chargeable to tax u/s 56(2)(v). The alternate submission that gift was exempt u/s 10(2) was rejected on the basis that s. 10(2) applied only to amounts received "out of income of the estate" on partial or total partition of the HUF.

On appeal by the assessee, held allowing the appeal:

- S. 56(2)(v) exempts gifts from a "relative". Though the definition of the term "relative" does not specifically include a Hindu Undivided Family, a 'HUF" constitutes all persons lineally descended from a common ancestor and includes their mothers, wives or widows and unmarried daughters. As all these persons fall in the definition of "relative", an HUF is 'a group of relatives'. As a gift from a "relative" is exempt, a gift from a 'group of relatives' is also exempt since the singular will include the plural;

- The gift was also exempt u/s 10(2) because the two conditions required to be satisfied for relief viz (1) that the assessee is a member of the HUF and (2) that he receives the sum out of the income of such HUF (may be of an earlier year) were satisfied.

……………

CORPORATE UPDATES TEAM		
Nitesh Agarwal	Rahul Jain	Vinay Kumar Joshi

ranj & associates
company secretaries

Disclaimer: The above information is only indicative and solely for informational purpose and private circulation. RANJ & Associates, Company Secretaries intend to, but do not guarantee or promise that it is correct, complete / up-to-date. We expressly disclaim any liability to any person in respect of anything, and of consequences of anything done, or omitted to be done by any such person in reliance upon the contents of this document.

The information in this document is as of June 30, 2011.

CONTACT US

ranj & associates
company secretaries

sai srinivasa arcade, 2-1-392/1/3/11
near fever hospital 'x' roads, new nallakunta
hyderabad-500 044, andhra pradesh, india
voice :+91-810 61 300 64, +91-988 555 30 25
email : consultranj@gmail.com | **web :** www.ranj.co.nr