

CIRCULARS OF MCA FROM 01ST APRIL 2014 TO TILL DATE:

From: CS DIVESH GOYAL

Dear Professional,

Please find below the Circulars issued by the Ministry of Corporate Affairs till-date, since the commencement of Companies Act, 2013.

1. *General Circular No. 27/2014* dated June 30, 2014. (DPT-4)

Extension of 2 month upto 31-08-2014 without any additional fee for filling statement under form DPT-4 with the Registrar in terms of Section-403. (Form- DPT-4 is relating to Deposits). (Article relating to DPT-4 filling is already issued by me)

2. *General Circular No. 26/2014* dated June 27, 2014 (Commodity Exchange)

Clarifies that the use of the word "Commodity Exchange"

- The Word may be allowed only where a "No Objection Certificate" from the Forward Markets Commission (FMC) is furnished by the applicant.
- The certificate from Forward Markets Commission will also be required in cases of companies registered with the words "Commodity Exchange" before the issue of this circular.

3. *General Circular No. 25/2014* dated June 26, 2014®(Residence Requirement)-

Clarifies that the 'RESIDENCY REQUIREMENT' This would be reckoned from the date of commencement of section 14 of the Act i.e. 1st April, 2014.

The first previous calendar year, for compliance with these provisions would, therefore, be Calendar year 2014. Therefore, on a proportionate basis, the number of days for which the director(s) would need to be resident in India, during Calendar year 2014, shall exceed 136 days. (Because Act is effective from 1st April, 2014 so we counted 136 from 1st April 2014 to 31st December, 2014)

Regarding Newly Incorporated Companies it is clarified that companies incorporated between 1.4.2014 to 30.09.2014 should have a resident director either at the incorporation stage itself or within six months of their incorporation.

Companies incorporated after 30.9.2014 need to have the resident director from the date of incorporation itself.

4. *General Circular No. 24/2014* dated June 25, 2014: (Holding of shares in fiduciary Capacity)-

Clarifies that the shares held by a company in another company in a 'fiduciary capacity' shall not be counted for the purpose of determining the relationship of 'associate company' under section 2(6) of the Companies Act, 2013.

5. *General Circular No. 23/2014* dated June 25, 2014: (Status of Company Incorporated outside India)

- Clarifies that there is no bar in the new Act for a company incorporated outside India to incorporate a subsidiary either as a public company or a private company.
- An existing company, being a subsidiary of a company incorporated outside India, registered under the Companies Act, 1956, either as private company or a public company by virtue of section 4(7) of that Act, will continue as a private company or public company as the case may be, without any change in the incorporation status of such company.

6. *General Circular No. 22/2014* dated June 25, 2014: (Annual Return)-

Clarifies that Form MGT-7 shall not apply to annual returns in respect of companies whose financial year ended on or before 1st April, 2014 and for annual returns pertaining to earlier years. **These companies may file their returns in the relevant Form (Schedule - V) applicable under the Companies Act, 1956.**

7. *General Circular No. 21/2014* dated June 18, 2014: (CSR)-

In relation to Clarifications with regard to provisions of Corporate Social Responsibility under section 135 of the Companies Act, 2013" clarifies that the entries in the said Schedule VII must be interpreted liberally so as to capture the essence of the subjects enumerated in the said Schedule.

1. The items enlisted in the amended Schedule VII of the Act, are broad-based and are intended to cover a wide range of activities.
2. CSR activities should be undertaken by the companies in project/ programme mode. One-off events shall not qualify.
3. Expenses incurred by companies for the fulfillment of any Act/ Statute of regulations (such as Labour Laws, Land Acquisition Act etc.) **would not** count as CSR expenditure
4. Salaries paid by the companies to regular CSR staff as well as to volunteers of the companies (in proportion to companies time/hours spent specifically on CSR) **can be factored** into CSR project cost as part of the CSR expenditure.

5. "Any financial year" referred under Sub-Section (1) of Section 135 of the Act read with Rule 3(2) of Companies CSR Rule, 2014, implies 'any of the three preceding financial years'.

Expenditure incurred by Foreign Holding Company for CSR activities in India will qualify as CSR spend of the Indian subsidiary if, the CSR expenditures are routed through Indian subsidiaries and if the Indian subsidiary is required to do so as per the Act.

6. Contribution to Corpus of a Trust/ society/ section 8 companies etc. will qualify as CSR expenditure as long as (a) the Trust/ society/ section 8 companies etc. is created exclusively for undertaking CSR activities or (b) where the corpus is created exclusively for a purpose directly relatable to a subject covered in Schedule VII of the Act.

8. *General Circular No. 20/2014* dated June 17, 2014: (Provision of E-Voting)-
Clarification on Rules prescribed under Companies Act, 2013 -Clarification with regard to Voting Rights through Electronic Means-reg.

Section 108 read with rule 20 of the Companies (Management and Administration) Rules, 2014: "Exercise of right to vote by members by electronic means (e-means)."

The provisions seek to ensure wider shareholder's participation in the decision making process in companies. It has been decided not to treat the relevant provisions mandatory till 31st December, 2014.

The relevant provisions pertain to compliance with procedural requirements, engagement of Depository Agencies and the need for clarity on matter like demand for poll/postal ballot etc will take some more time.

9. *General Circular No. 19/2014* dated June 12, 2014: Clarification on matters relating to share capital and debentures-

- Any share transfer forms executed before April 1, 2014 and submitted duly to the company within the prescribed time, under the relevant section of the Companies Act, 1956; needs to be accepted by the companies for registration of transfers.
- In case of delay in submission, the company needs to satisfy itself suitably with regard to justification in delay. In case a company decides not to accept the share

transfer form, it shall convey the **reasons for such non-acceptance** within time provided under Section 56(4)(c) of the Act.

- Committee of Directors may exercise powers, subject to any regulations imposed by the Board in this regard with regard to issue of duplicate share certificates.

10. *General Circular No. 18/2014* dated June 11, 2014⊗(Conversion of Company from Public to Private)-

Clarifies that with respect to difficulties being faced in filing Form No. INC-27 for conversion of companies from public to private under the Companies Act, 2013 - the relevant provisions of Companies Act, 2013 have not yet been notified. The Companies Act, 1956 is in force for the said provisions/ purpose and powers stand delegated to Registrar of Companies, as before.

11. *General Circular No. 17/2014* dated June 11, 2014⊗(Form MGT-10)-

Clarifies that Form MGT-10 has to be filled physically and certified by a practicing professional thereon and thereafter filed as an attachment to eForm GNL-2 till the time eForm MGT-10 is made available.

12. *General Circular No. 16/2014* dated June 10, 2014: (Non Requirement of PAN by foreign director or subscriber)

- Clarifies that a Resident Director shall have to furnish PAN details at the time of incorporation of a company.
- A Foreign National who shall be a subscriber/promoter, and does not possess PAN shall submit a declaration in the said regard as an attachment to Form INC-7.

13. *General Circular No. 15/2014* dated June 09, 2014⊗(Register under MBP-2)

Clarifies that register maintained under section 372A(5) of the Companies Act, 1956 may continue as per requirements under these provisions and the new format prescribed vide Form MBP2 shall be used for particulars entered in such registers on and from April 01, 2014.

14. *General Circular No. 14/2014* dated June 09, 2014: Clarifies that only Appointment of Independent Directors under the new Act would need to be finalized through a letter of appointment.-

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In view of the provisions of Section 188 which take away transactions in the

ordinary course of business at arm's length price, from the purview of related party transactions, an "ID" will not be said to have a pecuniary relationship.

- It also does not include receipt of remuneration, from one or more companies as sitting fees, reimbursement of expenses for participation in the Board and other meetings and profit related commission approved by the members, in accordance with the provisions of the Act. {Section 149(6)(c)}
- **Terms:**
Section 149(10) provides for a term of "upto five consecutive years" for an ID and any term of less than five years, shall constitute as one term under Section 149(10) of the Act.
- Further, under Section 149(11), no person can hold office of ID for more than "two consecutive terms", and shall have to demit office, even if the total number of years in the two consecutive terms is less than ten years. He shall be eligible for re-appointment only after the requisite cooling off period of three years.

15. *General Circular No. 13/2014* dated May 23, 2014⊗(Extension for reserve of Name)-
There is a further extension of validity period for names reserved as on March 31, 2014 by another 15 days from the date of the above-mentioned circular i.e. till June 5, 2014. The same is in continuation with General Circular No 11/2014.

16. *General Circular No. 12/2014* dated May 22, 2014⊗(PAN requirement for foreigner)-

- Clarifies that PAN details are mandatory only for those foreign nationals who are required to possess "PAN" in terms of provisions of the Income Tax Act, 1961 on the date of application for incorporation.
- Where the intending Director who is a Foreign National is not required to compulsorily possess PAN, it will be sufficient for such a person to furnish his/her passport number, along with undertaking stating that provisions of mandatory applicability of PAN are not applicable to the person concerned.

17. *General Circular No. 11/2014* dated May 12, 2014⊗(Extention for reserve of name)
Mentioned a one time opportunity for extension of period of Reservation of names.

For those stakeholders, whose expiry of 60 days period of reservation of names for incorporation of companies, was falling in the period April 1, 2014 to April 28, 2014; the validity of such names have been extended till May 31, 2014. Those stakeholders, falling in this category, are advised by MCA, to file the relevant E-forms under Companies Act, 2013 before May 31, 2014.

18. *General Circular No. 10/2014* dated May 07, 2014: Certification of E-forms/non e-forms under Companies Act, 2013 by the Practicing Professionals.

CAUTION : Further Stringency : Section 447, 448, 449 of Companies Act, 2013

"Where any instance of filing of documents, application or return or petition etc. containing false or misleading information or omission of material fact or incomplete information is observed, the Regional Director or the Registrar as the case may be, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears prima facie responsible for submitting false or misleading or incorrect information pursuant to requirement of above said Rules; 15 days notice may be given for the purpose.

The Regional Director or the Registrar will submit his/her report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of the Ministry within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action u/s 447 and 448 of the Companies Act, 2013 wherever applicable and also regarding referral of the matter to the concerned professional Institute for initiating disciplinary proceedings.

The E-Gov cell of the Ministry shall process each case so referred and issue necessary instructions to the Regional Director/ Registrar of Companies for initiating action u/s 448 and 449 of the Act wherever prima facie cases have been made out. The E-Gov cell will thereafter refer such cases to the concerned Institute for conducting disciplinary proceedings against the errant member as well as debar the concerned professional from filing any document on the MCA portal in future."

19. *General Circular No. 09/2014* dated April 25, 2014 Availability of E-forms and non-e-forms under Companies Act, 2013:

In addition to the Public Notice issued in the newspapers on 25th April, 2014, the circular states that w.e.f. April 28, 2014,

1. Stakeholders can also file application for seeking [extension of date of AGM/](#) Accounting period by filing [form GNL-1.](#)
2. Documents in respect of Companies under [liquidation will also be allowed to be filed along with form GNL-2.](#)
3. Documents in respect of particulars of person(s) or Directors charged or specified for the purpose of section 2(60) of the Companies Act, 2013 will be allowed to be filed along with form [GLN-3.](#) Documents/ forms for filing petitions to Central Government will be allowed to file with form RD-2.

The Circular also mentions that the physically attached forms will be scrutinized to check all fields before accordingly approval to the respective forms.

20. *General Circular No. 08/2014* dated April 04, 2014: *Commencement of provisions of the Companies Act, 2013 with regard to maintenance of books of accounts and preparations/adoption/filing of financial statements, auditors report, board's report and attachments touch statements and reports- Applicability with regard to relevant financial*.

It was notified that the financial statements (and documents required to be attached thereto), auditor's report and Board's report in respect of [financial years that commenced earlier than 1st April, 2014 shall be governed by the relevant provisions/Schedules/rules of the Companies Act, 1956.](#) Reference in the Circular via example has been drawn to Schedule II & Schedule III.

21. *General Circular No. 06/2014* dated March 28, 2014: Phased roll-out plan of new forms has been released. Some key points from the same are :

It has been decided to waive fees for all event based filing whose due date falls between 01/04/2014 to 30/04/2014.

From 01/04/2014 to 14/04/2014 except existing e-forms (some of the said Form are Form 66, 14LLP, 20B, 23AC, 23ACA, 23AC-XBRL, 23ACA-XBRL to name a few) no other e-forms will be available for filing. From 01/04/2014 to 13/04/2014 the period will be used for clearing pending e-forms already filed under the provisions of Companies Act, 1956.

From 14/04/2014, 39 new e-forms will be available on MCA portal for upload. Test version of these forms will be available from 28/03/2014 onwards. Final forms will be available from 14/04/2014.

There are 5 general e-forms and 2 e-forms which will be available for filing w.e.f. 28/04/2014 will be available for filing 24 notified forms/events which will be made available for individual e-filing at a later date, can be attached with these 7 e-forms and filed.

22. *General Circular No. 05/2014* dated March 28, 2014: Online Payment of stamp duty and court fee stamp for issue of certified copies.

The Ministry has enabled payment [of Stamp Duty as well as Court Fee online through MCA Portal](#) to avoid the delay in sending certified copies of documents applied for. Court Fee would be added per SRN irrespective of number of documents applied for. Stamp duty would be calculated based on

DELEGATION OF SOME POWERS:

- **21.05.2014 *- DELEGATION OF POWERS TO REGISTRAR OF COMPANIES**
 - a. Section 4(2) - Name Undesirability
 - b. Section 8(1) - Issue of License for Charitable Companies
 - c. Section 8(4)(i) - Alteration of Provisions of Memorandum or Articles of Charitable companies, except for conversion into another kind of company
 - d. Section 8(5) - Conversion of 'Limited' or 'Private Limited' Company into a Charitable Company
 - e. Section 13(2) - Change of name of Company

- **21.05.2014* - DELEGATION OF POWERS UNDER SECTION 458 OF CA 2013 TO RDS :**
Delegation of powers to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong:
 - a. Section 8(4)(i) - Alteration of Provisions of Memorandum or Articles of Charitable Companies in case of conversion into another kind of company.
 - b. Section 8(6) - Revocation of license of company registered under Section 8.

- c. Section 13(4) & 13(5) - Alteration of Registered Office Clause - Change from one state to another.
 - d. Section 16 - Rectification of name of company.
 - e. Section 87 - Rectification by Central Government in Register of Charges.
 - f. Section 111(3) - To order non-circulation of any statement related to proposed resolution or business to be dealt with at members' meeting, which renders abuse of law and is for securing needless publicity for defamatory matter.
 - g. Section 140(1) - Removal of auditor from his office, before expiry of his term.
 - h. Proviso (i) to Section 399(1) - Powers of Central Government in relation to Inspection, production and evidence of documents kept by Registrar
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- **THE USEFUL LIFE OF AN ASSET** shall not be longer than the useful life specified in 'Part C' and the residual value shall not be more than five percent of the total cost of the asset. However, a different useful life or residual value may be used, provided the justification for the same is disclosed in the financial statements.

Regards,
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