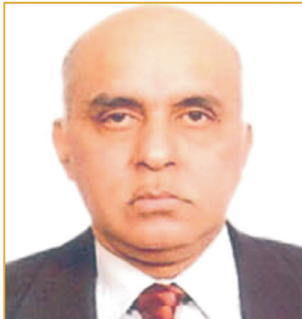




# Monthly Newsletter

Volume - 35

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**Shri Naved Masood,**  
Secretary, MCA

## From The Secretary's Desk

The last financial year witnessed the enactment of the Companies Act, 2013, replacing the fifty-seven year old Companies Act, 1956. The new law rolls out a system for enlightened regulation and global best practices in corporate governance. I am happy to announce that the Ministry has notified the commencement of substantial provisions of

the Act which has entered into force from 01.04.2014.

The last fiscal saw several ups and downs for the corporate sector that dampened the investment sentiments. The Government responded on a real-time basis by announcing major policy interventions, such as raising the ceiling and/or easing of FDI norms in a number of sectors; setting up of a Cabinet Committee for speedy clearances of infrastructure projects; a slew of measures by SEBI to promote foreign investments inflows; and the introduction of a policy framework by RBI for corporate debt restructuring (CDR), etc.

The Government has been putting sincere efforts to protecting the interests of small investors against the growing menace of pyramid schemes and illegal acceptance of deposits by some of the companies. Towards this end, Government has re-promulgated Securities Laws (Amendment) Ordinance, 2014 authorizing SEBI to empower the Investigating Authority to conduct search and seizure, especially to crack down on Ponzi schemes.

With the prolonged economic downturn in the last two years, the Indian economy is experiencing structural bottlenecks on the supply side, causing investment to remain below its potential. The headline inflation as well as CPI-based inflation has remained sticky at a high level, forcing the RBI to retain the repo rate at a high level of 8%.

The World Bank in its Report "South Asia Economic Focus", released in April, 2014, has projected an annual growth rate of 3% for the global economy, including 5.7% growth for India, for the year 2014. With increased economic integration, a revival of the world economy is sure to result in higher export growth prospects for India. There are several indications that the Indian economy has bottomed out.

India witnessed resurgence in capital inflows, with foreign institutional investors bringing in a whopping US\$ 5.2 billion in the month of March,

2014. The rupee appreciated by about 3.1% to reach the Rs. 60 per-dollar levels. The current account deficit has continued to contract, improving the balance of payment position for India.

In keeping with our objective of simplifying administrative procedures, we have introduced an additional facility on the MCA21 portal that would streamline the process of obtaining certified copies of documents from the Registrar of Companies (RoCs), without physically visiting the office of RoCs. The Ministry endeavors to put its sustained efforts towards simplifying regulatory requirements further.

 I am happy to announce that the Ministry has notified the commencement of substantial provisions of the Act which has entered into force from 01.04.2014 



### Senior Level Appointments:

1. Shri B.N. Harish, who held twin charges of Regional Director (Northern Region) and Director of Inspection & Investigation has been transferred as Regional Director (South Eastern Region) with effect from 28.03.2014.
2. Shri Alok Samantrai, Director, Directorate General Corporate Affairs (DGCA), has been given additional charge of Regional Director (Northern Region) with effect from 28.03.2014.
3. Shri R.C. Meena, has been promoted to the Senior Administrative Grade of the Indian Corporate Law Service with effect from 01.04.2014 and is posted as Additional Director, Serious Fraud Investigation Office.

**Implementation of the Companies Act, 2013:** The first set of notification on implementation of the Companies Act, 2013 was issued in September, 2013, whereby 98 Section of the Act, came into force with effect from 12.09.2013. These were standalone Sections not requiring prescription of Rules. In February, 2014, Section 135 of the Act, relating to Corporate Social Responsibility (CSR), and relevant rules thereunder as well as amended Schedule VII were notified. These provisions came into force with effect from 01.04.2014.

The Ministry has brought into force another set of 183 Sections and Six Schedules (Schedule I to VI) of the Companies Act vide **S.O. 902(E) dated 26.03.2014**. These Sections are brought into force with effect from 01.04.2014. The relevant rules of these Sections are also notified (for details please visit: [http://www.mca.gov.in/Ministry/pdf/NCARules\\_Chapter.pdf](http://www.mca.gov.in/Ministry/pdf/NCARules_Chapter.pdf)).

**ROC-cum-OL at Bilaspur Functional:** A new office of Registrar of Companies-cum-Official Liquidator has been established in March, 2013 at Bilaspur having jurisdiction in the State of Chhattisgarh. The Office is functional with effect from 01.04.2014. The premises are located at First Floor, Ashok PingleyBhavan Municipal Corporation, Nehru Chowk, Bilaspur, Chhattisgarh, with Telephone Nos. 07752-250092, 250093 and 250094.

**MCA-21 Adds Online Facilities:** In order to provide easier payment options and to reduce burden of visiting offices, MCA-21 has added two online facilities:

**(1) Payment Through 'Pre-paid Card':** Companies/general public are required to make payment of fees for availing services under MCA21 system such as filing of various e-forms (Form-1A, Form-1, Form-19, Form-37, Form-39, Form-23B, Form-39), shifting of registered office from one ROC to another ROC, viewing company documents on MCA Portal, obtaining Certified Copy of Company/LLP Documents etc. The payment of fees are made either online by using Credit card/ Debit Card/ Net Banking/ NEFT or offline through generation of challan to be filled and deposited in a Bank. The Ministry has now introduced a new method of online payment by introducing 'Pre-paid Card' facility in collaboration with the ICICI Bank.

**(2) Payment of fees etc. for Certified Copies simplified:** The process of issue of certified copies of the documents filed with ROC was reviewed in the Ministry. Prior to 31.03.2014, stakeholders could apply for certified true copy

of any document through online selection of document and payment of fee and approach the jurisdictional ROC along with the application and the acknowledgement of the fee paid. The application needs to be filed along with Stamp Papers of requisite value and the Court Fee stamp attached to the same. On receipt of the application, the respective ROC affix the certified documents on the Stamp paper and returns the same to the applicant duly certified. This is a time consuming and necessitates physical presence of applicant. The Ministry has now introduced a system with effect from 31.03.2014 whereby the stamp duty and the court fee are also received online, and the documents are despatched by post by the ROC within fifteen days of application made online to MCA21 without insisting on a physical visit by the applicant, a physical application and stamp paper.

**(3) Achievements of Online Service Delivery by MCA-21 System:** A comparative Statement regarding achievements by MCA-21 System during the last two Financial Years are given below:

Sl. No	Description	FY 2012-13	FY 2013-14
1	Average Unique Visitors per day*		30582
2	Total filings through system	4448348	4385401
3	Maximum number of documents filed on a day (with date)	87686 (21.11.2012)	160596 (30.10.2013)
4	Number of companies registered online	94494	94081
5	Total DIN issued till 31 <sup>st</sup> March	241003	245402
6	Number of balance sheets filed	570103	659777
7	Number of annual returns filed	584263	662758
8	Amount of E-Stamp collected (in ₹ Crore)	151.3	177.1

**IICA signs MoU with IIFT:** The Indian Institute of Corporate Affairs (IICA) and the Indian Institute of Foreign Trade (IIFT) signed a Memorandum of Understanding (MoU) on 14.03.2014. Under the MOU, it is proposed to establish a partnership in capacity building, training, research & publication and faculty exchange in broad fields such as Corporate Social Responsibility, Corporate Law, and Corporate Governance. The MoU was signed by Dr. Surajit Mitra, Director and Vice Chancellor, IIFT and Dr. Bhaskar Chatterjee, DG & CEO, IICA. Academic collaboration encompassing offer and award of degree/ diploma/certificate courses of contemporary importance and offer of expert advice to regulatory and other government authorities and joint workshops and conferences are unique features of the MOU.

**Notifications and General Circulars:** The Ministry of Corporate Affairs has issued ten Notifications and three General Circulars concerning administration of the Companies Act, 2013 in the month of March, 2014 (for further details, visit our website: <http://mca.gov.in>).

## **A. Notifications:**

**(1) Sitting Allowance for Non-Official Members of ICAI:** The Central Government has raised the sitting allowance for the non-official Members nominated by it on the Committees of the Institute of the Chartered Accountants of India to ₹ 5000/- from the existing fee of ₹ 1000/-, per day, while dealing with complaints of professional or other misconduct of the Chartered Accountants [**GSR 141(E) dated 04.03.2014 read with GSR 112(E) dated 27.02.2007**].

**(2) Service Conditions of Chairperson and Members of CCI:** The Central Government has amended the service conditions of the Chairperson and Members of the Competition Commission of India by providing that they would be paid a consolidated monthly salary of four lakh fifty thousand rupees and three lakh seventy five thousand rupees respectively, and that they shall not be entitled to any allowance relating to house and vehicle. The amendment comes into force retrospectively from 01.07.2013 [**GSR 164 (E) dated 05.03.2014**].

**(3) Extension to CLB Members:** The Companies Act, 2013 provides for the constitution of the National Company Law Tribunal to exercise certain adjudicatory functions, presently discharged by the Company Law Board and the High Courts. Even as the process of establishment of the National Company Law Tribunal (NCLT) is being pursued vigorously, it may take some more time before the Tribunal is finally constituted. Therefore, to provide for continuity and smooth transition, the Central Government has been empowered to give extension in service to the Chairman, Vice Chairman and Members of Company Law Board (CLB) up to a maximum period of one year or till the constitution of the NCLT, whichever is earlier, in public interest [**GSR 197 (E) dated 20.03.2014**].

**(4) IEPF Rules Applicable to Public Sector Banks:** Under Section 205C of the Companies Act, 1956, the amount lying unclaimed and unpaid with the companies, for more than 7 year in the form of (a) Unpaid dividend, (b) Unpaid application money received by Companies for allotment of securities and due for refund, (c) Unpaid Matured Deposit, (d) Unpaid Matured Debentures, and (e) Interest accrued on (a) to (d) are to be credited to the Investor Education and Protection Fund (IEPF). Now this provision of transferring unclaimed/unpaid amount to IEPF has been extended to Public Sector Banks, acquired under the Banking Companies (Acquisition and Transfer of Undertakings) Acts of 1970 and 1980 [**GSR 216(E) dated 27.03.2014**]. The exercise of identification of such moneys will be done by the said banks within 90 days of their Annual General Meetings each year, for paying it into the IEPF [**GSR 217(E) dated 27.03.2014**].

**(5) Method of Calculation of Amortization:** The Schedule II of the Companies Act, 2013, which provides for computation of 'useful life of assets' for the purposes of depreciation/ amortization has been amended. Under the amended provisions, the useful life of a tangible asset shall not be longer than what is specified in Part 'C' of the schedule, and that in case a company has a different method of computing useful life or residual value, the same shall be disclosed in the financial statement. For intangible assets (toll roads) created under the 'Build, Operate and

Transfer' or 'Build, Own, Operate and Transfer' or any other form of Public-Private Partnership, detailed method of calculation of amortization has been laid down [**GSR 237(E) dated 31.03.2014 w.e.f. 01.04.2014**].

**(6) Definition of Related Party and Relative:** The term 'related party' as defined in Section 2(76) of the Companies Act, 2013, has been extended to include directors or key managerial personnel of the holding company or their relatives, and the term 'relative' as defined in Section 2(77) of the Companies Act, 2013, has been extended to include close relatives such as father, mother, brother, sister, son, daughter etc. Terms such as 'certifying authority', 'digital signature', 'director identification number', 'electronic registry', 'executive director', 'Regional Director', 'Total share capital' etc., have also been defined for the purpose of smooth implementation of the Companies Act, 2013. Terms used, but not defined, in the Companies Act, 2013 or the rules, would carry their respective meanings as in other legislations such as the Securities contracts (Regulation) Act, 1956, SEBI Act, 1992, Depositories Act, 1996 and Information Technology Act, 2000 [**GSR 238(E) dated 31.03.2014 w.e.f. 01.04.2014**].

**(7) Declaring Dividends In Case of Inadequacy of Profits:** The Government has laid down conditions for declaring dividends in case of inadequacy of profits by a company. They are: the rate of dividend shall not exceed the average of the rates at which dividend was declared by it in the three preceding years; the total amount drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital; the amount so drawn shall first be used to set off the losses; the balance of reserves after such withdrawal shall not fall below fifteen percent of its paid up share capital; and no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year are set off [**GSR 241 (E) dated 31.03.2014**].

**(8) New Members in Quality Review Board:** Under Section 28A of the Chartered Accountants Act, 1949, the Government had constituted an eleven-member 'Quality Review Board'. The composition has been altered with the substitution of six members. The new inductees include CA Shri K. Raghu, President, ICAI, CA Shri Manoj Fadnis, Vice-President, ICAI, CA Shri S.K. Agrawal, former President, ICAI [**GSR 131 (E) dated 28.02.2014**].

## **B. General Circulars:**

**(1) Clarification Regarding Section 180 of the Companies Act, 2013:** It has been clarified that a Resolution passed under Section 293 of the Companies Act, 1956 prior to 12.09.2013 with reference to borrowing and/or creation of security on assets of the company, subject to the limits prescribed, will be regarded as sufficient compliance of the requirement of Section 180 of the Companies Act, 2013 for a period of one year from 12.09.2013, being the date on which Section 180 of the Act was notified for commencement [**General Circular No. 04/2014 dated 25.03.2014**].

**(2) Online Payment of Stamp Duty and Court Fee Stamp for Issue of Certified Copies:** The Ministry has, with the General Circular No. 05/2014 added online payment of stamp duty and court fee stamp for issue of certified copies. This will come into effect from 31.03.2014.

**(3) Roll Out Plan of Various Forms under the Companies Act, 2013 and Continuance of Forms under the Provisions of Companies Act, 1956:** With the General Circular No. 06/2014 the Ministry has decided to waive fees for all event based filing whose due date falls between 01.04.2014 to 30.04.2014. In order to facilitate the completion of notified section, the Ministry has planned a staggered roll out of various forms

#### **Investor Protection and Awareness:**

- A.** In collaboration with the three Professional Institutes (i.e., Institute of Chartered Accountants of India, Institute of Company Secretaries of India, and Institute of Cost Accountants of India), 234 Investor Awareness Programmes were conducted in different towns/cities of the country during March, 2014.
- B.** Till the end of March, 2014, as many as 2459 companies have uploaded information about unpaid and unclaimed amounts of investors (share application moneys, dividends, debentures, deposits etc.) lying with them on the dedicated website ([www.iepf.gov.in](http://www.iepf.gov.in)). This website has been set up for companies to file details of unpaid and unclaimed amounts of investors for the last seven years or less, which are yet to be transferred to the Investor Education and Protection Fund, so as to enable the investor to reclaim the said money from the company. The total amount reported by these companies by end March, 2014 amounts to Rs. 3454.29 crore.
- C.** Public Sector Banks, nationalized in 1970 and 1980 have also been brought under the IEPF Rules, by requiring them to identify and pay the money in Unpaid Dividend Account, lying unclaimed and unpaid for the past seven years. For further details, kindly refer to GSR 216(E) and GSR 217(E) (both dated 27.03.2014).

#### **Review of Corporate Sector:**

- A.** As on 31.03.2014, the number of companies registered under the Companies Act, 1956 stood at 13.94 lakhs. Of these, 2.70 lakh companies have been closed and 28,786 companies are in the process of being closed. As many as 1.42 lakh companies have not filed their Annual Returns/ Balance Sheets (i.e., Annual Statutory Filings) for more than three consecutive years and, hence, are classified as 'dormant'. In other words, there are about 9.52 lakh active companies, including 1.40 lakh companies which were incorporated within the preceding eighteen months (not due for filing).
- B.** A total of 9,755 companies were registered under the Companies Act, 1956 during March, 2014 with authorized capital of Rs. 2,808.97 crore. Of them 9,696 Companies were registered as Companies Limited by Shares with authorized capital of Rs. 2,808.82 crore; 57 Companies Limited by Guarantees with authorized capital of Rs. 5 lakh; and 2 Unlimited company were registered with authorized capital of Rs. 10 lakh during the month. Under the category of companies registered as limited by shares, Maharashtra had maximum number of registrations (1,795) followed by Delhi (1,594) and West Bengal (1,106). Economic activity-wise maximum number of companies (3,411) were registered under Business Services (IT and R&D).

- C.** For more statistical details about the growth of the corporate sector, the reader is invited to the Monthly Information Bulletin on Corporate Sector, at URL: [mca.gov.in/MinistryV2/InformationBulletin.html](http://mca.gov.in/MinistryV2/InformationBulletin.html)

#### **Major Events Attended by Senior Officials of the Ministry:**

1. Shri Naved Masood, Secretary, Ministry of Corporate Affairs and Shri M.J. Joseph, Additional Secretary attended the 21<sup>st</sup> Board of Governors Meeting of IICA on 25.03.2014 and 5<sup>th</sup> Annual General Meeting of IICA on 28.03.2014 at IICA Campus, Manesar.
2. Shri Naved Masood, Secretary, Ministry of Corporate Affairs, attended SEBI Board Meeting at Mumbai on 28.03.2014.

#### **Major Events at Indian Institute of Corporate Affairs (IICA) :**

**1. Consultation for Developing IICA Incubation Framework:** The Centre for Business Innovation & IT Services organized a programme on "Consultation for Developing IICA Incubation Framework" with experts and practitioners of incubation on 24.03.2014 at Scope Complex, New Delhi. The objective of this consultation was to create a framework for the roll-out of a green incubator-first of its kind in the country, proposed by the IICA. The incubator will provide facilities and services (business planning, legal, accounting, fund raising and marketing support) to catalyse the growth of small-business in a manner that would ensure that the incubated company has a higher rate of survival than an average spinout.

**2. Corporate Finance Programme on Intensive Credit Management:** School of Finance organized a training programme on Intensive Credit Management, during 17.02.2014 to 1.03.2014 at IICA, Manesar. The programme envisaged a thorough concept building of each and every aspect of lending to mid and large corporates. The ultimate objective was to equip the participants with confidence in taking sound lending decisions. The Case-study method was employed to create live situations for decision making in various complex situations.

#### **Major Events at Competition Commission of India:**

1. Tenth "Distinguished Visitor Knowledge Sharing Series" Lecture was delivered in Competition Commission of India (CCI) by Shri Vikram Singh Mehta, Chairman, Brookings India on "Competition concerns in energy sector in India" on 20.03.2014.
2. A seminar was organized on "Telecom Markets - where should regulation end and competition (competition law) takeover?" on 11.03.2014 at CCI. The main speaker of the Seminar was Prof. Martin Cave, Deputy Chairman of the Competition Commission, U.K.
3. Shri L. Raja Sekhar Reddy, Director General, CCI, participated in Competition Law Conference organized by ASSOCHAM on 8<sup>th</sup> March, 2014 in New Delhi.
4. Ms. Payal Malik, Adviser, attended a high level meeting on the topic "New Model Act on Marketing Reforms" organized by Department of Agriculture & Cooperation, Ministry of Agriculture, New Delhi on 20.03.2014.

## Important Provisions Notified in S.O. 902(E)

### **Incorporation of companies and incidental matters**

New entity – One Person Company (Sec. 3), Incorporation of Company (Sec. 7), Formation of companies with charitable objects etc. (Sec. 8), Commencement of business (Sec. 11), Where a company has changed its name or names during the last two years (Sec. 12), New restrictions on alteration of objects clause of memorandum where company has any unutilized amount from proceeds of public issue (Sec. 13) etc.

### **Prospectus and Allotment of Securities**

New enabling provision for offer for sale of shares to public by members (Sec. 28), New enabling provision for issue of GDRS (Sec. 41), Raising of Capital by private placement basis – New provisions (Sec. 42) etc.

### **Share Capital and Debentures**

Voting rights of preference shareholders (Sec. 47), Prohibition of issue of shares at a discount (Sec. 53), Issue of preference shares for a period exceeding 20 years for infrastructure projects (Sec. 55), Transfer of interest of a member in a company having no share capital (Sec. 56), Alteration of share capital by consolidation and division of share capital into shares of larger amount than existing shares to require NCLT's approval (Sec. 61), New enabling provision for issue of bonus shares (Sec. 63), No reduction of capital if deposits not repaid (Sec. 66), Special resolution required for issuing debentures with conversion option (Sec. 71) etc.

### **Acceptance of Deposits by Companies**

Prohibition of acceptance of public deposits (Sec.73), Conditions subject to which deposits from public can be accepted by certain public companies (Sec.76) etc.

### **Management and Administration**

Return to be filed by listed Companies with ROC in case promoters' stake changes (Sec.93), Voting through electronic means (Sec.108), Resolutions requiring special notice (Sec.115), Statutory recognition to secretarial standards (Sec.118), Penalty for tampering with minutes (Sec.118), Maintenance and inspection of documents in electronic form (Sec.120), Report on AGM required to be submitted by listed company (Sec.121) etc.

### **Declaration of Dividend**

Restrictions on interim dividend (Sec.123), Transfer of shares to Investor Education and Protection Fund (Sec.124) etc.

### **Accounts of Companies**

Compulsory consolidation of accounts of holding company and its subsidiaries including JVs and associate companies (Sec.129), Board's Report – Additional disclosures (Sec.134), Director's Responsibility Statement (Sec.134), Compulsory Internal Audit for certain companies (Sec.138) etc.

### **Audit and Auditors**

Time-bound annual appointment of auditors and filling of casual vacancy by CAG (Sec.139), Tribunal may direct the company to change its auditors (Sec.140), Duties of auditor/secretarial auditor/cost auditor to report to Central Government where fraud is committed or being committed on the company (Sec.143), Increased accountability of auditors (Sec.147) etc.

### **Appointment and Qualifications of Directors**

Woman director mandatory for certain classes of companies (Sec.149), Retirement of Directors by rotation (152) etc.

### **Meetings of Board and Its Powers**

Not more than 120 days gap between two Board Meetings (Sec.173), Enabling participation of directors at Board meeting by video conferencing (Sec.173 and 174), Nomination and Remuneration Committee and Stakeholders' Relationship Committee (Sec.178), Inter-corporate investments not to be made through more than 12 layers of investment companies (Sec.186), Contract by one person company (Sec.193) etc.

### **Appointment and Remuneration of Managerial Personnel**

Managerial Remuneration (Sec.197), Appointment of Whole-Time KMP (Sec.203), Secretarial audit compliance report from CS to be attached to Board's report by bigger companies (Sec.204) etc.