

ICAI:WIRC

Seminar on Important Provisions of
Companies Act, 2013

Compliance & e-Filing

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Practising Company Secretary

IMPORTANT

- * This presentation is in the nature of a support note for the speaker
- * Slides on standalone basis may not be self-explanatory

THE COMPANIES ACT 2013

- 29 Chapters
- 470 sections
- 7 Schedules
- “As may be prescribed” (AMBP)
- RoDs; Circulars; Notifications
- Judgments

POWER TO REMOVE DIFFICULTIES

Sec. 470

- Central Government may, make such provisions, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for removing the difficulty
- No such order shall be made after the expiry of a period of 5 years from the date of commencement of section 1
- Companies (Removal of Difficulties) Order

Contraventions punishable with

- Fine
- Fine or imprisonment
- Fine or imprisonment or both
- Imprisonment
- Fine and imprisonment

- Fine of Rs. _____
- Fine upto/ extend to Rs. _____
- Per day / fix

The illiterates of the 21st century will not be those who cannot read and write, but those who cannot learn, unlearn and relearn.

-ALVIN TOFFLER

The image features a blue gradient background that transitions from a lighter blue at the top to a darker blue at the bottom. A thin, light blue curved line starts at the top left and curves downwards towards the right. The text 'eForms' is written in a white, serif font, positioned in the upper-middle part of the image. The overall design is clean and modern, with a focus on the text and the curved line.

eForms

TITLES i

- **RULES**

- Companies (Incorporation) Rules, 2014
- Companies (Prospectus and Allotment of Securities) Rules, 2014
- Companies (Share Capital and Debentures) Rules, 2014
- Companies (Acceptance of Deposits) Rules, 2014
- Companies (Management and Administration) Rules, 2014
- Companies (Declaration and Payment of Dividend) Rules, 2014.

- **eFORMS**

- **INC-**
- **PAS-**
- **SH-**
- **DPT-**
- **MGT-**
- **DIV-**

TITLES ii

- **RULES**

- Companies (Accounts) Rules, 2014
- Companies (Audit and Auditors) Rules, 2014
- Companies (Appointment and Qualification of Directors) Rules, 2014.
- Companies (Meetings of Board and its Powers) Rules, 2014
- Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014

- **eFORMS**

- **AOC-**
- **ADT-**
- **DIR-**
- **MBP-**
- **MR-**

TITLES iii

- **RULES**

- Companies (Registration of Foreign Companies) Rules, 2014.
- Companies (Registration Offices and Fees) Rules, 2014
- Nidhi Rules, 2014
- Companies (Miscellaneous) Rules, 2014
- Companies (Cost Records and Audit) Rules, 2014

- **eFORMS**

- **FC-**

- **GNL-**

- **NDH-**

- **MSC-**

- **CRA-**

KEY FEATURES

- Instruction Kit: Section and Rule; Instructions; Fee etc.
- Pre-certification
- Exemption from pre-certification: Small, OPC
- Resubmission – only one time
- Straight Through Processing (STP) mode

FREQUENCY OF Forms

- Statutory Forms – To be filed every year: annual return, annual accounts.
- Event Based Forms – To be filed only on happening of certain events.
- Days
- Filing Fee, additional fee
- Verification clause in every e-Form requires the date of board meeting where the director was authorised to digitally sign the form

Forms to be Filed with CG

Approval Services (Headquarters)

| Description | e-Form with Instruction kit | e-Form | Form Version updated on |
|---|-----------------------------|------------|-------------------------|
| Form of intimation of appointment of cost auditor by the company to Central Government. | Form CRA-2 | Form CRA-2 | 01-April-2016 |
| Form for filing application or documents with Central Government | Form CG-1 | Form CG-1 | 27-Mar-2016 |

Forms to be Filed with RD

| Description | e-Form with Instruction kit | e-Form |
|--|-----------------------------|-------------|
| Application for removal of auditor(s) from his/their office before expiry of term | Form ADT-2 | Form ADT-2 |
| Application to Regional director for conversion of section 8 company into company of any other kind | Form INC-18 | Form INC-18 |
| Application to Regional Director for approval to shift the Registered Office from one state to another state or from jurisdiction of one Registrar to another Registrar within the same State | Form INC-23 | Form INC-23 |
| Memorandum of Appeal | Form ADJ | Form ADJ |
| Applications made to Regional Director | Form RD-1 | Form RD-1 |
| Application to Central Government for extension of time for filing particulars of registration of creation / modification / satisfaction of charge OR for rectification of omission or misstatement of any particular in respect of creation/ modification/ satisfaction of charge | Form CHG-8 | Form CHG-8 |

Forms to be Filed with ROC

- Incorporation
- Change
- Charge
- Compliance
- Information
- Managerial Personnel
- Annual Filing
- Attachments: Non eForms
- Addendum

OBLIGATION TO INDICATE DIN

- Sec. 158: Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall mention the DIN in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Companies (Registration Offices and Fees) Rules, 2014: Rule 7

- Provided also that any correspondences (physically or electronically) and documents to be filed by any person shall contain name, designation, address, membership number or DIN, as the case may be, of the person signing such document and make sure correctness thereof and in no case, correspondence, merely with signature and writing authorised signatory shall be acceptable.

FEE FOR FILING

- Sec. 403: First proviso: any document, fact or information may be submitted, filed, registered or recorded, after the time specified in relevant provision for such submission, filing, registering or recording, within a period of 270 days from the date by which it should have been submitted, filed, registered or recorded, as the case may be, on payment of such additional fee as may be prescribed

ATTACHMENTS

- Signed documents
- Properly scanned
- To reduce file size use save as option.
- Proper tab

TAB

- While attaching documents to the e form, use the tab assigned for the respective attachment. If attached through wrong tab, ROC may raise query for non attachment of the doc. If no tab is assigned for the doc than use optional button.

| DIN/DPIN/PAN | Full Name | Present Residential Address | Designation | Date of Appointment |
|--------------|-----------|-----------------------------|---------------------|---------------------|
| | | | | |
| | | | Additional Director | 01/11/2008 |
| | | | Director | |

Sec. 117
File Form MGT.14
Within 30 days

Circular, not widely circulated

GENERAL CIRCULAR NO. 10/2014 [F.NO.
MCA21/28/2014-E-GOV], DATED 7-5-2014

CERTIFICATION OF E-FORMS/NON E-
FORMS UNDER THE COMPANIES ACT,
2013 BY THE PRACTICING
PROFESSIONALS

CIRCULAR NO. 10/2014 i

- All the attachment to the forms have been duly scanned and attached
- If false or misleading information or omission of material fact or incomplete information is observed, the RD or the RoC, shall conduct a quick inquiry against the professionals who certified the form and signatory thereof including an officer in default who appears

CIRCULAR NO. 10/2014 ii

- RD or RoC will submit report in respect of the inquiry initiated, irrespective of the outcome, to the E-Governance cell of MCA within 15 days of the expiry of period given for submission of an explanation with recommendation in initiating action under sections 447 and 448 of the Companies Act, 2013
- Referral of the matter to the concerned professional Institute for initiating disciplinary proceedings

CIRCULAR NO. 10/2014 iii

- 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

CIRCULAR NO. 10/2014 iv

- Registrar shall forward a fortnightly report to the concerned Regional Director as well as to the E-Gov Division. Thereafter, the Regional Director shall forward a consolidated report to the Joint Secretary E-Governance Division on or before 7th of every month as per the prescribed proforma

FORTNIGHTLY REPORT BY ROC

- For the Period from to
- *Sl. no.*
- *Name of the professional*
- *Member of the institute*
- *Membership no /cp no.*
- *Details of the case*
- *Remarks*

MONTHLY REPORT BY RD

- FOR THE MONTH OF.....
- *Sl. no.*
- *Name of the ROC*
- *Details of the professional*
- *Membership no / CP no.*
- *Fact of the case*
- *Remarks*

MONTHLY REPORT BY RD

- FOR THE MONTH OF.....
- *Sl. no.*
- *Name of the ROC*
- *Details of the professional*
- *Membership no / CP no.*
- *Fact of the case*
- *Remarks*

SECRETARIAL STANDARDS

The image features a solid blue background. A white curved line starts at the top left and curves towards the right. On the right side, there is a white triangular shape that points towards the center, creating a layered effect.

SECTION 118

- (10) Every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980, and approved as such by the Central Government.
- Applicable to private companies too.

SS 1

- Set of principles for convening and conducting Meetings of the Board of Directors and matters related thereto.
- Not applicable to section 8 (old section 25) companies

SS 1

- Convening a Meeting
- Frequency of Meetings
- Quorum
- Attendance at Meetings
- Chairman
- Passing of Resolution by Circulation
- Minutes
- Preservation of Minutes and other Records
- Disclosure

Convening a Meeting

- Any Director of a company may, at any time, summon a Meeting of the Board, and
- Company Secretary or where there is no CS, any person authorised by the Board in this behalf, on the requisition of a Director,
- Shall convene a Meeting, in consultation with the Chairman or in his absence, the Managing Director or in his absence, the Whole-time Director, where there is any, unless otherwise provided in the Articles.

Unless otherwise provided in the Articles_

- If the Articles of a company provide that no Director other than the MD shall summon a Board Meeting, the said clause in the Articles shall prevail.
- If the Articles of a company state that only the Chairman is authorised to convene a Meeting or to give instructions to the Manager or the Company Secretary to do so, the said clause in the Articles alone shall prevail.

Every Meeting shall have a serial number

- “1/2015”, “2/2015”, “3/2015” and so on....
- “1/2015-16”, “2/2015-16”, “3/2015-16” and so on....or 1/15-16, 2/15-16, 3/15-16 and so on...
- 120th Meeting, 121st Meeting, 122nd Meeting and so on Here company may choose to either count and give continuous numbering from its incorporation or give continuous numbering from Meetings held on or after 1st July, 2015

IMPORTANT

- Company should follow a uniform and consistent system.
- It is advisable that the Board be informed about the system of numbering of the Meeting and/or any change in the system of numbering; and the same be recorded in the Minutes

Serial number of Adjourned Meetings

- Serial number of the original Meeting and the adjourned Meeting would be the same. For eg: In case the serial number of the original Meeting is 12th Meeting, the serial number of the adjourned Meeting should be 12th Meeting (Adjourned).

NOTICE

- by hand or
- by speed post or
- by registered post or
- by courier or
- by facsimile or
- by e-mail or
- by any other electronic means.

NOTICE

- 7 days notice [not 7 clear days]
- Ignore the date of meeting
- Add 2 days if sent by post or courier
- If sent by hand: signature of director or recipient be obtained as acknowledgment
- May also maintain a register for this purpose where signature of the concerned Director or the recipient could be obtained.

FORM OF NOTICE

- Preferably be on the letter-head of the company, except where it is sent by e-mail or any other electronic means in which case there should be, whether as a header or footer, the name of the company and complete address of its registered office together with all its particulars such as CIN; DIN

SERIAL NUMBERING OF ITEMS

- *Serially numbering irrespective of the number of the Meeting : 1, 2, 3, 4... and so on*
- *Serially numbering on the basis of the number of the Meeting : items to be discussed in 12th Meeting of the Board would be numbered as 12.1, 12.2, 12.3, 12.4 etc...*
- *Continuous numbering across years/Meetings: there are 8 items to be discussed in the first Meeting and 10 items in second Meeting: items of 1st Meeting will be numbered as item number 1-8 and the items in the second Meeting would be numbered 9-18 and so on.....*

SS 2

- Set of principles for the convening and conducting of General Meetings and matters related thereto

SS 2

- Convening a Meeting
- Frequency of Meetings
- Quorum
- Presence of Directors and Auditors
- Chairman
- Proxies
- Voting

Proof of sending of the Notice of

General Meeting

- Proof of sending of the notice of the general Meeting is required to be maintained only if it is sent by e-mail or by any other electronic means.
- This should be preserved in good order in physical or electronic form for as long as they remain current or for 8 financial years, whichever is later and may be destroyed thereafter with the approval of the Board.

THANK YOU ALL

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