

## **Corporate Update – May 2011\***

### **Content**

	Page No.
<b>COMPANY LAW</b>	<b>Simplification of DIN Registration Process</b> 2
	<b>Increase in limit of remuneration prescribed under section 217(2A) of the Companies Act, 1956</b> 2-3
	<b>Service of documents by e-mode under Section 53 of Companies Act, 1956</b> 3
	<b>Increase in limit of monthly remuneration prescribed under Section 314(1B) of the Companies Act, 1956</b> 3-4
	<b>Delegation of powers to Registrars of Companies and Regional Directors</b> 4-5
	<b>Note on Prosecution of directors</b> 5
<b>IMPORTANT DATES TO REMEMBER</b>	6

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## COMPANY LAW

### Simplification of DIN Registration Process

To simplify the entire process for obtaining Director Identification Number (DIN), the Ministry has issued two Circulars No. 5/2011 and 11/2011 dated 04.03.2011 and 07.04.2011 respectively, as well as notification dated 26th March 2011. Some of the important changes made are as under:

1. Under the new procedure Form DIN-1 (e-form to be filed for obtaining DIN) has to be filed online and no physical submission of documents is required.
2. The new Form DIN-1 is required to be signed digitally either by applicant himself or by any practising professional or company secretary in full time employment / managing director / director of the Company in which the applicant intends to be a director.
3. Under the new procedure in case the Form is filed online with the digital signatures of any practising professional, the DIN will get approved immediately online and if filed with the digital signatures of the applicant or company secretary in full time employment / managing director / director of the Company in which the applicant intends to be a director, it will take around 1-2 working days to get approved.

Further, the Ministry has decided that all the existing DIN holders who have not furnished their PAN earlier at the time of obtaining DIN, are required to furnish their PAN through filing Form DIN-4 latest by 31st May 2011.

The relevant notification and circulars are attached herewith.



DIN amendment.pdf



PAN mandatory for  
DIN.pdf



Simplification of  
DIN.pdf

### Increase in limit of remuneration prescribed under section 217(2A) of the Companies Act, 1956

The Central Government has issued a notification dated 31st March 2011, to amend the Companies (Particulars of Employees) Rules, 1975. Through this amendment it has raised the limit of remuneration received by the employees of the Company, whose details are required to be included in the report of Board of Directors. Earlier, the limit of remuneration was Rs 24 lacs per financial year or Rs 2 lacs per month, or above, which has been increased to Rs 60 lacs per financial year or Rs 5 lacs per month, or above.

Therefore pursuant to section 217(2A) of the Companies Act, 1956 every Directors' report approved by Board of Directors on or after 01st April 2011, shall include the details of those employees of the company who have been receiving remuneration of Rs 60 lacs per financial year or Rs 5 lacs per month or above, irrespective of the accounting year of the annual accounts, being approved by Board.

A copy of the relevant notification is attached herewith



Sec 217(2A).pdf

## **Service of documents by e-mode under Section 53 of Companies Act, 1956**

The Ministry of Corporate Affairs has issued Circular No. 17/2011 dated 21.04.2011, and Circular No. 18/2011 dated 29.04.2011 to allow the Companies to provide service of documents through electronic mode under Section 53 of the Companies Act, 1956, provided that the Company has obtained e-mail addresses of its members for sending the notice/documents through e-mail, by giving an advance opportunity to every shareholder to register their e-mail address or changes therein.

The Ministry has further clarified that a company, would be in compliance of section 219(1) of the Companies Act, 1956 if a copy of Balance Sheet, Profit & Loss Account, Auditors' Report, Directors' Report etc. is sent through e-mail, provided that Company's website displays full text of these documents, well in advance prior to mandatory period and the company has issued advertisement in prominent newspapers in both vernacular and English language stating that the copies of aforesaid documents are available on the website and for physical inspection at the registered office of the Company during office hours. However, if any member insists to have a physical copy of these documents, the same would be sent, by post, free of cost.

The relevant circulars are attached herewith.



Sec 53.pdf



Clarification on  
53.pdf

## **Increase in limit of monthly remuneration prescribed under Section 314(1B) of the Companies Act, 1956**

As per the existing provisions of Section 314(1)(b) of the Companies Act, 1956, the Company needs to obtain the consent of shareholders by way of special resolution, if (i) partner or relative of a director who holds any office or place of profit (ii) firm in which such director or his relative is a partner (iii) private company of which such director is a director or member, or any director or manager of such private company, holds office or place of profit carrying a total monthly remuneration of Rs 20,000 or above.

Further as per Section 314(1B), the Company needs to obtain prior consent of shareholders by way of special resolution as well as the approval of Central Government if (i) partner or relative of director or manager (ii) firm in which such director or manager or any of their relative is a partner (iii) private company of which such director or manager or any of their relative is a director or member, holds office or place of profit carrying a total monthly remuneration of Rs 50,000 or above.

The Central Government has now issued a notification dated 06th April 2011, to amend the Directors' Relatives (Office or Place of Profit) Rules, 2003. Through this amendment, it has raised the existing limit of monthly remuneration of Rs 50,000 prescribed under Section 314(1B) to Rs 2,50,000, while no change

has been made in the existing limit of monthly remuneration of Rs 20,000 prescribed under Section 314(1)(b) of the Companies Act 1956.

A copy of the relevant notification is attached herewith



Sec 314  
notification.pdf

## Delegation of powers to Registrars of Companies and Regional Directors

Under various provisions of the Companies Act, 1956 necessary approval is required to be obtained from Central Government.

The Central Government has delegated its powers and functions to the Regional Directors and Registrars of Companies, in respect of certain sections, as per details given below:

**1. Powers delegated to Registrars of Companies:** The powers and functions have been delegated to Registrars of Companies under the following provisions of Companies Act, 1956:

- Section 21 – Approval of Central Government required for change of name of Company
- Section 25 – Power of Central Government to dispense the addition of the word “Limited / Private Limited” to the name of charitable or other companies.
- Proviso to sub-section (1) of section 31 – Power of Central Government to approve alteration in articles of association of Company, which has the effect of conversion of public company into a private company.
- Sub-section (1D) of section 108 - Power of Central Government to extend the delivery period of transfer deed.
- Section 572 - Approval of Central Government required for change of name of Company proposing to get registered under Part IX of Companies Act, 1956.

**2. Powers delegated to Regional Directors:** The powers and functions have been delegated to Regional Directors under the following provisions of Companies Act, 1956:

- Section 22 – Prior approval of Central Government required for rectification of name of Company.
- Sub-sections (3),(4),(7) and clause (a) of sub-section (8) of Section 224 – Power of Central Government to appoint statutory auditors and to fix the remuneration of the auditors so appointed, prior approval of Central Government required for removal of auditor before the expiry of his term.
- Section 394-A- Notice to be given to Central Government for applications under Sections 391 and 394
- Section 400 - Notice to be given to Central Government for applications under Sections 397 and 398
- Second proviso to sub-section (5) of Section 439 and sub-section (6) of Section 439 – Previous sanction of Central Government required by Registrar of Companies for presentation of petition for winding up of Company, Central Government to afford an opportunity to the Company to make representations before according sanction to Registrar of Companies as above
- Clause (a) of sub-section (1) of Section 496 – Power of Central Government to extend the time for calling annual general meeting in the event of members’ voluntary winding up
- Clause (a) of sub-section (1) of Section 508 - Power of Central Government to extend the time for calling annual general meeting in the event of creditors’ voluntary winding up
- Sub-section (1) of Section 551 – Power of Central Government to exempt either wholly or in part, the liquidator to file statement with respect to pending liquidations.

## India

May 2011

- Clause (b) of sub-section (7) of Section 555 and the proviso to clause (a) of sub-section (9) of Section 555 - Power of Central Government to pass an order for payment of unpaid dividends and undistributed assets to the person entitled to the same, Power of Central government to remit the amount of interest payable by liquidator for retaining any money payable into Companies Liquidation Account.
- Proviso to sub-section(1) of section 610- Prior permission of Central Government required for inspection or taking a copy of documents delivered to Registrar in pursuance to section60(1)(b)(i) and section 605(1)(b) along with the prospectus, after the expiry of fourteen days from the date of publication of prospectus.
- Section 627 – Power of Central Government to make an application to the Judge of High Court to pass an order for inspection or production of books for investigation of the offence.

A copy of the relevant notifications is attached herewith.



Delegation of powers to RD.pdf



Delegation of powers to ROC.pdf

### Note on Prosecution of directors

Section 5 of the Companies Act, 1956, defines officer in default and the Directors are also liable for compliance of various provisions of the Companies Act 1956. It has been noticed that penal actions are also initiated against certain Directors who are actually not charged with the responsibility.

In view of the above, Ministry of Corporate affairs has, in supersession of all earlier circulars issued a general circular no. 08/2011 dated 25th March 2011 through which it has instructed the Registrars of Companies to carefully examine the cases where the following directors are also identified as officer in default :

- ❖ Independent directors appointed in listed companies
- ❖ Directors nominated by respective government in public sector undertakings
- ❖ Nominee directors appointed by public sector financial institutions
- ❖ Directors nominated by the Government u/s 408 of the Companies Act, 1956
- ❖ Special Directors appointed by BIFR under section 16 (6)(b) of SICA 1985

These directors shall not be held liable for any act of omission or commission by the company or by any officers of the company, which constitute a breach or violation of any provision of the Companies Act, 1956, if such violation has occurred without their knowledge attributable through Board process and without their consent or connivance or where they have acted diligently in the Board process.

Wherever the Registrar of Companies has doubt as to whether director/officer can be held liable after applying the above parameters, they should refer to Regional Director, who shall guide Registrar of Companies in the matter.

The relevant circular is attached along with this note



Prosecution of directors.pdf

**India**

**May 2011**

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## Important Dates To Remember

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Last Date

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Payment of Service Tax by Companies for May, 2011  
-if e-payment

5th June, 2011  
6th June, 2011

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Payment of TDS/TCS for May, 2011

7th June, 2011

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