

LATEST ISSUES IN MCA

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In the last month of the year 2008 the business activity in the State of Andhra Pradesh continued to be moderate despite Global melt down. 358 number of companies were registered with an aggregate Authorized capital of Rs.95,08,00,000 This includes 10 public companies with an aggregate Authorized capital of Rs.23,95,00,000/-. There were no public issue of securities which was apparently due to the depressed stock market.

2. During the month of December, 2008, MCA had resolved certain vexed issues like execution of company documents abroad. Now MCA has finally announced through Gazette of India in GSR No.835(E) dated 4-12-2008 that documents like those relating to incorporation of companies etc. shall be executed as per the procedure laid down in the Hague Convention. Such documents are required to be apostilled in accordance with Hague Convention. The practice hitherto followed for attestation of documents by the Indian Embassy office in the country where the document is executed stands withdrawn. The Companies (Central Government) General Rules and Forms (Fourth Amendment) Rules, 2008 has inserted sub-rule (7) under Rule 16 to provide that in case of foreign nationals residing outside India in countries who are signatories to the Hague Convention and seeking to register a company in India, their signatures and addresses on the Memorandum of Association and proof of identity shall be notarized before the notary of the country of their origin and duly apostilled in accordance with the Hague Convention. The new procedure has eliminated the hassle involved in execution of documents for notarizing by the Indian Embassy as there are no offices of the Indian Embassy in many smaller countries
3. The Ministry of Corporate Affairs has totally changed the procedure for registration of e-forms which is coming into effect from 15-2-2009. The Regulation 17 of the Companies Regulations, 1956 has been amended by the Companies (Amendment) Regulations, 2008 and the following procedure will have to be followed regarding filing and processing of e-forms/ documents under the Companies Act, 1956.
 4. The e-forms/ documents filed by the company/ stakeholder or any other person will be examined by the Registrar's Back Office and the defects if any will be communicated to the applicant by e-mail as well as by placing it on the website. The applicant will be given 30 days time for rectification of the defect or for completing the document or for resubmission of such e-form/ document. However, in the case of e-forms filed pursuant to section 18 regarding amendment of the Object Clause or Shifting of Registered Office, the time limit is only 15 days. If the company/ applicant does not rectify the defect or resubmit the document with all required attachments, the Registrar shall reject the e-form/ document and label such application/ e-form/ document as invalid and ROC shall not take on record such invalid e-form/ document. ROC shall also inform the action taken to the applicant/ company. If the company/ applicant requires that such e-form should be registered, the entire process has to be started denova and fresh e-form has to be filed with prescribed fees along with additional fee for delay without prejudice to other liability under the Companies Act, 1956. The new Regulation provides that the defect/ deficiency in the e-form should be rectified through an Addendum filed in the prescribed e-form 67.
 5. The balance sheets and annual returns and other documents which are filed through Straight Through Process (STP) will directly go to the Record Room without preliminary scrutiny by ROC. However, the new Regulation provides that ROC Back Office can scrutinize such documents at any time. If ROC finds that such documents filed through STP process are defective or incomplete, the same will be labeled as "DEFECTIVE" in the e-Registry and communicate the defects/ deficiency to the company/ applicant for rectification of such defects and remove deficiency which has to be done within 30 days. The company/ applicant shall file fresh e-forms/ documents denova with filing fee and additional fee as applicable after rectifying such defects and removing the deficiency.
 6. In so far as the current pending e-forms which have

defects and parked under categories like "Pending for User Clarification", "Pending for Resubmission" etc., ROC shall give a final opportunity to the company/ applicant to rectify the defects and remove the deficiency within a period of 30 days from the date of such notice. If the defects/ deficiencies are not removed within the stipulated period, ROC shall reject such e-forms and label them as invalid under intimation to the company/ applicant. If the company requires to update its record, fresh e-forms will have to be filed along with prescribed fee and additional fee. Presently 5034 e-forms are

pending in the ROC Back Office on account of several defects. The companies/ applicants/ stakeholders are requested to pay attention to such pending e-forms and rectify the defects so as to enable ROC to register such e-forms. If the stakeholders/ applicants/ companies do not rectify the defects within the stipulated time, ROC will have no other option but to reject all such documents.

The professional friends are required to pay attention to this area of work for updation of the records of their client companies.