

## LATEST ISSUES IN MCA

by Sri Henry Richard,

Registrar of Companies, Andhra Pradesh

1. Fifteenth February, 2009 witnessed a land mark change in the process of e-filing and registration under MCA-21. The Company Regulation 1956 was amended by introduction of new Regulation 17 which has revolutionized the process of examining the e-forms. The amended Regulation 17 has introduced a new concept that no defective e-form should be registered and taken to e-Record Room so that the Registrar of Companies can issue certified copies of only proper documents. You may be aware that under the erstwhile Regulation 17, there was a provision enabling Registrar of Companies to register defective documents enumerating the defects even if they are not rectified by company after giving 15 days notices and such defective documents were also available for inspection and issue of certified copies after registration. **This practice has been done away with under the new Regulation 17.**
2. Presently, Registrar of Companies can scrutinize e-forms, identify the defects and communicate to the company/ applicant giving 30 days time for rectification of the defect. The time limit is only 15 days in the case of e-form 23 relating to amendment of Object Clause and shifting of Registered Office u/s 18 of the Companies Act, 1956. If the company/ applicant does not resubmit the document within the prescribed time, such e-forms will automatically be marked as invalid in the system and shall not be taken on record. Thereafter, the company/ applicant has the only option of filing fresh form with prescribed fee and additional fee without prejudice to legal action under the relevant penal provisions of the Companies Act, 1956. For example, if the Form 32 is found defective and such pointed out defects were not rectified within the prescribed time, the same will be marked **"Invalid and not taken on record"**. Thereafter another Form 32 has to be filed afresh with usual filing fee plus additional fee u/s 611 of the Companies Act, 1956. Apart from the said payment, the company and the directors will be liable for prosecution under sub-section (3) of section 303 of the Companies Act, 1956. The same time limit is prescribed regarding certain clarifications on e-forms which has to be replied only through newly introduced e-form 67. In other words, the earlier practice of putting addendum to the e-form has been disabled. Any addition through clarification to an e-form can be done only through Form 67.
3. Professional friends are aware that the system of filing documents through STP ( Straight Through Process ) has been misused by many by filing incomplete documents. Under the new Regulation 17, MCA has introduced checks and balances to discourage improper filing of documents through STP. Registrar of Companies has been given authority to examine STP documents at any time without limitation of period. If Registrar of Companies finds that the STP documents ( Form 23AC, 23ACA etc.) relating to financial statements are defective, he can mark it as invalid at any time under intimation to the company/ applicant. In such cases, the company has to file fresh STP forms along with the prescribed fee and additional fee. The company is also liable for legal action under the relevant penal provisions such as section 220, 159 etc. of the Companies Act, 1956.
4. The new Regulation 17 has also restricted the number of resubmissions and PUCL to a maximum of two times, unlike the earlier system of unlimited number of resubmissions. If the defects in the e-forms pointed out by the O/o. Registrar of Companies is not rectified within the maximum of two times, the e-form is marked as "Invalid and not taken on record" and the consequences mentioned above will follow.
5. As on date about 3500 e-forms are pending for correction which have been filed in this office since 2006. All defective pending e-forms have been pushed to the category known as "HELD IN ABEYANCE". Such old defective e-forms will also have fresh opportunity for rectification. Here again only two opportunities will be given through Resubmission or PUCL for rectification of defects with a maximum time limit of 30 days. If the defects are not rectified within that time, all such e-forms will lapse and marked as "Invalid and not taken on record" and the consequences mentioned above will follow.
6. The new dispensation explained above ushers in the age of perfection. The ultimate goal of MCA is that only quality e-forms perfect in all respects should be available for inspection and issue of certified copies. Every defective e-form should be rejected and marked "INVALID" so that such incomplete/ defective e-forms will not be taken on record and shall not be made available for public inspection. Such a practice is also prevalent in several other countries where ROCs have been given authority to invalidate incomplete and defective e-forms filed under the Companies Act. The present Regulation 17 has been introduced by MCA by exercising the powers provided to MCA under sub-section (2) of section 609 read with section 610A, 610B and 610E of the Companies Act, 1956. Sub-section (2) of Section 609 of the Companies Act, 1956 empowers the Central Government (MCA) to make such regulations as may be required in connection with registration of companies and other duties of Registrar of Companies regarding registration of documents. Backed up by the said powers vested in the Central Government, the new Regulation 17 has been framed with a view to improve the quality of the documents registered by the O/o. Registrar of Companies, with a view to achieve the laudable objective of making available perfect and quality documents for inspection to public and issue of certified copies. Professional friends may bestow the best of their efforts to comply with new regulation 17 so as to enable Registrar of Companies to effectively accomplish the task of registering quality documents. Professional friends may also give feed back on the operation of new Regulation 17 so that any further improvement can be considered at the Ministry level. ■