

## Corporate sector goes hi-tech with e-governance initiatives

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**T**he Registrar of Companies (ROC) is a body appointed according to the provisions of section 609 of the Companies Act, 1956. Its primary duty involves registering companies incorporated in the states and union territories of India. The ROC ensures that all registered companies comply with statutory requirements as prescribed under the act. ROC offices situated across India function as a registry of records, which are filed by companies as required under the act.

Keeping pace with global e-governance initiatives, the Ministry of Company Affairs (MCA) launched "MCA 21" in 2006 to build on the Indian government's vision to introduce a service-oriented approach in the design and delivery of government services.

The project is named MCA 21 because it seeks to reposition the MCA as an organization capable of fulfilling the aspirations of its stakeholders in the 21st century. Instead of travelling to its offices, the services provided by the MCA are available online for the business community and professionals.

The MCA 21 project is designed to fully automate all processes related to the enforcement and compliance of legal requirements, thereby facilitating the fulfillment of statutory obligations. This article examines the scope of this initiative in terms of its impact on the appointment and cessation of directors.

A company director may be appointed in a number of ways. Often, the company names its first directors in its articles. Section 255 of the act provides that unless the company's articles provide for the retirement of all directors at every annual general meeting – at least two-thirds of the total number of directors of a public company (listed or unlisted) or of a private company which is a subsidiary of a public company should: (a) be individuals whose period of office is

determined by the retirement of directors by rotation; and (b) be appointed by the company in its general meeting unless the act states otherwise.

The act also empowers the board of directors (provided the articles authorize or a resolution is passed in a general meeting) to appoint an alternate director to act for the original director during his absence for a period of at least three months from the time during which board meetings are usually held.

An alternate director holds office for the same duration as the original director, and vacates office if and when the original director returns for a meeting. This offers great flexibility for foreign directors unable to attend the board's quarterly meetings. It is important to note that the power to appoint alternate directors lies exclusively with the board and that shareholders have no say either in their appointment or their possible removal.

### Director identification number

The administrative process after a board meeting may be cumbersome, but is crucial for corporate governance. The ROC must be notified about the appointment or cessation of any director (including an alternate) from the board within 30 days of such action in Form 32.

Where an individual's Form 32 for cessation is not filed, and the same individual is subsequently (some months or years later) re-appointed as a director or as an alternate, the electronic system will not permit the filing of the form for the fresh appointment, which, in turn, will be construed as a statutory violation.

Failure to file any form properly can create unforeseen problems as the MCA 21 processes continue to be streamlined.

From 28 February 2006, the ministry made it mandatory for any individual (Indian or foreigner) intending to become

a director of an Indian company, to have a DIN number prior to their appointment.

In order to generate a DIN, personal information, such as proof of residence, is essential. In the case of foreign nationals, the documentary proof must be in English and notarized at the Indian embassy/consulate of the proposed director. Intended to be a lifetime number, the DIN is used on all filings submitted by or on behalf of the director. Without a DIN, these filings cannot be completed.

This electronic tracking system keeps a constant eye on the directors of any company and enables the statutory authority to track any illegal action, such as a director sitting on the boards of more than 15 companies.

Indian company law is mammoth and involves numerous administrative compliances. If a company defaults in complying with any provision of the act, the ROC can send an application to the Company Law Board (CLB) to take action against it. If a company continues to default, then the CLB can order any officer of the company to file the requisite papers with the registrar and provide the additional fee. However, if any officer of the company contravenes the CLB's orders they can be imprisoned for a maximum period of six months and fined as the CLB deems fit.

Practically, the CLB does not pass an order for imprisonment easily, but with increased monitoring by the MCA, more companies are starting to receive notices for non-compliance. In this light, it becomes crucial that those assisting in the compliance process (be it in-house company secretaries or external advisers), ensure that the daunting paperwork is done to prevent the company from being accused of non-compliance.

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