

THE COMPANIES (AMENDMENT) BILL, 2006
(As passed by the Rajya Sabha on 21/3/2006 and the Lok Sabha on 15/5/2006)

A

Bill

further to amend the Companies Act, 1956.

BE it enacted by Parliament in the Fifty-seventh Year of the Republic of India as follows:—

Short title and commencement

1.(1) This Act may be called the Companies (Amendment) Act, 2006.

(2) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different provisions of this Act.

Amendment of section 253

2.In section 253 of the Companies Act, 1956 (hereinafter referred to as the principal Act), the following proviso shall be inserted, namely:—

"Provided that no company shall appoint or re-appoint any individual as director of the company unless he has been allotted a Director Identification Number under section 266B."

Insertion of new sections 266A, 266B, 266C, 266D, 266E, 266F and 266G

3. After section 266 of the principal Act, the following sections shall be inserted, namely:—

'Director Identification Number

Application for allotment of Director Identification Number

266A. Every—

(a)Individual, intending to be appointed as director of a company; or

(b)Director of a company appointed before the commencement of the Companies (Amendment) Act, 2006,

shall make an application for allotment of Director Identification Number to the Central Government in such form, and manner (including electronic form) along with such fee, as may be prescribed:

Provided that every director appointed before the commencement of the Companies (Amendment) Act, 2006 shall make, within sixty days of the commencement of the said Act, such application to the Central Government:

Provided further that every applicant, who has made an application under this section for allotment of Director Identification Number, may be appointed as a director in a company, or, hold office as director in a company till such time such applicant has been allotted Director Identification Number.

Allotment of Director Identification Number

266B. The Central Government shall, within one month from the receipt of the application under section 266A, allot a Director Identification Number to an applicant, in such manner as may be prescribed.

Prohibition to obtain more than one Director Identification Number

266C. No individual, who had already been allotted a Director Identification Number under section 266B, shall apply, obtain or possess another Director Identification Number.

Obligation of Director to intimate Director Identification Number to concerned company or companies

266D. Every existing director shall, within one month of the receipt of Director Identification Number from the Central Government, intimate his Director Identification Number to the company or all companies wherein he is a director.

Obligation of company to inform Director Identification Number to Registrar

266E. (1) Every company shall, within one week of the receipt of intimation under section 266D, furnish the Director Identification Number of all its directors to the Registrar or any other officer or authority as may be specified by the Central Government.

(2) Every intimation under sub-section (1) shall be furnished in such form and manner as may be prescribed.

Obligation to indicate Director Identification Number

266F. Every person or company, while furnishing any return, information or particulars as are required to be furnished under this Act, shall quote the Director Identification Number in such return, information or particulars in case such return, information or particulars relate to the director or contain any reference of any director.

Penalty for contravention of provisions of section 266A or section 266C or section 266D or section 266E

266G If any individual or director, referred to in section 266A or section 266C or section 266D or a company referred to in section 266E, contravenes any of the provisions of those sections, every such individual or director or the company, as the case may be, who or which, is in default, shall be punishable with fine which may extend to five thousand rupees and where the contravention is a continuing one, with a further fine which may extend to five hundred rupees for every day after the first during which the contravention continues.

Explanation - For the purposes of sections 266A, 266B, 266C, 266D, 266E and 266F, the Director Identification Number means a identification number which the Central Government may allot to any individual, intending to be appointed as director or to any existing directors of a company, for the purpose of his identification as such".

Insertion of new sections 610B, 610C, 610D, and 610E

4. After section 610A of the principal Act, the following sections shall be inserted, namely:—

Provisions relating to filing of applications, documents inspection etc. through electronic form

"610 B. (1) Notwithstanding anything contained in this Act, and without prejudice to the provisions contained in section 6 of the Information Technology Act, 2000, the Central Government may, by notification in the Official Gazette, make rules so as to require from such date as may be specified in the rules, that—

(a) such applications, balance-sheet, prospectus, return, declaration, memorandum of association, articles of association, particulars of charges, or any other particulars or document as may be required to be filed or delivered under this Act or rules made there under, shall be filed, through the electronic form and authenticated in such manner as may be specified in the rules;

(b) such document, notice, any communication or intimation, required to be served or delivered under this Act, shall be served or delivered under this Act through the electronic form and authenticated in such manner as may be specified in the rules;

(c) such applications, balance-sheet, prospectus, return, register, memorandum of association, articles of association, particulars of charges, or any other document and return filed under this Act or rules made there under shall be maintained by the Registrar in the electronic form and registered or authenticated, as the case may be, in such manner as may be specified in the rules;

(d) such inspections of the memorandum of association, articles of association, register, index, balance-sheet, return or any other document maintained in the electronic form, which is otherwise available for such inspection

under this Act or rules made there under, may be made by any person through the electronic form as may be specified in the rules;

(e) such fees, charges or other sums payable under this Act or

rules made there under shall be paid through the electronic form and in such manner as may be specified in the rules;

(f) the Registrar shall, register change of registered office, alteration of memorandum of association or articles of association, prospectus, issue certificate of incorporation or certificate of commencement of business, register such document, issue such certificate, record notice, receive such communication as may be required to be registered or issued or recorded or received, as the case may be, under this Act or rules made there under or perform duties or discharge functions or exercise powers under this Act or rules made there under or do any act which is by this Act directed to be performed or discharged or exercised or done by the Registrar, by the electronic form, in such manner as may be specified in the rules.

(2) The Central Government may, by notification in the Official Gazette, frame a scheme to carry out the provisions specified under sub-section (1) through the electronic form:

Provided that the Central Government may appoint different dates in respect of different Registrar of Companies or Regional Directors from which such scheme shall come into force.

Power to modify act in relation to electronic records (including the manner and form in which electronic records shall be filed)

610C. (1) The Central Government may, by notification in the Official Gazette, direct that any of the provisions of this Act, so far as it is required for the purpose of electronic record specified under section 610B in the electronic form,—

(a) shall not apply, in relation to the matters specified under clauses (a) to (f) of sub-section (1) of section 610B, as may be specified in the notification; or

(b) shall apply, in relation to the matters specified under clauses (a) to (f) of sub-section (1) of section 610B only with such consequential exceptions, modifications or adoptions as may be specified in the notification:

Provided that no such notification which relates to imposition of fines or other pecuniary penalties or demand or payment of fees or contravention of any of the provisions of this Act or offence shall be issued under this sub-section.

(2) A copy of every notification proposed to be issued under sub-section (1), shall be laid in draft before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in disapproving the issue of the notification or both Houses agree in making any modification in the notification, the notification shall not be issued or, as the case may be, shall be issued only in such modified form as may be agreed upon by both the Houses.

Providing of services through electronic form

610D. The Central Government may provide such value added services through the electronic form and levy such fees as may be prescribed.

Application of provision of Act 21 of 2000

610E. All the provisions of the Information Technology Act, 2000 relating to the electronic records (including the manner and format in which the electronic records shall be filed), in so far as they are not inconsistent with this Act, shall apply, or in relation, to the records in electronic form under section 610B.”

STATEMENT OF OBJECTS AND REASONS

In context of the rapid developments witnessed in technology, the Ministry of Company Affairs decided to enable the operations carried out by the Ministry and its field offices to be performed more efficiently and effectively through the use of contemporary information technology and computers. It was felt that the earlier efforts at computerisation had not yielded the desired efficiency in operation of the system and an operating system that took into account contemporary technology was necessary. Therefore, it was decided to implement a comprehensive e-Governance system and programme to achieve the above objective.

2. The Ministry of Company Affairs on the recommendations of Department of Information Technology is implementing an e-Governance initiative through a project named as "MCA-21". This project will provide the public, corporate entities and others an easy and secure online access to the corporate information, including filing of documents and public access to the information required to be in the public domain under the statute, at any time and from anywhere. This would also result in efficiency in statutory supervision of corporate processes and efficient professional services under the Companies Act, 1956 (the Act).

3. The filing and registration of documents is a statutory requirement under the Act. At present, the Act lays down the procedures for filing of various documents in physical

form and the processes associated therewith. While, the broad enabling framework for such an initiative is available under the Information Technology Act, 2000 read with Companies Act, 1956, enabling provisions would still be required to support certain online electronic processes which have since become available due to technological advancement for various detailed procedural requirements under the Companies Act, 1956.

4.It is, therefore, proposed to insert new sections 610B, 610C, 610D and 610E in the Companies Act, 1956 so as to make provision for electronic filing system and for payment of fees through electronic form under the said Act which are essential for the successful implementation of the MCA-21 Project. After the proposed amendments to the Companies Act, 1956 have been enacted, the documents in electronic form duly authenticated with digital signatures shall be accepted under the provisions of that Act. The proposed electronic system also provides for multiple modes of payment of statutory fees.

5.The provisions of the Companies Act, 1956 allow an individual to be a director of up to fifteen companies and such companies can be located in the jurisdiction in any of the Registrars of Companies. There is a need for individual identity of person(s) intending to be directors of companies to be established. This would also facilitate effective legal action against the directors of such companies under the law, keeping in view the possibility of fraud by companies and the phenomenon of companies that raise funds from the public and vanish thereafter. It is, therefore, proposed to insert new sections 266A, 266B, 266C, 266D, 266E, 266F and 266G in the Companies Act, 1956 so as to, *inter alia*, provide for allotment of a unique Director Identification Number to any individual, intending to be appointed as a director in a company or to any existing director of a company, for the purpose of his identification as such, through electronic or other form and to provide for penalty for any violation in this regard.

6.This Bill seeks to achieve the above objectives.

NEW DELHI;

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PREM CHAND GUPTA.

The 25 February, 2006.