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The Companies (Amendment) Act, 2006 (India)

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The Companies (Amendment) Act 2006 received the assent of the President of India on 29th May 2006 and was published in the Official Gazette of India on 30th May 2006. It was enacted to give legal validity to the project named as MCA-21 project (Ministry of Company Affairs –21 project).

MCA-21 would provide electronic filing of documents and records of a company including registration, adaptation of all statutory forms for electronic filing, scanning and digitization of permanent records, annual returns and balance sheets. It is an e-governance initiative installed to facilitate the public, corporate entities and other stakeholders an easy and secured on-line access to corporate information at any time and from anywhere. The Companies (Amendment) Act, 2006 (the Act 2006) provides suitable framework for successful implementation of online electronic processes under MCA 21 project.

New Provisions inserted by the Companies (Amendment) Act, 2006 in the Companies Act, 1956 (The Principal Act)

- Director Identification Number (DIN)

Section 253 of the Act 1956 has been amended to provide that no company shall be allowed to either appoint or re-appoint any individual as director of the company unless a Director Identification Number (DIN) is obtained.

To comply with this provision, new sections 266A-266G have been inserted detailing the procedure:

- Every person interested in appointment as a director and every person appointed as a director before the commencement of Act 2006 shall within sixty days of such commencement make an application in the prescribed form along with the specified fee to the Central Government for allotment of the DIN. The director can hold his office pending application before the Central Government. The Central Government shall allot DIN within one month from the date of receipt of application.

- Every director within one month of receipt of DIN shall intimate to all the Company (s) in which he is a director and every company within one week of receipt of DINs of all of its director(s) shall intimate the same to the Registrar or to any other authority specified by the Central Government.

- Every person or company shall quote the DIN number wherever applicable in any return, information or particulars before it is furnished to any authority under the Act, 1956.

- No director is allowed to apply, obtain or possess more than one DIN.
If any individual or director or a company contravenes any of the aforesaid provisions then they are 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.

**Electronic Filing (e-filing)**

The Central Government may by notification in the official gazette make rules for e-filing. Such rules shall apply from such date as specified in said rules. Accordingly, the following shall be filed/delivered, as the case may be, in electronic form and authenticated in the manner specified under the rules.

- applications, balance-sheet, prospectus, return, declaration, memorandum of association, articles of association, particulars of charges or any other particulars or documents required for filing or deliverable under the Act 1956;
- document, notice, any communication or intimation required to be served or deliverable under the Act 1956 or rules made there under;
- any document or particulars to be filed with the Registrar under the Act 1956 or rules made there under;
- any document or particulars to be maintained for inspection under the Act 1956 or rules made there under; in the electronic form and in the manner specified under the rules;
- fees, charges or other sums payable under this Act or rules made there under;
- 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 relevant documents, issue relevant certificates, serve record notice, receive relevant communication, perform duties, discharge functions or exercise powers, under the Act or the rules made there under, to be carried out by the Registrar.

To ensure strict adherence to the above task new sections 610B - 610 D are inserted to empower the Central Government to frame a scheme through notification in the official gazette. Such notification shall take effect only on receiving the approval from both the houses of Parliament.

The Central Government has the power to effect any modifications or adoptions in relation to electronic records but has no power in respect of 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. However, the Central Government is empowered to provide value added services through electronic form and also levy such fees as prescribed under the Act 2006.

Further, the provisions of the Information of Technology Act, 2000 relating to the electronic records and electronic filing so far not inconsistent with the Act 2006 are applicable to the electronic records and electronic filing under section 610 B.