

Shell Crackdown: Companies Now Need To Prove They're Alive. But To What Effect?

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India's over 17 lakh companies have been given two months to show that they are 'alive'.

As proof, they have to give the Registrar of Companies details of their registered office, its location by latitude and longitude, photos of the office exteriors and interiors featuring a director in them, statutory and cost auditors' details and more. The rules apply to all companies incorporated prior to December 2017. But the intent and the goal of the exercise have not been made clear by the Ministry of Corporate Affairs.

The government's focus for a while has been to figure out companies that are being misused for money laundering and tax evasion and perhaps this is another attempt in that direction, Pratibha Jain, head of regulatory practice at Nishith Desai Associates, told BloombergQuint. But how effective will this be, she questioned, because if someone wants to circumvent the intent, they'll just give an address, a photograph and move on.

The important part is enforcement — the ministry has taken data before as well. It is asking for compliance after compliance, which whoever wants to circumvent will circumvent and it becomes a burden for genuine businesses.

Pratibha Jain, Partner, Nishith Desai Associates

For a company that is doing regular filings, all this information will anyway be available with the RoC other than the requirement of the photographs, she said.

The rules seem to be strange because the section under which they have been framed says that if the RoC has a reasonable cause to believe that a company is not in operation, it can prescribe the manner in which the physical verification of the registered office can take place, Sharad Abhyankar, partner at Khaitan & Co. pointed out. Instead of framing rules for such companies, they have actually reversed the process to say if you have not filed this form, then you'll be deemed to be not in operation, he said.

It's saying that let everybody prove they are existing and then I will go about preparing a list of those which are not active and proceed against them. But the law requires you to first find a reasonable cause and then verify the registered office.

Sharad Abhyankar, Partner, Khaitan & Co.

The other curious requirement is that of submitting the photograph of the registered office featuring a key managerial personnel, Jain said.

The concept of a registered office is different from a corporate office. In most developed jurisdictions, companies need to have a registered office which doesn't need to be a physical space.

These rules have brought in the requirement of having a registered office that is a physical space where the director is sitting.

Pratibha Jain, Partner, Nishith Desai Associates

The only requirement under law today is that the registered office should be an active one for the purpose of correspondence, etc. but now the government is introducing a new element in law, she added.

Abhyankar pointed out that there have been instances where vacant plot addresses have been submitted as registered offices. This new provision is to ensure companies show the physical environment they are working out of and given that a practising company secretary needs to verify the existence of this office and give an undertaking to that effect, this will address the issue of vanishing companies, he said. “I don’t think anyone will risk losing their practice license by giving a false undertaking.”

But both experts agreed that companies which intend to circumvent rules will find a way to do so if lack of enforcement continues. Instead, the rules will increase the compliance burden for others.

Watch the discussion with Sharad Abhyankar and Pratibha Jain

here... <https://www.bloomberquint.com/law-and-policy/shell-crackdown-companies-now-need-to-prove-theyre-alive-but-to-what-effect>