

Corpsec Hotline

March 14, 2011

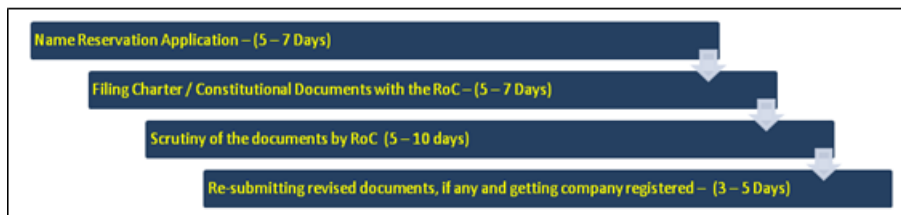
ESTABLISHING PRESENCE IN INDIA MADE EASY!!!

Introduction:

In a further attempt to enable the corporate sector in India to operate in a regulatory environment of best international practices that fosters entrepreneurship, investment and growth, the Ministry of Corporate Affairs ("MCA") issued a General Circular No. 6/2011 dated March 8, 2011¹ ("Circular") to all the Regional Directors ("RD"), the Registrar of Companies ("RoC"), and all Official Liquidators ("OL") in relation to simplifying the process of incorporation of companies and establishment of principal place of business in India by foreign companies under the provisions of the Companies Act, 1956 ("Act").

Existing Process:

The current process of the incorporation of the Company is as follows:



The above process of incorporation generally takes 25 - 30 working days which involves a lot of time and also results in unnecessary administrative hassle for the individuals / corporations intending to set up their operations in India. The situation would get further aggravated since RoC's of different state have different internal set of rules and guidelines leading to more delay in the entire process.

Key Recommendations:

The following are the key recommendations made in the Circular:

Incorporation of a company in India :

1. Only the application and declaration for incorporation of a company will be approved by the RoC office (form 1). However, other incorporation forms such as notice of situation of registered office (form 18) and particulars of appointment of directors (form 32) to be processed by the system online. Changes required to be carried in these forms will be notified online.

2. Further, the following incorporation forms will be considered by RoC under the category of 'highest priority' while processing:

- Form 1A (Application form for availability or change of a name);
- Form 37 (Application by an existing joint stock company or by an existing company for registration);
- Form 39 (Registration of an existing company as a limited company);
- Form 44 (Documents delivered for registration by a foreign company); and
- Form 68 (Application for rectification of mistakes apparent on record)

The above recommended process is intended to reduce the average time taken for incorporation of company to one (1) day only post name approval.

Establishment of principal place of business in India by foreign companies:

For establishment of principal place of business in India by foreign companies (either liaison office, branch office or project office), the foreign companies are required to obtain prior approval of the Reserve Bank of India ("RBI"). Such approval is granted by the RBI on a case-by-case basis and such establishment is required to comply with the specific regulations prescribed by the RBI. Post obtaining such approval from RBI for establishing principal place of business in India, the foreign company has to apply to RoC for registration of such establishment in India. The process of registration with RoC of such establishment generally takes around 10 – 15 working days which is now proposed to be reduced pursuant to this Circular.

Conclusion:

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In line with the global standards, MCA has from time to time introduced various reforms including electronic filing of corporate documents and providing online access/ scrutiny of company documents to the public at large. Further, recently a series of reforms have been introduced by the MCA keeping in mind changing economic and commercial environment nationally as well as internationally. The above recommendation for speedy incorporation of the company is a much welcome move which would reap benefits for those interested in setting up their presence in India.

1 General Circular No. 6/2011 dated March 8, 2011

Jignesh Makwana, Avinash Poojari & Ruchi Biyani

You can direct your queries or comments to the authors

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