



Snehal Shah

B.Com., FCS, LL.B.
+91 9821 778811

Snehal Shah & Associates
COMPANY SECRETARIES

501, Shreeji Arcade Premises, Jn. of S. V. Road & M. G. Road, Kandivali (West), Mumbai 400067
Office No. : + 91 97693 51780 | Email: snehalshah_19@yahoo.com | snehalshahpcs@gmail.com

Some important changes happened in the Corporate and Legal world in last one year:

1. Consideration of Aadhaar Integration for availing various MCA21 related services

Need: After demonatisation drive and further to streamline the availability of information on assesses, the Government has issued a notification to integrate the Aadhaar Card for all Directors' Identification Numbers ("DIN").

Impact: All the persons who are Directors of Private Limited and Limited Companies and Designated and other Partners in LLPs are required to register their Aadhaar Card numbers with priority.

Options: The existing Directors & Partners need to take the Aadhaar card on priority.

2. Mandatory submission of Aadhaar Card with Bank Accounts

Need: After demonatisation drive and further to streamline the availability of information on assesses, the Government has issued a notification to integrate the Aadhaar Card in all Bank Accounts.

Impact: All the bank account holders are required to register their Aadhaar Card numbers with priority. **Even Minor Accounts are required to register the Aadhaar Card Number.**

Options: The bank account holders are required to take the Aadhaar card on priority.

3. Removal of Names of the Companies from Register - Section 248 of Companies Act, 2013 (Replacement of FTE)

Need: The dormant companies were not filing forms as well as able to strike off the name of the Company under erstwhile Section 560 of the Companies Act, 1956.

Impact: Ministry of Corporate Affairs (MCA) issued a Notification dated 26th December, 2016. MCA has appointed 26.12.2016 as effective date for Section 248 to 252. Now, This Section 560 of erstwhile Companies Act, 1956 is replaced.

Now, MCA on its portal has notified that the much awaited **Form STK-2 which is an application by company for removing name of a Company from register**



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of companies is likely to be made available w.e.f. 5th April 2017 and the promoters can suo-moto make application for closure of its defunt Company/ies.

NOTICE ISSUED BY REGISTRAR FOR REMOVAL OF NAME OF THE COMPANY

The Registrar of Companies are **NOW** issuing notices to inactive companies for removing their name from the Register of companies. A copy of such notice is enclosed herewith for referral. Whereas in the notice the ROC has prescribed that if no representation is received from the company or its directors within 30 days of serving such notice then the company shall be removed from the register of Companies and **DIRECTORS of the Company shall be liable for appropriate actions.**

Options: So, referring the above clause it is advisable that if a company has received any such notices from ROC then apply for Striking off the name of the Company from Register of Companies suo moto rather than waiting for any action from the end of ROC.

Alternatively, if the Company is active, then they can send letter stating the pending filing will be done within due course of time.

4. Government Initiatives for EASE OF DOING BUSINESS - SPICe FORM

Need: In order to excel the Corporate India towards Ease of doing Business at par with other countries like Singapore which does incorporation in **ONE** day, the Government of India has introduced **SPICe Form** (Simplified Proforma for Incorporating Company Electronically for incorporation of the new companies.

Impact: By introducing the new process, the Ministry of Corporate Affairs ("MCA") has given an option to obtain **Directors Identification Numbers ("DIN");** Incorporation Certificate; Permanent Account Number ("PAN") and Tax Account Number ("TAN") at one go. ***This has reduced the incorporation and PAN, TAN time by 1 month.***

Apart from making the procedure simpler (since everything need to be e-filed), one can also fill a pre-drafted Memorandum and Article of Association online, thus, making it a hassle free process.

Till 31st March 2017, 19,704 newly incorporated Companies were allotted PAN in this manner. During March, 2017, of the 10,894 newly incorporated companies,



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PAN was allotted within 4 hrs in 95.63% cases and within 1 day in all cases. Similarly, TAN was allotted to all such companies within 4 hrs in 94.7 % cases and within 1 day in 99.73% cases.

Options: Choose the incorporation of the Private Limited and it can be incorporated within 10 days with PAN & TAN.

5. Establishment of National Company Law Tribunal ("NCLT") and National Company Law Appellate Tribunal ("NCLAT").

The Government has approved the establishment of NCLT and NCLAT with effect from 1st June, 2016. With this approval, the Company Law Board ("CLB") was dissolved. Vide notification dated 15th December, 2016; the NCLT provisions were given effect to operate.

Need: There were thousands of cases were pending in various courts relating to different matters which was time consuming and approval was delayed. Due to this, the economic affairs of the Companies were delayed. In some cases, the matter was in litigation for around 5 - 10 years and still going on.

Impact: All cases which were pending with the High Courts of various cities will be gradually shifted to the NCLT. Due to above, most of the **corporate** matters were taken under the purview of the NCLT.

Due to this, after initial period of 2 -3 years, the NCLT will hear the matters and will be faster in delivering its orders for matters presented. The period required will be shorten and it will be faster and effective.

Options: The Corporates can use the options of demerger of the organization for value creation as well as for Wealth creation to promoters in long run through systematic planning, approach and execution.

6. Virtual Currency

Reserve Bank of India, vide, its Press Release dated February 01, 2017 has advised that it has not given any license / authorization to any entity / company to operate schemes or to deal with Bitcoin or any virtual currency. As such, any user, holder, investor, trader, etc. dealing with Virtual Currencies will be doing so at their own risk.



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Reserve Bank of India had issued cautionary advice to the users, holders and traders of Virtual Currencies (VCs) including Bitcoins about the potential financial, operational, legal, customer protection and security related risks that they are exposing themselves to, vide, its press release dated December 24, 2013.

The creation, trading or usage of VCs including Bitcoins, as a medium of payment is not authorized by any central bank or monetary authority. No regulatory approval, registration or authorisation have been obtained by the entities concerned for carrying on such activities. The absence of counter parties in the usage of VCs including Bitcoins, for illicit and illegal activities in anonymous / pseudonymous systems **could subject the users to unintentional breaches of anti-money laundering and combating the financing of terrorism (AML/CFT) laws.**

7. Introduction of new form STK2

The Ministry of Corporate Affairs has introduced a new **form STK2** for making an application for Companies who are inactive and which want to apply to Ministry of Corporate Affairs for striking off the name of the Company from the Registrar of Companies records. The form is effective from 5th April, 2017.

This form will enable to close down the companies which are dormant subject to fulfillment of certain conditions.

8. Amendment in the disclosure norms of Private and Public Companies

Ministry of Corporate Affairs has notified amendment in Schedule III (i.e. General Instruction for Preparation of Balance Sheet & Statement of P& L of a Company) of Companies Act, 2013 which shall come into force on the date of their publication in the Official Gazette i.e. March 30, 2017.

The amendment provides that In Schedule III, Part I under the heading "General instructions for preparation of Balance Sheet in paragraph 6, after clause '(w)', the following clause shall be inserted:-

"Every company shall disclose the details of Specified Bank Notes (SBN) held and transacted during the period from November 8, 2016 to December 30, 2016."

Impact: All the Companies are now required to disclose the details of Bank notes deposited in various bank accounts.



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9. Introduction of the Insolvency and Bankruptcy code, 2016

The Above code was enacted and made effective with effect from 28th May, 2016.

One of the fundamental features of the Code is that it allows creditors to assess the viability of a debtor as a business decision, and agree upon a plan for its revival or a speedy liquidation.

The Code creates a new institutional framework, consisting of a regulator, insolvency professionals, information utilities and adjudicatory mechanisms, that will facilitate a formal and time bound insolvency resolution process and liquidation.

The code is evolving and it helps **the lenders to take shelter of law** and get faster and better results by following the provision of the Act.

More will be given separately as the process is work in progress and will be available in due course of time.

10. Case Study: the Bombay High Court on Right of Nomination

One of the prime contentious issues has been whether nomination under the Companies Act shall prevail over the will? This Bombay High Court ruling is in relation to "Right of Nomination" under Companies Act, with reference to the principles of inheritance and succession laid down by the Apex Court.

Division Bench of the Bombay High Court in **Shakti Yezdani v. Jayanand Jayant Salgaonkar** [December 01, 2016] ('Case') held that only the legal heirs, and not Nominee, shall ultimately be vested with shares of deceased shareholder.

Division Bench also held that the object of the provisions relating to "Nomination" is not to either provide a mode of succession or to deal with succession, but the object is to ensure that the deceased shareholder is represented by someone as the value of the shares. The purpose is to ensure that commerce do not suffer due to delay on the part of the legal heirs in establishing their rights of succession and claiming the shares of the Company.

Division Bench also noted that the word "Vesting" under Section 109A of the Companies Act, 1956 does not create a third mode of creation and Companies Act has no relation with the law of succession.



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We suggest readers to draw their conclusions after taking into consideration various other relevant sections, rules to be notified from time to time and applicable Secretarial Standards, Accounting Standards and Guidance notes and other notifications, circulars and amendments notified from time to time.

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