

## MCA 21 – The e-Revolution in Corporate Governance

**W**ith the opening of the economy towards globalisation, our corporate world requires a world-class governance system. The essence of corporate world lies in promoting compliance of the law in letter and spirit, transparency, accountability and above all, fulfilling the fair expectations of all the stakeholders.

The process of economic reform and liberalisation that started in 1991 has entered a crucial phase, i.e., second-generation reforms. In the pursuit of globalisation, India has responded by opening up its economy, removing constraints and resorting to liberalisation. The natural corollary of this is that the regulatory system should be geared up in consonance with the best practices and technological development across the world. The Competition Act, 2002, has been enacted substituting the Monopolies and Restrictive Trade Practices Act, 1969. The corporate leaders are assimilating the recommendations of various Committee Reports on Corporate Governance across the globe to incorporate the best corporate practices and to ensure good governance.

The General Assembly of the United Nations by resolution A/RES/51/162, dated the 30 January 1997, has adopted the Model Law on Electronic Commerce adopted by the United Nations Commission on International Trade Law. This resolution recommends, *inter alia*, that all States give favourable consideration to the said Model Law when they enact or revise their laws, in view of the need for uniformity of the law applicable to alternatives to paper-based methods of communication and storage

— Dr. Alok Ray

*(The author is working as Deputy Secretary with the ICAI. He can be reached at alokray@icai.org)*

of information. Henry Hansmann and Reinier Kraakman have very rightly pointed out that the basic law of corporate governance has achieved a high degree of uniformity across the developed market jurisdictions, and continuing convergence toward a single, standard model is likely.

### The Information Technology Act, 2000

To be in tune with the U.N. Resolution, in India, The Information Technology Act, 2000 has been enacted to provide legal recognition carried out by means of electronic data interchange and other means of electronic communication commonly referred to as “electronic commerce” which involves the use of alternative to paper-based methods of communication and storage of information to facilitate electronic filing with the Government agencies and to amend the Indian Penal Code, The Indian Evidence Act, 1872, The Bankers’ Book Evidence Act, 1891 and The Reserve Bank of India Act, 1934.

### Electronic Governance

Chapter III of the I.T. Act provides for electronic governance. Section 4 of the Act provides legal recognition of electronic records. Where any law provides that information or any other matter shall be in writing or in the typewritten printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have satisfied if such information or matter is

- (a) rendered or made available in an electronic form and
- (b) accessible so as to be usable for a subsequent reference.

Section 5 of the Act prescribes legal recognition of digital signatures where any law provides that information or any other

matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

### Use of Electronic Records and Digital Signatures in Government and its Agencies—E-compliance

Section 6 of the IT Act prescribes that:

- (1) Where any law provides for-
  - (a) the filing of any form, application or any other document with any office, authority, body or agency owned or controlled by the appropriate Government in a particular manner;
  - (b) the issue or grant of any licence, permit, sanction or approval by whatever name called in a particular manner;
  - (c) the receipt or payment of money in a particular manner,

then, notwithstanding anything contained in any other law for the time being in force, such requirement shall be deemed to have been satisfied if such filing, issue, grant, receipt or payment, as the case may be, is effected by means of such electronic form as may be prescribed by the appropriate Government.

- (2) The appropriate Government may, for the purpose of sub-section (1), by rules, prescribe –
  - (a) the manner and format in which such electronic records shall be filed, created or issued;
  - (b) the manner or method of payment of any fee or charges for filing, creation or issue any electronic record under clause (a).

Section 7 of the Act provides sanctity for retention of electronic records substituting paper documentation and Section 8 has empowered

the Government to publish the rules, regulations, order, byelaws, and notification in electronic gazette. Section 51 to 53 of the Companies Act, 1956 provides for service of documents. Section 52 provides that a document may be served on a Registrar by sending it to him at his office by Post under a Certificate of Posting or by registered post, or by delivering it to, or leaving it for him at his office. Section 6 of the IT Act modified the requirements of Companies Act and paved the way for the e-filing system.

### Evidentiary Value of Electronic Documents

To accord sanctity to the electronic record, the Indian Penal Code, the Indian Evidence Act, Bankers' Books Evidence Act, and have been extensively amended. The documents retained electronically have been given the same footing as paper document. Section 65B has been inserted to provide admissibility of electronic record. It provides, *inter alia*, that any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be also a document.

### Salient Features of MCA 21

- ❑ Introduction of anywhere, anytime secure electronic filing for MCA transactions;
- ❑ Adaptation of a new set of electronic forms or e-forms leading to a reduction in the total number forms besides elimination of repetitive data in each of the e-forms;
- ❑ Use of Digital Signatures to ensure the security of electronic forms and documents in conformance with the Information Technology Act, 2000
- ❑ Convenient methods of payments that will encompass electronic payment options using credit cards and Internet banking in 200 bank branches across the country
- ❑ Back office of the Ministry to use best-in-class information technology solutions
- ❑ 53 Customers Facilitation Centres located

nationwide that will provide facilitation services for electronic filing and the public interface

- ❑ Nearly 5 crore pages of legacy corporate documents digitised/to be digitised for electronic access through Internet
- ❑ Easy reporting of complaints by investors through MCA portal for easy and speedy redressal
- ❑ National Data Center to provide uninterrupted 24X7 operations
- ❑ Disaster Recovery mechanisms with a facility to restart operations within half-day in the event of a natural or man-made disaster
- ❑ Proposal for collection of stamp duty electronically
- ❑ Adoption of a Build-Own-Corporate-transfer model through Public-Private partnership to ensure sustained performance levels

In India, more than 6,50,000 companies have been incorporated, a fraction of which is only listed. MCA 21 is a project envisaged to ensure transparency and online compliance with the various requirements of the Companies Act, 1956, for all the companies. This project, by adopting international best practices, has the ambition to ensure:

- ❑ **Business:** enabled to register a company and file statutory documents quickly and easily and in a manner that is convenient
- ❑ **Public:** to get easy access to relevant public records and get their grievances redressed effectively
- ❑ **Professionals:** to be able to offer efficient services to their client companies
- ❑ **Financial Institutions:** to find registration and verification of charges easy
- ❑ **MCA:** to ensure proactive and effective compliance of relevant laws and corporate governance
- ❑ **Employees:** enabled to deliver best of breed services

This Project envisages a cost effective integrated software solution for computerising various in-house functions like human resource management, pay-roll, accounting and finance for internal users of MCA.

Permanent documents of existing companies like Memorandum of Association, Articles of Association, and Current charged documents are presently maintained in paper form across various RoC offices. These documents are being converted into electronic format and it is being carried out at the respective ROC offices as part of this project.

### Services Available Under MCA 21

- Registration and incorporation of new companies
- Filing of Annual Returns and Balance Sheets
- Filing of forms for change of names/address/ Director's details
- Registration and verification of charges
- Inspection of documents
- Applications for various statutory services from MCA
- Investor grievance redressal

### Ingredients of MCA-21 Project

To appreciate the MCA-21 Project, we have to understand the following concepts constituting the ingredients as well as basics of the system:

#### Director Identification Number (DIN):

The concept of a Director Identification Number (DIN) has been introduced for the first time with the insertion of Section 266A to 266G of Companies Amendment Act, 2006. The DIN is a unique identifier for an existing or a future Director containing personal information about him. The need for introducing the unique identifier arose from i) the need to create a rich and authentic data base for the Directors and ii) to address the phenomena of Companies that raising capital from public and subsequently vanish, with their

Directors became untraceable. This DIN concept not only helps in fixing the identity of the person but also correlates his participations in other companies, past or present. The DIN holder is required to inform the Central Government about any change in his particulars as and when such change takes place.

The Central Government has set up a DIN processing Cell in the office of Regional Director (Northern Region at Noida). The procedure relating to allotment of DIN is a two-stage process and is available on the portal [www.mca.gov.in](http://www.mca.gov.in) to apply for DIN, one has to fill DIN application online. A simple form available on the link "Apply for DIN" on My MCA Home Page. It may be mentioned that the "My MCA" Portal is the single point of contact for all MCA related services, which can be easily accessed over the Internet by all users. On submission of the form, a provisional DIN is generated by the system and is displayed on the screen. One has to take a print out of the filed form, affix his photograph and to send the same along with photocopies of identify and residence proof, duly attested by a notary, Gazetted Officer, Certified Professionals to MCA DIN Cell, Noida (U.P.). The form will be processed by the MCA DIN Cell and on approval DIN Confirmation and Activation Letter will be sent to the applicant.

### **Company Identification Number (CIN):**

The existing company registration number are unique within a given RoC office but it is not so across various RoC offices in the country. The My MCA Portal will display the CIN of a company when the company registration number or name is entered along with the relevant RoC code. Since the company registration number is not unique on an all India basis, the Roc code should also be keyed in by the user to provide the exact CIN. The name or CIN of the company may change over a period of time. System only displays the current name and CIN.

### **Digital Signatures (DSc)**

Section 2(1)(p) of the I.T. Act defines Digital

Signature as authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3. Section 3 provides authentication of electronic records, which prescribes, inter alia, that any subscriber may authenticate an electronic record by affixing his digital signature. The authentication of the electronic record shall be effected by the use of asymmetric crypto system and hash function, which envelop and transform the initial electronic record into another electronic record. Section 2(1)(t) defines electronic record as date, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche.

The following four categories of persons are required to obtain Digital Signature Certificates (DSC): (a) professionals, i.e., practising chartered accountants, company secretaries, cost accountants and lawyers who will be required to attest documents; (b) directors and other authorised signatories of companies; (c) representatives of banks and financial institutions; and (d) MCA employees concerned.

Section 5 of the I.T. Act provides legal recognition of Digital Signatures. Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may be prescribed by the Central Government.

Section 35 of the Act provides for Certifying Authority to issue Digital Signature Certificate. The Controller of Certifying Agencies (CCA) appointed under the I.T. Act has authorised 7 Certification Agencies to issue such Certificates. The I.T. Act provides for use of Digital Signatures on the documents submitted in electronic form

in order to ensure the security and authenticity of the documents filed electronically. As such, all filing done by the companies under e-governance MCA 21 programme are required to be filed with the use of Digital Signatures by the person authorised to sign the documents. The details of these certification agencies are available on the portal of MCA i.e., [www.mca.gov.in](http://www.mca.gov.in).

Digital Signature issued other than these authorised Certification agencies has no legality for authentication.

With the understanding with an authorised certifying agency, the Institute is issuing such Certificates to its members on subsidised rates and within a minimum time frame. So far the Institute has issued more than 1,650 Digital Signatures to its members. It has been prescribed that a Class 2 or above category certificate for e-filing is required. The filing of Annual Returns and Balance Sheet form a part of the Annual Filings and no stamp papers are required in these filings. The Annual Returns and the Balance Sheet can be filed in the prescribed e-forms, i.e., Form 20B and Form 23AC with attachments in word or Excel Documents converted into PDF thereby obviating the need for scanning these documents. Physical submission would be limited to the documents required to be submitted on stamp papers till such time the Ministry is able to implement a system of electronic generation of stamp papers.

### Payment of Statutory Fees

The filings by the companies entail payment of statutory fees. Multiple options are available under which the user can opt for Offline Mode of Payment or Online Mode of Payment. In the case of Offline Mode of Payment, the system calculates the applicable fees and generates a pre-fill challan, which the user is required to present before one of the authorised bank branches for making payment. The list of authorised bank/branches is available on the portal of the Ministry. In case of Online Mode of Payment, one has to use the Credit Card or

Internet Banking. In the case of online payment, the system generates a receipt of the amount. This can be termed as Virtual Inspection.

### Inspection/Viewing of Public Documents

Under the MCA 21 system, a user can view the documents available in the public domain of a company after making payment of the requisite fees. The inspection of the public documents is allowed online for 3 hours after the request is activated. This facility has significant advantages over the manual system, as the users are not required to physically travel to the office of the RoC and inspect the documents.

### Verification of Master Company Data and Charge Document

A facility has been provided under MCA 21 whereby the companies can access their master data by going to 'other services' and clicking on to the 'Master Company Data' on the Portal. The corporates may correct their data without any charge. However, this facility without any charges would be available upto 31 December 2006. This facility will ensure updation of data to prepare a correct database.

### E-Forms

An E-form is nothing but a reengineered conventional form representing a document in electronic format for filing with MCA authorities to the Internet. These may be either a form filed for compliance or information purpose or an application seeking approval from the MCA. An e-form contains certain standardised features. Each e-form contains the form reference and the description as well as the particular section of the Companies Act, 1956 or the relevant rules or regulations under which it is required to be submitted. It starts with the corporate identity number (CIN), which works as a unique identifier of a company, in the case of an Indian company and the foreign company registration no. in the case of a foreign company that is required to be filled up. By entering the number, the company details available in the static form

in the database, are automatically filled in by using the pre-filled functionalities. The e-form contains a number of mandatory fields which are required to be filled in. Certain other fields are non-mandatory in nature which may be filled in as may be relevant in any particular case. An instruction kit is available for each form, which contains details of the instructions for properly filling the form. Most of the e-form require the digital signature of the Managing Director, Director, Manager or Secretary of the company for successful filing or submission. In certain cases, a certificate from the chartered accountant or cost accountant or company secretary in whole-time practice is also required to authenticate the particulars contained in the form, for example, this requirement is mandatory in the case of an e-form for creation or modification of charges. Presently there are 61 reengineered e-forms.

### Prefill

Prefill is a functionality in the e-form that is used for filling automatically the requisite data from the system without repeatedly entering the same.

### Attachment

An attachment refers to a document that is sent as an enclosure with an e-form by means of an attached file. The objective of the attachment is to provide details relevant to the e-form for processing. While some attachments are optional, some are mandatory in nature.

### Public document: Right to Information Act, 2005

Public document are those documents that are available for viewing, by anyone on payment of requisite fees. Users may need to see public documents of any company registered with MCA for various purposes. Banks and Financial Institutions may also need to view these documents while sanctioning loans. The following are in the category of public documents:

- i) Incorporation Documents
- ii) Charged Documents
- iii) Annual Returns and Balance Sheet
- iv) Change in Directors'
- v) Other documents

The access to public documents pertaining to a company is provided from My MCA Portal to any citizen who wishes to view the same. This feature is available after log in. After the payment is received by MCA, one can view the documents during the next 7 days for a maximum of 3 hours.

The Parliament has enacted the Right to Information Act, 2005, to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.

Section 2(f) of the Act defines 'information' as any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force.

The definition of 'Public Authority' under Section 2(h) of the Act will include the office of RoC and SEBI also. Being equipped with Right to Information Act, this MCA-21 Project will empower the stakeholders to ensure a new era of transparency and accountability.

### Back Office

The Back Office represents the office of ROCs, Regional Directors and Head Quarters and takes care of Internal processing of the forms filed by the corporate users as per MCA norms

and guidelines. The e-forms will be routed dynamically to the concerned authority for processing depending upon the assigned role. All the e-forms along with the attachment will be stored in the electronic repository, which the staff of MCA can view depending upon the access rights.

### Front Office (FO)

The Front Office represents the interface of the corporate and public user with the MCA 21 system. This comprises virtual Front Office and physical Front Office. Virtual Front Office merely represents a computer facility for filing of digitally signed e-forms by accessing the My MCA Portal through Internet. It also presupposes availability of related facilities to convert documents into PDF Format and scanning of documents whenever required. If a company or user does not have these computer facilities, it can avail of these facilities at the designated Facilitation Centre, known as Physical Front Office.

### Virtual Front Office

Virtual Front Office facilitates online filing of the e-form using Internet. The system automatically does pre-scrutiny of the e-forms filed and indicate error message in case of incomplete or invalid particulars. Upon successful submission, a service request No. (SRN) will be generated by the system for the user, which will be used for future correspondence with MCA.

### Physical Front Office

Physical Front Office has replaced the existing ROC office counters. It will act as a facilitation Centre to facilitate filing of e-forms, scanning attachment to e-forms, generating challans for making payment of fees at the designated bank and finally, uploading the filled in digitally signed e-forms.

To meet the demands of the corporate who do not have access to computer and Internet, 53 no. of physical front offices have been established across the country. While

encouraging corporates to use virtual front office who are fulfilling their obligations as stipulated under the Companies Act, 1956, physically front offices would ensure a smooth transition to fully electronic delivery of MCA services. All the services of scanning and uploading of e-form are available free of cost in the PFO.

These Facilitation Centres are managed by the TCS–CMC.

### Certified Filing Centre Scheme

The Ministry has announced the Certified Filing Centre Scheme to provide an opportunity to the members of three professional Institutes, i.e., ICAI, ICSI & ICWAI to create and set up Virtual Front Office on payment of service charges. The Scheme has the objective to integrate the professionals to provide greater outreach to ensure the e-filing facility to the stakeholders and to make the process of transition from manual mode of operation to the electronic mode in a smooth manner. This scheme has come into force from 4<sup>th</sup> August 2006 and shall remain valid for a period of 3 years unless reduced or revised further. The details of the Scheme including the procedure of making application has been hosted on the website of the Institute [www.icaai.org](http://www.icaai.org). To expedite the process of registration, the Institute has hosted online application with effect from 1<sup>st</sup> August 2006. The registration is a continuous process and the Institute with all its resources is implementing the Scheme in the desired spirit. To disseminate the knowledge amongst the members, the Institute is organizing Training/Orientation Programme/Conference/Workshop across the country to inculcate the message of this Scheme and to sharpen the knowledge and excellence of the members.

The Certified Filing Centres Scheme is a measure to widen the Network of Facilitation Centre in association with the professionals. All details pertaining to CFCs can be found under the title 'CFC Corner' on the MCA Portal [www.mca.gov.in](http://www.mca.gov.in)

## Advertisement of CFC

The guidelines issued by the MCA provides that the CFC should display a sign board indicating that the Centre has been authorised by the Ministry of Company Affairs to accept MCA 21 filing. This Sign Board should be displayed in the prominent location and with the dimension 3" x 2". However, it may be mentioned that the members are not permitted to add or solicit his services under the Code of Ethics issued by the Institute.

Clause (6) of Part I of the First Schedule to the CA Act, 1949 prescribes that a chartered accountant in practice shall be deemed to be guilty of professionals misconduct, if he solicits clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means.

The Code of Ethics, 2004 edition issued by the Institute provides that it is an elaboration of the principle propounded in this clause enjoining that for securing professional work the help of others should not be sought. This clause further enjoins on a member not to solicit professional work by means of advertisement, circular, personal communication or interview or by any other means. The member should not adopt any indirect methods to advertise their professional practice with a view to gain publicity and thereby solicit clients or professional work.

Members should not advertise for soliciting work or advertise in a manner which could be interpreted as soliciting or offering to undertaken professional work. They are also not permitted to use the less open method of circulating letters to a small field of possible clients.

However, it may be mentioned that to implement the Project, the CFC requires best possible interface with the corporate world. Generally, the e-filing job will be carried out trained persons under the supervision of a professional. Whether the CFC may be

permitted to publicise itself in a limited way to the corporate world is an issue to be considered keeping in view the regulatory aspect and the image of the profession.

## Despatch of Physical Documents to the RoC Office

All the physical documents required to be submitted in respect of certain services that require a physical copy of the documents to be delivered in the offices of RoC for the time being i.e., (stamp paper approvals, charged documents, MOA, AOA etc.) should be sent to the respective RoC office by Courier or Speed Post along with Acknowledgement Due. The courier charges, on actual basis, would however, be payable by the user. The CFC should send all such physical documents in a separate envelope, i.e., superscribed with the details of service request no. not later than the immediate next working day, so as to enable prompt service delivery.

## Maintenance of Records

CFC should maintain an account of all transactions, day-wise, as described in the Performa published under the CFC Corner on the MCA website. This should include the details on challans generated and online payments made in respect of transactions.

## Companies Amendment Act, 2006

To implement the MCA 21 Project, the Companies (Amendment) Act, 2006, has been enacted 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.

The Act also provides for 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.

To make the e-governance a reality and to prescribe a legal framework for this flagship programme, this Act provides for, inter alia:

1. Application for allotment of Director Identification Number
2. Allotment of Director Identification Number
3. Provisions relating to filing of application, documents inspection etc. through electronic form
4. Power to Modify Act in relation to electronic records (including the manner and form in which electronic records shall be filed)

### **CFC in Corporate Form**

To empower the members to face the emerging challenges in the service sector as well as to equip them for the opportunities in the non-audit service area, the Council at its 261<sup>st</sup> meeting held from 1<sup>st</sup> to 3<sup>rd</sup> August, 2006 reviewed the aforesaid position and in the interest of the profession, decided to allow members in practice to render Management Consultancy and Other Services in Corporate form, subject to the guidelines to be issued by the Institute in this regard.

The Council decided to allow members in practice to hold the office of Managing Director, Whole-time Director or Manager of a body corporate within the meaning of the Companies Act, 1956 provided that the body corporate is engaged exclusively in rendering Management Consultancy and Other Services

permitted by the Council in pursuant to Section 2(2)(iv) of the Chartered Accountants Act, 1949, and complies with the conditions(s) as specified by the Council from time to time in this regard.

The members can retain full time Certificate of Practice besides being the Managing Director, Whole-time Director or Manager of such Management Consultancy Company. There will be no restriction on the quantum of the equity holding of the members, either individually and/or along with the relatives, in such Company. Such members shall be regarded as being in full-time practice and therefore can continue to do attest function either in individual capacity or in Proprietorship/ Partnership firm. They are also entitled to train articled/audit assistants.

The name of the Management Consultancy Company is required to be approved by the Institute and such Company has to be registered with the Institute. The guidelines along with the prescribed application forms for approval of name and registration, provisions of ethical compliance and other details have been issued and the same will come into force w.e.f. 1.10.2006.

To ascertain whether the Certified Filing Centre can be treated as Management Consultancy and Other Services, we may refer 2.2.4 (xviii) of the Code of Ethics, 2005 edition which provides "Systems analysis and design, and computer related services including selection of hardware and development of software in all areas of services which can otherwise be rendered by a Chartered Accountant in practice and also to carry out any other professional services relating to EDP".

Since the Certified Filing Centre is a recent phenomena, the same has not been considered in the definition of Management Consultancy & Other Services. However, the para 2.2.4 (xviii) shall include this service as Computer Related Services and to carry out professional services relating to EDP. □