

ICSI-EIRC NEWSLETTER



THE INSTITUTE OF Company Secretaries of India

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

May- July 2017 ISSUE

EIRC-ICSI organizes

13TH REGIONAL PCS CONFERENCE

26TH & 27TH
AUGUST, 2017

VEDIC VILLAGE
KOLKATA

Topics for Deliberation	Guest Speakers
The Insolvency and Bankruptcy Code, 2016	CS Anil Murarka <i>Past President, ICSI</i>
Latest Developments and Amendments in Companies Act SEBI PIT & SAST Regulations	CS Vineet K. Chaudhary <i>Central Council Member, ICSI</i>
Goods and Services Tax	CS Vinod Kothari <i>Past Chairman, EIRC-ICSI</i>
	DOST (CA) Vikash Dhanania <i>Tax Consultant</i>

Delegate Fee

(Inclusive of applicable taxes)

Category	Non Residential	Residential	
		On Twin Sharing Basis Per person	On Single Occupancy Basis *
1)AMS Members of EIRC	No Fee	₹ 2,650/-	₹ 4,700/-
2)NON-AMS Delegate	₹ 3,250/-	₹ 5,900/-	₹ 7,950/-
3)Spot Registration	₹ 3,750/-	Delegates to make their own arrangements for Stay + Dinner + 2nd Day Breakfast	

PCH – 8

Non Residential Includes Day 1: Breakfast in Bus, Lunch & Hi-tea,
Day 2: Breakfast in Bus & Lunch

PDP –16

Residential Includes Day 1: Breakfast in Bus, Lunch, Hi-tea & Dinner
Day 2: Breakfast at Resort & Lunch

* **For additional companion/ spouse / children / non-member ₹ 3150/- will be charged extra apart from Residential Single Occupancy Delegate fee**

- **Non Residential delegates to make their own arrangements for late stay and dinner**
- **Bus Routes, Timings & Pick up Points will be shared soon**

With regards,

CS Siddhartha Murarka
Chairman, EIRC

CS Sunita Mohanty
Chairperson, PCS Committee of EIRC

CS Ashok Purohit
Vice-Chairman, EIRC

CS Gautam Dugar
Secretary, EIRC

CS Rupanjana De
Treasurer, EIRC

Cultural Evening



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CHAIRMAN'S MESSAGE



My Dear Esteemed Colleagues,

At the outset, please accept warm greetings on behalf of the Eastern India Regional Council (EIRC) of ICSI! It gives me immense pleasure in sharing my thoughts with you through this Communique.

Substance over form: During these six months, me and my Council have focused on quality over quantity, be it member programs or students training programs. We have emphasized on discussing relevant subjects with subject matter experts deliberating on the same. During these two months, we have organized joint programs with bodies such as Calcutta University, Merchant Chambers of Commerce and Indian Chamber of Commerce. Most of the member programs were priced reasonably to encourage participation from our young members. Needless to reiterate, that placement of members and students has been a priority for my council.

Several programs were held during these months but some of the notable ones are PCS Day Celebration on 15th June jointly with Hooghly Chapter of EIRC-ICSI, Full Day Seminar on the theme "Preparedness for Tomorrow" at Hotel Lalit Great Eastern, Capital Markets Week Celebration at Hotel HHI and 29th Regional Conference of Student Company Secretaries at National Library Auditorium jointly with Hooghly Chapter of EIRC-ICSI.

13th Regional Conference of Practicing Company Secretaries on 26-27 August 2017 at Vedic Village Resort:

We have planned the 13th Regional Conference of Practicing Company Secretaries on 26-27 August 2017 at Vedic Village Resort. The topics for this event have been so selected that it will be relevant for all our members, be it members in Practice or in employment. Members may choose to register themselves either as residential or non-residential delegates. However, I encourage my esteemed members to kindly register themselves as residential delegates. This will encourage bonding and networking amongst our members. I request all my esteemed members to kindly register themselves by this week itself to help us make proper and necessary arrangements for all delegates.

Eastern Region adjudged as Best Region in terms of activities conducted during Students Month (July 2017):

I am extremely delighted to inform that Eastern Region has been adjudged as the Best Region in terms of activities conducted during Students Month (July 2017).

I am equally delighted to share that Bhubaneswar Chapter of EIRC-ICSI has been adjudged as the 2nd best Chapter on same parameters. I thank and congratulate my EIRC & EIRO colleagues and Bhubaneswar Chapter Chairman, CS Priyadarshi Nayak; his Managing Committee Members & officials of the Chapter on this achievement.

My Regional Council Colleagues and our respected Central Council Members have been supporting and guiding me in all my initiatives. Untiring and dedicated efforts of my EIRO colleagues provides strength to the Regional Council.

I once again acknowledge the efforts put in by our Past Presidents, Past Chairmen and Council Colleagues in building this Institution of Excellence. We as a team will endeavor to take the legacy forward.

I request my fellow members and students to reach out to me with their thoughts at my coordinates provided below-

CS Siddhartha Murarka
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With warm regards
Your privileged colleague
Siddhartha Murarka
Chairman - EIRC-ICSI

Date	Programme / Activity	Venue
06.05.2017	Study Circle Meeting on Transfer of Shares to IEPF and Director's Report & MDA	ICSI-EIRC House
08.05.2017 to 25.05.2017	121st Batch of Management Skills Orientation Programme	ICSI-EIRC House
13.05.2017	HDW on Corporate Restructuring (joint programme with ICC)	ICC Auditorium, Kolkata
19.05.2017	Workshop on SEBI (LODR) Regulations (joint programme with MCCI)	MCC Conference Hall, Kolkata
24.05.2017	Success Mantra – How to prepare for the exams in a better way	ICSI-EIRC House
24.05.2017	Meeting of General Observers and Exam Centre Superintendents of June 2017 exams	ICSI-EIRC House
26.05.2017	Workshop on Mezzanine Financing and Hybrid Capital Instruments for Small Entities and Start-ups and SS1 (joint programme with MCCI)	MCC Conference Hall, Kolkata
27.05.2017	Mega Placement Drive 2017	Garden Courtyard Banquet, Middleton Chambers, Kolkata
13.06.2017 & 14.06.2017	2 Day National Seminar on Companies Act 2013 and GST (joint programme with University of Calcutta)	Jogmaya Devi College, University of Calcutta
15.06.2017	Celebration of PCS Day (joint programme with Hooghly Chapter)	ICSI-EIRC House
16.06.2017	Workshop on "Insolvency and Bankruptcy Code for MSMEs" (joint programme with MCCI)	MCC Conference Hall, Kolkata
21.06.2017	Celebration of International Yoga Day	ICSI-EIRC House
24.06.2017 to 25.06.2017	18th National Conference of Practising Company Secretaries	Shillong, Meghalaya
30.06.2017	HDW on Goods & Services Tax	ICSI-EIRC House
01.07.2017	Van Mahotsav	ICSI-EIRC House
01.07.2017	Blood Donation Camp and Free Medical Health Check-up Camp	ICSI-EIRC House
03.07.2017	CS Olympiad Prize Distribution	Kendriya Vidyalaya, Santaragachi
04.07.2017	Interaction of CS Students after the Exam	ICSI-EIRC House
07.07.2017	ICSI Convocation (Eastern Region)	Centenary Hall, University of Calcutta
08.07.2017	HDW on GST- Beginning of A New Era	Gorky Sadan
14.07.2017	Webcast from HO for Students	ICSI-EIRC House
14.07.2017	Mock Interview for Students for preparation of Campus Placement	ICSI-EIRC House
15.07.2017	Full Day Seminar on "Preparedness for Tomorrow"	The Lalit Great Eastern, Kolkata
15.07.2017	Campus Placement for MT	ICSI-EIRC House
18.07.2017 to 03.08.2017	122nd MSOP	ICSI-EIRC House
18.07.2017 to 25.07.2017	Career Awareness Week	Different Colleges/ Institutions
22.07.2017	Mega Programme from Capital Markets Week	Hotel Hindusthan International, Kolkata
24.7.2017	Interaction with Parents of Newly Registered Students	ICSI-EIRC House
25.7.2017 to 26.7.2017	2 Days Professional Induction Programme	ICSI-EIRC House

Date	Programme / Activity	Venue
26.07.2017	Essay Writing Competition to celebrate Kargil Vijay Diwas	ICSI-EIRC House
27.07.2017 to 04.08.2017	56th Executive Development Programme	ICSI-EIRC House
27.07.2017 to 29.07.2017	3 Days Professional e-Governance Programme	ICSI-EIRC House
27.07.2017	Swachh Bharat Abhiyan	ICSI-EIRC House
28.07.2017	World Nature Conservation Day – Declamation Competition on the theme “Role of CS in Environment & Pollution Control Laws”	ICSI-EIRC House
30.07.2017	29th Regional Conference of Student Company Secretaries on the theme “Synergy... Unleash Your Potential” (jointly with Hooghly Chapter of EIRC)	Bhasha Bhawan, National Library, Kolkata
31.07.2017	Communication / Soft Skill Development Programme	ICSI-EIRC House

35 Career Awareness Programmes were organised during this period



Go
Green

COMPANY SECRETARIES BENEVOLENT FUND

“Saathi Haath Badhana”

Members are requested to pay a small amount of Rs. 10,000/- as a onetime contribution for your life membership to the Company Secretaries Benevolent Fund. Further details are available on the link given below:

<https://www.icsi.edu/csbf/Home.aspx>

Come! Join hands for the noble cause.

EIRC Events



06.05.2017

Study Circle Meeting on Transfer of Shares to IEPF and Director's Report & MDA



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13.05.2017

HDW on Corporate Restructuring (joint programme with ICC)



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Workshop on SEBI (LODR) Regulations (joint programme with MCCI)



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Workshop on Mezzanine Financing and Hybrid Capital Instruments for Small Entities and Start-ups and SS1 (joint programme with MCCI)

15.06.2017



Celebration of PCS Day (joint programme with Hooghly Chapter)

16.06.2017



16.06.2017

Workshop on "Insolvency and Bankruptcy Code for MSMEs" (joint programme with MCCI)

30.06.2017



30.06.2017

Half Day Workshop on GST

EIRC Events



25 & 26th
July, 2017

2 Day
Induction Programme



27-29th
July, 2017

3 days
Professional Programme



27.07.2017 to
04.08.2017

56th EDP



18.07.2017
to
03.08.2017

122nd MSOP



31.07.2017

Programme on - Communication / Soft Skill Development

EIRC Events

07.07.2017



Convocation

28.07.2017



Declamation Competition

16.07.2017



Essay Competition on Kargil Victory Diwas

18.07.2017 to 25.07.2017



Career Awareness Program Week

Regional Students Conference





FCS Rajib Kumar Das
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“Integrated Reporting” by Listed Companies- An Overview

“Good Corporate Governance Standards are essential for the integrity of corporations, financial institutions and markets. They also have bearing on growth and stability of the economy. It is said that any code of Corporate Governance must be dynamic, evolving and should change with changing context and times”.

In the light of the above statement, SEBI has introduced vide its circular dated 06.02.2017 a new reporting structure i.e. “Integrated Reporting” for top 500 listed companies on a voluntary basis from the Financial Year 2017-2018. The applicability of the new concept has been drawn from Regulation 4(1)(d) of SEBI (LODR) Regulation, 2015. It states “the listed entity shall provide adequate and timely information to recognized stock exchange(s) and investors.”

The main purpose of this reporting is to provide relevant information of the organization to its stakeholders for making investment decisions.

The concept of Integrated Reporting is being discussed at various International Forums. The International Integrated Reporting Council has prescribed the guidelines for preparation of Integrated Report. The principal guidelines are as follows:

- (1) **Strategic Focus and future orientation:** An Integrated Report should provide insight into the organization strategy and how it relates to the organization’s ability to create value on short, medium and long term basis, and to its use of and effects on capital.
- (2) **Connectivity of information:** An integrated report should show a holistic picture of the combination, interrelatedness and dependence between the factors that affect the organization’s ability to create value over time.
- (3) **Stakeholder relationships:** It should provide insight into the nature and quality of the organization’s relationships with its stakeholders, including how and to what extent the organization understands, takes into account and responds to their legitimate needs and interests.
- (4) **Materiality:** It should disclose information about the matters that substantially affects the organization’s ability to create value over the short, medium and long-term.
- (5) **Conciseness:** It should be concise.
- (6) **Reliability and Completeness:** It includes all material matters, both positive and negative, in a balanced way and without material error.
- (7) **Consistency and comparability:** the information in this report should be presented on a basis that is consistent over time and in a way that enables comparison with other organizations to the extent it is material to the organizations own ability to create value over time.

Disclosure Requirements

The Integrated Report includes the followings elements:

- (a) Organizational overview and external environment
- (b) Governance
- (c) Business model
- (d) Risks and Opportunities
- (e) Strategy and Resource allocation
- (f) Performance
- (g) Outlook
- (h) Basis of preparation and presentation

The information related to Integrated Reporting may be provided in the annual report separately or by incorporating in Management Discussion and Analysis or by preparing a separate report.

In case the company has already provided the relevant information in any other report prepared in accordance with national/ international requirements/framework, it may provide appropriate reference to the same in its Integrated Report.

The company may host the Integrated Report on their website and provide appropriate references to the same in their Annual Report.



CS Nikhil Agarwal
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Recent Amendment:

In exercise of the powers conferred by Ministry of Corporate Affairs and pursuant to second proviso to Rule 6 of IEPF (Accounting, Audit, Transfer and Refund) Amendment Rules, 2017 and under provisions of Section 124, 125 read with Section 469 of the Companies Act, 2013, The Ministry of Corporate Affairs (MCA) has issued general circular no- 06/2017 dated 29th May, 2017, notified on 28th February, 2017, where the seven year period provided under section 124(5) of the Companies Act, 2013 completed during 7th September, 2016 to 31st May, 2017, the due date for transfer of such shares by companies is 31st May, 2017.

With respect to the above, IEPF Authorities has considered to open a "special demat account" through its depository participant and till opening of demat accounts, the due dates of transfer of shares stands extended and will be notified by the Ministry of Corporate Affairs from time to time.

Companies are required to transfer shares to this special demat account having features and functionality to support IEPF operations using paperless, digital process and facilitate record keeping of shares,

whether shares held in demat form or physical form. There is no need to publish fresh notice in newspaper where the Companies have already performed with the functionalities for the transfer/transmittal of shares.

Recap:

In exercise of the powers conferred by Ministry of Corporate Affairs under provisions of Section 124, 125 read with Section 469 of the Companies Act, 2013, the Ministry vide Notification dated 5th Sept. 2016 has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer & Refund) Rules 2016 under Section 125 of the Act with effect from September 7, 2016.1

In relation thereto, the Investor Education and Protection Fund (Accounting, Audit, Transfer and Refund) Rules, 2016 all the provisions with respect to administration of the Fund, process of managing, auditing, accounting and the procedure of transfer of unclaimed dividend and shares to the IEPF by the Organizations and the procedure to claim the same by the eligible shareholder get the refund has also been laid down in the Rules therein.

Available at: http://www.mca.gov.in/Ministry/pdf/Rules_06092016.pdf

Rules Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016

Rule 3 Sources of Fund:

The account of Investor Education and Protection Fund is being credited with the:-

- >> Amount of unpaid or unclaimed Dividend in the Unpaid Dividend Account of the Companies for a period of consecutive seven years or more transferred to the Fund under sub-section (5) of section 124.
- >> All the shares in respect of which dividend has not been paid or claimed for seven Consecutive years or more shall be transferred by the Company to such IEPF suspense account as per the manner specified in Rule 6.
- >> The application money received by companies for allotment of any securities and due for refund and the matured amount of term deposits and debentures along with due unpaid or unclaimed interest thereupon of companies shall be transferred to the Fund.*
- >> Grants and donations given to the Fund by the State Governments, Companies or any other institutions for the purpose of the Fund as also the interest or other income received out of the Investments made from the Fund;
- >> all amounts payable as mentioned in clause (a) to (n) of sub-section (2) of section 125 of the Act except the clauses as already referred above;
- >> all income earned by the Authority in any year;

*Provided that such amounts have remained unclaimed and unpaid for a period of seven years from the date they became due for payment.

Note: - For the removal of doubts, it is hereby declared that no claims shall lie against the Fund or the company in respect of individual amounts which were unclaimed and unpaid for a period of seven years from the dates that they first became due for payment and no payment shall be made in respect of any such claims.

The Fund shall be utilized for promotion of investors' awareness and protection of the interests of investors in accordance with such rules as may be prescribed.

Rule 5 Statement to be furnished to the Fund

- i. Any amount required to be credited by the companies to the Fund as provided under clause (a) to (n) of sub-section (2) of section 125 of the Act shall be remitted into the specified branches of Punjab National Bank within a period of thirty days of such amounts becoming due to be credited to the Fund.
- ii. The amount may also be transferred electronically as may be specified by Central Government.
- iii. The amount shall be tendered by the companies along with challan (in triplicate) and shall file one copy to the specified Bank Branches of Punjab National Bank evidencing the deposit and then one copy with the concerned Authority indicating the deposit of the amount to the Fund and shall fill in the full particulars of the amount tendered, including the head of account to which it has been credited.
- iv. The Company shall file Form IEPF-1 along with the copy of the Challan containing details of the amount transfer to IEPF within 30 days of submission of challan.
- v. The company shall maintain record consisting of name, last known address, amount, folio number or client ID, certificate number, beneficiary details etc. of the persons whose unpaid or unclaimed amount has been transferred to the IEPF.
- vi. Every Company within a period of ninety days after the holding of Annual General Meeting till completion of the seven years period, identify the unclaimed amounts, as referred in sub-section 2 of section 125 of the Act as on the date of holding of Annual General Meeting and shall file Form IEPF 2 containing a statement of unclaimed and unpaid amount lying with the Company and upload on its own website and also on website of Authority or any other website as may be specified by the Government.

IEPF - 1

When the amounts as referred in Rule 3 are credited to IEPF by the Companies lying in their Unpaid Dividend account upon expiry of seven years from the date the same become due for repayment/transferred, the Company is required to submit the statement of amount deposited into the said fund with ROC

IEPF-2

The companies which have unclaimed and unpaid amounts are required to transfer the amounts to the Unclaimed Dividend account maintained by the company till the period of 7 years and shall file an annual statement of the amounts as on the date of holding of Annual General Meeting. The statement of a separate investor-wise details shall also be filed which include all amounts payable as mentioned in clause (a) to (n) of sub-section (2) of section 125 of the Act.

Rule 6

Procedure of Transfer of Shares under Section 124(6) to the IEPF:

(a) The shares whether physical or in demat form shall be transferred by the Company to IEPF suspense account with one of the depository participants within a period of thirty days of such shares becoming due to be transferred to the Fund.

**Provided that, in case the beneficial owner has encashed any dividend warrant during the last seven years, such shares shall not be required to be transferred to the Fund even though some dividend warrants may not have been encashed.*

(b) For the purposes of effecting transfer of such shares, the Board shall authorise the Company Secretary or any other person to sign the necessary documents.

(c) The company shall inform the shareholder regarding the transfer of shares three months before the due date of such transfer and also simultaneously publish the details of the transfer and shareholders in a notice in the leading newspaper in English and regional language and on their website.

(d) The company shall furnish details of such shares and unpaid dividend to the Authority in Form No. IEPF 3 within thirty days from the end of financial year where there is a specific order of Court or Tribunal or statutory Authority restraining any transfer of such shares and payment of dividend.

(e) For the purpose of transfer of shares in:

Demat form:

i. The Company Secretary on behalf of such shareholders shall sign the delivery instruction slips of the respective depository participants where the shareholders have their accounts.

ii. On receipt of the delivery instruction slips, the depository participants shall effect the transfer of shares in favour of IEPF.

Physical form:

i. The Company secretary on behalf of the shareholders shall make a request to the Company for issue of duplicate share certificates.

ii. The Company on such request shall issue duplicate share certificate stated on the face of it be recorded in the Register that the duplicate certificate is "Issued in lieu of Certificate No. _____ for the purpose of transfer to IEPF" with the word "duplicate" shall be stamped in bold letters.

(Particulars of every share certificate issued as above shall be entered in a register of renewed and duplicate share certificates maintained in Form No. SH 2 as specified in the Companies (Share Capital and Debentures) Rules, 2014)

(f) On receipt of the duplicate share certificates, the Company Secretary shall sign and execute Form No. SH 4 i.e., securities transfer Form as specified in the Companies (Share Capital and Debentures) Rules, 2014, for transferring the shares in favour of the Fund;

(g) On receipt of the duly filled transfer forms along with the duplicate share certificates, the Board or its Committee shall approve the transfer;

(h) While executing such transfer, the Company shall attach a statement of the details of such transfer in Form IEPF-4.

(i) The voting rights on such transferred shares to the Fund shall remain with the owner of the shares.

(j) If the Company is getting delisted or being wound up, the Authority shall surrender the shares on behalf of the security holders and transfer the proceeds realised to the Fund.

IEPF - 4

Every company which has transferred unpaid and unclaimed dividend after the expiry of seven years to the Investor Education and Protection Fund is also required to transfer such shares to the Fund. The statement containing all details of such transfer shall be given in Form IEPF-4.

IEPF - 5

Any person whose amounts under clause (a) to (n) of sub-section (2) of section 125 are transferred to IEPF can make an application by filing Form IEPF-5 with the Authority as set up by MCA.

Rule 7 Refunds to Claimants:

>> Any person whose shares, unclaimed dividend or any amount eligible to be claimed as credited by the Companies under clause (a) to (n) of sub-section (2) of section 125 may claim the shares or the amount as the case vary, by making an application to the Authority in Form IEPF 5.*

>> The claimant after making the application in IEPF 5, send the same duly signed by him along with requisite documents as mentioned in IEPF 5 to the concerned Company at its registered office for verification of his claim

>> The Company shall, within 15 days of receipt of claim shall send a verification report to the IEPF Authority.

>> An application received for refund of the claim duly verified by the concerned company shall be disposed of by the Authority within 60 days from the date of receipt of the verification report from the concerned company;

**In case, claimant is a legal heir or successor or administrator or nominee of the registered security holder, he has to ensure that the transmission process is completed by the company before filing any claim with the Authority.*

P.S.: The claimant shall file only one consolidated claim in respect of a company in a financial year.

Rule 8

The Company shall furnish a statement in Form IEPF 6 within 30 days of end of financial year stating the amounts due to be transferred to the fund in next financial year.

IEPF - 6

The company shall furnish a statement to the Authority in Form IEPF 6 within thirty days of end of financial year stating therein the amounts due to be transferred to the Fund in the next financial year and the amounts transferred during the current financial year along with reason of deviation in case there is any deviation from the amount stated last year.

International CS Olympiad



EIRC of ICSI handed over the certificate of Appreciation and a cheque of Rs. 10,000 to the zonal 1st Rank holder, Master Rahul Kumar Bageria at his School, Delhi Public School, Ruby Park in the presence of CS Gautam Dugar, Secretary, EIRC of ICSI, Shri DVNS Sarma, Regional Director, ICSI EIRO, Mrs. Anusree Ghose Principal, Delhi Public School, Ruby Park in-front of all Class XI and XII students of the school.

EIRC of ICSI handed over the certificate of Appreciation and a cheque of Rs. 5,000 to the zonal 02nd Rank holder, Master Vedant Modi at his School, Birla Bharathi School, in the presence of Shri DVNS Sarma, Regional Director, ICSI EIRO, Ms Apala Datta, Principal, Birla Bharathi, in-front of all Class XI and XII students of the school.



EIRC of ICSI handed over the certificate of Appreciation and a cheque of Rs.5,000 to the zonal 2nd Rank holder of International CS Olympiad, Master Apratim Sil at his School, Kendriya Vidyalaya, Santragachi on 03rd July 2017 as part of ICSI Student day Programmes in the presence of CS Gautam Dugar, Secretary, EIRC of ICSI, S.Sreejesh, Assistant Director, ICSI EIRO, Ms Sangita Roy, Principal, Kendriya Vidyalaya, Santragachi in-front of Class XII students of the school.





CS Sandip Sarkar
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Remedies available against a company incorporated by means of false or incorrect information

An entrepreneur forms a company to carry some business activities under certain Brand name and it takes years to establish such brand value. Now to take the advantage of such brand value in an illegal manner one may form a company with similar name and with similar object just to take away the business opportunities from the exiting one.

Suppose Mr.X formed a company with a name of ABC Ship Services Private Limited(an existing company) and it has created it's brand value over decades. Now Mr.Y wants to take the advantage of the brand value ABC and he formed a company with a name of ABC Shipping Services Private Limited(the new company) after giving false and incorrect information to the Registrar of Companies.

It is quite obvious that newly formed company will snatch the business opportunity of the existing company and due to that the existing company will incur loss.

Now what are the remedies are available to the promoters of the exiting company to protect their business interest.

As per section 7(7) of the Companies Act 2013 the National Company Law Tribunal is empowered to deal in such matters.

Who can make the application

the said sub-section did not specify that who can make the application. So any person, whose interest is affected due to such fraudulent activity may make an application to the National Company Law Tribunal (NCLT) to get relief.

Servicing of the application

Once the petition is completed then the copy of the petition shall be served to the respondents and copy shall be served to the Registrar of Companies and Regional Director also.

How to make an application before NCLT

The application to be drafted as per format given in the Form NCLT-1 with details facts and figures. It shall accompanied with the index , list of dates of events and the synopsis of the facts. Every allegation shall be supported with proper attachment. Like if the allegation is for similar name and object then the copy of the Memorandum of Association of both the existing and new companies along with other relevant Forms are required to be annexed. Every application shall be accompanied with an affidavit and that should be as per format of Form NCLT-6. Every application shall be accompanied with Form NCLT-2 which is notice of admission. Every page of the application shall be numbered and all the annexures shall be named like A-1,A-2 etc.

The application along with all annexures and other documents shall be printed on legal paper.

The facts of the matter shall be described in the application in details along with proper evidence and date of events. The relief (s) sought in the application shall be mentioned precisely along with the interim relief if any. If there are more than one applicants then the petition shall be signed either by all applicants or by if it is signed by a particular applicant then a power of attorney is required to be issued in favor of that applicant and the said power of attorney shall be part of the petition.

Fees of the Application

The application fees for making an application under Section 7(7) is Rs.5000. However it is always advisable to make the application under section 213(b) also along with section 7(7). Since as per section 213(b) of the Companies Act 2013 NCLT may direct to investigate the affairs of the new company by an inspector or inspector appointed by the Central Government, which will be more effective. The fees for Section 213(b) is Rs.5000. The application shall consist a demand draft in favour of "pay and accounts officer, Ministry of Corporate Affairs, Kolkata of Rs. 10000 (Rupees Ten Thousand only).

Notice of Mentioning

The petitioner shall give the notice of mentioning to the NCLT to heard the matter at least forty eight hours before of the date of the mentioning after giving intimation of the same to the respondents. There is no specific format of mentioning, it can be served in the form of letter.

Filing of petition before the NCLT

Once the servicing of the petition among the respondents and Registrar of Companies and Regional Director are completed then three copies of the petition, one original and two photo copies along with the proof of servicing to the respondents shall be filed before the Registrar of the NCLT. A court fee stamp of Rs.20 shall be affixed on the original copy of the petition. The Registrar shall verify the petition and if it is technically correct then it will be considered for the admission otherwise it will write to the counsel of the petitioner to rectify the same.

Time Limit to dispose a matter

As per section 422 of the Companies Act 2013 NCLT shall dispose the matter within a period of ninety days from the date of admission and the said period may extend for a further period not exceeding ninety days. So the matter filed under section 7(7) shall be disposed by NCLT within a period of maximum six months.

Proceedings at the NCLT

The proceedings under section 7(7) is quite similar with the proceedings of the oppression and mismanagement. Since both the matters are related to the disputes. In NCLT Kolkata there are two Court. Court number 1 deals with the matters related to companies having paid up capital of less than Rs.50 Lac and consisting with single Member(Judiciary) and Court number 2 deals with the matters related to companies having paid up capital of Rs.50 lac or more and consisting two members(Judiciary and Technical). So before filling the petition under section 7(7) it is required to verify the paid up capital of the respondent company and accordingly file the application. on the date of admission the Bench will allow both the parties to make their submission and after hearing both the parties either it may pass any interim order or may direct the respondent to file it's reply within a certain period and direct the petitioner to file it's rejoinder within a specified time period. Both the respondent and the petitioner are required to serve the copy of the reply and rejoinder to each other. In case the respondent or the petitioner failed to file the reply or rejoinder within the given time limit then the bench may extend the time of filling after imposing a cost on the defaulted party.

Applicability of Limitation Act in oppression and Mismanagement

Before filling the petition under section7(7) at the NCLT, one should take care that the application is within the time period as prescribed under the Limitation Act 1963 and the first cause of action has been arose within a period of Three years from the date of filling petition at the NCLT. If any matter which is beyond the limitation period then the Bench may reject the same on the ground of time barred under the Limitation Act 1963.

Power of the NCLT

After being satisfied that the company was formed after giving false and incorrect information the Bench may pass the following power:

- (a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
- (b) direct that liability of the members shall be unlimited; or
- (c) direct removal of the name of the company from the register of companies; or
- (d) pass an order for the winding up of the company; or
- (e) pass such other orders as it may deem fit:

Start – Up India: A Quick Analysis & Recent Companies Act, 2013 Amendments for Pvt Ltd. Companies



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START – UP INDIA

A Project Announced and Started by Honorable Prime Minister of India, Shri. Narendra Modi describes his vision of making India a Start – up Hub. With various projects commencing in different regions of the Country by new entrepreneurs it seems to be a master-stroke by the Government to recognize such emerging business icons and their hard-works. The Start-Up concept is not new for us along with the hurdles faced by the young & emerging entrepreneurs. The Mission aims to turn the youth of India from job-seekers to job- creators. Department of Industrial Policy and Promotion (India) – DIPP & Ministry of Commerce and Industry (India) have launched the Start-Up India Project from 16 January, 2016 after it was first announced by Prime Minister in his 15 August, 2015 address from the Red Fort. The Programme focuses on to restrict role of States in policy domain and to get rid of "license raj" and hindrances like in land permissions, foreign investment proposal, environmental clearances required for starting up a business set-up.

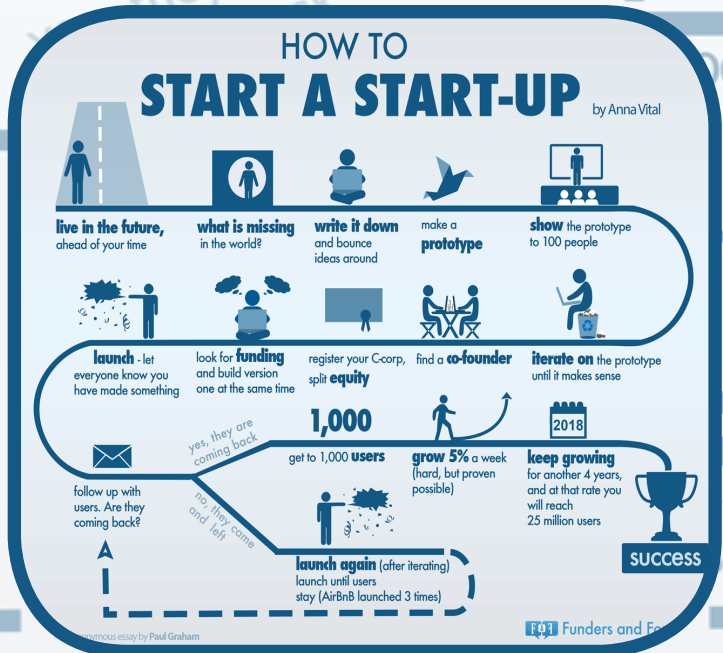
What is a Start – Up?
A startup is a newly established business, usually small, started by 1 or a group of individuals

What are the eligibility conditions need to be met by an entity?

- The following conditions are need to be met to register an entity as a Start-Up in India:
- >> Entity shall be considered as a "Start – Up" up to five years from the date of incorporation.
- >> Entity should be incorporated on or after 1 April, 2016.
- >> If its turnover does not exceed 25 Crores in last five financial years.
- >> It is working towards innovation, development, deployment and commercialization new products, processes or services driven by technology or intellectual property, significantly improved existing product or service or process that will create or add value for customers or workflow.
- >> Further provided that, it should not be formed by splitting or Reconstruction of a business already in existence.

Further A business which aims to develop and commercialize

- >> A new product or service or process; or
 - >> Significantly improved existing product or service or process that will create or add value for customers or workflow.
- Note: However, the mere act of developing products or services or processes which do not have potential for commercialization or undifferentiated products or services or processes with no or limited incremental value for customers or workflow would not be considered as eligible business.



Procedure for Registration as a Start-up in India

STEP – 1 - Incorporation

The Start-Up Entity need to register itself with MCA or Registrar of Firms using the Existing Processes as a Pvt. Ltd Co. / LLP or Partnership Firm.
(You have to follow all the normal procedures for registration of any business like obtaining certificate of Incorporation/ Partnership registration, PAN and other required compliances.)

STEP – 2 - Register with Startup India

The business must be registered as a startup. The entire process is simple and online. All you need to do is log on to the Startup India Portal:(<http://www.startupindia.gov.in/startup-recognition.php>) and fill up the form with details of your business and upload certain documents as detailed in step 3 along with corporation/ registration certificate of company/LLP/Partnership & brief note on innovativeness of products /services offered by the entity.

Step – 3: A letter of recommendation /support

A letter of recommendation must be submitted along with the registration form:

Any of the following will be valid:

1. A recommendation (regarding innovative nature of business) from an Incubator established in a post-graduate college in India ,in a format specified by Department of Industrial Policy and Promotion (DIPP) Or,
2. A letter of support by an incubator which is funded by Government of India as part of any specified scheme to promote innovation; Or
3. A letter of recommendation from an Incubator recognized by Government of India in DIPP specified format; OR
4. A letter of funding of not less than 20% in equity by any Incubation Fund/Angel Fund/Private Equity Fund/Accelerator/Angel Network duly registered with SEBI that endorses innovative nature of the business; OR
5. A letter of funding by Government of India or any State Government as part of any specified scheme to promote innovation; OR
6. A patent filed and published in the Journal by the Indian Patent Office in areas affiliated with the nature of business being promoted.

Incorporation/Registration Certificate:

Upload the certificate of incorporation of your company/LLP (Registration Certificate in case of partnership).

CONFIRMATION OF TAX BENEFITS

Startups are exempted from income tax for 3 years. To avail these benefits certification by the Inter-Ministerial Board (IMB) is required.

Get you Start – up recognition number

- >> After applying successfully you will immediately get a recognition number for your startup.
- >> The certificate of recognition will be issued after examination of all your documents.

A BRIEF ANALYSIS OF THE RECENT CHANGES / AMENDMENTS ISSUED BY MINISTRY OF CORPORATE AFFAIRS (MCA) W.R.T TO START- UP'S & OTHER PRIVATE LTD. COMPANIES:

Ministry of Corporate Affairs by notification dated 5th June, 2015 (herein after referred as the Principal Notification) has given several exemptions to Private Limited Companies. Now, Via Notification dated 13th June, 2017 MCA has added more exemptions by amending the notification dated 5th June, 2015.

The Following is a quick snapshot of the Recent Relaxations provided by the MCA:

AMENDMENT NO. 1

A new clause 1 is inserted in principal notification and existing clause 1 of principal notification re-numbered as Clause 1A. For the proviso, the following shall be substituted, namely:-

“Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up) may not include the cash flow statement;”

Effect: Cash flow statement will not be required for:

1. One person Company,
2. Small Company,
3. Dormant Company and
4. Private limited Company (if such Company is start-up company)

success

AMENDMENT NO. 2

Existing Clause 6 of Principal notification is substituted with following clause.

Chapter V, clauses (a) to (e) of sub-section (2) of section 73: Shall not apply to a private company-

- (A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfills all of the following conditions, namely:-

- (a) which is NOT AN ASSOCIATE OR A SUBSIDIARY COMPANY OF ANY OTHER COMPANY;
- (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than TWICE OF ITS PAID UP SHARE CAPITAL OR FIFTY CRORE RUPEES, WHICHEVER IS LOWER; and
- (c) such a company has NOT DEFAULTED IN THE REPAYMENT OF SUCH BORROWINGS subsisting at the time of accepting deposits under this section: Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

Effect: This notification will allow private companies to accept money from members if the conditions specified are met.

AMENDMENT NO. 3

Proviso to Section 92(1):

“Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.”

Effect: Annual Return of Private Companies (if such Private Company is a Start up) can be sign by Director of Company if there is no Company Secretary.

AMENDMENT NO. 4

Section 143(3) of the Act, 2013 lists the items which are required to be stated in the auditor’s report. The Sub clause (i) provides that the auditor’s report shall also state—whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls.

Conclusion:

With Recent initiatives taken by the GOI with regards to promotion of entrepreneurship culture in the Country we professionals do have a responsibility of making the dream of JOB CREATING INDIA come true. The Recent MCA amendments seek to provide relaxation to the Private & Small Companies as well as Start-ups in India. These being effective should promote the belief of STAND UP INDIA.

Effect: An auditor need not report the aforesaid for following class of private companies:

- A. A one person company or small company; or •**
- B. A company which has a turnover of less than rupees fifty crores as per latest audited financial statement; or**
- C. When the aggregate borrowing of a private company at any point of time during the financial year is less than rupees twenty five crore.**

AMENDMENT NO. 5

CHAPTER XII, SUB-SECTION (5) OF SECTION 173

For sub-section (5), the following sub-section shall be substituted,-
A One Person Company, small company, dormant company and a private company (if such private company is a start-up) shall be deemed to have complied with the provisions of this section if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than ninety days:

Effect: Two Board meeting is sufficient (in every half year and with the gap of 90 days) in case of private limited company if it is a start-up company.

AMENDMENT NO. 6

Where at any time the number of interested directors exceeds or is equal to two- thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time. Explanation.—For the purposes of this sub-section, “interested director” means a director within the meaning of sub-section (2) of section 184.

Effect: In case of Private Limited Companies: Interested director MAY ALSO BE COUNTED TOWARDS QUORUM in such meeting AFTER DISCLOSURE OF HIS INTEREST PURSUANT TO SECTION 184.

POINT TO BE NOTED: *The above mentioned exemptions shall be applicable to a PRIVATE COMPANY WHICH HAS NOT COMMITTED A DEFAULT IN FILING ITS FINANCIAL STATEMENTS UNDER SECTION 137 OF THE ACT OR ANNUAL RETURN U/S 92 OF THE COMPANIES ACT, 2013 WITH THE REGISTRAR OF COMPANIES.*

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