

NIRC-ICSI

PANIPAT CHAPTER



**CORPORATE LAWS–
LATEST ANNOUNCEMENTS AND
AMENDMENTS**

Management Committee 2020-21

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Chairman

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Vice Chairperson

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Secretary

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CS DEVENDER JAGLAN
Member

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ABOUT

Panipat Chapter, NIRC-ICSI Newsletter is generally Published on quarterly basis with the permission of NIRC-ICSI. First Newsletter was published in April, 2020. This newsletter is published with the consent of all Management Committee members. Articles Published in the Newsletter are invited by giving notices to all the members.

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The write-ups of this newsletter are also available on the website of the Panipat Chapter, NIRC-ICSI.

CS Sumit Grover, Chairman of Panipat Chapter has published the newsletter for and on behalf of Panipat Chapter of Northern India Regional Council of the Institute of Company Secretaries of India at
1ST Floor, Above JSR Trading, Geeta Mandir Road, Panipat-132103, Haryana, India; E-mail: panipat@icsi.edu; Phone No.:0180-4009144;;

Published at:1st Floor, Above JSR Trading, Geeta Mandir Road, Panipat-132103, Haryana, India.



Motto

सत्यं वद। धर्मं चर।
इत्यक्षरे त्रेतुः तन्मतेः कवेदेव त्तु त्रेतुः क्व

Vision

"To be a global leader in promoting
good corporate governance"

Mission

"To develop high calibre professionals
facilitating good corporate governance"

Message from Sh.Sanjay Bhatia Ji, Hon'ble MP Loksabha (Panipat-Karnal)



“In the Movement of Self-Reliant India, role of COMPANY SECRETARIES is very vital because Company Secretary is the one who apprised the Companies regarding new rules and regulations in relation to production of domestic goods and services.”

Every Country is fighting with Coronavirus Disease but it has affected on Economy the most. India is blessed to have a leader like our Hon'ble Prime Minister Narendra Modi Ji who understand and introduced the concept of “Go vocal for Local” and “Self-Reliant India Movement”, where people connect and work for betterment of economy and if there is any profession on which we can trust for this i.e., Company Secretaries.

ICSI has history of around 52-53 years and it has derived a lot of respect in the Country over these Years. Government drafts the Rules and Regulations but Interpretation and implementation both are with Company Secretaries. Without Company Secretaries, there is no Corporate Governance. Implementation of Rules and Regulations in the Corporates is the responsibility of Company Secretaries. Stakeholders invested in Companies because of faith of Company Secretaries. You ensure timely and transparent Compliance of every Law, channelization of rights and always guide with the best to stakeholders.

During Ordinary Course of Business, you act as *Vidur* from Mahabharat who always guide Directors and others for good deeds and during crises in the Company, you act as *Krishna* by motivating all. Big Corporates faced losses due to poor Corporate Governance, thus, everything depends on you.

Company Secretaries are the backbone of the Company without which structure of the Company can get dissolved.

With high hopes there are also indeed many Challenges with CS profession. I urged to all CS to take Companies towards good directions and better corporate governance. If ICSI face any issue in the system in near future and give me an opportunity to represent CS profession, I will act as spokesperson of ICSI in Parliament. I know with the unity of Company Secretaries and good Corporate Governance we will be able to save our Economy and Country. I believe that Country is in determined and safe hands and we all together will accomplish the dream of Self-reliant India of Modi Ji.

My best wishes are with the CS Sumit Grover, Chairman of Panipat Chapter and entire Management Committee for their marvelous job during this Pandemic .

Message from CS NPS Chawla, (Central Council Member, ICSI)



Dear Professional Brethren,

At the outset, I would like to congratulate the Panipat Chapter, ICSI for coming up with another very informative, thought provoking and edifying issue of their quarterly newsletter.

The year 2020 has seen unprecedented times, more than half of the year has passed wondering what tomorrow holds for us. One thing which is constant and has again proven to rule the world is “technology driven changes”. I feel everyone will have to accept the present as the “new normal” and accordingly, adapt oneself.

In these extraordinary times it becomes crucial that we keep ourselves abreast with the scores of significant developments in the law and legal system happening every day. Notably, the Panipat Chapter has been instrumental in giving appropriate coverage to these developments through this Newsletter and other initiatives. This issue of the Newsletter is covering a wide range of very relevant subjects including amendments in IBC, MSME, IFSC, MCA Relaxations, CSR Policy, Start-up India and other regulatory developments.

As new doors of academic debates and dialogues on law and economy are opening up, we as corporate and legal professionals should make best use of this time to inculcate a creative approach to law and to sharpen our legal brains. The post COVID world will be a laboratory for experiments and innovations in the legal field. Let us be prepared.

Again, I would like to convey my best wishes to the very erudite team of the Managing Committee of the Panipat Chapter for coming up with this Newsletter. May you cross new milestones everyday!

Best wishes for future of all members and students.

CS NPS Chawla
Central Council Member, ICSI

Message from Chairman of NIRC-ICSI



“Motivation is what gets you started, habit is what keeps you going.”

-Jim Ryun

Dear Esteemed Professionals,

It is exceptionally jovial for me to learn that the Panipat Chapter of NIRC of ICSI has stepped forward to deliver the release of its Newsletter for the members.

May my heartiest wishes surround Mr. Sumit Grover, the Chairman of Panipat Chapter and the entire management committee for coming up with this initiative of releasing chapter's Quarterly Newsletter which will definitely serve the readers in enlightening their knowledge and providing them sentiments of belongingness with their Chapter and ultimately shaping its framework for better.

I possess no doubt in believing that this inception is going to bring value enhancement to not only the members but also to the chapters and the entire Northern Region of ICSI.

I put my utmost faith and confidence in the Chapter's learned management team that they are going to magnify their horizons in working towards this Quarterly Newsletter initiative because a newsletter is like a mirror of an organisation that depicts the deepest of its features and that motivates it to shape its legacy.

I also wish that you and your family members are safe in these unprecedented times. ICSI is reliable for its members always, please feel free to connect if we can be of any help.

Wishing the newsletter a grand success and a wonderful future!

Yours Own,

CS Suresh Pandey
Chairman NIRC of ICSI
Chairman.nirc@icsi.edu
Mob. +91 9968300649

Message from Chairman of Panipat Chapter of NIRC-ICSI



“Professional is not a label you give yourself- it’s a description you hope others will apply to you” — David Maister

Dear Professional Companions,

With the commencement of Second Quarter there are new hopes and energy, your respect and support encouraged Panipat Chapter to publish Second Quarterly Newsletter. All of you are very well acquainted with the current situation, when everyone is facing so much challenges and problems in life and carrier. We always try our best for extension of all stakeholders. We have conducted webinars and various sessions for the benefit of our members with the aim of enhancing the knowledge base of our members and enriching them with the latest updates on various emerging areas of our profession.

Panipat Chapter has taken many initiatives during this lockdown and pandemic period. No one can stop you until you wanted to halt. We always work towards the aggrandizement of our Chapter, members, students and Stakeholders. We have also faced many hindrances in the way to achieve but we never stopped. Support of our members and students has always motivated us to outdo instead to stop.

In today’s era, the scope of services rendered by Company Secretaries has been extended beyond Company Law. We, Company Secretaries, has many fields in which we can work and improve ourselves, we do not want to limit our members by restricting them in Company Law, thus, to vast the knowledge of every readers of this newsletter, we gave the theme for Articles/write-ups Corporate Laws- Latest Announcements and Amendments . During Lockdown, there are many announcements and amendments were made by various Regulatory Authorities, by this theme, we have tried to hoard all the announcement and amendments at one place for readers. Corporate Laws doesn’t only mean Company Law but it includes all the laws applicable on a Corporate.

We have received various Articles/ Write-ups from members as well as from students but it were tenacious for us to publish each and every Article/Write-Ups in this newsletter. Never lose hope, there will always another chance. Panipat Chapter understand the value of efforts of its members and students so there is nothing like losing hope, we will consider the remaining unpublished Articles/Write-ups in our 3rd Quarterly Newsletter. We understand value of your efforts and hard work, we are always with you.

In last, I would like to convey the message to all professional companions that we will work together for self-reliant India by devoting ourselves in true letter and spirit. I believe that we can do it and we will do it. We will make our profession, Institute and Country feel proud because we are professionals not because of holding Professional degree but because we always perform in ethical behavior and complete every work elegantly, effectively and neatly. Our effort makes us a true professional so never stop trying your efforts.

We are Company Secretaries!!! We are together!!!

With Best Regard,

CS Sumit Grover
Chairman
Panipat Chapter, NIRC-ICSI

VISION OF MANAGEMENT COMMITTEE



CS Prabhjot Kaur
Vice-Chairperson

Words of our Missile man of India, Lt. Shri APJ Abdul Kalam, "Don't take rest after your first victory because if you fail in second, more lips are waiting to say that your first victory was just luck."

It is proud privilege for me to say that Panipat Chapter of ICSI has earmarked its place amongst highest in counting. I acknowledge my appreciation for the support and motivation received from every member connecting with us in this journey.

I wish Panipat Chapter a great success for all their future endeavours.

Chairperson of Training and Placement and Career Counseling/CAP Committee

Success is not the key to happiness rather happiness is the key to success. If you love what you are doing, you will be successful".

I convey my best wishes to entire ICSI fraternity and I am sure in the years to come, the Panipat Chapter of ICSI will scale newer heights in its service to all the members of ICSI."

CS Devesh Uppal
Secretary



CS Abhishek Sharma
Treasurer

To create Virtual class room, Contact Classes, Quality E books , Effective Placement Services.

To Provide Library Facilities, quick response to the queries.

To Conduct workshops, Seminars, programmes on latest issues related to the profession.

To Regular Coordinate with the trade and industry to create Visibility for the profession.

I would like to share the quote

DREAM IT. WISH IT. DO IT

Chairperson of Students Facilitation Sub-Committee

Chairperson of Members Facilitation Sub-Committee

My vision is intended to stand in alignment with the vision and mission of "The Panipat Chapter of NIRC (ICSI)" that is imparting knowledge, empowering youth, women empowerment, and overall growth of Members and Students in every aspects, So I will contribute in achieving the set goal and will play my expected Role in enhancing the quality, strength and capacity of our Members and provide our members an platform for paradigm shift So that they can become total business solution provider"

"The secret of getting ahead is getting started." – by Mark Twain,.

CS Raman Rani
Member



CS Sachin Saluja
Member

Chairperson of CSBF (Company Secretaries Benevolent Fund) Sub-Committee

To organize, promote and spread the information in order to assist others, professionally or otherwise, and to perform better.

CS Devender Jaglan
Member



To offer and provide a dynamic, interactive environment that engages students and members that expand access to learning.

SUB-COMMITTEES AND THEIR WORKINGS

Following are the sub-committees constituted in Panipat Chapter of NIRC-ICSI:-

1. Member Facilitation Sub-Committee
2. Students Facilitation Sub-Committee
3. Training and Placement and Career Counseling/CAP (Career Awareness Program)
4. CSBF (Company Secretaries Benevolent Fund)

MEMBER FACILITATION SUB-COMMITTEE	Members Facilitation Sub-Committee has conducted various webinars during this quarter for member with the permission of Management Committee.
STUDENT FACILITATION SUB-COMMITTEE	In July, Students Facilitation Sub-Committee will commence many activities for the students to celebrate the Student Month with the permission of Management Committee.
TRAINING AND PLACEMENT SUB-COMMITTEE AND CAREER COUNSELLING/CAP SUB-COMMITTEE	Chapter has Invited Members of Panipat Chapter Jurisdiction to share details of their schools and colleges so that Chapter can commence CAP Activities from school of their own chapters.
CSBF SUB-COMMITTEE	Chapter is continuously informing members for the benefit of CSBF i.e., Company Secretaries Benevolent Fund.

GLIMPSES OF GLORIOUS MOMENTS

During this Lockdown period, Panipat Chapter has gained so many glorious moments on its platforms. Panipat Chapter has invited CS Ashish Garg, President of Institute of Company Secretaries of India, CS Suresh Pandey, Chairman of NIRC-ICSI and many other eminent personalities as chief guest.

In this sections, there are few glimpses of those glorious moments of Chapter.



CS Ashish Garg, President of ICSI was the Special Guest in the Third webinar of the Panipat Chapter on the topic of “How to crack CS Exam: Do & Don’ts” which was delivered by **CS Raman-deep Singh** and Moderated by **CS Prabhjot Kaur** in the presence of **CS Sumit Grover**, Chairman of Panipat Chapter of NIRC-ICSI.

CS Govind Mishra, Life Coach & Motivational Speaker was also present in the webinar.

CS Suresh Pandey, Chairman of NIRC-ICSI was the Special Guest in the Second webinar of the Panipat Chapter on the topic of “GST-IBC Interplay-Clarification in respect of Issues Under GST for companies Under CIRP” which was delivered by **Mr. Sumit Wadhwa** and Moderated by **CS Aseem Juneja** in the presence of **CS Sumit Grover**, Chairman of Panipat Chapter of NIRC-ICSI.



CS Govind Mishra, Life Coach & Motivational Speaker was the Guest of Honor in the Third webinar of the Panipat Chapter on the topic of “How to crack CS Exam: Do & Don’ts” which was delivered by **CS Raman-deep Singh** and Moderated by **CS Prabhjot Kaur** in the presence of **CS Sumit Grover**, Chairman of Panipat Chapter of NIRC-ICSI.

CS Sumit Grover, Chairman of Panipat Chapter has moderated 4th day of Four days master classes organized by NIRC on Drafting, Pleadings, Appearances and Corporate Communication, that day session was delivered by **Mr. Shiv Ram Bairwa**, Registrar of NCLT in the presence of **CS Suresh Pandey**, Chairman of NIRC-ICSI.



GLIMPSES OF WEBINARS

During this Lockdown period, Panipat Chapter has conducted various Webinars with eminent speakers and moderators which receive enormous response from the members.

THE INSTITUTE OF Company Secretaries of India
भारतीय कंपनी सचिव संस्थान
 IN PURSUIT OF PROFESSIONAL EXCELLENCE
 Statutory body under an Act of Parliament
 (Under the jurisdiction of Ministry of Corporate Affairs)

PANIPAT CHAPTER

Cordially Invites you for
FIRST WEBINAR
 Tuesday, 12th May, 2020
 Topic
Criminal Liabilities of Directors & KMP's for offences by the companies

Speaker :
Adv. Prateek Som
 (Central Govt. Counsel in Delhi High Court; NCW, Ministry of WCD, Govt. of India)

Moderated By :
CS SP Singh Chawla
 (Founder : Corplit Consultants)

CS Sumit Grover
 (Chairman, Panipat Chapter)

CS Devesh Uppal
 (Secretary, Panipat Chapter)

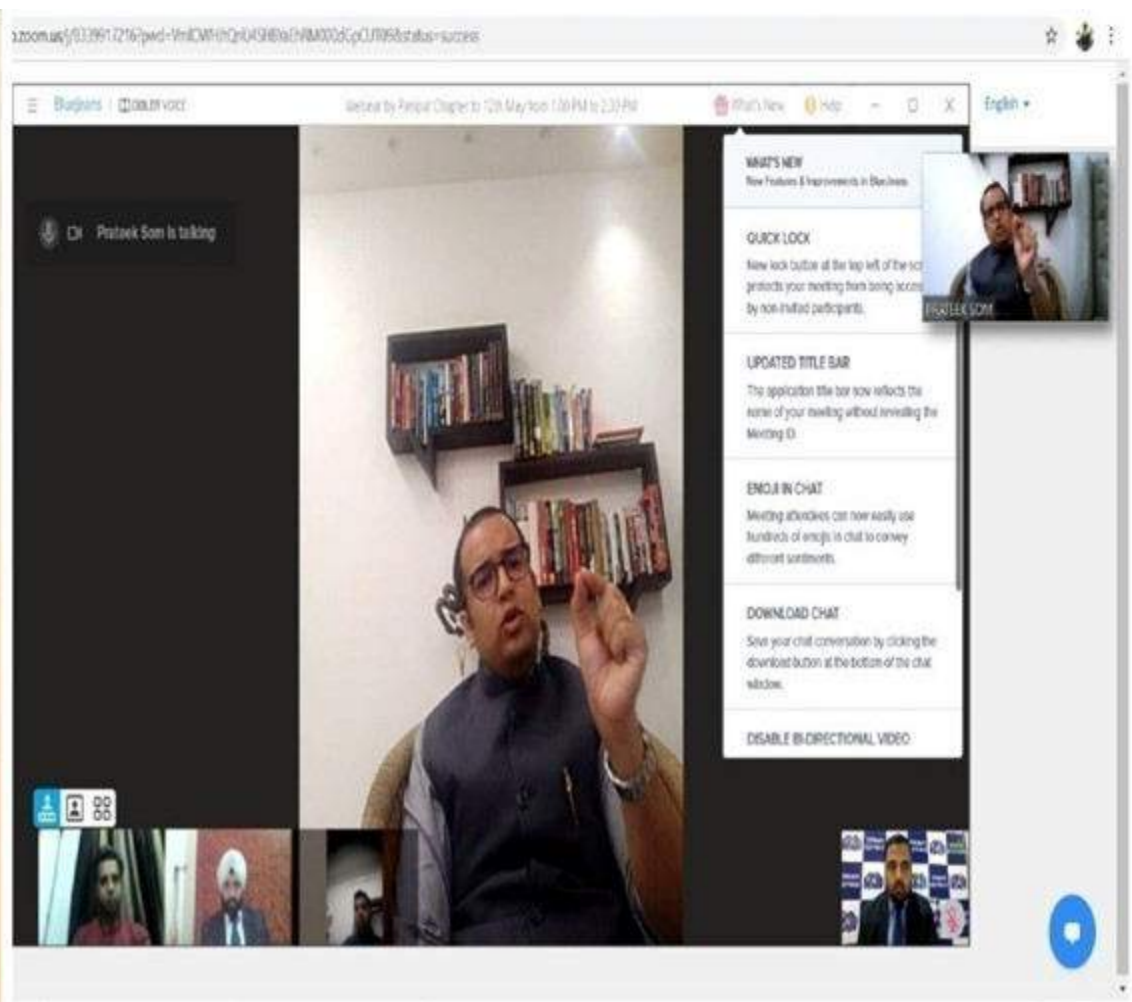
Timings : 1 pm to 2:30 pm
 Webinar Link : <https://bluejeans.com/959510849/5771>
 Meeting ID:- 959 510 849
 Participant Passcode:- 5771

PARTICIPATION FEE : NIL CPE Hours : 01
 Ph. : 0180-4009144, 9335346179, 8950100144
 E-mail : panipat@icsl.edu

Please Note :
 1. Registration is only first come first basis.
 2. Only upto First 70 valid registration will be accepted.
 3. Credit hours will be awarded to only those members who attend the complete webinar.
 4. Download BlueJeans app in advance to avoid inconvenience.

With Best Regards
PANIPAT CHAPTER OF NIRC OF ICSI
CS Sumit Grover Chairman
CS Prabhjot Kaur Vice-Chairperson
CS Devesh Uppal Secretary
CS Abhishek Sharma Treasurer
CS Sachin Saluja Member
CS Raman Sharma Member
CS Devender Jaglan Member

VISION To be a global leader in providing good corporate governance solutions.
ICSI Motto सत्यं वद। धर्मं चरतः। speak the truth; abide by the law.
MISSION To develop high caliber professionals; facilitate and coordinate activities.



First webinar was delivered by Adv Prateek Som, on Tuesday, 12th May, 2020 on the topic of “Criminal Liabilities of Directors & KMPs for offences by the Companies” which was moderated by CS SP Singh Chawla, founder of Corplit Consultants in the presence of CS Sumit Grover, Chairman of Panipat Chapter and CS Devesh Uppal, Secretary of Panipat Chapter

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PANIPAT CHAPTER

Panipat Chapter of NIRC-ICSI cordially Invites you to another **WEBINAR** on 30-05-2020 on the

TOPIC
GST - IBC Interplay - Clarification in Respect of Issues Under GST for Companies Under CIRP

Eminent Speaker
Mr. Sumit Wadhwa
 Corporate Lawyer
 Founder & Managing Partner
 Abott Law Office

Special Guest
CS Suresh Pandey
 Chairman-NIRC, ICSI

Chairman
CS Sumit Grover
 Chairman-Panipat Chapter NIRC-ICSI

Moderator
CS Aseem Juneja
 Company Secretary
 Akash Edutech Private Limited

Details of Webinar
 Date: 30-05-2020
 Day: Saturday
 Time: 01:00 PM to 2:30 PM
 Participation Fee: Nil
 CPE Hour: 1 (One)

PLEASE NOTE:
 1. Prior registration is mandatory. Only registered members can attend the programme.
 2. Only for ICSI members with Professional address at Panipat
 3. Participation on First come First Serve basis.
 4. Registration will be accepted only for first 70 members.
 5. Only those members who will attend complete webinar will be entitled for CPE hours.

With Warm Regards Panipat Chapter of NIRC - ICSI
CS Sumit Grover Chairman
CS Prabhjot Kaur Vice-Chairperson
CS Devesh Uppal Secretary
CS Abhishek Sharma Treasurer
CS Sachin Saluja Member
CS Raman Sharma Member
CS Devender Jaglan Member

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Second Webinar was delivered by Mr. Sumit Wadhwa, Corporate Lawyer, Founder & Managing Partner, Abott Law Office on Saturday, May 30, 2020 on the Topic of “GST-IBC Interplay– Clarification in respect of issues under GST for Companies under CIRP which was moderated by CS Aseem Juneja, Company Secretary in Akash Edutech Private Limited in the presence of CS Suresh Pandey, Chairman of NIRC-ICSI and CS Sumit Grover, Chairman of Panipat Chapter.

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PANIPAT CHAPTER

You Have got Questions We have Answers

How to Crack CS Exam: Do & Don'ts

Guest of Honour
CS Govind Mishra
 Life Coach & Motivational Speaker

Speaker
CS Ramandeep Singh
 Cyber Lawyer and Renowned Faculty of Law

Chairman
CS Sumit Grover
 Chairman - Panipat Chapter NIRC-ICSI

Moderator
CS Prabhjot Kaur
 Vice Chairperson of Panipat Chapter

Details of Webinar
 Date: 15-06-2020
 Time: Monday (7:30 PM to 2:30 PM)
 Venue: Online
 Registration Fee: ₹500/-
 Contact: CS Sumit Grover, Chairman, Panipat Chapter, NIRC-ICSI
 Email: sumitgrover@panipatchapter.com

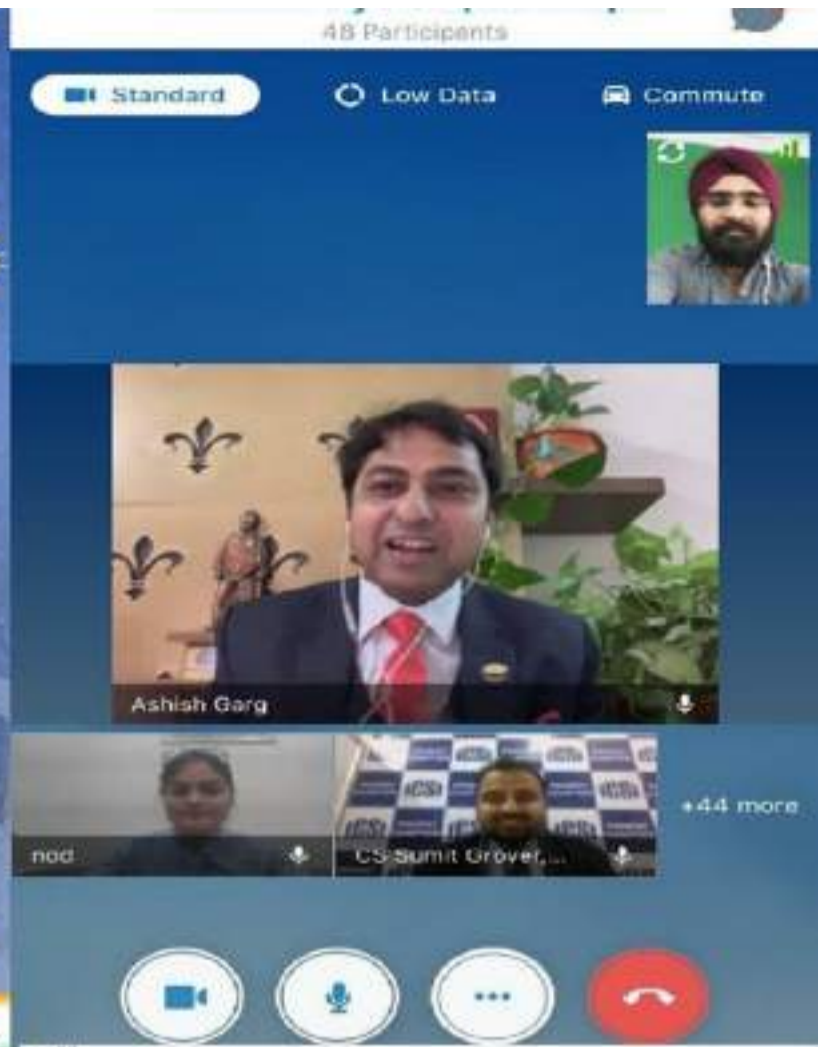
With Warm Regards
Panipat Chapter of NIRC - ICSI

CS Sumit Grover (Chairman), **CS Prabhjot Kaur** (Vice Chairperson), **CS Devesh Uppal** (Member), **CS Abhishek Sharma** (Member), **CS Sachin Saluja** (Member), **CS Raman Sharma** (Member), **CS Devender Jaglan** (Member)

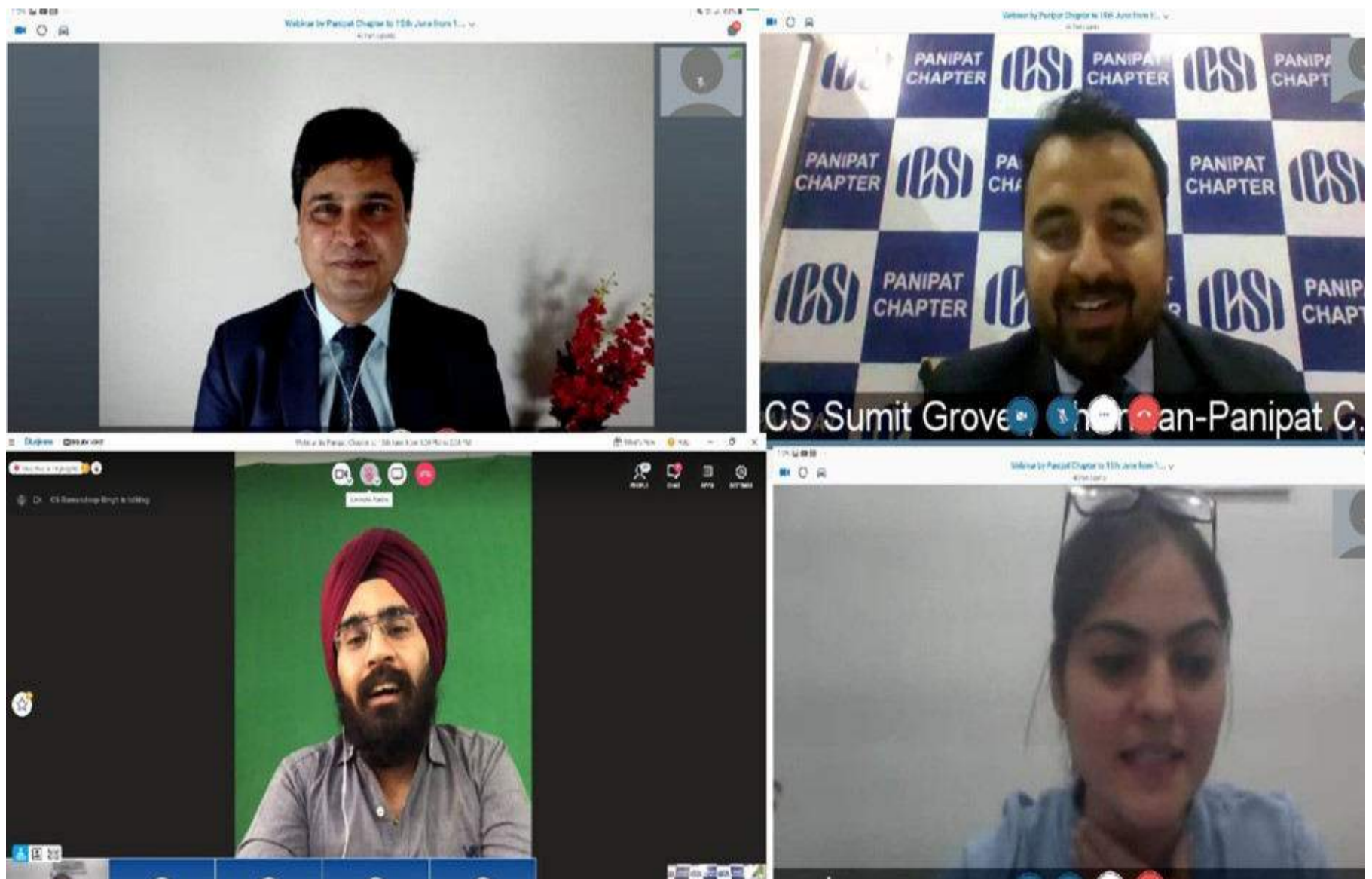
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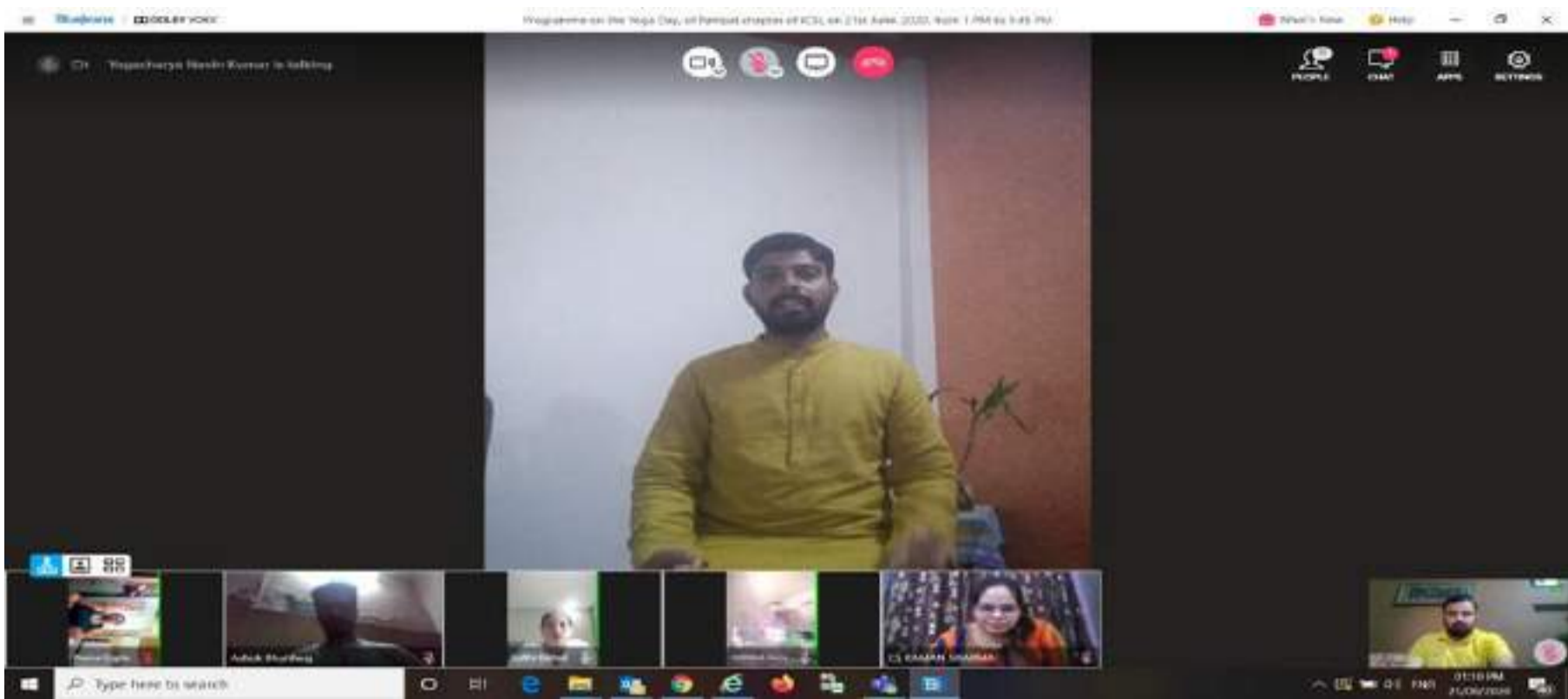
MISSION
 To develop high caliber professionals facilitating and promoting good corporate governance.



Third Webinar delivered by CS Ramandeep Singh, Cyber Lawyer and Renowned Faculty of Law on Monday, June 15, 2020 on the Topic of "How to crack exam: Do & Don'ts" which was Moderated by CS Prabhjot Kaur, Vice-Chairperson of Panipat Chapter in the presence of CS Ashish Garg, President ICSI and CS Sumit Grover, Chairman of Panipat Chapter



CS Govind Mishra, Life Coach & Motivational Speaker (First Row first column) was the guest of honour in the third webinar of Panipat Chapter on How to Crack CS Exam: DO & Don'ts which was delivered by CS Ramandeep Singh ,Cyber Lawyer and Renowned Faculty of Law (Second Row First Column) and moderated by CS Prabhjot Kaur, Vice Chairperson of Panipat Chapter of NIRC-ICSI (Second Row Second Column) in the presence of CS Sumit Grover, Chairman of Panipat Chapter (First Row Second Column).



Mr. Navin Kumar, Practitioner in Yoga, Meditation and Naturopathy and Ms. Naina Gupta, CS Aspirant & Yoga trainer Alumna– Udayan Shallni took the webinar on Sunday, June 21, 2020 on “Corporate Yoga” on International Yoga Day in the presence of CS Sumit Grover, Chairman of Panipat Chapter, CS Lalita Bansal, Past Chairperson of Panipat Chapter and Members of Management Committee of Panipat Chapter.





**MEDIA COVERAGE BY
PANIPAT CHAPTER**



Press release in Panipat Bhaskar of regarding launching of 50 hours online educational courses for Registered valuer (ICSI-RVO) from 18 to 20 April, 2020 and 23 to 26 April, 2020.



Press release in Panipat Kesri Newspaper regarding Postponement of Exams of Company Secretary due to COVID-19 which was to be held in June, 2020.till July, 2020. But due to Pandemic exams are again postponed, this was also published in newspaper.



Press release in Panipat Bhaskar Newspaper regarding Postponement of Exams of Company Secretary due to COVID-19 which was to be held in June, 2020 till July, 2020. But due to Pandemic exams are again postponed, this was also published in newspaper.



Press release in Panipat Bhaskar Newspaper regarding Celebration of PCS Day in the presence of Mr. Anurag Singh Thakur, Finance and Corporate Affairs, State Minister and CS Ashish Garg, President of ICSI.

ARTICLES AND WRITE-UPS

START-UP INDIA

CS Akhil Thakur
A55793

akhil16thakur1995.cs@gmail.com



Followers of Mr. Narendra Modi, India's Hon'ble Prime Minister will be aware of the Initiatives taken by Modi Government since his coming to power at the Center. Even his haters or opposition party followers are not unheard of transitions taking place in the Country since the advent of Modi Government. The list can go long which includes i.e. Make in INDIA, Digital INDIA, Startup INDIA, Swachh Bharat Abhiyan and so on.

In this Article, I will write about what is Startup India Initiative, Merits of Registering under Start-up India and the host of benefits offered to DPIIT recognized Start-ups.

What is STARTUP INDIA Initiative?

Startup India Scheme was launched to encourage the young Entrepreneurs to come up with new Idea's which can be transformed into scalable business with the assistance of the Government. The aim is to augment the Startup environment in the country and turn Job seekers into Job creators leading to creation of employment and wealth in the Country.

As envisaged, this initiative has had a positive impact on the Entrepreneurial environment of the Country as more and more young Entrepreneurs are coming up with innovative, bright ideas, products, services and technologies that boast of huge potential for future wealth creation for the promoters, investors and the nation. Government is working towards provision of continuous support to Startups in terms of Finance facilitation, networking opportunities with mentors, investors, eased Compliances among others. I will discuss the benefits in detail later in this article.

What is a STARTUP?

According to the definition provided in the Startup India Portal, A Startup is an Entity:

1. Incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
2. Having not crossed 10 years from the date of its incorporation or registration.
3. Whose turnover for any of the financial years since incorporation/registration has not exceeded INR 100 Crore.

Working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Getting your Startup recognized by DPIIT!

Startup Recognition is different from registering an Entity on the Startup India Portal. Entity Registration is the first step which is followed by applying for recognition by Department of Industrial Promotion and Policy.

An Entity has to be mindful of the fact that a mere registration on the Startup India Portal does not mean recognition as a Startup. Only an Entity which has been recognized as a Startup by DIPP

can avail host of benefits provided by the Government of India.

Now the Question that arises is, how can an entity secure this much emphasized recognition from DIPP?

The answer is that, one of the major motives of the Modi Govt. behind launching this initiative was to bring innovation in the country which would lead to creation of Employment and wealth with the assistance of Govt. Thus, for an Entity to be recognized as a "STARTUP", it should meet the following criteria's:

Innovative product, process, Service or Technology: the Entity should be working on an Innovative idea resulting into a unique product, process or service or an improvement of existing product, process or service.

Generation of Employment: the second qualifying factor is ability of the Startup to generate employment in the country with the innovation in hand. This is where a Job seeker steps into the shoes of Job creator and supports the nation is generating Jobs for qualified, skilled and unskilled masses.

Creation of Wealth: creation of wealth is the eventual aim of the govt. which is bound to happen if the above two criteria's fall into the right place at the right time.

An Entity registered on the Startup India Portal can reap the following benefits even without being recognized by the DIPP:

"Such Entities can apply for various acceleration, incubator/mentorship programmes and other challenges on the Startup Portal along with getting an access to resources like Learning and Development Program, Government Schemes, State Policies for Startups, and pro-bono services."

BENEFITS AVAILABLE TO A DIPP REGISTERED STARTUP!

The highlights of being recognized by DIPP as a Startup is the host of benefits, an entity can derive and those can prove to be very benefiting during the early phase of any Startup Entity.

Now, these benefits are not only limited to the ones being offered by DPIIT, Ministry of Commerce and Industry but the Companies Act, 2013 has also jumped into the picture to provide a flexible cushion to the Startups under some its stringent provisions.

So, I will divide the benefits under two categories i.e. Startup Hub benefits and Companies Act, 2013 benefits:
Startup India Hub Benefits:

a. Assistance in Patent and IPR applications: To promote awareness and adoption of IPRs by Startups and facilitate them in protecting and commercializing the IPRs, Startup India provides access to high quality Intellectual Property services and resources.

Besides a Patent application filed by a recognized startup is fast-tracked for examinations and disposal. Moreover, such startups are offered monetary benefit in terms of rebate in the Filing of Patent and trademark applications. For Patent applications, recognized startups get 80% of rebate bringing down the cost from Rs. 8000/- to Rs. 1600/-. For trademark applications, rebate is 50% of the Govt. Fees.

b. Self Certification under Labour and Environment Laws: The compliance burden on Startups is huge these days which can hinder their focus on the key areas of the business. Though proper Compliance with the laws is also important at the same time. A recognized Startup is allowed to self-certify their compliance under 6 Labour and 3 Environment laws for a period of 3 to 5 years from the date of incorporation.

These Labour Laws are:

i. Other Constructions Workers' (Regulation of Employment & Conditions of Service) Act, 1996 ii. The Inter-State Migrant Workmen (Regulation of Employment & Conditions of Service) Act, 1979 iii. The Payment of Gratuity Act, 1972 iv. The Contract Labour (Regulation and Abolition) Act, 1970 v. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 vi. The Employees' State Insurance Act, 1948

If such startups furnish self-declaration for compliance of the above labour laws for the first year from the date of starting the business, no inspection will happen under the labour laws, wherever applicable.

However, it must be noted that the startups are not exempt from the ambit of compliance of these labour laws. Such relaxation is provided so that startups are encouraged to be self-disciplined and adhere to the rule of law. These measures are being taken with intention to avoid harassment of entrepreneurs by restricting the discretion and arbitrariness.

c. Relaxation in Public Procurement Norms: This serves as a huge benefit to recognized Startups. Startups are being relaxed from meeting the following eligibility criteria's for any public procurement:

i. Prior Turnover ii. Prior Experience and iii. Earnest Money Deposit These relaxations are a huge boost for the early stage startups looking to procure Government tenders. Recognized Startups are placed in a strong position vis-a-vis other bidders for bidding for Public procurement and securing the same.

Now DPIIT recognized can get listed as Sellers on the Government of India's largest e-procurement portal—Government e-Marketplace.

Simply visit gem.gov.in/startup_runway

c. Tax Holiday/Exemptions: Though a recognized Startup do not entail this benefit only on the basis of its recognition, but these startups can make an application for Tax exemption under two Categories i.e. Income Tax exemption under Section 80IAC and Angel Tax exemption under Section 56 of the Income Tax Act, 1961.

Now there are certain Eligibility Criteria's for availing exemption under either of the two Sections.

Section 80IAC: 1. Only a Private Limited Company and a Limited Liability Partnership are eligible to make an application under this Section.

2. The Startup should have been incorporated after April 01, 2016 but before before April 01, 2021. **Hurry Up!**

Section 56(2)(viib): Aggregate amount of paid up share capital and share premium of the Startup after the proposed issue of share, if any, does not exceed INR 25 Crore.

By availing exemption under Section 56, a Startup can issue securities at a price higher than the Fair Market Value.

E) Ease in Winding up of the Startup: Ministry of Corporate Affairs has notified Startups as 'fast track firms' enabling them to wind up operations within 90 days vis-a-vis 180 days for other companies. An insolvency professional shall be appointed for the Startup, who shall be in charge of the Ministry of Corporate Affairs has notified Startups as 'fast track firms' enabling them to wind up company for liquidating its assets and paying its creditors within 6 months of filing an application in this regard.

COMPANIES ACT 2013 EXEMPTIONS AND RELAXATIONS

i. Exemption from preparation and filing of Cash Flow Statement in their Annual Filings with the ROC.

ii. Startups can issue Employee Stock Options to Promoters and Promoter Group and also to Directors who directly or indirectly hold 10% of voting Rights in the Company. Issuance of Stock Options is prohibited to the said persons for Companies which are not Recognized Startups.

iii. Startups are allowed to issue Sweat Equity Shares upto 50% of the existing Paid-up capital upto 5 years from the date of its incorporation. This Limited is restricted to 15% for a Non-Startup Company.

iv. Startups are allowed to hold 2 Board Meetings in a Financial Year instead of 4 Board Meetings applicable for Non-startup Companies. Startup can hold 1 BM every Half Financial Year.

v. Startups can have their Annual Return under Section 92 signed by a Director, if their is no Company Secretary in the Company. For other Companies, the Annual Return has to be signed by Practicing Company Secretary.

So, An early age Startup with Innovative product, process or service has substantial support from the Government to see out the traction period without incurring bucket of expenses. Angel Tax exemption, IPR Rebates and expedited examination, SIDBI Funding among others are the benefits a Startup can derive for its innovation.

DISCLAIMER: The entire contents of this article have been prepared on the basis of relevant provisions and the information existing at the time of preparation. Although care has been taken to ensure the accuracy, completeness and reliability of the information provided, the auhtor assumes no liability therefore. Users of this information are expected to refer the relevant law. the information as given in no case shall be construed as a Professional advice or opinion. IN NO EVENT THE AUTHOR SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL OR INCIDENTAL DAMAGE RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH THE USE OF THIS INFORMATION.

MCA Relaxations in Corporate Compliance Norms Due to COVID-19

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Coronavirus Disease 2019 (COVID-19)

Coronavirus Disease 2019 (COVID-19) is a Pandemic disease as declared by World Health Organization (WHO) and was identified in Wuhan, China, and is now being spread throughout the world.

Government of India has declared Lock-down in various states and for corporate sectors, employees and employers both are advised to work from home.

Ministry of Corporate Affairs (MCA) has taken preventive steps via issued guidelines and relaxation in Corporate Filings.

Initiatives taken by Ministry of Corporate Affairs (MCA)

Work from Home Policy and Filing of Form CAR-2020

- Ministry of Corporate Affairs vide an advisory dated 20.03.2020, to all the Corporates including Companies and LLPs both are expected and strongly advised to put in place an immediate plan to implement "Work from Home" Policy in their headquarters and field offices.
- Ministry of Corporate Affairs (MCA) will deploy Company Affirmation of Readiness towards COVID-19 ("CAR") web-based form on 23rd March, 2020 to ensure that "work from home" policy is followed by all the LLPs and Companies to show their readiness against fight with COVID-19.

Kindly note that:

Company Affirmation of Readiness towards COVID-19" has been discontinued w.e.f 14th April 2020

Relaxation in the Provisions related to Board Meetings:

MINISTRY OF CORPORATE AFFAIRS (MCA) vide G.S.R. 186(E) and Gazette id No. CG-DL-E-19032020-218797 dated 19th March, 2020 has issued published Companies (Meetings of Board and its Powers) Amendment Rules, 2020 further to amend Companies (Meetings of Board and its Powers) Rules, 2014.

Notification text:

In the Companies (Meetings of Board and its Powers) Rules, 2014, rule 4 shall be renumbered as sub-rule (1) thereof and after sub-rule (1) as so renumbered, the following sub-rule shall be inserted, namely:-

- "For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 30th June, 2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3."

In other words, Matters Not to be Dealt With in a Meeting Through Video Conferencing or Other Audio Visual Means as per

Rule 4 (1) of the Companies (Meetings of Board and its Powers) Rules, 2014 **can be done via through video conferencing or other audio visual means in accordance with rule 3 till 30.06.2020.**

Matters Includes:

- the approval of the annual financial statements;
- the approval of the Board's report;
- the approval of the prospectus;
- the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act]; and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Relaxations to Companies and LLPs – Special Measures

MCA has issued General Circular No. 11 /2020, F No.2/1/2020-CL-V dated 24.03.2020 regarding Special Measures under Companies Act, 2013 (CA-2013) and Limited Liability Partnership Act, 2008 in view of COVID-19 outbreak

- No additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry.
- The **mandatory requirement of holding meetings** of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA13) (120 days) **stands extended by a period of 60 days till 30th September.**
- The Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-21.
- For the financial year 2019-20, if the **Independent Directors** of a company have **not been able to hold a mandatory meeting** As per Para VII (1) of Schedule IV to the Companies Act -2013, the same shall not be viewed as a violation.
- Requirement under section 73(2)(c) of Companies Act - 2013** to create the deposit repayment reserve of 20% shall be allowed to be complied with till 30th June 2020.
- Relaxation to the Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 **to invest or deposit at least 15%, may be complied with till 30th June 2020**
- MCA E- Form INC – 20A:** Newly incorporated companies are required to file a declaration for Commencement of Business within 6 months of incorporation. **An additional time of 6 more months will be allowed. (i.e., 180 days from incorporation + additional six months)**

- Non-compliance of **minimum residency in India for a period of at least 182 days by at least one director** of every company, under Section 149 of the Companies Act, **shall not be treated as a violation.**

Source: http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf

4. Relaxation in Annual Filing

Relaxation of additional fees and extension of last date in filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013- UT of J&K and UT of Ladakh

extension of time for filing of financial statements for the financial year ended 31.03.2019. Therefore, it has been decided to extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC-4 XBRL and e-form MGT-7 upto 30.06.2020, for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of additional fee.'

5. RE-ACTIVATION OF DEACTIVATED DIN (DIR-3KYC Form) AND ACTIVE NON-COMPLIANT (Active form) COMPANIES WITHOUT PENALTY

- DIN holders of DINs** marked as 'Deactivated' due to non-filing of DIR-3KYC/DIR-3 KYC-Web and
- those Companies whose compliance status has been marked as **"ACTIVE non-compliant"** due to non-filing of Active Company Tagging Identities and Verification(ACTIVE) e-form

are encouraged to become compliant once again in pursuance of the General Circular No. 11 dated 24th March, 2020 & General Circular No.12 dated 30th March 2020 and file DIR-3KYC/DIR-3KYC-Web/ACTIVE as the case may be between **1st April, 2020 to 30th September, 2020 without any filing fee** of INR 5000/INR 10000 respectively

6. MCA Launched Corporate Revival Schemes :

- Company Fresh Start Scheme, 2020 (CFSS-2020)
- LLP Modified Settlement Scheme, 2020

Companies Fresh Start Scheme, 2020 (CFSS-2020)	Modified LLP Settlement Scheme, 2020.
The Ministry of Corporate Affairs (MCA) vide its General Circular No. 12/2020 dated 30.03.2020 has come up with the Companies Fresh Start Scheme, 2020 for one-time application of condonation of delay of filling the various documents, forms, returns etc. with the Registrar.	MINISTRY OF CORPORATE AFFAIRS (MCA) vide General Circular No. 13/2020 and File No. F. No. 17/61.2016-CL-V-Pt-I issued dated 30th March, 2020, has modified the provisions related to LLP SETTLEMENT SCHEME, 2020.
Circular Available at: http://www.mca.gov.in/Ministry/pdf/Circular12_30032020.pdf	Circular available at: http://www.mca.gov.in/Ministry/pdf/Circular13_30032020.pdf
List available Forms at Source / Link: http://www.mca.gov.in/Ministry/pdf/CFSS2020_02042020.pdf	
MCA has issue 50 FAQ'S ON CFSS, 2020 AND LLP MODIFIED SETTLEMENT SCHEME, 2020 and Available at: http://www.mca.gov.in/Ministry/pdf/FAQCFSS_15042020.pdf	

7. Threshold of default under Section 4, IBC for initiation of insolvency proceedings raised to Rs 1 crore

MINISTRY OF CORPORATE AFFAIRS (MCA) vide notification / Gazette id No. CG-DL-E-24032020-218898 and S.O. 1205(E) issued and pub-

lish dated 24th March 2020, has amended section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016).

They shall come into force on the date of their publication in the Official Gazette, i.e. 24th day of March, 2020.

CHANGE VIA THIS AMENDMENT –

Section 4(1) of IBC, 2016 - Application of this Part-II (INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS):

<u>Before Amendment</u>	<u>After Amendment</u>
This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees:	This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one crore rupees:

Source: http://www.mca.gov.in/Ministry/pdf/Notification_28032020.pdf and <http://egazette.nic.in/WriteReadData/2020/218898.pdf>

8. COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)

The Ministry of Corporate Affairs vide General Circular No. 15 /2020, F. No. CSR-01/4/2020-CSR-MCA dated 10th April 2020 has issued and published COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR).

Major Update:

“Chief Minister’s Relief Fund’ or ‘State Relief Fund for COVID-19’ is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.”

COVID 19 (FAQs) on Corporate Social Responsibility (CSR) available at:

http://www.mca.gov.in/Ministry/pdf/Notification_10042020.pdf

9. Clarification on passing Ordinary and Special Resolutions by Companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19

The Ministry of Corporate Affairs vide General Circular No. 14/2020, dated 08th April 2020 and General Circular No. 17/2020, dated 13th April 2020 has issued and published Clarification on passing Ordinary and Special Resolutions by Companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid19.

These clarifications are expected to greatly facilitate the conduct of business by companies during these extraordinary times.

Circulars are available at:

http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf
http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

10. Filings under Companies Act 2013 w.r.t IEPFA (Accounting, Audit, Transfer and Refund) Rules 2016 in view of emerging situation due to outbreak of COVID- 19

The Ministry of Corporate Affairs, Investor Education and Protection Fund Authority, vide General Circular No. 16/2020, dated 13th April 2020 has issued relaxation Filings under Companies Act 2013 w.r.t IEPFA (Accounting, Audit, Transfer and Refund) Rules 2016 in view of emerging situation due to outbreak of COVID- 19.

- It has been clarified that Ministry of Corporate Affairs has already allowed filing without additional fees till 30th September, 2020 through General Circular No. 11/2020, dated 24th March, 2020 and General Circular No. 12/2020 dated 30th March, 2020.
- Therefore, the necessary relaxation, insofar as filing of various other IEPF e-forms (IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4, IEPF -7) and e-verification of claims filed in e-form IEPF-5 has already been provided.

Source: http://www.mca.gov.in/Ministry/pdf/Circular16_13042020.pdf

11. Extension of last date for public comments on Draft Companies (CSR Policy) Amendment Rules, 2020 till 20th April 2020

Ministry of Corporate Affairs vide announcement dated 09th April, 2020 extended Last Date of Submission of Suggestions has been extended from April 10, 2020 to April 20, 2020.

Ministry of Corporate Affairs had invited for public comments on the draft Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 vide a notice dated 13th March, 2020. The last date to submit comments was 28th March, 2020 which was further extended till 10th April 2020.

Web Link for submitting comments: <http://feedapp.mca.gov.in/csr/>

12. Relaxation in Holding of AGM's by companies whose financial year has ended on 31st December, 2019.

Ministry of Corporate Affairs vide General Circular No. 18/2020, F. No.2/4/2020-CL-V dated 21st day of April, 2020 has issued Clarification on Holding of annual general meetings by companies whose financial year has ended on 31st December, 2019.

Companies which is a holding company or a subsidiary or associate company of a company incorporated outside India post approval of Central Government, can decide any period as its financial year and not applicable for Companies for first financial year.

Link: http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf

13. MCA Extends validity of Name Reservation / Re-submission

In view of the situation arising due to COVID-19 pandemic and extended lockdown period, Ministry of Corporate Affairs vide notification / circular dated 22nd day of April, 2020 has issued Circular with respect to PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS. Several representations have been received from stakeholders with regard to difficulty in incorporation / resubmission of incorporation forms due to COVID-19

- Names expiring any day between 15th March 2020 to 3rd May would be extended by 20 days beyond 3rd May 2020
- Names expiring any day between 15th March 2020 to 3rd May would be extended by 20 days beyond 3rd May 2020.

All FAQ's - **Link:** http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

14. Independent Directors Registration due date extended till 30th June, 2020

MCA vide notification dated 29th April, 2020 has issued the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020.

Individual who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of **seven months** from such commencement apply online for inclusion of his name in the data bank.

Link: http://www.mca.gov.in/Ministry/pdf/Rules_29042020.pdf

15. MCA EXTENDS DUE DATE OF FILING OF FORM NFRA -2

MINISTRY OF CORPORATE AFFAIRS vide General Circular No. 19/2020 dated 30th April, 2020, has extended the due date of Filing MCA E-Form NFRA -2 .

It has been decided that the time limit for filing of Form NFRA-2, for the reporting period Financial Year 2018-19' will be 210 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

Link: http://www.mca.gov.in/Ministry/pdf/Circular19_30042020.pdf

16. MCA CLARIFICATION ON HOLDING OF DIGITAL AGM THROUGH VC OR OAVM – NOT PHYSICAL

Ministry of Corporate Affairs (MCA) vide General Circular No. 20 / 2020 dated 05th May, 2020 has issued Clarification on holding of annual general meeting (AGM) through video conferencing (VC) or other audio visual means (OAVM). It has been decided that the companies be allowed to conduct their AGM through video conferencing (VC) or other audio visual means (OAVM), during the calendar at year 2020, subject to the fulfillment of the requirements mentioned in the circular.

Link: http://www.mca.gov.in/Ministry/pdf/Circular20_05052020.pdf

17. MCA CLARIFICATION ON DISPATCH OF NOTICE BY LISTED COMPANIES

MCA vide General Circular no. 21/ 2020 dated 11 th May, 2020 has issued CLARIFICATION ON DISPATCH OF NOTICE UNDER SECTION 62 (2) OF COMPANIES ACT, 2013 BY LISTED COMPANIES FOR RIGHTS ISSUE OPENING UPTO 31ST JULY, 2020.

Clarification from MCA:

For Right Issue opening 31st July 2020:

In case of Listed Entities, which comply with the SEBI/HO/CFD/DIL2/CIR/P2020/78 dated 06th May, 2020, inability to dispatch the notice per Section 62 (1) (a) (i) of the Companies Act, 2013 read with Section 62 (2) of the Act, to their shareholders through registered post / speed post / courier would not considered as violation of Section 62(2) of the Companies Act, 2013

Link: http://www.mca.gov.in/Ministry/pdf/Circular21_11052020.pdf

18. MCA REVISED FAQ'S ON NAME RESERVATION AND RESUBMISSION FORMS

In view of the situation arising due to COVID-19 pandemic and extended lockdown period, Ministry of Corporate Affairs vide notification / circular dated 20th day of May, 2020 has issued Circular with respect to PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS.

Several representations have been received from stakeholders with regard to difficulty in incorporation / resubmission of incorporation forms due to COVID-19.

Revised FAQ's are available at:

http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

19. Amendment of in the Schedule VII of the Companies Act, 2013

MCA via Gazette notification no. CG-DL-E-26052020-219562 and G.S.R. 313(E) dated 26th May, 2020 has made some modifications in Schedule VII of the companies act 2013.

The Issued Notification states that in Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted. The Notification will come into effect from March 28, 2020.

Link of the Circular: http://www.mca.gov.in/Ministry/pdf/Notice_27052020.pdf

20. Companies (Share Capital and Debentures) Amendment Rules, 2020.

MCA vide notification dated 05th June 2020, F. No. 01/04 I2013-CL-v-Part-IV has issued Companies (Share Capital and Debentures) Amendment Rules, 2020 further to amend the provisions of the Companies (Share Capital and Debentures) Rules, 2014.

Key Highlights:

- The company shall not issue sweat equity shares for more than 15% of the existing paid-up equity share capital in a year or shares of the issue value of Rs. 5 crores, whichever is higher.
- Start-up company is allowed to issue sweat equity shares not exceeding 50% of its paid up capital up to 10 years from the date of its incorporation or registration.

Link of the Circular: http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

21. Extension of Time for EGMs

In view of the continuing restrictions on movement of people because of covid-19 lockdown, MCA vide General Circular No. 22/2020 dated 15.06.2020 has extended Time Limit for EGMs till 30th Sep 2020.

2. This Ministry has issued General Circular No. 14/2020 on 8th April 2020 and General Circular No. 17/2020 on 13th April 2020 for providing clarifications on the passing of ordinary and special resolutions by companies by holding extraordinary general meetings (EGMs) through video conferencing (VC) or other audiovisual means (OAVM) or the passing of certain items only through postal ballot without convening the general meeting. The framework provided in the said Circulars allows companies to hold relevant EGMs or transact relevant business through postal ballots, as per the procedure specified therein, up to 30th June 2020 or till further orders, whichever is earlier.

Link of the Circular: http://www.mca.gov.in/Ministry/pdf/Circular22_15062020.pdf

22. MCA SCHEME FOR RELAXATION OF CHARGES

MCA vide General Circular no. 23/ 2020 dated 17th June, 2020 has issued Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 for all Companies Registered with ROC. Purpose of the Scheme is condoning the delay in filing certain forms related to creation/ modification of charges and applicable w.e.f. 17th June, 2020

The Scheme shall not apply, in case:

- The forms i.e. CHG-1 and CHG-9 had already been filed before the date of issue of this Circular.
- The timeline for filing the form has already expired under section 77 or section 78 of the Act prior to 01.03.2020
- The timeline for filing the form expires at a future date, despite exclusion of the time provided in sub-para (iii) above.
- Filing of Form CHG-4 for satisfaction of charges.

Link of the Circular: <http://www.mca.gov.in/Ministry/pdf/>

[Circular23_17062020.pdf](#)

23. MCA EXTENDS TIME FOR CREATION OF DEPOSIT REPAYMENT RESERVE & TO DEPOSIT 15% OF AMOUNT OF DEBENTURES

MCA vide General Circular no. 24/ 2020, File No. 02 /08 I 2020-CL-V dated 19th June, 2020 has provide Clarification with regard to creation of deposit repayment reserve of 20% under section 73 (2) (C) of the companies Act 2013 and to invest or deposit 15% of amount of debentures under Rule 18 of Companies (Share capital and Debentures) Rules 2014 - COVID-19 -Extension of time-regarding'.

MCA has decided to further extend the time in respect of matters referred to in paras V , VI of the aforesaid circular, from 30th June 2020 to 30th September 2020.

Link of the Circular: http://www.mca.gov.in/Ministry/pdf/Circular24_20062020.pdf

24. MCA FURTHER REVISED FAQ'S ON NAME RESERVATION AND RESUBMISSION FORMS (Third time) BEYOND 30.06.2020

In view of the situation arising due to COVID-19 pandemic and extended lockdown period, Ministry of Corporate Affairs vide notification / circular dated 22nd day of June, 2020 has issued Circular with respect to PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS BEYOND 30th JUNE 2020.

Revised FAQ's are available at:

http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

25. Independent Directors Registration due date extended

MCA vide notification dated 23rd June, 2020 has issued the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020.

Individual who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of **Ten months** from such commencement apply online for inclusion of his name in the data bank.

Link: http://www.mca.gov.in/Ministry/pdf/Rule2_25062020.pdf

26. Companies (Meetings of Board and its Powers) Second Amendment Rules, 2020

MCA vide notification dated 23rd June 2020 has further relaxed the requirement of holding Board meetings with physical presence of directors under section 173 (2) read with rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the annual financial statements, Board's report, etc. Such meetings may **till 30th September, 2020** be held through video conferencing or other audio visual means by duly ensuring compliance of rule 3 of the said rules.

Link: http://www.mca.gov.in/Ministry/pdf/Rule1_25062020.pdf

Conclusion:

Ministry have taken preventive steps and extended due dates for Corporate Filings due to COVID 19 Outbreak. We have to follow and abide the regulations and advisories issued by Ministry of Health and other Ministries from time to time and also made contribution towards joining the movement to fight against the spread of the disease.

INTERNATIONAL FINANCIAL SERVICE CENTER [IFSC]

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An IFSC deliberately provides Indian corporates with easier access to global financial markets, and to complement and promote further development of financial markets in India.

The financial services and transactions that are presently administered in offshore financial centres by Indian corporate entities and overseas branches or subsidiaries of Monetary Institutions like banks, insurance companies, etc. to India will be brought back by an IFSC.

This is done by providing a business and regulatory environment compared to other leading international financial centres in the world like London and Singapore. It will conduct business in such foreign currency and with such entities, whether resident or non-resident.

The first IFSC in India has been set up at Gujarat International Finance Tec-City (GIFT City) in Gandhinagar. The Bill is applicable to all the IFSCs set up through the SEZ Act, 2005.

Why an IFSC in India?

An IFSC seeks to bring to India, those types of financial services and transactions that are currently carried on outside India by overseas financial institutions and overseas branches/ subsidiaries of Indian financial institutions.

The policy objective behind establishing an IFSC in India is providing a platform for international financial services to operate from and to specialize in Exports of high value-added International Financial Services.

What are the Products and Services at IFSCs?

The IFS products and services that IFSCs provide include the following :

Fund Raising for individuals, corporations and governments.

Asset Management and Global Portfolio Diversification.

Personal Wealth Management for high-net worth individuals.

Global Tax Management and Cross- border Tax Liability Optimisation.

Global/Regional Corporate Treasury Management Operations which involves fund raising, liquidity investment and management, asset-liability and duration matching, and risk-management through insurance and traded derivative products for currency, interest-rate, credit and political risk exposure

Global/Regional Risk Management Operations and Insurance/Re-insurance which involves highly developed exchange traded and tailored derivatives (futures, options, swaps, caps and collars) as well as world class derivatives exchanges that trade a variety of global contracts.

Global/Regional Exchange Trading of Financial Securities, Commodities and Derivatives Contracts in Financial Instruments/ Indices and in Commodities

Financial Engineering and Architecture for Large Complex Projects.

Global/Regional Mergers and Acquisitions Activity.

Financing for Global/Regional Public- Private Partnerships.

Global Transfer Pricing This is an activity which most governments looks doubtfully but often practiced by transnational corporations.**What are Types of IFSCs?**

IFSCs are generally classified into four.

1. Global Financial Centers (GFCs): These are centres that genuinely serve clients from all over the world in the provision of the widest possible array of international financial services (IFS). Example : London, New York, Singapore.

2. Regional Financial Centers (RFCs): They serve their regional economies rather than their national economies. Example : Dubai or Hong Kong

3. Non-global and non-regional, ordinary international IFSCs: These are centres like Paris, Frankfurt, Tokyo and Sydney that provide a wide range of IFS but cater mainly to the needs of their national economies rather than their regions or the world.

4. Offshore Financial Centers (OFCs): These are centres that are primarily tax havens for wealth management and global tax management rather than providing the fully array of IFS.

What is the Legal provisions for IFSC in India?

Section 18 and Section 55 of India's **Special Economic Zone Act, 2005** provides for the establishment of an International Financial Services Centre in India within an SEZ in India and enables the Central Government to regulate IFSC activities.

Government of India on 18 August 2011 for setting up a sector specific SEZ for multi services at Gandhinagar, Gujarat.

The Finance Minister of India, Shri Arun Jaitley, while delivering the budget speech for the assessment year 2015–16 announced that the first phase of GIFT will soon become a reality and that appropriate regulations/guidelines governing IFSC would be issued by March 2015.

Following the Budget 2015, the financial regulators viz. the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI) and the Insurance Regulatory and Development Authority of India (IRDAI) and the Department of Financial Services issued the following regulations and guidelines to operationalize IFSC-GIFT in India under the provisions of the SEZ Act.

What is Benefits under Income Tax Act, 1961 for units located in IFSC?

Under the Income Tax Act, 1961, the IFSC is given a special recognition and is provided with various benefits. The benefits available to units in an IFSC under the Income Tax Act, 1961 are tabulated below:

Section	Description of the section	For a Normal organization	For organizations located in IFSC	Inferences drawn
112A and 10(38)	Tax on long term capital gains in certain cases	Under section 112A of the act, i) any capital gain arising from transfer of Long term capital assets being an Equity Share in a Company or units of an equity oriented fund or units of a business trust, ii) on which securities transaction tax has been paid at the required time and iii) the capital gain exceeds Rs. 1,00,000 such amount in excess of Rs. 1,00,000 shall be taxable at the rate of 10%.	Where the transfer takes place through a recognized stock exchange located in the IFSC, the provisions of section 112A shall not apply. Section 10(38) provides exemption from long term capital gain on transfer of equity shares or units of equity oriented funds or units of business trust on which securities transaction tax is paid. Proviso to section 10(38) provides that where the transaction is undertaken on a stock exchange situated in IFSC, the LTCG shall be exempt even though STT is not paid.	Whereas, Long term capital gain on transfer of Equity Share in a Company or units of an equity oriented fund or units of a business trust on which STT is paid is taxable @ 10% where the capital gain exceeds Rs. 1,00,000. The long term capital gain on transfer of the above mentioned capital asset through a stock exchange located in IFSC is totally exempt even if STT is not paid.
111A	Tax on short term capital gains in certain cases	Under section 111A of the act, i) any capital gain arising from transfer of short term capital assets being an Equity Share in a Company or units of an equity oriented fund or units of a business trust and ii) such transaction is chargeable to securities transaction tax shall be taxable at the rate of 15%.	Proviso to section 111A provides that where the transaction is undertaken on a stock exchange situated in an IFSC, the STCG shall be taxable at the rate of 15% even though STT is not paid. One additional condition is that the consideration for such transaction shall be paid or payable in foreign currency	For a normal organization there is a requirement of paying STT on the transaction. At the same time, where the transaction is undertaken on a stock exchange situated in IFSC, though the tax rate is same, the concessional rate of 15% will be applicable even if STT is not paid.
115-O	Tax on distributed profits of domestic Companies.	Section 115-O talks about charging Dividend Distribution Tax (DDT). Under this section, where a Domestic Company declares, distributes or pays dividend, it shall be chargeable to DDT at the rate of 15% plus 12% surcharge plus 4% Health and Education Cess. The rate comes up to 17.472% in aggregate. This rate is applied on 85% of the dividend amount (gross up concept applicable). Hence the effective rate would be 17.472% divided by 85% which comes to 20.555% of the Dividend amount	The provisions of Section 115-O shall not be applicable to units located in the IFSC.	Since, DDT is not available for set off against the normal income tax payable by a Company, it becomes an additional cost to the Companies. Hence, the units located in IFSC enjoy tax concession to the extent of 20.555% on dividends distributed, declared or paid.
80LA	Deductions in respect of certain incomes of Offshore Banking Units and International Financial Services Centre.		Section 80LA provides income based deductions for units located in an IFSC from payment of income tax. The exemption shall be as under: i) 100% deduction for the first five consecutive years beginning from the year in which permission from the respective regulatory authority was obtained ii) 50% deduction for the next five consecutive financial years.	
115JB	Special provision for payment of tax by certain companies	Section 115JB provides for levy of Minimum Alternate Tax (MAT). In case of a Company, where the TAX on the total income is less than 18.5% of the Book Profit (as computed in accordance with the provisions of section 115JB), then the Company shall instead of paying tax as per the normal provision, pay tax at the rate of 18.5% of the Book Profit.	For a Company located in IFSC, the provisions of section 115JB shall be as follows: where the TAX on the total income is less than 9% of the Book Profit (as computed in accordance with the provisions of section 115JB), then the Company shall instead of paying tax as per the normal provision, pay tax @ 9% of the Book Profit.	Thus, for a Company located in IFSC, the rate of MAT is 9% instead of 18.5%.
115JC	Special provisions for payment of tax by certain persons other than a company.	Whereas section 115JB provides for levy of MAT, section 115JC provides for levy of Alternate Minimum Tax in case of an assessee other than a Company. In case of an assessee other than a Company, where the TAX on the total income is less than 18.5% of the Adjusted Total Income (as computed in accordance with the provisions of section 115JC), then the assessee shall instead of paying tax as per the normal provision, pay tax @ 18.5% of the Adjusted Total Income.	For an assessee other than a Company located in IFSC, the provisions of section 115JC shall be as follows: where the TAX on the total income is less than 9% of the Adjusted total Income (as computed in accordance with the provisions of section 115JC), then the assessee shall instead of paying tax as per the normal provision, pay tax @ 9% of the Adjusted Total Income.	Thus, for a unit other than a Company located in IFSC, the rate of AMT is 9% instead of 18.5%.
47	Transactions not regarded as transfer		Under clause viiab of Section 47, any transfer of Capital Asset being, i) bond or Global Depository Receipt ii) rupee denominated bond of an Indian company iii) derivative made by a non-resident on a recognized stock exchange located in any International Financial Services Centre and where the consideration for such transaction is paid or payable in foreign currency is not considered as a transfer and hence not liable to Capital Gain Tax.	

CONCEPT OF BENEFICIAL OWNER AND SBO

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“This write up is prepared in regards to the newly introduced/ substituted provisions under the Companies Act, 2013 (hereinafter referred to as ‘the Act’) i.e. Section-89 read with Companies (Management and Administration)

Rules, 2014 and Section 90 read with Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 (‘Final Rules’) issued by MCA vide its Notification dated June 13, 2018 and Companies (Significant Beneficial Owner) Amendment Rules, 2019 notified dated 08th February, 2019”.

“Assessing beneficial ownership isn’t like looking for needle in haystack?”

Yes, it’s like looking for a needle in a pile of other needles and if you are the beneficial owner then you’ll be getting all the perks related with that position.

“Not everyone wants to be identified as the beneficial owner, many criminals will deliberately use the opacity of corporate vehicles to hide their identity, hence financial action task force (FAFT), an international body sets standards for anti-money laundering by issuing guidelines for implementing risk-based approach towards handling customers.”

OWNERSHIP- MEANING

‘Ownership’ is a bundle of rights attached to property.

TYPES OF OWNERSHIP

Ownership is categorised into 4 different kinds:

Legal Owner –one who hold legal title to property.

Registered Owner- one whose name is entered in the register of members of the company as holder of shares.

Beneficial Owner – he is a natural person who enjoys the benefit or interest on shares (equity or preference; whether convertible or not except debentures) but he is not the actual owner i.e. name is not registered in the register of member of the company.

Significant Beneficial Owner–individual who is acting alone or together with one or more persons for rights or entitlement in reporting company.

CONCEPT OF BENEFICIAL OWNER

“One who is not having apparent legal title, but enjoys the ownership of property”.

“Entitled to receive income of estate without title, custody, or control over the property, the beneficial owner with more than 25 % is identified as BO as per verified and revised anti money laundering guidelines”.

Beneficial Owner is defined under section 89 (10) of the companies act, 2013 which means interest on shares directly or indirectly through contract or arrangement, alone or together with one or more persons to exercise or cause to be exercised any rights attached with such shares or receive or participate in dividend on such shares.

EXAMPLE Mr. X buys 100 shares in ABC limited via brokerage house, though shares are recorded under broker’s name but Mr. X is beneficial owner.

In case of WOS company, holding company is holding 100 % shareholding in WOS in the name of nominee, to maintain the minimum number of members in company i.e. 2 for private and 7 for public.

(In this case, company is beneficial owner and nominees are registered owner)

WHY THE CONCEPT OF BENEFICIAL OWNER EMERGED?

“The companies are independent corporate personality often misused for corporate illicit activities like money laundering, benami transactions, formation of shell companies, tax evasion, corruptions, having complex ownership by holding shares with different names & other illegal activities and due to which company hide the real owners behind the transaction, and the properties held in benami transactions are liable for confiscation by government”.

So to avoid the misuse of corporate vehicle, the financial action task force (FATF) designs and promote various policies to combat the financial crime.

Subsequently to bring transparency, an onerous provision has been rolled out by MCA in regards to the concept of registered owner, beneficial owner & significant beneficial owner under section 89 and 90 of companies act, 2013 and this becomes an obligation on the company to collect the information from the respective persons and reporting the same to the registrar”.

“Under the beneficiary ownership rules, company must maintain written records to identify and verify beneficial owners.”

CONCEPT OF SIGNIFICANT BENEFICIAL OWNER

Identification of SBO is based on direct or indirect holding of any

Shares or Profit	<ul style="list-style-type: none"> • he hold ultimate beneficial interest indirectly or together with direct holding, <u>not less than 10 % of shares or entitlement of not less than 10 % of profits or 10 % interest in trust</u> • (the name of SBO is not entered in ROM of company)
Voting Rights	<ul style="list-style-type: none"> • he hold ultimate beneficial interest indirectly or together with direct holding of <u>not less than 10 % of voting rights.</u>
Dividend or Control	<ul style="list-style-type: none"> • he hold ultimate beneficial interest indirectly or together with direct holding of <u>not less than 10 % of distributable dividends</u> • he hold ultimate beneficial interest indirectly or together with direct holding right to exercise significant influence or control over.

For the purpose of direct holding, the person must hold shares in his own name i.e. name must be mentioned in the register of members (in such case he is not SBO) and;

For the purpose of indirect holding, the member may hold the shares on behalf of body corporate, HUF, partnership firm, trust or through pooled investment fund.

“If an individual doesn’t hold any indirect right or entitlement, then he is not considered as significant beneficial owner, so in order to be significant beneficial owner, he must have indirect holding.”

If individual is holding shares indirectly on behalf of body corporate, then he must hold majority stake (more than ½ of shares or voting rights or right to participate in dividend) in the body corporate or the ultimate holding of body corporate.

If individual is holding shares indirectly on behalf of HUF, then he must be karta of HUF

If individual is holding shares indirectly on behalf of partnership firm, then he must be partner or holds majority stake in the body corporate or its ultimate holding which is partner of partnership firm.

If individual is holding shares indirectly on behalf of trust, then he must be trustee, beneficiary or the author of trust.

EXAMPLE:

Mr. A is holding 60 % shares in XYZ Ltd. and his name is entered in ROM, whether SBO rules on Mr.A? is applicable



No, SBO rules are not applicable, as he is registered owner not beneficial owner.

Mr. A is holding 80 % shares in XYZ Ltd., which holds 80 % in PQR Ltd. whether SBO declaration is required?

Yes, SBO rules are applicable because there’s indirect shareholding of 64 % in PQR Ltd. So Mr. A is required to declare SBO

WHY THE CONCEPT OF SIGNIFICANT BENEFICIAL OWNER EMERGED?

The issue of misuse of multi-layered corporate entities have grabbed attention of various policy makers and regulators, so the concept of significant beneficial owner was incorporated to catch those individuals (natural person) who hold significant beneficial interest or who have significant influence or control over the company “beyond the threshold limits.

After various deliberations and playing the game of hide and seek, MCA vide its notification provides SBO rules Companies (Significant Beneficial Owner) Amendment Rules, 2019 notified dated 08.02.2019, the intension of amending the rules is still to remove the parda and unmask the real owners of companies, as various

15th February, 2018 – Draft Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018

13th June, 2018 – Companies (Beneficial Interest and Significant Beneficial Interest) Rules, 2018 “Final Rules” and enforced section 90

08th February, 2019 – Companies (Significant Beneficial Owner) Amendment Rules, 2019

layers of investment are involved and it’s tough to find out the real owners. So, to remove the parda, MCA notified the amended rules.”

DETAILED ANALYSIS OF SECTION 89 OF COMPANIES ACT, 2013

Section 89 of the Companies Act, 2013 read with rule 9 of Companies (Management and Administration) Rules, 2014 provides for the declaration to be filed by “Registered Owner” as well as “Beneficial Owner” and requires company to record such information in the registers, also this section doesn’t focus on quantum of shares.

Registered owner is mandatory required to give declaration under section 89(1) of the act to the company in **FORM MGT-4** within 30 days from the date of entry of his name in ROM explaining the details of ownership of registered as well as the beneficial owner;

If any change in the beneficial interest, registered owner to file declaration in **FORM MGT-4** within 30 days from such change.

Beneficial owner is mandatory required to give declaration under section 89(2) of the act to the company in **FORM MGT-5** within 30 days after acquiring beneficial interest in shares disclosing their interest.

If any change in the beneficial interest, beneficial owner to file declaration in **FORM MGT-5** within 30 days from such change.

Reporting Company is mandatory required to give declaration under section 89(6) of the act in **FORM MGT-6** to registrar of companies within 30 days after the receipt of declaration from registered as well as beneficial owner.

If no declaration given by beneficial owner or registered owner to company, then as per section 89 (8) of the act no rights is available to beneficial owner or his representatives to any of his shares, but the company can’t refuse to pay dividend to members i.e. registered owners.

CONTRVENTION OF SECTION 89 OF COMPANIES ACT, 2013

S.NO	Particulars	Penalty
1.	Failure to provide return to ROC or to maintain registers by company	Rs. 10, 00, 000 which may extend to Rs. 50, 00, 000 and if the failure continues Rs. 1,000 per day
2.	Willfully furnish false or incorrect information, which he was aware of	Liable for section 447

CRUX OF SECTION 89

E-Form	Purpose of Form	Time Period	By Whom	To Whom
FORM MGT-4	Declaration of ownership	within 30 days	Registered owner	Company
FORM MGT-4	Change of Beneficial Interest	within 30 days	Registered owner	Company
FORM MGT-5	Declaration of ownership	within 30 days	Beneficial owner	Company
FORM MGT-5	Change of Beneficial Interest	within 30 days	Beneficial owner	Company
FORM MGT-6	Return of declaration provided by RO and BO by company to registrar	After the receipt of declaration from RO and BO	Company	Registrar

CASE STUDIES IN RESPECT TO SECTION 89

Q.1 In case the beneficial holder and registered holder are two different people, then who is entitled to receive dividend/bonus shares?

The right to receive dividend/bonus shares lies with the registered shareholder.

Q.2 Mr. A is registered holder of shares of PQR Ltd, whose beneficial owner is M/S XYZ Ltd. partnership firm.

The right to give declaration by both Mr. A as well as M/S XYZ Ltd.in MGT-4 and MGT-5 and subsequently by PQR Ltd. in MGT-6

Q.3 Mr. A is registered owner of 500 shares of PQR Ltd, whose beneficial owner is M/S XYZ Ltd. partnership firm, again Mr. B is registered owner of 1000 shares of PQR Ltd, whose beneficial owner is M/S XYZ Ltd. partnership firm. Mr. A transfers 500 shares to Mr. B

Since the beneficial owner remain the same, so no declaration is required to be made.

SH-4 is sufficient to show the change.

DETAILED ANALYSIS OF SECTION 90 OF COMPANIES ACT, 2013

“The ultimate intent of section 90 is to identify the natural persons who hold beneficial interest in company or exercise significant beneficial interest or control over the company.”

This new section has introduced the concept of significant beneficial owner and filing of such declarations by such SBO.

Responsibility of reporting company

Reporting companies are taking various steps to find out the individuals who are significant beneficial owner, hence the company is responsible for seeking information from the beneficial owners in **FORM BEN-4** by way of notice and the individual must provide the information within 30 days from the date of notice.

Responsibility of SBO

Every individual who is SBO is required to give declaration to the reporting company under section 90 (1) of the act in **FORM BEN-1** within 30 days from the date of acquisition or any change thereon.

If an individual is having significant beneficial interest in more than 1 company, he need to give declaration in all the companies simultaneously.

“The basic difference between declaration in MGT-5 and BEN-1 is that in case of MGT-5, declaration by beneficial owner even if interest is more or less than 10 % but in case of BEN-1 significant beneficial owner gives declaration only if the interest is at-least 10%”.

Responsibility of reporting company to file the return of SBO

Reporting company shall file a return to registrar of companies in **FORM BEN-2** within 30 days from the date of receipt of declaration.

Register of SBO

Every company to maintain register of SBO under section 90 (3) of the act in **FORM BEN-3** which shall be kept open for inspection during the business hours on payment of such fees not exceeding Rs. 50 for each inspection.

APPLICABILITY OF SBO

Provision of SBO is applicable for resident as well as non-resident and for all companies:-

- ◆ Listed public
- ◆ Unlisted public
- ◆ Private

NON-APPLICABILITY OF SBO

The rules of SBO is not applicable, is shares of reporting company are held by:

- ◆ IEPF authority
- ◆ CG/SG or any entity governed by CG/SG
- ◆ Mutual funds/ Alternate investment funds
- ◆ Real estate investment funds/ Infrastructure investment funds
- ◆ Investment vehicle regulated by RBI

APPLICATION TO TRIBUNAL

Company can apply to tribunal within 15 days of expiry of period specified in notice, if individual fails to provide information via declaration or information was not satisfactory.

The tribunal after providing ROOBH within 60 days from the date of appeal order directing to:

- Restricting the right to transfer interest on shares
- Suspend the right to receive dividend/voting rights on shares

If any person is aggrieved by the order of tribunal, he may make an application to tribunal for lifting of restrictions within 1 year.

No.	Share-holders	Hold-ings	Actual Interest in XYZ Ltd	BEN-1
1.	Mr. A	10%	(60*10%) = 6%	No
2.	Mr. B	20%	(60*20%) = 12%	Yes
3.	Mr. C	30%	(60*30%) = 18%	Yes

CONTRAVENTION OF SECTION 90 OF COMPANIES ACT, 2013

S.N O	Particulars	Penalty
1	Failure to provide return to ROC or to maintain registers by company	Rs. 10, 00, 000 which may extend to Rs. 50, 00, 000 and if the failure continues Rs. 1,000 per day
2	Willfully furnish false or incorrect information, which he was aware of	Liable for section 447

CRUX OF SECTION 90

E-Form	Purpose of Form	Time Period	By Whom	To Whom
FORM BEN-4	Notice for extraction of information		Company	Individuals
FORM BEN-1	Declaration by Individual	within 30 days after the receipt of notice	Disclosure of interest by SBO	Company
FORM BEN-2	Declaration by Company	within 30 days from the date of receipt of declaration from SBO	Return filled by Company	Registrar
BEN-3	Registers of SBO		Company to maintain registers of SBO	

CASE STUDIES IN RESPECT TO SECTION 90:

ABC Ltd. is holding 60 % in XYZ Ltd. (subsidiary) and Mr. A, Mr. B and Mr.C holds 10%, 20% and 30% shares respectively in ABC Ltd. Whether Mr. A,B,C required to declare SBO in XYZ Ltd.?

Mr. A beneficiary holds Rs. 55000/- equity in XYZ Ltd. (capital structure – equity Rs. 2,00,000/- , CCPS – Rs. 3,00,000/- and CCD – Rs. 1,00,000) and XYZ Ltd. holds 50 % equity in PQR Ltd. Whether Mr. A required to give SBO declaration in PQR Ltd.?

$55,000/2,00,000 + 3,00,000 + 1,00,000 * 100 = 9.17\%$
Mr. A is not required to declare SBO

DISCLAIMER:

The information given in this document has been made on the basis of the provisions stated in the Companies (Amendment) Act, 2017 and Companies Act, 2013. It is based on the analysis and interpretation of applicable laws as on date. The information in this document is for general informational purposes only and is not a legal advice or a legal opinion. You should seek the advice of legal counsel of your choice before acting upon any of the information in this document. Under no circumstances whatsoever, we are not responsible for any loss, claim, liability, damage(s) resulting from the use, omission or inability to use the information provided in the document.

The 3 Lakh Cr. Collateral Free Loans For MSMEs-A Critical Analysis

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Amidst the Pandemic, where the economy of the country is falling, the lockdown stopping everyone from even stepping out of their homes and increase in the number of deaths, there came a silver lining on 13 May, 2020 for all businesses and enterprises. With the country slowly getting

ready for the after corona phase, one of the key questions is regarding the revival of the economy. With GDP rapidly falling to all time lows it was imperative for the government to announce drastic measures. The Prime Minister in his last address to the nation on 12th May, 2020 also spoke about the need to be self dependent or Atma Nirbhar. So everyone in the country held their breaths and waited patiently for the Finance Minister to speak and announce the 20 lakh crore package which the Prime Minister claimed would cater all the sections of the society.

So The Finance Minister Nirmala Sitharaman announced Rs 3 lakh crore collateral free automatic loan for businesses, including MSMEs. The Speech by our Finance Minister has brought a much-needed relief to restart the economy, and build the Aatmanirbhar Bharat Abhiyan focused by our Prime Minister. This move intends to benefit 45 lakh small businesses, she said while shining light on PM Narendra Modi's Rs 20 lakh crore economic package. The loan will have tenure of four years along with a 12 month moratorium, she added. This time period will give businesses a reasonable turnaround time to get back on their feet. This will be a step towards self reliant India and support "Make in India". This will also help MSMEs to increase their businesses.[1]

MSME sector is considered as the backbone of the country's economy as the sector contributes over 28 per cent of the GDP and more than 40 per cent of exports, while creating employment for about 11 crore people, second highest after agriculture. To help out stressed MSMEs in dire times, the government will also take burden of Rs 20,000 crore subordinate debt, benefiting 2 lakh such businesses in the country.

The series of measures announced by our Finance Minister will be in assistance to micro and small businesses that are facing severe cash, steps to boost liquidity for non-banking financial companies (NBFCs). That will be really necessary as the business has suffered huge losses due to the lockdown.

In this article we'll assess how these schemes will help the MSMEs and small and local businesses to recover losses and get these loans on for which the government is giving the guarantees from their side. We would also critically analyze the scheme and highlight some of the concerns surrounding this announcement.

Banks, though flush with cash, have been unwilling to lend to this category of borrowers as they fear that the money will not be repaid. It is to break this logjam that the government has said that it will backstop banks up to 3-lakh crore and said that these loans do not need collaterals. Banks are now expected to be more comfortable in assisting this category of borrowers because the risk is zero (since the loans are guaranteed by the central government).

This will act as initial seed money for these small enterprises hit by zero cash flow due to the national lockdown. This loan will help them buy raw materials, pay initial bills and daily wages to employees. In short, this will be like working capital for cranking up their businesses again. **The advantages of this scheme are :**

- These loans to MSMEs with one-year moratorium will be one of the strongest point;
- Securities will be fully guaranteed by Government of India, which will provide liquidity and build confidence in the market;
- Liquidity measures linked to TDS, EPF and master support to MSMEs,

will help and protect many jobs for Indians.

- The scheme can be availed till 31st October 2020 with no guarantee fee and no fixed collateral.

• The government has also altered the definition of MSME. With the latest changes, those units which have invested up to Rs 1 crore will now be called micro units as opposed to the earlier limit of Rs 25 lakh. Those units which have a turnover of up to Rs 5 crore will now be called micro units, FM said, adding that a turnover based criteria is being introduced to define small scale businesses.

- The credit line will be 100% guaranteed by the government through the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE), but no guarantee fee.

• The government has barred Global tenders from procurements up to Rs 200 crores [3]. The move should improve the competitiveness of Indian MSMEs on government contracts. It should also see an increase in registration by MSMEs and Mid-Market businesses on such platforms.

While many of the experts have referred to this package as a game changer but still there are some reservations in one section of society. They are quite skeptical of the relief which could be granted through this package and are advocating a direct transfer of funds. **Some of their major arguments are as follows:**

- The pandemic is an extraordinary situation and the world is still wary of setting any time limit till things might get normal. The market players are still not sure about the demand of goods once some of the restrictions are relaxed.

• Many argue that in this situation who would take fresh loans as the criteria set by the scheme is that only those business enterprises are eligible whose credit limit is upto 25 crores the existing term loans like cash credit limits have been reduced by bank which is a big setback for MSME companies.

- Even after so many weeks of providing relaxations most of the business enterprises are not able to resume their services because of non availability of labour and raw materials. In these circumstances a direct transfer of funds could have been a better solution so as to reduce the fixed expenses of the business enterprises.

• A direct reimbursement of salaries of the labourers could have been a lucrative option. This would have solved two fold purposes. One it would have encouraged the labourers to stay wherever they were and this would have not led to the mad rush of the migrants to go back to their native places. Second this would have also reduced the fixed costs of the business enterprises and there would have been a quite low level of layoffs.

- Another key reservation about the scheme is that there are some business industries who have not taken any sort of credit but are now under stress but this scheme does not talk about such industries.

• The scheme will cover only existing borrowers with outstanding credit limit of up to 25 crore as on 29 February 2020 and having a turnover of up to 100 crore. Although it is being said that this scheme is to help all the MSMEs however, the limit put up by the government on turnover is huge which would be covered mostly by enterprises with strong financial background and only they will be able to get this benefit. This loan according to me would easily be recoverable as giving it to enterprises with huge turnover will keep it secured even without the collateral.

These are some concerns about the scheme. We hope that these are extraordinary situations and the government is making the best possible efforts to solve this crisis by taking strong measures to improve the liquidity in the system. The government has taken a right step in understanding the need of the MSME sector by releasing of emergency credit lines to MSMEs, capping of interest, and credit guarantee which will help them get back on their feet and respond to this crisis and this article just tries to clarify both the perspectives about this scheme.

BRIEF INSIGHT ON OVERSEAS DIRECT INVESTMENT (ODI)

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Overview

Overseas Direct Investment refers to the investments made in the Joint Ventures (JV) and Wholly Owned Subsidiaries (WOS) by way of:

- ⇒ Subscription to the Memorandum of a foreign entity; or
- ⇒ Purchase of existing shares of foreign entity either by market purchase or private placement or through stock exchange

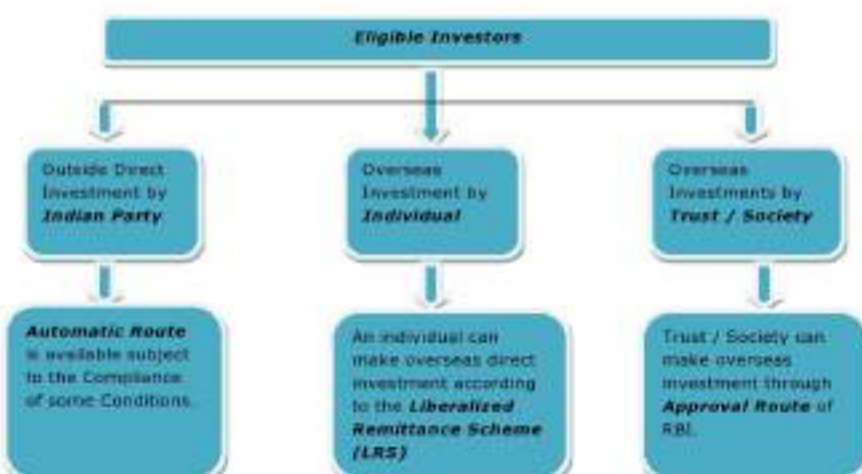
Overseas investments in JV or WOS have been recognised as important avenues for promoting global reach of Indian entrepreneurs.

To regulate the Overseas Direct Investment, RBI had notified:

- ◇ Notification No. FEMA 120/RB-2004 dated July 7, 2004, as amended from time to time. A Master Direction titled 'Master Direction on Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) abroad' has been issued.
- ◇ Liberalized Remittance Scheme of February 4, 2004 amended from time to time.



Note: ODI in Pakistan is allowed under the approval Route. ODI in Nepal can be made in Indian Rupees only.



Overseas Direct Investment by Indian Party

Overview

An **Indian Party** is eligible to make Overseas Direct Investment into a **Joint Venture** or **Wholly Owned Subsidiary**.

Indian Party: An Indian Party is:

- a Company
- a body created under an Act of Parliament
- Registered Partnership Firm*
- Limited Liability Partnership (LLP)
- Any other entity in India as notified by RBI

A combination of the above entities can also form an "Indian Party".

* Only those Partnership firms which are registered under Partnership act can make outside investment through automatic route. Unregistered Partnership firms require approval of RBI before making any outside investment.

Joint Venture: A foreign entity is termed as JV of the Indian Party when there are other foreign promoters holding the stake along with the Indian Party.

Wholly Owned Subsidiary: In case of WOS entire capital is held by the one or more Indian Parties

Criteria for ODI under Automatic Route:

An Indian Party can make outside investment through automatic route subject to the compliance of following conditions:

- ⇒ The total **financial commitment*** ("FC") of Indian Party in overseas JV/ WOS shall not exceed 400% of its **net worth**** (as per the last audited Balance Sheet)

Note: FC made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs will not be taken into consideration for the purpose of the aforesaid calculation. Hence, Maximum Limit would be:



- ◇ Prior approval of RBI is required if the FC exceeds USD 1 Billion in a FY
- ◇ Overseas JV/ WOS shall carry out bonafide activity permitted as per the law of the host country
- ◇ Indian Party not on RBI's caution list / under investigation by enforcement agency
- ◇ All transactions relating to a JV / WOS routed through one branch of an AD bank. For switching over to another AD, an application shall be made to RBI after obtaining an NOC from the existing AD.

S.No	Particulars	Amount (In Rs.)
1	Net Worth of ABC Ltd.	Rs. 8 Lacs
2	400 % of Net Worth (Maximum Limit which an Indian Party can Invest through Automatic Route)	Rs. 32 Lacs
3	Existing Investment (AED 1,53,000*20) (Assuming 1 AED of Rs. 20 each)	Rs. 30,60,000
4	Proposed Investment (AED 10,000*20)	Rs. 2,00,000
5	Total Investment after entering proposed transaction (3+4)	Rs. 32,60,000

* **Financial Commitment:** Financial Commitment comprises of:-

100 % Equity Contribution in JV/WOS

100 % Preference Shares Contribution in JV/WOS

100 % Amount of Loan



Note: Indian Party can extend Loan and guarantee by way of Automatic Route to an overseas entity only if there is already **existing equity participation** by way of direct investment in such overseas entity. If there is no equity holding of Indian Party, then Loan and Guarantee can be granted by way of RBI Approval.

Illustration 1: An Indian Company "ABC Ltd" having net worth of Rs. 8 Lacs formed a WOS Company in Dubai "FEZ DMCC" by Subscription of 100% equity shares of Value of AED 1,00,000. Later on ABC Ltd remitted the following sums in FEZ DMCC on various dates:

- Subscription of Preference Shares - AED 50,000
- Extend Loan to FZE DMCC – AED 2,000
- Extend Corporate Guarantee – AED 1,000
- Extend Performance Guarantee – AED 1,000

What would be the Financial Commitment?

Answer – Financial Commitment of ABC Ltd Co:

S.No	Particulars	Amount (In AED)
1	100 % of Equity Shares	1,00,000
2	100% of Preference Shares	50,000
3	100% of Amount of Loan	2,000
4	100 % of Corporate Guarantee	1,000
5	50% of Performance Guarantee	500
	Total	1,53,500

Illustration 2: In the Illustration 1, ABC Ltd is intending for further Investment in FZE DMCC by way of subscription of Preference Shares of Value of AED 10,000. Can ABC Ltd do so by way of Automatic Route or there is prior Approval of RBI?

Answer An Indian party can invest by way of automatic route if the total **financial commitment*** ("FC") of Indian Party in overseas JV/ WOS shall not exceed 400% of its net worth.

Calculation of Maximum Investment Limit are as follows:

Requirement of RBI Approval : ABC Ltd shall follow Approval Route since the total investment after entering the proposed transaction would breach the limit of 400% of Net Worth.

Illustration 3: What would be the answer if in the aforesaid Illustration, the further Investment in Preference Shares of Value of AED 10,000 is made out of Balances of EEFC Account?

Answer FC made out of balances held in the EEFC account of the Indian party or out of funds raised through ADRs/GDRs will not be taken into consideration for the purpose of calculation of limit of 400% of Net Worth.

Maximum Limit which Indian Party Can Invest by way of Automatic Route :

S.No	Particulars	Amount
1	400% of Net Worth	Rs. 32 Lacs
2	FC Made Out of Balances in EEFC A/c	Rs. 2 Lacs
	Total	Rs. 34 Lacs

No Requirement of RBI Approval : ABC Ltd shall follow Automatic Route since the total investment after entering the proposed transaction is within the Maximum Permissible Limit.

****Net Worth:** As per ODI Regulation, Net Worth includes Paid Up Capital and Free Reserves. The Indian Party can also utilize the net-worth of Holding/ Subsidiary company, if required. This facility is not available to Partnership firms.

Provided that the holding or subsidiary company furnishes a letter of disclaimer for such inclusion in favour of the Indian Party.

Source of Funding

Funding for overseas direct investment can be made by one or more of the following sources:

- ⇒ Market Purchase
- ⇒ Drawl of Foreign Exchange
- ⇒ Swap of Shares
- ⇒ Capitalization of exports and other dues and entitlements*
- ⇒ Proceeds of ECB / FCCB
- ⇒ In exchange of ADRs / GDRs issued
- ⇒ Balances held in EEFC Account
- ⇒ Proceeds of ADR / GDR issue

For any capitalization of exports, along with Form ODI, a custom certified copy of the invoice raised towards the export has to be submitted to RBI.

Reporting Requirements

In respect of Initial Investment:

1. An Indian Party shall submit **Part I of the Form ODI** within 30 days of Investment with designated Branch of Authorized Dealer Bank along with the following annexures:

- Certified Copy of Board Resolution approving the Investment Outside India
- Remittances Proofs i.e. Bank Documents of payments
- Statutory Auditor's Certificate
- Form A2 (Form A2 is submitted to Banks at the time of remittance Outside India)
- Valuation report for the value of shares

2. After receiving the aforesaid documents, AD Bank shall verify all the Documents and if found in order, forwards the same to RBI.

3. RBI then allots an Unique Identification Number (UIN) for that particular JV/WOS.

UIN No. is allotted by RBI to Indian Party in respect of each JV/WOS outside India.

Note: Before submitting Part I of ODI, ensure that all APRs due on the Company have been filed and there is

In respect of Subsequent Investment:

1. Report to the Authorized Dealer Bank by Submitting the **Part I of the Form ODI** within 30 days of Investment along with all documents as prescribed above.

An Indian Party shall quote the UIN No. as allotted by RBI in Part I of form ODI.

Contents of Part I of the form ODI:- All ODI forms are submitted to the AD Bank in physical. Part I of form is divided in sections which includes the following:

Section A – Details of the Indian Party (IP) /Resident Individual (RI)

Section B – Capital Structure and other details of JV/ WOS/ Step Down Subsidiary

Section C - Details of Transaction/ Remittance/ Financial Commitment of IP/ RI

Section D – Declaration by the IP/ RI

Section E – Certificate by the statutory auditors of the IP/ self certification by RI

Post Investment Obligations of Indian Party

Receive Share Certificates/Other Documentary Evidence: An Indian Party shall Receive share certificates/ any other documentary evidence of investment in the overseas JV / WOS and submit the same to the designated AD within 6 months.

Repatriation of Dues: Repatriate to India all dues receivable from the overseas JV / WOS, like dividend, royalty, technical fees etc within 60 days of its falling due, or such further period as the Reserve Bank may permit.

Submission of Annual Performance Report (APR) : Submission of APR APR in Part II of Form ODI in respect of each JV or WOS outside India set up or acquired by the Indian party by 31 December every

year.

Repatriation of Sale Proceeds in case of Disinvestment: On disinvestment, repatriate the sale proceeds immediately or not later than 90 days from the date of sale of the shares /securities.

Submission of Return on Foreign Liabilities and Assets: File Foreign Liabilities and Assets (FLA) return every year by 15 July.

Disinvestment by Indian Party

Disinvestment by the Indian party from its JV / WOS abroad may be by way of:

- ⇒ transfer / sale of equity shares
- ⇒ liquidation of the JV / WOS abroad.
- ⇒ merger / amalgamation of the JV / WOS abroad.

Modes of Disinvestment: An Indian Party may disinvest from JV/ WOS either

- ⇒ without write off or
- ⇒ with write off

subject to the compliance of some provisions.

Disinvestment by Indian Party without write off:

Indian Party may disinvest **without write off** under the automatic route subject to the following:

- * the sale is effected through a stock exchange where the shares of the overseas JV/ WOS are listed;
- * if the shares are not listed on the stock exchange and the shares are disinvested by a private arrangement, the share price is not less than the value certified by a Chartered Accountant / Certified Public Accountant as the fair value of the shares based on the latest audited financial statements of the JV / WOS;
- * the Indian Party does not have any outstanding dues by way of dividend, technical know-how fees, royalty, consultancy, commission or other entitlements and / or export proceeds from the JV or WOS;
- * the overseas concern has been in operation for at least one full year and the Annual Performance Report together with the audited accounts for that year has been submitted to the Reserve Bank;
- * the Indian party is not under investigation by CBI / DoE/ SEBI / IRDA or any other regulatory authority in India
- * Other terms and conditions prescribed under ODI Regulations

Disinvestment by Indian Party with write off:

Indian Party may disinvest **with write off** under the automatic route subject to the following:

- where the JV / WOS is listed in the overseas stock exchange;
- where the Indian Party is listed on a stock exchange in India and has a net worth of not less than Rs.100 crore;
- where the Indian Party is an unlisted company and the investment in the overseas JV / WOS does not exceed USD 10 million; and
- where the Indian Party is a listed company with net worth of less than Rs.100 crore but investment in an overseas JV/WOS does not exceed USD 10 million.
- All other conditions as applicable in Disinvestment without write off shall mutatis mutandis apply for Disinvestment with write off.

Writing off Capital or Other Receivables (Loan, Guarantee Amount, Eligibility Criteria for Society Royalty):

Indian Party may write off Capital or Other Receivables within permissible limit which are as follows:

- Listed Indian companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV / WOS under the Automatic Route; and
- Unlisted companies are permitted to write off capital and other receivables up to 25% of the equity investment in the JV /WOS with prior approval of the Reserve Bank

Compliances followed by the Inian Party:

- Reporting of **Part III of Form ODI** to AD Bank within 30 days of divestment.
- On disinvestment, repatriate the sale proceeds immediately or not later than 90 days from the date of sale of the shares / securities .

(i) The Society should be registered under the Societies Registration Act, 1860.

(ii) The Memorandum of Association and rules and regulations permit the Society to make the proposed investment which should also be approved by the governing body/council or a managing/ executive committee.

(iii) The AD Category - I bank is satisfied that the Society is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;

(iv) The Society has been in existence at least for a period of three years;

(v) The Society has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, CBI etc

Valuation /Reporting and Post investment obligations are same as applicable to ODI by Indian Companies.

Overseas Direct Investments by Resident Individuals

- Two Routes for Outbound Investments by Resident Individuals – LRS (Liberalised Remittance Scheme) and ODI
- Investment in overseas JV / WOS only by way of equity / compulsorily convertible preference shares
- JV / WOS to be engaged in bonafide business activities except real estate / banking / financial services
- Limit of investment in JV / WOS as per LRS limit (currently USD 250,000 per person per annum).
- Investment made from EEFC / RFC account also included in prescribed LRS limit
- JV / WOS to be operating entity only - No step down subsidiary to be acquired or set up by JV / WOS
- Valuation /Reporting and Post investment obligations same as applicable to ODI by Indian Companies
- Write off not permitted in cases of disinvestments

Overseas Direct Investment by Registered Trust and Societies

Registered Trusts and Societies engaged in manufacturing/ educational/ hospital sector are allowed to make investment in the same sector(s) in a JV/WOS outside India, with the **prior approval of the Reserve Bank.**

Eligibility Criteria for Trust

- (i) The Trust should be registered under the Indian Trust Act, 1882;
- (ii) The Trust deed permits the proposed investment overseas;
- (iii) The proposed investment should be approved by the trustee/s;
- (iv) The AD Category – I bank is satisfied that the Trust is KYC (Know Your Customer) compliant and is engaged in a bonafide activity;
- (v) The Trust has been in existence at least for a period of three years;
- (vi) The Trust has not come under the adverse notice of any Regulatory / Enforcement agency like the Directorate of Enforcement, Central Bureau of Investigation (CBI), etc.

Thanking you.

Draft Companies (CSR Policy) Amendment Rules, 2020

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Bill Ford once quoted “Creating a strong business and building a better world are not conflicting goals – they are both essential ingredients for long term success.” With the same spirit considering the eminence of Corporate Social Responsibility Ministry of Corporate affairs published the draft of Companies (Corporate Social Responsibility Policy) Amendment Rules, 2020 on its website on 13th of March, 2020 and the draft was made available for professional feedback till 10th of April, 2020. Once notified these rules will be governing the CSR implementation in India.

Companies Amendment Act, 2019 enumerated key changes in Section 135 and these rules have been amended with a purpose to bring them in parlance with those changes and to bring vital changes that were required as per the recommendations of High Level Committee on CSR.

Majorly the draft provides for:

- * certain key amendments in the definitions and also have introduced a few new definitions like ongoing project, international organization etc;
- * amendments to the concept of CSR implementation to exclude trusts and societies from the current list of eligible entities which could be used as Implementation agencies;
- * introduction of international organisations as implementation agencies;
- * filing of Form CSR-1 by implementation agencies to get themselves registered with ROC;
- * mandatory impact assessment of CSR projects and amendments to disclosure requirements;
- * Introduction of National unspent CSR Fund by CG.

Amendments to the definition of ‘Corporate Social Responsibility’

The rules have been amended to define CSR as the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 in accordance with rules and shall not include the following:

- Activities undertaken in normal course of business.
- Activities undertaken outside India.
- Contribution made to any Political Party.
- Activities that benefit employees of the company. (Provided if any activity that has less than 25% of employees as its beneficiary, then it can be counted as CSR.)

The rationale behind this amendment is to exclusively provide for activities which won't be counted in CSR. For the first time CSR expenditure on employees has been brought into the CSR ambit but only upto a threshold of 25% of employees.

Amendments to the definition of ‘CSR Policy’

The draft rules has defined the term CSR Policy as a a statement containing the approach and directions given by the board as per CSR committee recommendations for selection, implementation and monitoring of activities to be undertaken in areas or subjects specified in Schedule VII of the Act.

The term CSR Policy has been amended to give in a more enhanced version of the definition by laying down the responsibility on the shoulders of Board to determine the approach and to give directions

for selection and implementation of the CSR Projects.

Moreover, if an in-depth analysis of the definition is done one can easily see that the entire Rule 6 has been enumerated in the definition, which was not there in the current definition.

Introduction of the term ‘Ongoing Project’

This term was very well used in Companies Amendment Act, 2019. The Draft rules has defined the term ‘Ongoing Project’ as a multi-year project undertaken by a Company in fulfillment of its CSR obligation having timelines not exceeding 3 years excluding the financial year in which it was commenced, and shall also include such projects that were initially not approved as a multi-year project but whose duration has been extended beyond a year by the Board based on reasonable justification.

The rationale behind the insertion of this term was to bring the rules in parlance with Companies Amendment Act, 2019 which provided that any amount remaining unspent pursuant to any ‘Ongoing Project’ shall be transferred to unspent CSR Account and such amount shall be utilised by the company within three financial years from the date of transfer.

Concept of ‘CSR Implementation (Rule 4)’

The concept of CSR implementation has undergone certain pivotal changes when it comes to implementation of CSR projects and now Rule 4 provides that the board shall ensure CSR activities are undertaken by company itself or:

- ♦ a company established under section 8 of the Act
- ♦ Any entity established under an act of parliament or a state legislature.

Provided such company/entity mentioned above shall get itself registered with CG for undertaking CSR activity by filing e-form CSR-1 with registrar.

Impact 1: Earlier Registered Trust or societies were also eligible to be an implementing agency. However, draft rules have only covered Sec 8 Company and entity established under act of parliament or a state legislature. Draft has excluded such trusts and societies which is contrary to the recommendation of High level Committee on CSR making this step ambiguous in itself. In this scenario corporates undertaking CSR through trusts or societies will have to look for change.

Impact 2: The implementing agencies will have to get themselves registered with Central Government by filing form CGR-1 with the registrar.

Concept of ‘International Organisations’

The draft rules has come up with a new term International Organisation and has defined the same as an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and immunities) Act, 1947.

Further Rule 4 has provided that a company *may* engage international organizations for designing, monitoring and evaluation of of

implementation agency subject to prior approval of CG.

This concept will not only pave the way for international CSR experts to work with our corporate CSR Professionals but will also help in capacity building of our CSR Professionals.

CSR Committee: Responsibility enhancement (Rule 5)

Rule 5 has been amended to provide that the CSR Committee shall formulate and recommend an annual action plan to the Board that shall include:

- List of projects and programmes approved
- Manner of execution of projects and programmes
- Modalities of utilisation of funds and implementation schedules
- Monitoring and reporting mechanism
- Details of need and impact assessment by the company.

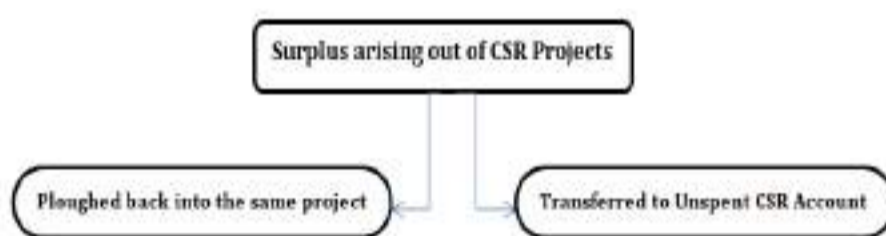
This rule has been amended to exaggerate the working of CSR Committee and to lay down more responsibilities over the shoulders of CSR Committee. Now they will be preparing an action plan that will not only focus on determining the areas and activities like earlier, but will make them work on the manner of execution of projects. This will ultimately lead the committee to meet more than once in a year not mandatorily but out of responsibility and is a move towards better governance.

Amendments to CSR Expenditure

The draft rules have laid down responsibility over the board to ensure that the administrative overheads incurred shall not exceed 5% of total CSR Expenditure for that FY. However those companies which are taking impact assessment pursuant to Rule 8 may incur administrative overhead not exceeding 10% of total CSR Expenditure for that financial year.

- In the report submitted by High Level Committee on CSR it recommended to maintain the status quo on administrative overheads.
- However a recommendation was made to increase the same limit up to 10% for those who were undertaking impact assessment. So, this amendment has been bought out in that regard only.

Treatment of Surplus arising out of CSR projects



Any surplus arising out of the CSR projects or programmes or activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account. However, surplus from CSR project has always been prohibited from being part of profits of the company and this amendment is an endeavour to bring out clearer picture on the same.

Mandatory Impact Assessment of CSR Projects (Rule 8)

Draft rules have inserted an important sub rule that has also laid down certain Disclosure requirements. Rule 8 now provides that a company having average CSR spending not less than 5 crore in preceding 3 FY shall undertake impact assessment for their CSR Projects or programmes and disclose details of the same in Annual Report.

The rationale behind bringing the concept of Impact assessment is to ensure a comprehensive evaluation of the impact that various CSR projects are making on society and its beneficiaries.

The High Level committee on CSR was of the opinion that impact assessment for projects is likely to bring forth the areas which require

intervention for the benefit of socially and economically backward regions. Moreover disclosure of the impact in Annual Report will ultimately act as add on towards goodwill of the corporates among stakeholders.

Display of CSR activities on website (Rule 9)

Companies shall be required to make following disclosures on their websites:

- Composition of the CSR Committee.
- CSR Policy and projects approved by the Board.

This vital step will for the first time require companies to make certain additional disclosures on their websites regarding the composition of CSR committee and CSR policy as well as CSR projects approved by the board. Earlier what was only visible in Board Reports will now be available on websites for public viewing and will make the Board to look more seriously on CSR Committee recommendations.

National Unspent Corporate Social Responsibility Fund

The Central Government shall establish a fund to be called National unspent Corporate Social Responsibility Fund so that any unspent amount pursuant to Section 135(5) and 135(6) may get transferred to this fund. The Fund shall be utilized for the purposes of undertaking CSR projects in the areas or subjects specified in schedule VII of the Act.

However until such fund is created such unspent amount will get transferred by the company to any such fund as specified in Schedule VII of the Act.



CHANGES IN VARIOUS LAWS IN THE AFTERMATH OF SUSPENSION OF IBC PROCEEDINGS

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INTRODUCTION

The corona virus has left its efficacy on the Indian market in a very unassertive way. In May 2020 the finance minister provided the breakup of PM Modi's Rs.20 lakh crore COVID stimulus package for India. The finance minister through the ordinance dated 5th June,2020 announced to suspend section 7,9 and 10 of Insolvency and Bankruptcy code,2016 .

Key points of ordinance are as follows:-

- No petition under section 7,9 and 10 of IBC,2016 shall be filed in respect of default occurred on or after 25.3.2020
- The ordinance shall not affect any pending proceeding in respect of default occurred prior to 25.3.2020
- The ordinance shall remain valid for six months or such period not exceeding one year
- The ordinance shall not affect the petition pending before NCLT.

The said amendment will protect the corporate debtor from falling into unexpected insolvency proceedings. Section 7, 9 and 10 will remain suspended and get in the groove after six months. An ordinance would be promulgated to suspend three sections of IBC for up to six months, The effective date of the amendments coming into force would be the date of promulgation of the ordinance. The corporate debtors hit hard due to non -functioning of business units on account of covid-19.This amendment aims to provide relief who are unable to repay the debt of financial creditors and operational creditors.

EFFECT ON VARIOUS LAWS

1. THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016

Default by real estate companies in IBC mostly occurs due to the non-delivery of flat/unit/apartment to the homebuyers. On 6th June, 2018 (hereinafter referred to as 'the amendment') came up with the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2016 granting homebuyers a status of "Financial creditor" as a welcome relief to the home buyers. In 2020 due to covid-19, The finance minister has announced that IBC proceeding will suspend for six months, As a result the allottees cannot take action against the Real estate companies.

Section 18 of RERA, 2016 deals with Return of amount and compensation to allottees and it clearly states that If the promoter fails to complete or is unable to give possession of an apartment, plot or building, (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason, he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under RERA.

2. BANKING REGULATION ACT, 1949

The Union Cabinet has cleared the proposal to suspend Insolvency and Bankruptcy Code (IBC) proceedings for bank defaulters for six months with a provision to extend the period for up to one year, This news is not good for banking sector since banks will have to sit on bad assets for a long period. The NPA's of banking sectors are in same boat like other sectors. Section 35 AA and 35AB of Banking Regulation Act, 1949 have the provision which deals with the Power of Central Government to authorize Reserve Bank for issuing directions to banking companies to initiate insol-

veny resolution process and Power of Reserve Bank to issue directions in respect of stressed assets. In exercise of the powers conferred by the Banking Regulation Act, 1949 and the Reserve Bank of India Act, 1934, the Reserve Bank, being satisfied that it is necessary and expedient in the public interest so to do, hereby, issued Prudential Framework for Resolution of Stressed Assets through its notification on 7th June, 2019. The RBI exercised its power conformed by section 35AB of Banking Regulation Act, 1949. The circular mandates banks to recognise stress, and initiate a review of default within 30 days Banks are allowed 180 days' time after the 30-day review period ends to implement a resolution plan, In cases where resolution does not happen within 180 days post the review period, an additional provision of 20 percent will have to be made. If the resolution does not take place within 365 days from the commencement of the Review Period, a further additional provision of 15 percent (hence, total additional provision becomes 35 percent) will have to be made. These provisions will be over and above the ageing provisions that banks provide once the asset turns non-performing. But banks are still prefer to refer the case to NCLT because Such high provision requirement and its impact on profitability of banks will nudge them to refer cases to NCLT (National Company Law Tribunal), if no resolution is in sight in a time-bound manner. In case the resolution is pursued under IBC, half of the provision would get reversed on filing of insolvency application and the remaining half on admission of the borrower into the insolvency resolution process under IBC.However, due to presence situation the road map to IBC by banks is suspended for a minimum period of six months.

3. LOSS OF JOB OF INTERIM RESOLUTION PROFESSIONAL

As per section 17 of IBC, 2016 the resolution professional will manage the affair of corporate debtor

Due to abeyance in insolvency proceedings the career of resolution professional will come on stake and they are badly suffering from the unemployment for long span of time.

REMEDIES AVAILABLE TO FINANCIAL CREDITORS AND OPERATIONAL CREDITORS

There are several formal and informal remedies available to financial and operational creditors to address the stress under various laws. IBC is not the last resort for both the parties. Creditors can exercise their power under

- Companies Act,2013
- The Code of Civil Procedure, 1908

COMPANIS ACT, 2013

Creditors may use the route of compromise and arrangement under Companies Act,2013 in absence of IBC framework. Section 230 of Companies Act, 2013 deals with Power to Compromise or Make Arrangements with Creditors and Members. The company, creditors and members may make an application to the Tribunal and tribunal may order meeting of company, members and creditors.

CODE OF CIVIL PROCEDURE, 1908

An efficacious remedy is available to the creditors under order 37 of the code of Civil Procedure, 1908.

A summary suit under order 37 of the Code of Civil Procedure is a legal procedure used for enforcing a right that takes effect faster than ordinary suits as unlike in ordinary suits the courts do not hear the defence.

The remedy of filing civil suits for recovery of money is the last recourse due to its lengthy time taking procedure.

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CREATIVE EXPRESSIONS



CS Poonam Hasija



Ms. Jyoti Mittal



"CS KAR RHI HU YEH KEHNA SHAAN
H MERI ,
ICSI SE PEHCHAAN HAI MERI "

CS Arju Tyagi



गरीबी (एक खतरनाक बीमारी)

सच में नहीं पता या अनजान हूँ मैं?
इन हालातों से बहुत परेशान हूँ मैं!

कहते हैं सब है इसकी चपेट में
फिर क्यूँ मर रहा है वो भूख से, हैरान हूँ मैं!

ना है पैसा उपर से कीमत वबंडर जैसा
फिर सत्राटा पूछे अरे वरदान हूँ मैं?

अगर सब एक है वो क्यूँ ना डरता?
मज़बूरी ना होती तो वो घर से क्यूँ निकलता?
पेट की आग या मन कि विचलता ?
मरूँ इस बीमारी से या भूख से मरूँ मैं
कुछ ही दिनों का मेहमान हूँ मैं!!
सोचता है वो गरीब क्या फिर भी नादान हूँ मैं ?

बहुत दानी हूँ मैं ,बहुत शानी हूँ मैं ।
मैं मेरे भारत की पहचान हूँ मैं!
जमाखोरी के रुख से मेरे सामने वो मर रहे थे भूख से
क्या फिर भी इंसान हूँ मैं ???
इन हालातों से बहुत परेशान हूँ मैं!
इन हालातों से बहुत परेशान हूँ मैं!

CS Ashok Bhardwaj



प्यारी अम्मा,

इस दुनिया में लाने के लिए शुक्रिया,
बापू और दादी की चेहरे की सिकन देखी मैंने।
पर तू तो खुश है ना अम्मा?

अच्छा एक सवाल पूछ अम्मा?
क्यू निर्भया और आसिफा दीदी रोक रही थी मुझे इस
दुनिया में आने से?
तुझे पता है इस दुनिया तो वो जालिम बता रही थी,
क्या हुआ था उनके साथ अम्मा?
बोल ना अम्मा?

Mr. Aakarshit Jai



Ye sham dukho ki jayegi,
Kal ek nayi subah aayegi.
Is aandheri raat k bad hi,
Zindgi ek naya sawera layegi.
Kyu baithu main udas,
Jab udasi mujhe gwara nahi.
Koshish meri haari hai,
Main abhi haari nahi.

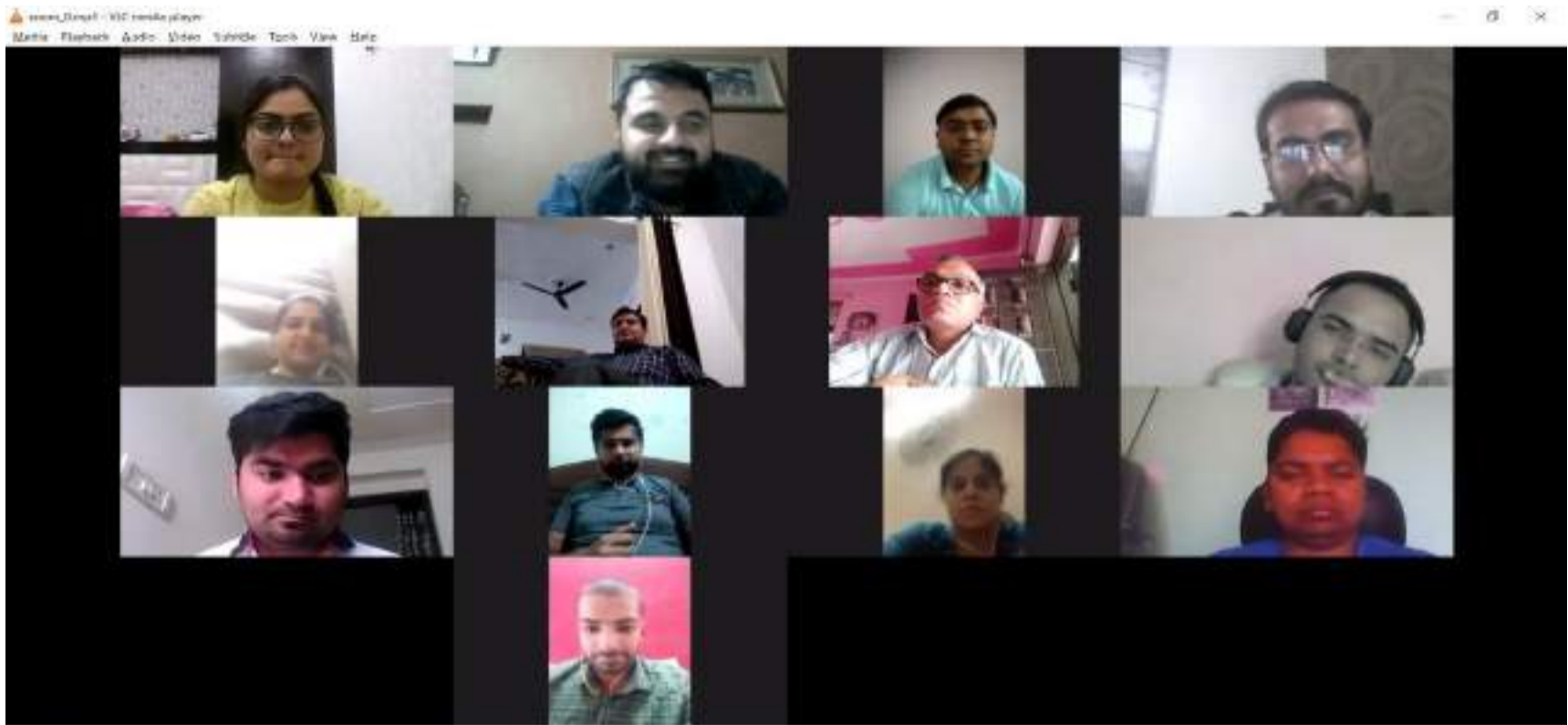
Sab sahugi par hasugi,
Zindgi k chakarviiyuh me na fasugi.
Jeet lugi ya lad kr marugi,
Haar kr yu na hatugi.
Haan giri hu fir uthugi,
Uth kr fir se ladugi.
Zindgi k in imtihano se,
Ab to sahab main na darugi.
Jheel si behti dhara hu,
Koi ruka hua pani nhi.
Koshish meri haari hai,
Main abhi haari nhi.

Ms. Priyanka Agarwal





OTHER INITIATIVES OF PANIPAT CHAPTER



Panipat Chapter is regularly conducting meeting of Management Committee and sub-committee through video conference to discuss important activities for members and students



Show must go on. Panipat Chapter in situation of Pandemic successfully conducted it's first Annual General Meeting through Video Conference on 30th June, 2020.



Regular cleaning and sanitizing of Panipat Chapter for protection of stakeholders and office staffs.

THANKYOU.....

To read the Newsletter and give your respect to your Chapter.

Your Chapter is taking all the necessary steps for the betterment of Members, Students and other stakeholders.

Trust Your Chapter! Trust yourself.



ICSI THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the Jurisdiction of Ministry of Corporate Affairs)

CSBF
COMPANY SECRETARIES
BENEVOLENT FUND

Safeguarding and
caring for your well being

COMPANY SECRETARIES BENEVOLENT FUND
Saathi Haath Badhana
साथी हाथ बंधना

What exactly is CSBF?

The Company Secretaries Benevolent Fund (CSBF) is a Society registered under the Societies Registration Act, 1860 and is recognized under Section 12A of the Income Tax Act, 1961.

The CSBF was established in the year 1976 by the ICSI, for creating a security umbrella for the Company Secretaries and/or their dependent family members in distress.

The amount of ₹ 7,50,000 (in the case of death of a member under the age of 60 years) has been increased to ₹ 10,00,000

The subscription amount is being increased from ₹ 10,000 to ₹ 12,500 soon

Is it the right time to enrol in CSBF?

CSBF is the protection you and your family need to survive the many ups and downs in life, be it a serious illness or a road accident which derails your plans for the future.

Is it a requirement?

Yes, as your dependents need the protection. Your dependents be it your parents, your spouse, or your children will have to bear the brunt of paying off your home/education personal loans and even for managing day-to-day expenses without your contribution.

If you do not want to leave behind such a situation in your absence, enrol in CSBF today.

Advantages of enrolling into CSBF

- 1 To ensure that your immediate family has some financial support in the event of your unfortunate demise
- 2 To finance your children's education and other needs
- 3 To ensure that you have extra resource during serious illness or accident
- 4 Subscription/Contribution to CSBF qualifies for deduction under Section 80C of the Income Tax Act, 1961

Become a proud Member of CSBF by making a one-time online subscription of ₹ 10,000/- (to be changed soon) through Institute's web portal (www.icsi.edu) along with Form 'A' available at link <https://www.icsi.edu/csbf/home> duly filled and signed.

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