



**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)

NEWS LETTER

Noida Chapter of NIRC of ICSI

JANUARY - 2022
(19.01.2022 - 31.01.2022)



Managing Committee

Inside - THE ISSUE

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CS. Nikhil Verma
Vice Chairman

CS. Dhruv Khandelwal
Secretary

CS. Pankaj Grover
Treasurer

CS. Preeti Grover
Immediate Past-Chairman

CS. Nand Lal Thakur
Past-Chairman-2020

CS Shivam Rastogi
Past-Chairman-2019

CHAPTER TEAM

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Lalit Kumar Bhati - Executive Admin

Umesh Kumar

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Chairman's Message

Dear Members and Students

Greetings from Noida Chapter of NIRC of ICSI

I convey my immense pleasure in sharing thoughts as Chairman of Noida Chapter of NIRC of ICSI for the first time. At the outset, I would like to thank Almighty God, my parents, Seniors, Colleagues & Friends for their blessings and wishes.

I would like to express my heartfelt gratitude to my Management Committee Colleagues for reposing trust in me. Period of my tenure will be a great opportunity to give back my dedication and welfare attributes to our profession and I really wish and hope that I would be able to fulfill my determination which comes with the responsibility as a Chairman of the Chapter.

The new office bearers of Noida Chapter for the year 2022 are –

CS Manpreet Singh	Chairman
CS Nikhil Verma	Vice Chairman
CS Dhruv Khandelwal	Secretary
CS Pankaj Grover	Treasurer

I would like to acknowledge the contributions of past chairperson of Noida Chapter. Noida Chapter has tried its best in the past and have done lots of hard work and organized events for the betterment of the Profession. We assure you that we will make all the efforts to take institute and Profession to zenith. We persuade that the flag of ICSI will be elated with your support and suggestions.

"Thinking is easy, acting is difficult, and to put one's thoughts into action is the most difficult thing in the world."— Johann Wolfgang von Goethe

Noida Chapter has successfully conducted three (3) webinars for members, one programme for Students (One-day Orientation Programme) and also celebrated 73rd Republic starting in the period of covering this newsletter (i.e. 19th January 2022 till 31st January 2022).

Noida Chapter has announced following two initiatives on the day Republic Day i.e. 26th January 2022, which will be implemented soon.

“Happy to Serve:”

Objective of this initiative will be to support & serve members & students by way of their counseling & knowledge enhancement by eminent Senior Professionals of the CS Fraternity. Members and students can dial to Senior members at pre-decided time slot for pre-decided topic.

“ChaloUthoaur fir se chalo:”

This Initiative will be with the objective to support members especially women who are not in touch with the profession because of their personal reasons but wanted to come back in the profession. We will support them with enhancement of Soft Skills, Knowledge and personality skills and this is possible with the support of all members as we are on CS Family.

We believed in the saying of **Helen Keller that, Alone we can do so little; together we can do much.**

In addition to above, we are also planning to organized, Blood Data bank of the Volunteers so that we as humans can extend personal support to the members, or to anyone in need of that. As this pandemic has thought a great lesson that “Health is Wealth” though it's an old saying but we never focused on that but thanks to this pandemic for teaching us a good lesson.

Webinars /Seminars

Noida Chapter is organizing “**Knowledge Week**” in each month for the professional evolution of members and students. Noida Chapter will conduct Classes on different topics in that particular week, followed by **Panel Discussion** on the same. Saturdays will be kept for Panel discussions. Objective is to learn & gain knowledge in the whole week and take up the technical session (Panel discussion) at the end of the week in Seminar / Webinar. Topic will be circulated wellin advance for each month. Tentative List of topics will be:

- Labour Laws
- Company Law
- Securities Law
- IBC
- FEMA
- Arbitration
- RERA
- GST

Suggestions are always welcome for any other topic. You may email me at chairman.noida@icsi.edu.

At last I want to quote a maxim by Jame Wilson that **Practice, hard work, honesty and team spirit are the ingredients of a correct attitude.** I am very blessed to be a part of great team and express my gratitude to our hard working team of Noida Chapter.

Thank you, Have a great and healthy life ahead.

Regards

CS Manpreet Singh

Chairman-Noida Chapter of NIRC of ICSI

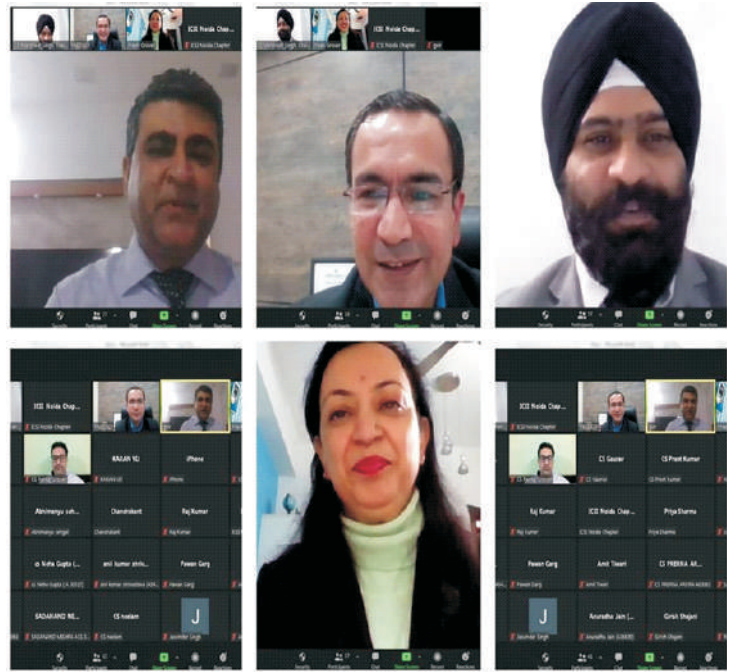
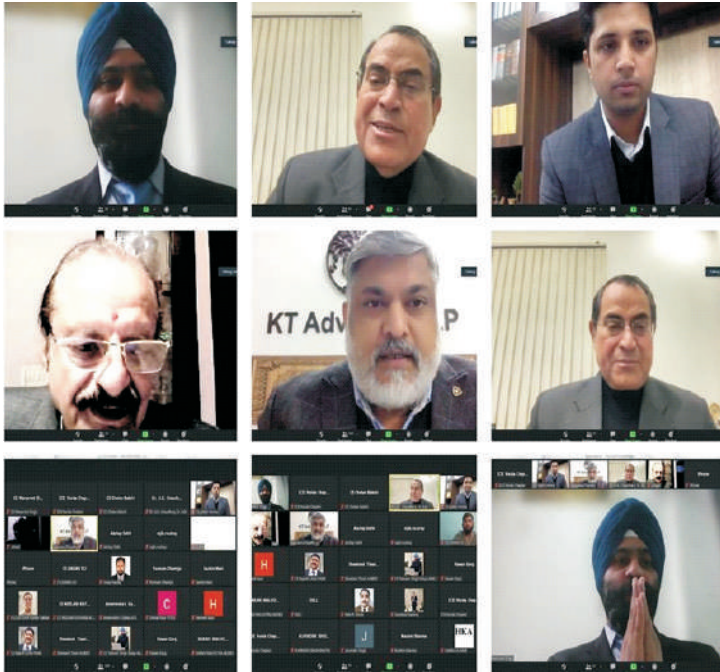
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DETAILS OF EVENTS

SL. NO.	DATE	NAME OF THE PROGRAMME
01	20.01.2022	<p>First (1st) Webinar for the term 2022 on the topic</p> <p>“Nuances of Restructuring Scheme ”</p> <p>Chief Guest: CS U. K. Chaudhary - Past President, The ICSI Guest Speaker: Mr. Kalpataru Tripathy – Managing Partner, KT Advisors LLP</p>
02	22.01.2022	<p>Second (2nd) Webinar for the term 2022 on the topic</p> <p>“Commercial Contracts of Different Industries & Role of CS”</p> <p>Chief Guest: Mr. Gaurav Vir, Director for Regional Legal Affairs & Senior Counsel - North & South Asia at JC Penney Guest Speaker: CS Pradeep Arora – R&P Legal, Advocates & Legal Consultants</p>
03	26.01.2022	<p>Celebrated 73rd Republic Day and Flag Hoisting</p> <p>Chief Guest: Col. O. P. Bajar (Retd.) Guest of Honour: CS Atul Prakash</p>
04	29.01.2022	<p>Third (3rd) Webinar cum Panel Discussion for the term 2022 on the topic</p> <p>“Data Protection Laws: Emerging Opportunities, Practical Considerations, Challenges & Role of CS”</p> <p>Chief Guest: CS Nilanjan Sinha- Head Legal, ICICI Bank Ltd Guest Speaker: Mr. Mathew Chacko – Founder and Managing</p>
05	31.01.2022	One Day Orientation Programme for Students

Glimpses of Webinars



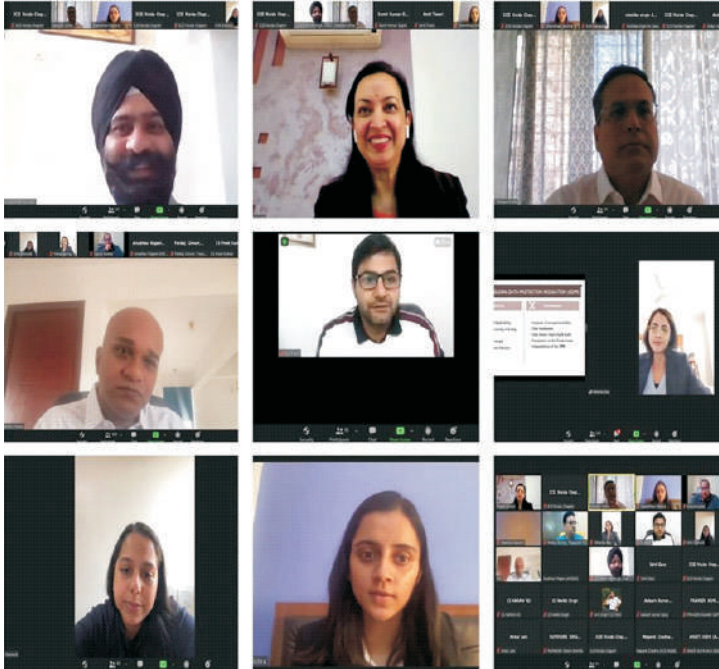
Noida Chapter successfully conducted its 1st webinar for the term 2022 on the topic **“Nuances of Restructuring Scheme ”** on Thursday, 20th January, 2022. Our Chief Guest was CS U. K. Chaudhary - Past President, The ICSI and Guest Speaker was Mr. Kalpataru Tripathy – Managing Partner, KT Advisors LLP. 100 members had joined and graced the webinar.

Noida Chapter successfully conducted its 2nd webinar for the term 2022 on the topic **“Commercial Contracts of Different Industries & Role of CS”** on Saturday, 22nd January, 2022. Our Chief Guest was Mr. Gaurav Vir, Director for Regional Legal Affairs & Senior Counsel - North & South Asia at JC Penney, Guest Speaker was CS Pradeep Arora – R&P Legal, Advocates & Legal Consultants.

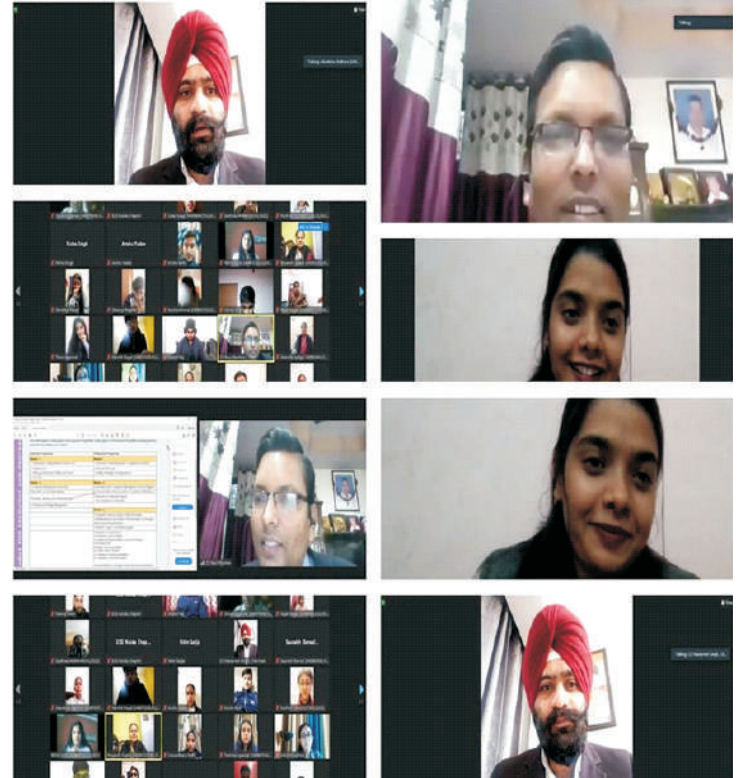


Noida Chapter celebrated the **73rd Republic Day** at his premises located at C-37, Sector 62, Noida on 26th January 2022. Our Chief Guest Col. O. P. Bajar (Retd.) and Guest of Honour CS Atul Prakash, along with other members, students and kids unfurl the National Flag to Commemorate the 73rd Republic Day. Members and students also done cultural activities to grace the occasion.

Glimpses of Webinars



Noida Chapter successfully conducted its 3rd webinar for the term 2022 on the topic **“Data Protection Laws: Emerging Opportunities, Practical Considerations, Challenges & Role of CS ”** on Saturday, 29th January, 2022. Our Chief Guest was CS Nilanjan Sinha- Head Legal, ICICI Bank and Guest Speaker was Mr. Mathew Chacko – Founder and Managing Partner of Spice Route Legal along with Panel Members & other Guest Speakers. 100 (full capacity) members had joined and graced the webinar.



Noida Chapter organized ***One Day Orientation Programme*** for Executive Students on 31st January 2022 with faculty CS Ravi Bhushan and CS Amrita Oha.



Startup Recognition

CS Jinu Jain

Under the Startup India Action Plan, startups that meet the eligibility criteria can apply for recognition under the program. The Startups have to provide support documents, at the time of application. A Startup shall make an online application over the mobile app or portal set up by the Department of Industrial Policy and Promotion i.e.

<https://www.startupindia.gov.in/>, which is an official website for startup recognition and related aspects.

Context:

1. Eligibility Criteria for Startup Recognition.
2. Benefits/ Exemptions to startups under Companies Act, 2013
3. Tax Benefits or Tax Exemptions for Startups
4. Benefits for entrepreneurs
5. Financing options available for startups
6. Government Programs That Offer Startup Capital
7. Udyam Registration
8. How to register in start-up India?

Eligibility Criteria for Startup Recognition:

1. The Startup should be incorporated as a private limited company or registered as a partnership firm or a limited liability partnership (LLP)
2. Turnover should be less than INR 100 Crores in any of the previous financial years
3. An entity shall be considered as a startup up to 10 years from the date of its incorporation
4. The Startup should be working towards innovation/ improvement of existing products, services and processes and should have the potential to generate employment/ create wealth. An entity formed by splitting up or reconstruction of an existing business shall not be considered a "**Startup**".

❖ Documents Required

- Certificate of Incorporation or Registration of entity
- If the startup received any funding, the Proof of Funding need to furnish for DPIIT Certificate of Recognition for Startups
- Document of awards or recognition received by the entity
- Document of the patent published by the entity (The patent should be published in the patent journals)

- A brief description of the nature of the business. The write-up should contain the following details:
- Details of how the startup is working towards innovation
- Development of products or processes or services
- The scalability in terms of employment generation or wealth creation

❖ **Proof document for Funds**

- Support letter from the central or state Government authorities or any incubator which is duly recognized by the government of India can be submitted.
- The document for funding should not be less than 20% in equity by angel funds or incubation funds.

❖ **Disclaimer**

1. Department of Industrial Policy and Promotion, Ministry of Commerce and Industry has not appointed any Agency/Representative/ Franchise for DPIIT Certificate of Recognition for Startups.
2. Application for Startup India Certificate of Recognition should be filed by the Startup on its own, using own details/ mobile No./ email.
3. Ministry of Commerce and Industry does not charge any fee for DPIIT Certificate of Recognition for Startups.
4. Any charging of fees for Recognition for Startups is illegal and will invite appropriate legal action.

Benefits/ Exemptions to startups under Companies Act, 2013:

- **Financial Statement-** Section 2(40):-An explanation has been inserted in Clause (40) of Section 2 of the Companies Act, 2013 which provides the definition of a Startup. It states that – the 'Startup Company' means a private company incorporated under the Companies Act, 2013 and recognized as start-up in accordance with the notification issued by the Department of Industrial Policy & Promotion, Ministry of Commerce & Industry. And according to the same the start ups are exempted from preparing Cash flow statements.
- **Deposit Treatment-**The Companies (Acceptance of Deposit) Rules, 2014 have been amended to provide that an amount of INR 25 lakh or more received by a startup company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 5 years from the date of issue) in a single tranche, from a person shall not be treated as a deposit.

- **Deposit Provision-** The provisions of clauses (a) to (e) of Section 73 shall not apply to a startup company for five years from the date of its incorporation.
- **Maximum Limit of Deposit-** The upper limit on the acceptance of deposits has been enhanced to 35% of net worth instead of earlier 25%.
- **Employee Stock Option Plan-** Startups are allowed to issue Employee Stock Options to promoters working as employees and can hold more than 10% upto 10 years.
- **Sweat Equity Shares-** The limits with regard to sweat equity that can be issued by a start-up company from 25% of paid-up capital to 50% of paid-up capital upto 10 years of its incorporation.
- **Annual Return:-** The annual return of a startup company may be signed by the company secretary, or where there is no company secretary, by the director of the company.
- **Board Meeting:** - For start-ups, convening at least one meeting of the board of directors in each half of a calendar year with the gap between the two meetings of not less than 90 days is sufficient to meet the requirement of section 173(5) of the Act.

Tax Benefits or Tax Exemptions for Startups

Post getting recognition a Startup may apply for Tax exemptions.

1. 80 IAC Tax exemption:

In this Tax exemption the Startup can avail tax holiday for 3 consecutive financial years out of its first ten years since incorporation. A Startup being private limited company or a LLP incorporated on or after 1st day of April 2016 but before 1st day of April 2021 may, for obtaining a certificate for the purposes of section 80-IAC of the Act, make an application in Form-1 along with documents specified therein to DPIIT. Application may be accepted or rejected on the basis of the application.

2. Tax Exemption under Section 56 of the Income Tax Act (Angel Tax):

DPIIT recognized startups are exempt from tax under section 56(2)(viib) (taxation on shares) of the Income Tax Act, when such startup received any consideration for issue of shares which exceeds the FMV of such shares. To avail this exemption one need to fill Form 2 along with documents specified therein to DPIIT but at the same time the following criteria need to be fulfilled:

- a. the aggregate amount of paid up share capital and share premium of the startup after the proposed issue of shares does not exceed 10 crore rupees,
- b. the investor/ proposed investor, who proposed to subscribe to the issue of shares of the startup (hereinafter in this notification referred to as “investor”) has, —

- (a) the average returned income of INR 25 lakh or more for the preceding three financial years; or
- (b) the net worth of INR 2 crore or more as on the last date of the preceding financial year,
- (c) the startup has obtained a report from a merchant banker specifying the fair market value of shares in accordance with Rule 11UA of the Income-tax Rules, 1962.

3. Exemption from tax on Long Term Capital Gain 54EE:

Exemption from LTCG on Government funds as notified by the Central Government within a period of six months from the date of transfer of the asset. The maximum amount that can be invested in the long-term specified asset is INR 50 lakh. Such amount shall remain invested in the specified fund for a period of 3 years. If withdrawn before 3 years, then the exemption will be revoked in the year in which money is withdrawn.

4. Tax Exemption to Individual/HUF on investment of LTCG in equity shares of Eligible startups under Section 54GB:

If an individual or HUF sells a residential property and invests the capital gains to subscribe the 50% or more equity shares of the eligible startups, then tax on long term capital will be exempt provided that such shares are not sold or transferred within 5 years from the date of its acquisition. The startups shall also use the amount invested to purchase assets and should not transfer asset purchased within 5 years from the date of its purchase. This exemption will boost the investment in eligible startups and will promote their growth and expansion.

5. Set off of carry forward losses and capital gains allowed in case of change in shareholding patterns under section 79:

The carry forward of losses in respect of eligible start-ups is allowed if all the shareholders of such company who held shares carrying voting power on the last day of the year in which the loss was incurred continue to hold shares on the last day of the previous year in which such loss is to be carried forward. The restriction of holding of 51 % of voting rights to be remaining unchanged u/s 79 has been relaxed in the case of eligible startups.

Benefits for entrepreneurs

- ❖ **FUND OF FUNDS FOR STARTUPS (FFS)** A 'fund of funds' of INR 10,000 crores to support innovation driven Startups has been established which is being managed by SIDBI. The corpus shall be released over two Finance Commission cycles, by 2025. FFS invests in SEBI registered Alternative Investment Funds (AIFs) which, in turn, will invest in Startups. INR 600 crore has been released to SIDBI. Further, a letter of comfort for INR 1600 crore has been provided to SIDBI.

- ❖ **Faster Exit For Startups** The Insolvency and Bankruptcy Board of India (IBBI) has been constituted and the provisions regarding corporate insolvency resolution. The Ministry of Corporate Affairs (MCA) has notified the relevant sections 55 to 58 of Insolvency and Bankruptcy Code, 2016 pertaining to the Fast Track process (FTP) and has notified that the process shall apply to Startup (other than the partnership firm) as defined by DIPP. Startups shall now be able to wind up their business within a period of 90 days from making an application for the same as compared to the 180 day period for other firms.
- ❖ **Apply for tenders:** Startups can apply for Government Tenders. They are exempted from the “prior experience/turnover” criteria applicable for normal companies answering to Government Tenders.
- ❖ **Self Certificate based Compliances Regime:** Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance (through the Startup mobile app) with 9 labour and 3 environment laws. In case of the labour laws, no inspections will be conducted for a period of 3 to 5 years. Startups may be inspected on receipt of credible and verifiable complaint of violation, filed in writing and approved by at least one level senior to the inspecting officer. In order to self-certify compliance, you may log on to 'Shram Suvidha Portal'.
- ❖ **Legal Support and Fast Tracking Patent Examination at lower cost:** The fees for the IPR are reduced to 80% under Startups IPR Protection (SIPP). Start-ups Intellectual Property Protection (SIPP) scheme launched by Government of India, facilitates the start-ups to file applications for patents, designs and trademarks through registered facilitators in appropriate IP offices by paying only the statutory fees. The official site for the same is <http://www.nrdcindia.com/>
- ❖ **R&D facilities:** Seven new Research Parks will be set up to provide facilities to startups in the R&D sector. Under Atal Innovation Mission, Niti Ayog will set up Atal Incubation Centers(AICs) in public and private sector. All information regarding this can be gathered from startup.gov.in

Financing options available for startups:

There are mainly three financing options for startups:

- a. Equity Financing
- b. Debt Financing
- c. Grants

S.No.	Financing options	Information
1.	Seed Capital or Bootstrapping startup Business	Self-funding, also known as bootstrapping, is an effective way of startup financing, as it involves one's own money or money gathered from family, friends or near or dear ones.
2.	Angel Investment	Angel investors are group of industry professional willing to fund the venture in return of an equity stake. Under SEBI (Alternative Investment Funds) Regulation, 2012 " Angel investor "

S.No.	Financing options	Information
		<p>means any person who proposes to invest in an angel fund and satisfies one of the following conditions:</p> <p>(a) an individual investor who has net tangible assets of at least two crore rupees excluding value of his principal residence, and who: (i) has early stage investment experience, or (ii) has experience as a serial entrepreneur, or (iii) is a senior management professional with at least ten years of experience</p> <p>(b) a body corporate with a net worth of at least 10 crore rupees; or</p> <p>(c) an AIF registered under these regulations or a VCF registered under the SEBI (Venture Capital Funds) Regulations, 1996.</p> <p>Angel funds shall accept, up to a maximum period of 3 years, an investment of not less than `25 lakh from an angel investor. List of popular Angel Investors in India – Indian Angel Network, Mumbai Angels, Hyderabad Angels.</p>
3.	Venture Capital/ Private equity	<p>Some of the well known Venture Capitalists in India are – Nexus Venture Partners, Helion Ventures, Kalaari Capital, Accel Partners, Blume Ventures, Canaan, Sequoia Capital and Bessemer Ventures. In this the investor and startups will normally enter into non-binding offer based on the preliminary valuation of the startups usually followed with a financial, legal and technical dues diligence on the startups as required by investors.</p>
4.	Crowdfunding	<p>An entrepreneur will put up a detailed description of the business on a crowd funding platform mentioning all the required details and then consumers can read about the business and give money if they like the idea. Those giving money will make online pledges with the promise of pre-buying the product or giving a donation. Anyone can contribute money toward helping a business that they really believe in. Some of the popular crowd funding sites in India are Indiegogo, Wishberry, Ketto, Fund lined and Catapoolt. In US, Kickstarter, Rocket Hub, Dream funded, Onevest, Donor Box and Go Fund Me are popular crowd funding platforms.</p>
5.	From Business Incubators & Accelerators	<p>Incubators are like a parent to to a child, who nurture the business providing shelter tools and training and network to a business. Incubator helps /assists /nurtures a business to walk, while accelerator helps to run/ take a giant leap.</p> <p>In India, popular names are Amity Innovation Incubator, AngelPrime, CIIE, IAN Business Incubator, Villgro, Startup Village and TLabs.</p> <p>Popular business accounting software – ProfitBooks is also a part of Washington based accelerator Village Capital.</p> <p>In US, companies like Dropbox and Airbnb started with an accelerator – Y Combinator. Here is a list of top 10 incubators & accelerators in US.</p>
6.	Debt Funding	<ol style="list-style-type: none"> 1. Loan from NBFCs 2. External Commercial Borrowings 3. CGTMSE Loan: Credit Guarantee Trust for Micro and Small Enterprises scheme launched by Ministry of MSME upto Loan 1 crore. Now for MSME registration Udh yog Aadhar is no more required it is not been replaced by Udh yam registration.

Government Programs That Offer Startup Capital:

The Government of India has launched [10,000 Crore Startup Fund](#) to improve startup ecosystem in India. In order to boost innovative product companies, Government has launched **Bank Of Ideas and Innovations** program.

Government backed '**Pradhan Mantri Micro Units Development and Refinance Agency Limited (MUDRA)**' starts with an initial corpus of Rs. 20,000 crore to extend benefits to around 10 lakhs SMEs. Submit business plan and once approved, the loan gets sanctioned. One gets a MUDRA Card, which is like a credit card, which can be use to purchase raw materials, other expenses etc.

Also, different states have come up different programs like Kerala State Self Entrepreneur Development Mission (KSSEDM), [Maharashtra Centre for Entrepreneurship Development](#), Rajasthan Startup Fest, etc to encourage small businesses.

[SIDBI](#) – Small Industries Development Bank Of India also offer business loans to MSME sector.

Mudra Bank

Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to Micro Finance Institutions and Non-Banking Financial Institutions which then provide credit to MSMEs.

The bank will classify its clients into three categories and the maximum allowed loan sums will be based on the category:

Shishu : Allowed loans up to ₹ 50,000 **Kishore** : Allowed loans up to ₹ 5,00,000 **Tarun** : Allowed loans up to ` 10,00,000 (US \$ 16,000)

The basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available if and only if it is for commercial and business purposes and not for personal purposes. At the most, borrower can buy vehicle from Mudra loan, given that it is used for commercial purposes. Lastly, this loan is for new business and is only applicable for small business owners.

Mudra offering:

1. Technology Enable
2. Refinance for micro units to commercial banks.
3. Credit Gurantee for MUDRA loan (through NCGTC)
4. Development and promotional Supports.

Udyam Registration

An enterprise for the purpose of registration as MSME will be known as Udyam and its Registration Process will be known as 'Udyam Registration. MSME registration process is fully online, paperless and based on self-declaration. The certificate will have a dynamic QR Code from which the web page on our Portal and details about the enterprise can be accessed. This certificate will have a dynamic QR Code from which the web page on our Portal and details about the enterprise can be accessed. Those who have EM-II or UAM registration or any other registration issued by any authority under the Ministry of MSME, will have to re-register themselves. The website for the same is <https://udyamregistration.gov.in/>

How to register in start-up India?

1. Click on the link <https://www.startupindia.gov.in/>
2. Then on the right hand side we a profile icon appears, where we would see two option Register or Login.
3. After clicking on the register option we will need to fill out information and password should be 8 letter which should contain Capital letter, numbers and special character like etc.
4. We will get an OTP on email, enter the OTP on the desire option.
5. Now Login into the page filling the required details. A page will appear where, select language and country and select an option telling who are you.
6. Now in the second step we have to fill more information like Age, occupation Interest, Profile Picture (whose size should be 1 MB), etc. after this click on the NEXT, again a page will appear where we have to fill our state and CITY NAME and Agree the terms and conditions. And click on save profile.
7. The applicant unit need access the [Start-up India Recognition portal](#) for Register with Start-up India to get the DPIIT Certificate of Recognition for Startups. Provide the short summary of business plan with following details in the Start-up Recognition application:
 - Entity Details: Nature of Entity, Industry, Sector, Categories and Company Incorporation Number and Registration Date
 - Full Address of the Entity
 - Details of the Authorized Representative
 - Directors or Partner Details

- Details of Intellectual Property Right
 - Details of funding
 - Recognition received by the entity
8. The DPIIT Certificate of Recognition for Startups will be issued after examination of the application and documents submitted. Once the ministry approves the application and provides the unique startup recognition number, the startup can be registered with tax benefits. File the application under section 56 for Exemption. One will receive an email for CBDT within 72 hours of submitting the declaration.
 9. Then click on go to my dashboard where different scheme about Startups are available and can get various information related to startups. We can also fill application for tax exemption through the portal of startups.gov.in



Claims of Provident Fund and Gratuity under IBC

CS Srajan Garg

Whether paid in Super Priority to the provisions of Section 53 (Waterfall Priority) of the Insolvency & Bankruptcy Code, 2016?

In the recent past the Insolvency and Bankruptcy Code, 2016 (for brevity the Code/IBC) has evolved to bridge the gaps and plug the loopholes to the best interest of all the stakeholders. When the code was introduced the only intention of the legislators were to bring a comprehensive law to cater the needs of corporate sector of the country in view of speedy revival of the code and safeguarding the assets of the Corporate Debtor. To that instant, the law is still evolving and developing.

This article revolves around the corner stone of social security benefits which various law of land has established, i.e. Provident Fund (PF), Pension Fund (Pension) and Gratuity Fund (GF) etc., should be paid by a company which has been admitted under the provisions of IBC (Corporate Debtors/Company) for the Corporate Insolvency Resolution Process (CIRP)/Liquidation.

Various delegations and deliberations had been made in order to reach to a concrete conclusion over the payment of PF, Pension and Gratuity dues towards the claims of Employees Provident Fund Organization, Exempted PF Trust, NPS and Pension Fund Trust received under the IBC. Upon various judgements has been delivered so far by the Hon'ble National Company Law Tribunal (NCLT), Hon'ble National Company Law Appellate Tribunal (NCLAT) and Apex Court, the subject matter has still left various questions of law to be decided upon.

PF, Pension & Gratuity are terminal benefits that are basically employees' dues under statutory provisions which are provided through contributions to the dedicated funds, out of expenditure head – “workmen/employees cost” by a company/corporate debtor. For PF, the contributions are placed with the EPFO or with the exempted PF Trust. For Pension, Gratuity, dedicated funds are created either internally (plan funds) or with trust created for management of these funds.

Provident Funds and Gratuity Funds Dues- Resolution Professionals to take a judicious stand

One of the most thoughtful question that may arise is whether the payment to Provident Fund and Gratuity Fund due would form part of Liquidation Estate under section 53 of IBC. Well to answer this various diverse judgement has been passed by the Courts and

Adjudicating Authorities such as:

In the set of first judgements the Hon'ble NCLT and Hon'ble NCLAT in *Prececion Fastners (by NCLT, Mumbai) & Moser Bear India Limited (by NCLT and NCLAT)*, held that the Provident Fund Dues & Gratuity dues do not constitute part of the Liquidation Estate in terms of Section 36(4)(iii)(a) of IBC and these have to be paid in super priority over and above the Section 53 of IBC 2016, from the sale proceeds of assets of the Corporate Debtor.

Whereas in a conflicting judgment of Hon'ble NCLAT in the matter of *Savan Godiawala vs Apalla Siva Kumar in Company Appeal (AT)(INS) no. 1229 of 2019*, it was held that if there are no funds/account created for the payment of gratuity, provident fund, pension dues by the employer (Corporate Debtor) then the liquidator cannot be directed to create such funds.

In view of the above judgements if the sale proceeds are not to be paid towards payment of gratuity, provident fund and pension dues then next set of immediate beneficiaries under section 53(1)(b)(ii) are Secured Creditors who may strive that the law established in *Savan Godiawala vs Apalla Siva Kumar in Company Appeal (AT)(INS) no. 1229 of 2019*, will be followed. The workmen's who are uneducated and vulnerable, won't know how to protect their rights and can't hire costly advocates. The result is that this confusion is leading to more litigation and consequent delay in payment of workmen dues.

Further, in *Savan Godiawala vs Apalla Siva Kumar*, the Court settled the position of law, that the provident fund, the pension fund and the gratuity fund, do not come within the purview of 'liquidation estate' for the purpose of distribution of assets under Section 53 of the Code. Based on this, the only inference which can be drawn is that Pension Fund, Gratuity Fund and Provident Fund can't be utilised, attached or distributed by the liquidator, to satisfy the claim of other creditors. Section 36(2) of the IBC 2016 provides that the Liquidator shall hold the Liquidation Estate in fiduciary for the benefit of all the Creditors. The Liquidator has no domain to deal with any other property of the corporate debtor, which is not the part of the Liquidation Estate.

In a case, where no fund is created by a company, in violation of the Statutory provision of the Section 4 of the Payment of Gratuity Act, 1972, then in that situation also, the Liquidator cannot be directed to make the payment of gratuity to the employees because the Liquidator has no domain to deal with the properties of the Corporate Debtor, which are not part of the liquidation estate.

Therefore, in this conflicting judgement by excluding the PF and Gratuity dues out of the ambit of Section 53 of IBC, the jurisdiction of Resolution Professional has been restricted/curtailed.

In another set of judgement the Hon'ble NCLAT in the matter of Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 354 of 2019, has held that the Resolution Applicant was directed to release the full payment towards provident fund and interest thereof in terms of the provisions of the Employees Provident Funds and Miscellaneous Provision Act, 1952 as the same are not part of asset of Corporate Debtor, the direction to release amount towards fund establishes that Corporate Debtor had not maintained any fund and Resolution Applicant was accordingly, directed to pay the amount towards the same. Again, a conflicting judgement to the delivered in Savan Godiawala vs Apalla Siva Kumar.

The Hon'ble NCLT, New Delhi Bench in the matter of Alchemist Asset Reconstruction Co. Ltd. Vs Moser Bear India Limited vide its order dated 19.03.2019 in CP (IB)-378(PB)/2017, while placing reliance on the decision of the Hon'ble NCLT Mumbai bench in the matter of Precision Fasteners (Supra) has held that PF, Pension and Gratuity Fund dues cannot be made part of the liquidation estate and stated that "It is made clear that if there is any deficiency to provident fund, pension fund and gratuity fund, then the liquidator shall ensure that the fund is made available in the aforesaid accounts, even if the employer has not diverted the requisite amount." Thereby directing the Resolution Professional to abide the social security obligation for the benefits of under privileged workmen.

Concluding from the above diverse judgements, further deliberations and judgements may clarify the uniform stand/position to be taken with regard to the settlement of dues of PF, Gratuity and Pension, since the social security benefits to an employee forms an integral part of his hard-earned money.

The Opinions expressed in this article are that of the author(s). The facts and opinions expressed here do not reflect the views of any person or authority. Nothing herein shall be deemed or construed to constitute legal advice.

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Producer Companies under the Company Law Regime

CS Lalit Rajput

Ministry of Corporate Affairs (MCA) through introduction of the Companies (Amendment) Act, 2020 vide gazette notification id CG-DL-E-28092020-222070 dated 28.09.2020 has inserted a new Chapter XXIA which deals with the provisions regarding PRODUCER COMPANIES the Companies Act, 2013 and the same has been notified on 11.02.2021 by the Central Government, MCA, through a separate gazette notification id CG-DL-E-11022021-225115 ([click here](#)) dated 11th February, 2021.

❑ Define Producer Company under the Company Law:

As per the Provisions: "Producer Company" means a body corporate having objects or activities specified in section 378B and registered as Producer Company under this Act or under the Companies Act, 1956;

In general, Producer Company can be defined a legal Body Corporate, registered under the Companies Act 2013 or under applicable provisions of the Companies Act 1956, as the case may be, and which includes farmers / agriculturists and is working with a vision / object to improve the standard of their living and ensure a good status of their available support, incomes and profitability.

Further "**producer**" means any person engaged in any activity connected with or relating to any primary produce

❑ List of Activities/objects to be carried out by Producer Company:

A Producer Company can be established / registered for the lawful objects, related to improving the standard of living of those involved in the agricultural sector, specified under the provisions of Section 378B of the Companies Act, 2013, which includes the followings:

- a) production, harvesting, procurement, grading, pooling, handling, marketing, selling, export of primary produce of the Members or import of goods or services for their benefit, *either by itself or through other institution;*
- b) processing including preserving, drying, distilling, brewing, vinting, canning and packaging of produce of its Members;
- c) manufacture, sale or supply of machinery, equipment or consumables mainly to its Members;

- d) providing education on the mutual assistance principles to its Members and others;
- e) rendering technical services, consultancy services, training, research and development and all other activities for the promotion of the interests of its Members;
- f) generation, transmission and distribution of power, revitalization of land and water resources, their use, conservation and communications relatable to primary produce;
- g) insurance of producers or their primary produce;
- h) or other activities which may promote the principles of mutuality and mutual assistance amongst the Members in any other manner;

Key Points to be kept in mind while doing Incorporation of Producer Company:

1. Who can form a Producer Company?

- i) Any 10 or more individuals, each of them being a producer or/
- ii) two or more Producer Institutions or/
- iii) a combination of ten or more individuals and Producer Institutions)

2. **Objects:** As mentioned above and can refer section 378B of the Companies Act, 2013.

3. **Board Composition:** Every Producer Company shall have at least 5 and not more than 15 directors

4. **Type of Capital:** The share capital of a producer company consists only of equity shares.

5. **Name Style:** The name of a producer company must end with the words '**Producer Company Limited**'.

Registration Timeline:

After successful submission of all the required documents and information with Ministry of Corporate Affairs (MCA), The authority will do a check. If satisfied that all requirements regarding registration have been complied with, the Concerned Registrar of Companies will register the memorandum, articles and other documents, if any, and issue a certificate of incorporation under the Companies Act 2013 within 30 days of receipt of the requisite documents.

Provisions related to Board Meeting of Producer Company

S.No.	Provisions	Details
1	Minimum no. of Meetings in a Financial Year	At least 4 meetings

Sl.	Provisions	Details
2	Maximum gap between two Board Meeting	3 months
3	Notice of Board Meeting	Shall be given in writing to every director at his usual address in India at least 7 days prior the date of meeting.
4	Quorum of the Board Meeting	Shall be one-third (1/3rd) of the total strength of directors, subject to a minimum of three directors.

Provisions related to Annual General Meeting (AGM)

- First AGM:** Within a period of 90 days from the date of its incorporation, wherein the company must adopt its articles of association and appoint the directors of its board.
- A producer company must hold an annual general meeting of its members every year.
- Gap between two AGM's:** not more than 15 months shall elapse between the date of one annual general meeting of a Producer Company and that of the next.
- The quorum for a general meeting of a producer company is one-fourth of the total members, unless the articles of the Producer Company provide for a larger number
- A general meeting of the Producer Company shall be called by giving not less than 14 days prior notice in writing.

Annual Compliance related to Producer Company

Sl.	Particulars	Due Date	E- Form
1	Appointment of Auditor	Within 15 days from the conclusion of AGM <i>(ratification at every annual general meeting is not mandatory)</i>	ADT-1
2	Filing of financial statement and other documents with the ROC	Within 60 days from the conclusion of the AGM	AOC-4
3	Filing of annual return by a com.	Within 60 days from the conclusion of AGM	MGT-7
4	Director's KYC	For FY 2020-21 – 30.09.2021 DIN KYC through DIR 3 KYC Form is an Annual Exercise. Last date for filing DIR-3 KYC for Financial year 2020-21 is 30th September, 2021 Annual Exercise.	E-Form DIR – 3 KYC (Web Based and E-form)

Some Important Provisions:

Sl.	Provisions	Particulars
1	Appointment of CEO	Every producer company must appoint a full-time CEO, to be chosen by the board from persons other than the members.
2	Internal Audit	Every Producer Company shall have internal audit of its accounts carried out, at such interval and in such manner as may be specified in articles, by a chartered accountant as defined in section 2 (1) (b) of the Chartered Accountants Act, 1949.
3	Liability of Members	The liability of its members are limited to the amount unpaid on the shares, if any.
4	Company Secretary of Producer Company	Every Producer Company having an average annual turnover exceeding Rs. 500 Cr. or such other amount as may be prescribed in each of three consecutive financial years shall have a whole-time secretary, who possesses membership of the ICSI.
5	No. of Directors more than 15	If an inter-State co-operative society incorporated as a Producer Company, such company may have more than fifteen directors for a period of one year from the date of its incorporation as a Producer Company.
6	General Reserves	Producer companies must maintain a general reserve each financial year.

The Producer Companies Rules, 2021

Ministry of Corporate Affairs (MCA) vide Gazette ID No. CG-DL-E-11022021-225116 and F. No. 5 /1 /2020-CLI dated 11th day of February, 2021 has released the **the Producer Companies Rules, 2021** in section 378H (4) and section 378ZL (1) read with section 469 (1) & (2) of the Companies Act, 2013, and **in supersession of the Producer Companies (General Reserve) Rules, 2003, except as respects things done or omitted to be done before such supersession.**

Applicability:

They shall come into force on the date of their publication in the Official Gazette i.e. w.e.f. 11.02.2021.

To whom Applicable:

These rules shall apply to a Producer Company as referred in clause (l) of section 378A.

□ Key Highlights:

1. Key definition clause:

Rule 3 (1) (c) “co-operative society” means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.

Rule 3 (2) Words and expressions used in these rules but not defined and defined in the Act or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Act or in the said rules.

Rule 4. Change of place of registered office from one State to another.-

The rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.

Analysis:

Sl.	Provisions	Relevant Provisions Gist
1	Rule(s) under the Companies (Incorporation) Rules, 2014	Every producer company must appoint a full-time CEO, to be chosen by the board from persons other than the members.
2	27 Notice and Verification of Change of Situation of the Registered Office.-	The notice of change of the situation of the registered office and verification thereof shall be filed in Form No.INC.22 along with the fee and shall be attached to the said form, the similar documents and manner of verification as are specified for verification of Registered office on incorporation in terms of sub-section (2) of section 12
3	30. Shifting of Registered office from one State or Union Territory to another state	(1)An application under sub-section (4) of section 13, for the purpose of seeking approval for alteration of memorandum with regard to the change of place of the registered office from one State Government or Union territory to another, shall be filed with the Central Government in Form No. INC.23 along with the fee and shall be accompanied by the following documents required under this sub-rule. (read full read at http://ebook.mca.gov.in/Default.aspx?page=rules)
4	31 Certified Copy of Central Government's Order	The certified copy of the order of the Central Government, approving the alteration of the memorandum for transfer of registered office of the company from one State to another, shall be filed in Form No.INC.28 along with the fee as with the Registrar of the State within thirty days from the date of receipt of certified copy of the order.

Rule : 5. Investment of general reserves.-

A Producer Company shall make investments from and out of its general reserves in any one or in combination of the following, namely:-

- a. in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or
- b. in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- c. with any other scheduled bank; or
- d. in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (02 of 1882); or
- e. in the shares or securities of any other inter-State co-operative society or any co-operative society; or
- f. in the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Act.

Conclusion:

The Ministry has introduced the concept of '**Producer Company**' in the year 2002 based on the recommendations of an expert committee led by an economist, Mr.Y. K. Alagh. Keeping in mind the pressing issues of farmers and agriculturalists - collectively termed producers. Part IX A was introduced in the Companies Act, 1956 by the Companies (Amendment) Act, 2002, which consists of Chapters I to XII, covering Sections 581A to 581 ZT, encompassing the provisions of producer companies. The Income Tax Act, 1961 under section 10(1) exempts agricultural income. However, the exemption provided under section 10(1) for the agricultural income sometimes vary on the basis of the agricultural activity carried out. A producer company can be referred as a hybrid between a private limited company and a cooperative society.

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Striking Off The LLP: Easy Exit Scheme For LLP

CS NISHANT MISHRA
ASSOCIATE COMPANY SECRETARY

INTRODUCTION

To promote business in India, we need to promote ease of doing business in India. Ease of doing business involves easy incorporation, better compliance ecosystem, and easy exit opportunity to the business if they fail to get required momentum. Our government is in a constant endeavour to promote ease of doing business in India and a result came up with the easy exit opportunity to the LLP under the LLP Act, 2008.

LEGAL BACKGROUND

Section 75 of the LLP Act, 2008, provides power to Registrar to strike off those LLPs who are not carrying on any business. However, subject to the condition that before striking off the name of the LLP, the reasonable opportunity of being heard must be given to such LLP. Further, LLP Rules, 2009, govern the procedural aspect. Rule 37 of the LLP Rules, 2009, is applicable for striking off the LLP.

As per sub-rule (1), only those LLPs who are not carrying any business for the specified duration can be the strike off by the Registrar in the following manner;

Suo Moto: If LLP is not carrying on any business from the last two years or more, then Registrar may strike off such LLP. However, before striking off such LLP, the Registrar shall send notice of his intention to strike off such LLP to its partners and partners to give their representation within one month of such notice.

Voluntary Strike-off: Registrar may, if LLP not in operation for one year or more make an application to the Registrar in e-Form 24 along with the consent of all the partners, strike off the LLPs, subject to the fulfilment of other conditions. However, if LLP is governed by any special law then before making the application to Registrar, the approval of the body constituted under such special law will be required. For example, LLP registered with SEBI as a sub-broker will require SEBI's approval before filing e-Form 24, and such approval shall be attached with e-Form 24.

Notice sent to the partners in case of suo-moto strike-off shall also be placed on the MCA's website for One month for the general information of the public.

Unless the contrary is proved, after such time as may be mentioned in the notice issued under sub-rule 1, or within one month from the notice issued under sub-rule 2, the Registrar may by order strike off the name of the LLP.

In case, LLP has Assets and Liabilities, then Registrar, before making order of strike-off of LLP, shall ensure the following things;

1. Provision has been made for the realization of the amount due to the LLP
2. Discharge of payment of the obligation of the LLP.

In case of voluntary strike-off, the Registrar may take an undertaking from the Designated Partners or Partners on this behalf.

Notwithstanding the undertaking given by the Designated Partners or Partners, assets of the LLP shall continue to be available for discharging any liabilities that may arise in future even after the strike off of the LLP. The liability of the Partners will continue to exist even after the strike off.

PROCEDURE FOR STRIKE OFF OF LLP

Details procedure for the strike off of the LLP is provided under Rule 37 (1A). All the pending compliances up to the date the LLP was in operation must be completed before the filing of e-Form 24 by the LLP.

(a) Statement of Solvency (Annual Accounts) filed in e-form 8.

- Annual Account need to be Audited. Except in the following case:- Turnover does not exceed in any financial year by 40,00,000 (Forty Lakhs Rupees) and contribution does not exceed 25,00,000 (Twenty Five Lakhs Rupees).
- Statement of solvency shall have all the disclosures required under MSME Regulation Act, 2006, that is Total Amount Pending to MSME Vendor, Number of days from which it is pending and in case such pendency is of more than 45 days, then the interest charged on such dues
- Charge detail is to be provided in case of any creation, modification or satisfaction of the charge.

(b) Annual Return to be filed in e-Form 11.

- Compliance Certificate of Company Secretary, except in the case of LLP having turnover of up to 5,00,00,000 (Five Cr.) or contribution up to 50,00,000 (Fifty Lakhs Rs.), in other cases certificate from the designated partner is sufficient.
- Attach detail of designated partners, with details about their directorship and Partner/ Designated Partner.

(c) Filing of up to date Income Tax Return.

If the LLP has not commenced any business, then no need to do any above compliance.

However, an affidavit signed by all designated partners specifying LLP has not commenced any business shall be attached with the e-Form 24 along with other attachments.

After completing the pending compliances, the LLP shall pass the resolution and make an application to the Registrar for the strike off. The LLP will file such application in e-Form 24 with the following documents as attachments.

- Authority letter to make an application in favour of anyone designated partner.
- Detail application requesting, ROC to struck-off the LLP's name.
- Statement of Account disclosing NIL asset and Liabilities duly certified by CA, not older than 30 days from date of filing of e-Form 24.
- Affidavit signed by all the designated partner jointly on stamp paper of Rs. 10 (For Delhi)
 - (a) LLP has not commenced business or where it has commenced business date of cessation of business.
 - (b) LLP does not have any liability and indemnifying in case any liability arises in future.
 - (c) That LLP has not opened any Bank Account or where it has opened bank account then such bank account has been closed and certificate from the Bank of the same effect.
 - (d) Copy of latest ITR to be attached or if no return was filed, then the statement of the same effect.
- Copy of LLP Agreement.
- Affidavit that no proceeding is pending under any law.
- PAN Card and Address Proof of Designated Partners need to be attached (Recommendatory).



Food Laws in India

Jasvinder Singh
Professional Student

History

The food Industry has emerged as one of the burgeoning sectors in the recent past. The emergence of restaurants and Food Business Operators (FBOs) throughout India has also given rise to the necessity to regulate the Food Industry. Food laws have been regulated in India with the object to ensure safety manufacture, sale and distribution of food related products and prevent food adulteration in India.

The FSS Act is a bucket for all the older laws, rules and regulations for food safety. The FSS Act took 7 older acts into one umbrella.

1. Prevention of Food Adulteration Act, 1954
2. Fruit Products Order, 1955
3. Meat Food Products Order, 1973
4. Vegetable Oil Products (Control) Order, 1947
5. Edible Oils Packaging (Regulation) Order 1988
6. Solvent Extracted Oil, De- Oiled Meal and Edible Flour (Control) Order, 1967
7. Milk and Milk Products Order, 1992

Regulatory Framework

FSSAI was established by Former Union Minister Dr. Anbumani Ramadoss, Government of India on 5 August 2011 under Food Safety and Standards Act, 2006 which was operationalized in year 2006. The FSSAI consists of a chairperson & 22 members. The FSSAI is responsible for setting standards for food so that there is one body to deal with and no confusion in the minds of consumers, traders, manufacturers, and investors. Ministry of Health & Family Welfare, Government of India is the Administrative Ministry of Food Safety and Standards Authority of India. The following are the statutory powers that the FSS Act, 2006 gives to the Food Safety and Standards Authority of India (FSSAI).

1. Framing of regulations to lay down food safety standards
2. Laying down guidelines for accreditation of laboratories for food testing
3. Providing scientific advice and technical support to the Central Government
4. Contributing to the development of international technical standards in food
5. Collecting and collating data regarding food consumption, contamination, emerging risks, etc.
6. Disseminating information and promoting awareness about food safety and nutrition in India.

FSSAI is located in 5 regions in India-

1. Northern Region – With head office at New Delhi
2. Eastern Region
3. North Eastern Region
4. Western region
5. Southern Region

Meaning of FSS Act, 2006

1. FSSA is an Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.
2. This Act may be called the Food Safety and Standards Act, 2006
3. It extends to the whole of India
4. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision
5. It consists of 100 Sections, 26 Regulations, 2 Schedules and several rules.

Establishment of Food Safety and Standards Authority of India

1. The Central Government shall, by notification, establish a body to be known as the Food Safety and Standards Authority of India to exercise the powers conferred on, and to perform the functions assigned to, it under this Act
2. The Food Authority shall be a body corporate by the name aforesaid, having perpetual succession and a seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued
3. The head office of the Food Authority shall be at Delhi
4. The Food Authority may establish its offices at any other place in India

What is Food

“Food” means any substance, whether processed, partially processed or unprocessed,

which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality.

Applicability of FSSAI License-

Every Food Business Operators (FBOs) who wants to deal in food business in India, then they shall require Food License i.e. FSSAI License before starting the food business. So every FBOs should take the FSSAI license i.e. Manufacturer, Distributor, Wholesaler, Retailer, Transporter, Importer, Exporter, Hotels or Restaurants etc. Even a street food vendor (Thelawala) shall take a FSSAI license before starting the food business.

How many types of licenses are there?

1. Registration
2. State License
3. Central License

Difference between Registration, State License & Central License

Registration: A Petty Food Business Operator (whose Annual Turnover upto Rs. 12 Lacs or Production capacity upto 100 Kgs/Ltrs per day) who manufactures or sells any kind of food by himself/herself, petty retailer, hawker, itinerant vendor, temporary stall, Thela, Sweets Shop, Juice Stall etc. shall take Registration under FSSAI.

Example: Golgappa stall, fruits/vegetables vendors, snacks stall, Tea Stall, Samosa, Bread pakoda, retail shops, Temporary Food Stalls like Chinese food stall, Momoswala, South Indian Food etc.

State License: If FBO (whose Annual Turnover more than Rs. 12 Lacs and upto Rs. 20/30 crores (as defined in regulations) or Production capacity more than 100 Kgs/Ltrs upto 2 MT per day) who manufactures or sells any kind of food by himself/herself shall take State License under FSSAI.

Central License: If FBO (whose Annual Turnover more than Rs. 20/30 crores (as defined in regulations) or Production capacity more than 2 MT per day) who manufactures or sells any kind of food by himself/herself shall take Central License under FSSAI.

Fee Structure

The Food Business Operator (FBO) may apply for FSSAI license for maximum five years.

Registration: Rs. 100/year

State License: Rs. 2000 to 5000/year

Central License: Rs. 7500/year

From where you can apply for FSSAI license

URL: <https://foscoc.fssai.gov.in/>



Interpretation of “Section 235” of Companies Act, 2013

Damini Anand
Professional Student

Heading: Concept of Takeover of Unlisted Companies.

Tags: Takeover, Control, Companies Act 2013.

Summary:

MEANING OF TAKEOVER: - Takeover generally means acquisition of control over the management of the company, where such company is referred as "TARGET COMPANY"

- ❖ Takeover is not defined under any law for the time being in force.
- ❖ Methods of taking over the control over the management of an Company (Target Company) ay include-
 - Acquisition of shares
 - Debt route
 - Holding subsidiary route (indirect takeover)
 - Any other route.

PROVISIONS OF SECTION 235 UNDER COMPANIES ACT, 2013

35. Power to acquire shares of shareholders dissenting from scheme or contract approved by majority

1) Where a scheme or contract involving the transfer of shares or any class of shares in a company (the transferor company) to another company (the transferee company) has, within four months after making of an offer in that behalf by the transferee company, been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved, other than shares already held at the date of the offer by, or by a nominee of the transferee company or its subsidiary companies, the transferee company may, at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares.

2) Where a notice under sub-section (1) is given, the transferee company shall, unless on an application made by the dissenting shareholder to the Tribunal, within one month from the date on which the notice was given and the Tribunal thinks fit to order otherwise, be entitled to and bound to acquire those shares on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the transferee company

NOTE: Notice shall be sent in Form No: CAA 14 as per RULE 26 of CAARULES 2016

3) Where a notice has been given by the transferee company under sub-section (1) and the Tribunal has not, on an application made by the dissenting shareholder, made an order to the contrary, the transferee company shall, on the expiry of one month from the date on which the notice has been given, or, if an application to the Tribunal by the dissenting shareholder is then pending, after that application has been disposed of, send a copy of the notice to the transferor company together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferor company and on its own behalf by the transferee company, and pay or transfer to the transferor company the amount or other consideration representing the price payable by the transferee company for the shares which, by virtue of this section, that company is entitled to acquire, and the transferor company shall—

(a) here upon register the transferee company as the holder of those shares and

b) within one month of the date of such registration, inform the dissenting shareholders of the fact of such registration and of the receipt of the amount or other consideration representing the price payable to them by the transferee company.

4) any sum received by the transferor company under this section shall be paid into a separate bank account, and any such sum and any other consideration so received shall be held by that company in trust for the several persons entitled to the shares in respect of which the said sum or other consideration were respectively received and shall be disbursed to the entitled shareholders within sixty days.

5) in relation to an offer made by a transferee company to shareholders of a transferor company before the commencement of this Act, this section shall have effect with the following modifications, namely:—

a) in sub-section (1), for the words he shares whose transfer is involved other than shares already held at the date of the offer by, or by a nominee of, the transferee company or its subsidiaries, the words he shares affected shall be substituted and

b) In sub-section (3), the words together with an instrument of transfer, to be executed on behalf of the shareholder by any person appointed by the transferee company and on its own behalf by the transferor company shall be omitted. Explanation. - or the purposes of this section, assenting shareholder Includes a shareholder who has not assented to the scheme or contract and any shareholder who has failed or refused to transfer his shares to the transferee company in accordance with the scheme or contract.

READ WITH SECTION 236 & 238)**238.** Registration of offer of schemes involving transfer of shares.

1) In relation to every offer of a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company under section 235,—

a) every circular containing such offer and recommendation to the members of the transferor company by its directors to accept such offer shall be accompanied by such information and in such manner as may be prescribed

b) every such offer shall contain a statement by or on behalf of the transferee company, disclosing the steps it has taken to ensure that necessary cash will be available and

c) every such circular shall be presented to the Registrar for registration and no such circular shall be issued until it is so registered:

provided that the Registrar may refuse, for reasons to be recorded in writing, to register any such circular which does not contain the information required to be given under clause (a) or which sets out such information in a manner likely to give a false impression, and communicate such refusal to the parties within thirty days of the application.

2) An appeal shall lie to the Tribunal against an order of the Registrar refusing to register any circular under sub-section (1).

3) The director who issues a circular which has not been presented for registration and registered under clause (c) of sub-section (1), shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees.

SECTION 236 (BARE ACT)

1) In the event of an acquirer, or a person acting in concert with such acquirer, becoming registered holder of ninety per cent. or more of the issued equity share capital of a company, or in the event of any person or group of persons becoming ninety per cent. majority or holding ninety per cent. of the issued equity share capital of a company, by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, such acquirer, person or group of persons, as the case may be, shall notify the company of their intention to buy the remaining equity shares.

2) The acquirer, person or group of persons under sub-section (1) shall offer to the minority shareholders of the company for buying the equity shares held by such shareholders at a price determined on the basis of valuation by a registered valuer in accordance with such rules as may be prescribed.

3) Without prejudice to the provisions of sub-sections (1) and (2), the minority shareholders of the company may offer to the majority shareholders to purchase the minority equity shareholding of the company at the price determined in accordance with such rules as may be prescribed under sub-section (2).

4) The majority shareholders shall deposit an amount equal to the value of shares to be acquired by them under sub-section (2) or sub-section (3), as the case may be, in a separate bank account to be operated by company whose shares are being transferred for t least one year for payment to the minority shareholders and such amount shall be disbursed to the entitled shareholders within sixty days:

Provided that such disbursement shall continue to be made to the entitled shareholders for a period of one year, who for any reason had not been made disbursement within the said period of sixty days or if the disbursement have been made within the aforesaid period of sixty days, fail to receive or claim payment arising out of such disbursement.

5) In the event of a purchase under this section, company whose shares are being transferred] shall act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

6) In the absence of a physical delivery of shares by the shareholders within the time specified by the company, the share certificates shall be deemed to be cancelled, and company whose shares are being transferred shall be authorised to issue shares in lie of the cancelled shares and complete the transfer in accordance with law and make payment of the price out of deposit made under sub-section (4) by the majority in advance to the minority by despatch of such payment.

7) In the event of a majority shareholder or shareholders requiring a full purchase and making payment of price by deposit with the company for any shareholder or shareholders who have died or ceased to exist, or whose heirs, successors, administrators or assignees have not been brought on record by transmission, the right of such shareholders to make an offer for sale of minority equity shareholding shall continue and be available for a period of three years from the date of majority acquisition or majority shareholding.

8) Where the shares of minority shareholders have been acquired in pursuance of this section and as on or prior to the date of transfer following such acquisition, the shareholders holding seventy-five per cent. or more minority equity shareholding negotiate or reach an understanding on a higher price for any transfer, proposed or agreed upon, of the shares held by them without disclosing the fact or likelihood of transfer taking place on the basis of such negotiation, understanding or agreement, the majority share holders shall share the additional compensation so received by them with such minority

shareholders on a pro rata basis.

Explanation.—or the purposes of this section, the expressions acquirer and person acting in concert shall have the meanings respectively assigned to them in clause (b) and clause (e) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

9) When a shareholder or the majority equity shareholder fails to acquire full purchase of the shares of the minority equity shareholders, then, the provisions of this section shall continue to apply to the residual minority equity shareholders, even though,—

a) the shares of the company of the residual minority equity shareholder had been delisted and

b) the period of one year or the period specified in the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, had elapsed.

INTERPRETATION OF THE SECTION

Applicability of the Section:

What is Section 235?

Section 235 provides a power to such “acquirer” (individually or along with PAC) who holds 90%

or

who obtains approval 90% of shareholders of transferee for transfer of shares **within a period of 4 months** from the date of offer,

of total shares of the Company to Compel the Dissenting shareholder to sell off their shares against their wish.

Calculation of 90%

While calculating 90% shares held by the following shall be **EXCLUDED**:

Transferee Company itself	Nominee of Transferee Company	Subsidiary of Transferee Company
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LOGIC: There is no need of Section 235 for taking over a Company as Takeover can be done by becoming biggest shareholder or otherwise. the section favours the Majority and compel the Minority to sell off their shares (by providing Exit Opportunity)

Exit Opportunities to dissenting shareholders: under Companies Act 2013, there are two Subsections where EXIT OPPORTUNITY is provided to Dissenting shareholders.

EXIT OPPORTUNITY UNDER SECTION 235(1) OPTIONAL NOTICE	EXIT OPPORTUNITY UNDER SECTION 236(2) MANDATORY NOTICE
<p>After the Expiry of 4 months, within a period of next 2 months company may give Notice to dissenting shareholders at their option.</p> <p>NOTE: Notice shall be in CAA-14</p>	<p>In the event of an acquirer (individually or along with its PAC) becomes holder of ninety percent or more of issued share capital of the company, he shall offer the miserable minority (dissenting shareholders) an EXIT OPPORTUNITY by giving MANDATORY NOTICE.</p> <p>NOTE: here price must be determined by Registered Valuer (RULE 27 of CAA Rules, 2016)</p>

In reference to the notice under 235(1) shareholders have the following options

- He may accept(company is entitle and bound to acquire the shares)
- He may remain silent (deemed acceptance after a period of 1 month)
- He may apply to NCLT (within 1 month of such notice)
- But, he cannot reject.

N CASE DISSENTING SHAREHOLDER DOESN' ACCEPT THE OFFER GIVEN BY NOTICE

transferee company within 1 month from the date on which the notice has been given ,or (if decision is pending)thn, within 1 month after the application has been disposed off, shall transmit to transferor company the following :

A copy of notice to transmit shares
Instrument of transfer (SH- 4) executed on the behalf of shareholders appointed by the person appointed by the “ee” company.
Consideration

To register the transferee company as the owner and intimate dissenting shareholder that he ceased to be the member of the company.

Other Important points:

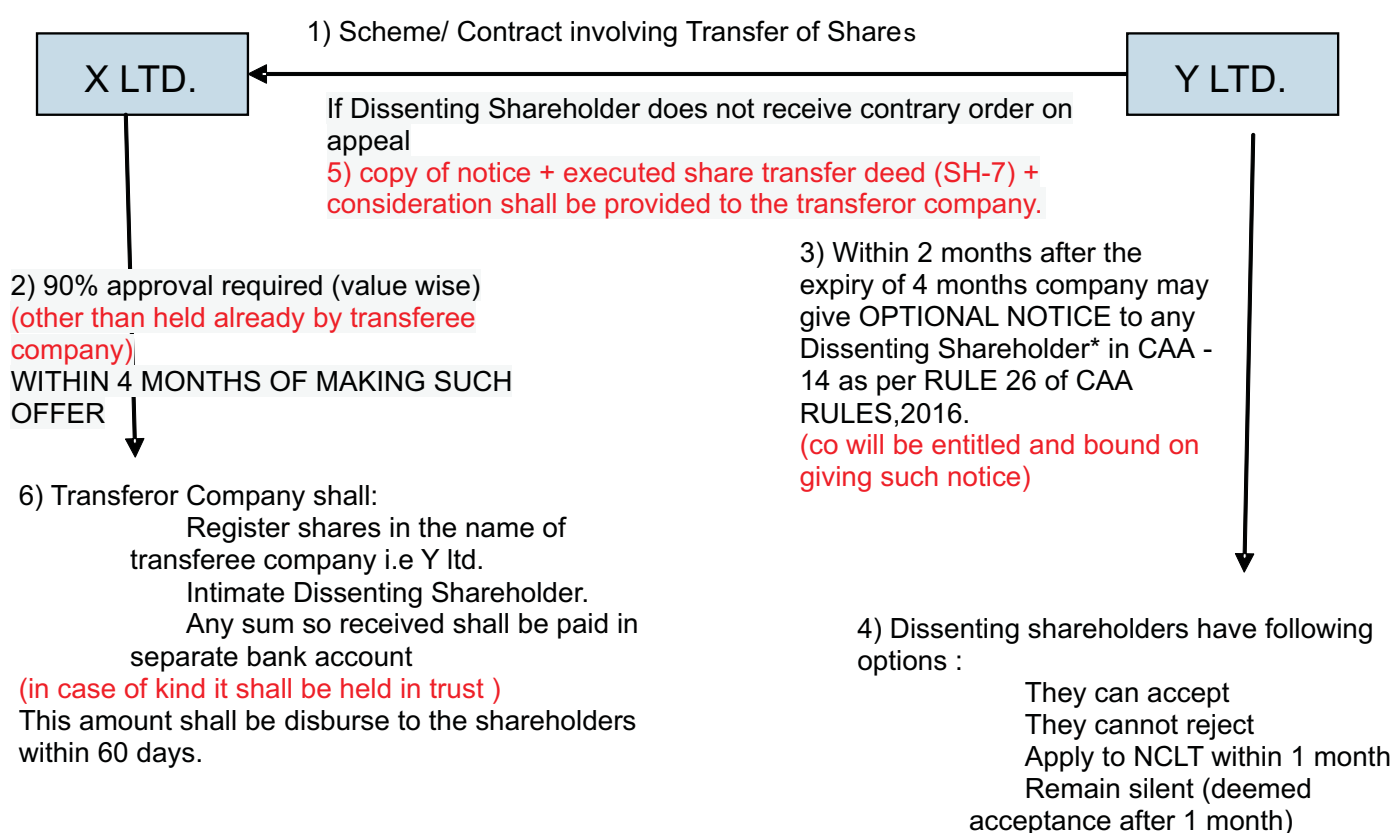
- Any sum received shall be paid in a separate bank account.
- Such amount shall be held in trust by the company and shall be disbursed (pay out) within 60 days to the entitled shareholders.
- Offer for transfer of share shall be accompanied with the following :

Statement showing availability of cash.
Background information of company in CAA -15(RULE 28 of CAA Rules,2016)

- Offer shall be presented before the registrar before issuance, however registrar have all the rights to refuse the registration when false information is provided or when the required information is not provided.
- Appeal can be made to NCLT in NCLT-9 with NCLT-6 (affidavit)

Offer must be accompanied with- (SECTION 238)
 Background information in CAA-15
 Statement declaring availability of cash.
 Offer shall be presented to the Registrar and shall not be circulated until got registered

NOTE: Registration shall be provided on the discretion of the Registrar
 In case of refusal appeal may be made in NCLT 9 along with affidavit in NCLT 6 (refusal shall be communicated within a period of 30 days from the application)



COMPLETE TAKEOVER OF UNLISTED COMPANY IN ONE CHAR

*Dissenting Shareholders here refers to the shareholders who does not give their assent to the scheme

However, Section 236 provides that Any Acquirer + PAC if holds 90% of share capital by way of Amalgamation, Share Exchange, Conversion or any other reason

They shall notify their intention to buy the remaining shares (MANDATORY OFFER) on the price mentioned under Rule 27 of CAARules, 2016

LISTED	UNLISTED
<ol style="list-style-type: none"> 1) As prescribed by SEBI 2) Registered valuer will provide a report which justify such valuation 	<ol style="list-style-type: none"> 1) Highest price payable by Acquirer, or PAC, or Group of persons for acquiring shares during last 12 months. 2) Determined by Registered valuer. 3) Valuation Report

NOTE: SECTION 235 IS AN EXCEPTION TO THE RULE THAT MEMBER CANNOT BE EXPELLED:

{CASE LAW: RE: MALINI BHARTI RAO CASE}

Q. Is Section 235 unconstitutional?

A. NO, Section 235 is not unconstitutional because power of Acquisition of Shares of dissenting minority shareholders is not ultra vires the constitution of India.

Same is decided in the case law:

S Viswanathan v. East India Distilleries & Sugar Factories Limited



Director's & Officer Liability

Shivli Jaiswal
Professional Student

The Omnipresent concern of corruption and fraud has put up an affair of Corporate Directors' liability. In India, the director's liability can be categorized into two principal areas:

- Liability under Companies Act, 2013
- Liability under other statues of India

Further, under various sections of Companies Act, 2013, the liability for default by company is not only limited to directors but also to the Officer who is in default, which primarily include managing director, whole-time director and the company secretary.

"Officer in default as per section 2(60) of the Companies Act, 2013" that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following of a company, namely: -

1. Whole-time director;
2. Key managerial personnel;
3. here there is no key managerial personnel, such director or directors as specified by the board in this behalf and who has or have given his or their consent in writing to the board to such specification, or all the directors, if no director is so specified;
4. Any person who, under the immediate including maintenance, filing or distribution of accounts or records, authorities, actively participates in, knowingly permits fails to take active steps to prevent, any default;
5. Any person in accordance with whose advice, directions or instructions the board of directors of the company is accustomed to act, other than a person who gives advice to the board in a professional capacity;
6. very director, in respect of a contravention of any of the provisions of this act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;
7. n respect of the issue or transfer of any shares of a company, the share transfer agents and merchant bankers to the issue or transfer;

Moreover, an urge to protect directors and officers from their personal losses, in case they

are sued during their tenure, has brought Directors and Officers Liability Insurance into the picture of corporate organizations.

"In general, **Directors and Officers Liability Insurance** is an insurance coverage intended to protect individuals from personal losses if they are sued as a result of serving as a director or an officer of a business or other type of organization".

Furthermore, these policies cover a group of individuals rather than by the individual themselves. The generous fact of D&O policy is that it is applicable to Former, Present and Future members of the board of Directors or any employee designated for a managerial role.

Why an organization should purchase D&O POLICY ?

1. To provide safeguard to the personal assets of the directors on being accused of breaching duties.
2. Defending of legal action is an expensive and complex affair. The cost for the same is covered under D&O Policy.
3. In case investors believe that they incurred continuous losses due to Board of Directors decision, investors may file suit against the directors. Therefore, this policy is an ultimate safeguard for directors to cover legal expenses.
4. Further, not only investors can sue, but the customers may also sue against directors regarding misrepresentation in advertisement and deceptive trade practices.
5. At last, this policy is termed as one of the effective measure to retain and attract talent in the organization.

Directors and Officers Liability Insurance

his policy usually covers the following:

- Management liability
- Management indemnification
- Non-profit outside directorship liability
- Spouse liability extension

Besides, this policy offers the following coverages: -

- Any loss or damage incur due to director' and officer' action in the individual capacity to the company.

- Includes loss or damage which arises from claims made against directors and officers for any wrongful act done by them in their official capacity.
- It provides indemnity to legal heirs of the director or officer, in case they become insolvent.
- It covers expenses incurred by the shareholders in pursuance of a claim against a director/officer for which the insurance company is legally obliged to pay, as per the court's discretion.

SEBI Initiative to Prompt the Need of the Hour

"As per Regulation 25(10) of the SEBI (LODR) Regulations, 2015 provide that with effect from October 1, 2018, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officer Insurance for all their independent directors of such quantum and for such risks as may be determined by its board of directors".

Predominant notions, a director should well versed in D&O POLICY

- Directors should ask the individual responsible for placing D&O insurance for the data of how much insurance a director already have and how much he/she needs, which helps to review one's limits versus their peer companies.
- Since, this policy usually covers all directors, officers, employees and the company itself. It is important to know the limits available to an individual and whether it covers "priority of payment clause".
- The conditions to trigger the coverage is as significant as the above-mentioned notions.
- Before appointing anybody as insurer, one must be aware of their claim paying rating ability, which is issued by reputable institutions.
- One must have known of the fact that if anyone else covered under the same policy make misrepresentation, then how it will affect one's coverage.
- A peek into exclusions from D&O policy, such as bankruptcy, criminal activity, theft, etc. is also required to be taken care of while considering policy.

Benefits of D & O Liability Insurance:

- Cover legal fees
- Also cover cost that organization incur in case of suit
- Applies to anyone who serves as a director or an officer
- Other costs incurred in defending such individuals against a lawsuit

TATA vs. Mistry, 2016

The well known case of Tata Sons vs. Cyrus Mistry, highlighted the Directors and Officers Liability Insurance policy. Moreover, Cyrus Mistry who was discharged from chairman position of Tata Group and its fallout with the company may trigger claim under D&O Liability Insurance which the company purchased in year 2013.

In addition to the above, drop in shares prices due to board of directors actions, may attract chances of lawsuit against directors. In such a case, this policy work as a safeguard to the company' directors.

Conclusion

All organizations must purchase D&O Insurance policy for enhancement in safeguard measures, irrespective of size of the organization and the experience of board of directors and its officers. In addition to this, the company shall incorporate an effective isk management and compliance framework.



**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 बढाना

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

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 80G of the Income Tax Act, 1961

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