

Newsletter for January, 2016 **By Amita Desai & Co.**



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MCA UPDATES:

A. Amendments by Ministry of Corporate Affairs (MCA) vide Circular No. 1/2016 dated 12th January, 2016 on Frequently Asked Questions (FAQs) with regard to Corporate Social Responsibility under section 135 of the Companies Act, 2013.

❖ (FAQs) WITH REGARD TO CORPORATE SOCIAL RESPONSIBILITY

- MCA vide Circular dated 12th January, 2016 has come up with a set of Frequently Asked Questions (FAQ's) on Corporate Social Responsibility and has thus clarified several queries and many grey areas which were not clear earlier to this circular.
- The link of the above Circular is as under:
http://www.mca.gov.in/Ministry/pdf/FAQ_CSR.pdf

B. Amendments by Ministry of Corporate Affairs (MCA) vide Circular No. 2/2016 dated 15th January, 2016 on LLP (Limited Liability Partnership)

❖ WHETHER HINDU UNDIVIDED FAMILY(HUF)/ ITS KARTA CAN BECOME PARTNER/DESIGNATED PARTNER(DP) IN LIMITED LIABILITY PARTNERSHIP(LLP)

- The MCA Vide its General Circular No. 13/2013 had clarified that **HUF or its Karta cannot become a partner/designated partner in a Limited Liability Partnership** (“LLP”), however in Paragraph 2 (as quoted below), MCA inadvertently didn't mention the word Partner and hence it was construed that HUF/Karta can become a partner in LLP.

Paragraph 2 of Circular No. 13/2013

As per Section 5 of the LLP Act, 2008 only an individual or body corporate may be a partner in a Limited Liability Partnership. A HUF cannot be treated as a body corporate for the purposes of LLP Act, 2008. Therefore, a HUF or its Karta can not become *designated partner* in LLP.

- However, MCA vide its Circular dated 15th January, 2016 has clarified that HUF or its Karta cannot become a **partner or a designated partner** in HUF.
- The link of the above Circular is as under:

http://www.mca.gov.in/Ministry/pdf/General_Circular_2_2016.pdf

C. Enforcement of Section 125 of the Companies Act, 2013 and Rules thereon by Ministry of Corporate Affairs (MCA) vide Circular dated 13th January, 2016

❖ ENFORCEMENT OF SECTION 125 AND RULES THEREON

- The MCA vide its Circular has appointed 13th January, 2013 as the date on which certain sub-sections of Section 125 shall come into force.
- The MCA has also laid down the Investor Education and Protection Fund Authority (Appointment of Chairperson and Members, holding of meetings and provision for offices and officers) Rules, 2016. These Rules shall come into force on the date of their publication in the Official Gazette.
- The links of the above Circulars are as under:

http://www.mca.gov.in/Ministry/pdf/Commencement_Section125_Notification_13_012016.pdf

http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_13012016.pdf

D. Setting up of Central Registration Centre (CRC) by Ministry of Corporate Affairs (MCA) vide Circular dated 22nd January, 2016

❖ SETTING UP OF CRC

- The Ministry of Affairs vide its Circular dated 22nd January, 2016 has launched the Central Registration Centre (CRC) having territorial jurisdiction all over India with the specific objective of providing speedy incorporation related services within stipulated time frames which are in line with International best practices. The CRC will process applications for reservation of name in Form INC-1.
- This notification shall come into force from 26th January, 2016.
- The link of the above circular is as under:

http://www.mca.gov.in/Ministry/pdf/CRC_Notification_22012016.pdf

E. Amendments by Ministry of Corporate Affairs (MCA) vide Circular dated 22nd January, 2016 on Companies (Incorporation) Rules, 2014

❖ AMMENDMENT TO COMPANIES (INCORPORATION) RULES, 2014

- As per Rule 8 of Companies (Incorporation) Rules, 2014, certain names were not allowed to be applied or considered undesirable for incorporation of Companies under Companies Act, 2013 are now allowed to be applied vide this Circular.
- With the launch of the **Central Registration Centre (CRC)**, an application for re-creation of name shall now be made in Form INC-1 to the Registrar, Central Registration Centre.
- The MCA vide this notification now gives three opportunities to the Companies to remove the defects or deficiencies in Form INC-29 (Integrated Incorporation Form) provided that the total period for re-submission of documents shall not exceed a total period of 30 days.
- Form INC-1 has been revised and shall replace the existing Form INC-1.
- The link of the above Circular is as under:

http://www.mca.gov.in/Ministry/pdf/Amendment_Rules_22012016.pdf



RBI UPDATES:

❖ FOLLOWING ARE THE MASTER DIRECTIONS ISSUED BY RBI IN THE MONTH OF JANUARY

A. Money Changing Activities

- RBI vide **FED Master Direction No.3/2015-16** dated 1st January 2016 has issued directions on Money Changing Activities.
- The link of the above Direction is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10206&Mode=0>

B. Compounding of Contraventions under FEMA, 1999

- RBI vide **FED Master Direction No.4/2015-16** dated 1st January 2016 has issued directions on Compounding of Contraventions under FEMA, 1999
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10190&Mode=0>

C. External Commercial Borrowings, Trade Credit, Borrowing and Lending in Foreign Currency by Authorised Dealers and Persons other than Authorised Dealers.

- RBI vide **FED Master Direction No.5/2015-16** dated 1st January 2016 has issued directions on ECB, Trade credit and other monetary policy.
- The link of the above Direction is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/.15MDC8CEB9A7BDE64745B9BE1DCEC3293CA1PDF>

D. Borrowing and Lending transactions in Indian Rupee between Persons Resident in India and Non-Resident Indians/ Persons of Indian Origin

- RBI vide **FED Master Direction No.6/2015-16** dated 1st January 2016 has issued directions on Borrowing and Lending transactions in Indian Rupee between Persons Resident in India and Non-Resident Indians/ Persons of Indian Origin
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10191&Mode=0>

E. Liberalised Remittance Scheme (LRS)

- RBI vide FED **Master Direction No.7/2015-16** dated 1st January 2016 has issued directions on Liberalised Remittance Scheme (LRS).
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10192&Mode=0>

F. Other Remittance Facilities

- RBI vide FED **Master Direction No.8/2015-16** dated 1st January 2016 has issued directions on Remittance Facilities.
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10193&Mode=0>

G. Insurance

- RBI vide FED **Master Direction No.9/2015-16** dated 1st January 2016 has issued directions on Insurance
- The link of the above Direction is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10194&Mode=0>

H. Establishment of Liaison/ Branch/ Project Offices in India by foreign entities

- RBI vide FED **Master Direction No.10/2015-16** dated 1st January 2016 has issued directions on Establishment of Liaison/ Branch/ Project Offices in India by foreign entities.
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10195&Mode=0>

I. Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999

- RBI vide FED **Master Direction No.12/2015-16** dated 1st January 2016 has issued directions on Acquisition and Transfer of Immovable Property under Foreign Exchange Management Act, 1999
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10196&Mode=0>

J. Remittance of assets

- RBI vide FED **Master Direction No.13/2015-16** dated 1st January 2016 has issued directions on Remittance of assets.
- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10197&Mode=0>

K. Deposits and Accounts

- RBI vide FED **Master Direction No.14/2015-16** dated 1st January 2016 has issued directions on Deposits and Accounts

- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10198&Mode=0>

L. Direct Investment by Residents in joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad

RBI vide FED **Master Direction No.15/2015-16** dated 1st January 2016 has issued directions on Direct Investment by Residents in joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad.

- The link of the above Direction is as follows
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10199&Mode=0>

M. Export of Goods and Services

- RBI vide FED **Master Direction No.16/2015-16** dated 1st January 2016 has issued directions on Export of Goods and Services
- The link of the above Direction is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10200&Mode=0>

N. Import of Goods and Services

- RBI vide FED **Master Direction No.17/2015-16** dated 1st January 2016 has issued directions on Import of Goods and Services.
- The link of the above Direction is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10201&Mode=0>

O. Reporting under Foreign Exchange Management Act, 1999.

- RBI vide FED **Master Direction No.18/2015-16** dated 1st January 2016 has issued directions on FEMA 1999.
- The link of the above Direction is as follows:
<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/13MDRD77DCF42C4E64B6C9A83C24EF5D4E188.PDF>

P. Miscellaneous

- RBI vide FED **Master Direction No.19/2015-16** dated 1st January 2016 has issued directions on Import of Goods and Services.
- The link of the above Direction is as follows:
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10201&Mode=0>



SEBI UPDATES:

A. Clarification Circular on Streamlining the Process of Public Issue of Equity Shares and Convertibles

- SEBI vide its circular dated 21st January, 2016 has issued further clarifications to make the public issue process more efficient and robust and reduce the time taken for listing after the closure of the issue to 6 working days.
- Stock exchange(s) may validate the electronic bid details with depository's records for DP ID, Client ID and PAN, at periodic intervals throughout the bidding day during the bidding period and bring the inconsistencies to the notice of intermediaries concerned, for rectification and re-submission within the time specified by stock exchange.
- Syndicate members, registered brokers of stock exchanges, depository participants (DPs) and registrars to an issue and share transfer agents (RTAs) registered with SEBI, may also forward the physical application forms received by them on day-to-day basis during the bidding period to designated branches of the respective self certified syndicate banks (SCSBs) for blocking of funds. Such applications should be with value not more than ` 2 lakh and shall be forwarded along with the schedule specified in SEBI Circular dated November 10, 2015.
- Stock exchanges may share the electronic bid file for applications with value not more than **2 lakh** with RTA to the issue on daily basis who in turn may share the same with each SCSB. SCSBs may carry out the blocking of funds on a daily basis during the bidding period for such physical application forms received. Revised electronic bid file / final bid file shall be shared by the stock exchanges with RTA to the issue. SCSBs to ensure blocking of funds is based on final electronic bid file received from RTA to the issue.
- Working days shall be **all trading days** of stock exchanges excluding Sundays and bank holidays.
- The instruction for publication of basis of allotment may be given by T+5 day so that basis of allotment is published in all the newspapers, where issue opening/closing advertisements have appeared earlier, on T+6 before the commencement of trading.

- The link of the above Circular is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1453383072765.pdf

B. Frequently Asked Questions (FAQ's) on SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015.

- Based on the queries, comments received from market participants, SEBI has laid down a set of Frequently Asked Questions (FAQ's) on 29th January, 2016 to provide guidance on the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and circulars issued thereunder.
- The link of the above FAQ's is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1454044894181.pdf

C. SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2016

- SEBI vide notification dated 21st January, 2016 inserted **services provided by recognised stock exchanges and registered depositories**, in Schedule X of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.
- Schedule X of SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009 comprises list of facilities or services included in the term “infrastructure sector” for the purpose of this Regulation.
- With this notification services provided by recognized stock exchanges and registered depositories are also covered under the term “Infrastructure Sector” for the purpose of Conditions for initial public offer, Face Value of equity shares and Minimum offer to public Regulations of SEBI(Issue of Capital and Disclosure Requirements) Regulations.
- The link of the above FAQ's is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1453376675934.pdf

D. Securities and Exchange Board of India (Depositories and Participants) (Amendment) Regulations, 2016

- SEBI vide Notification dated 21st January, 2016 has substituted Regulation 53C sub -regulation (2) with following, namely-
- “Every depository shall credit five per cent or such percentage as may be specified by the Board, of its profits from depository operations every year to the Investor Protection Fund”
- All the depositories need to mandatorily transfer 5% of its profits to Investor Protection fund or such percentage as may be specified by the Board.
- The link of the above FAQ's is as follows:
http://www.sebi.gov.in/cms/sebi_data/attachdocs/1453376331122.pdf

ARTICLE OF THE MONTH

16th January, 2016 was a Landmark day for the India's Start up Community. Prime Minister Shri Narendra Modi initiated Startup Action Plan (SAP) at Vigyan Bhawan, New Delhi.

Startup India is a flagship initiative of the Government of India, intended to build a strong eco-system for nurturing innovation and Startups in the country that will drive sustainable economic growth and generate large scale employment opportunities. The Government through this initiative aims to empower Startups to grow through innovation and design.

A. Definition, eligibility and certification of startups:

Startups were defined in the SAP as follows:

- a) Entities incorporated in India with a turnover of less than Rs 25 crore in any preceding financial year,
- b) Working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.
- c) Such entity is not formed by splitting up, or reconstruction, of a business already in existence.
- d) Startup needs to be "recommended" by a Government of India (GOI) or funded incubator, accelerator or fund considered it eligible for these benefits and amongst funds, only those duly registered with SEBI, would be able to "recommend" the startups.

B. Simplification and handholding:

- a) a self-certification regime for labour and environmental laws (not other laws);
- b) a Startup India Hub (No clarity given);
- c) a mobile app and portal for applications for approval;
- d) legal support and fast tracking of patent applications at lower, subsidised costs (not Trade Mark);
- e) relaxed norms for startups to be eligible for public procurement contracts (now bidding and tender can be filled without past track of experience); and
- f) faster exits (i.e., shutting down) for startups (to switchover with dynamic changes in business or have easy exit to avoid cost of compliances).

C. Funding support and incentives:

- a) Providing Funding Support through a Fund of Funds with a Corpus of INR 10,000 crore. In order to provide funding support to Startups, Government will set up a fund with an initial corpus of INR 2,500 crore and a total corpus of INR 10,000 crore over a period 4 years (i.e. INR 2,500 crore per year) . The Fund will be in the nature of Fund of Funds, which means that it will not invest directly into Startups, but shall participate in the capital of SEBI registered Venture Funds.
- b) Credit Guarantee Fund,
- c) Tax exemption for capital gains being invested into startups,
- d) Income tax exemption for startups for three years and tax exemption for

investments above fair market value.

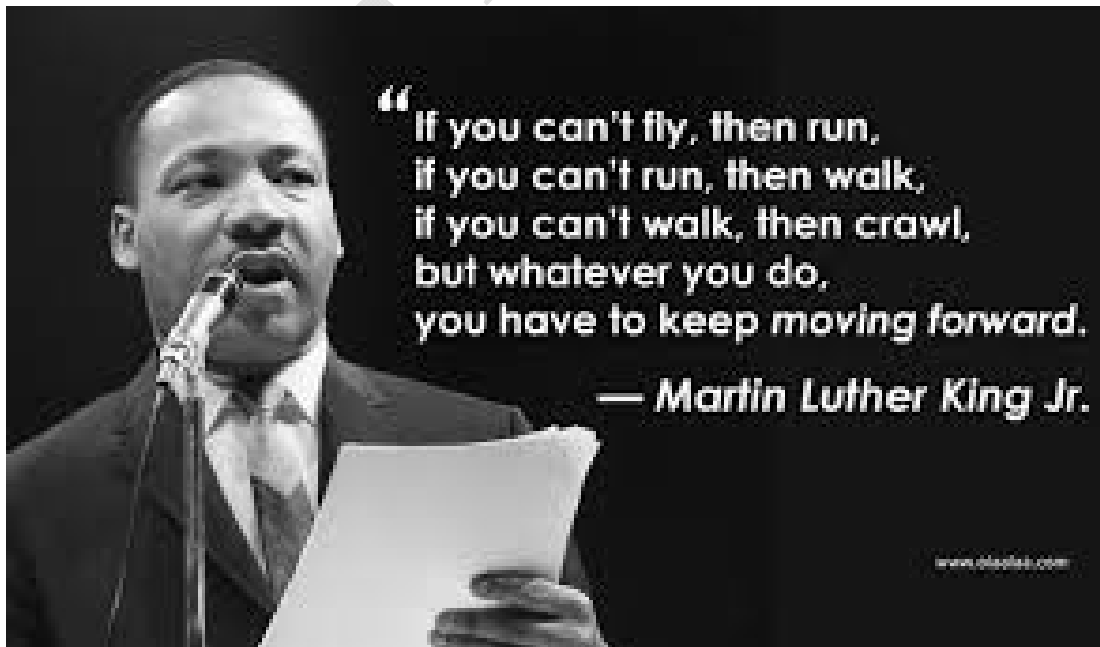
D. Industry-academia partnership and incubation:

- a) Organizing Startup Fests for showcasing innovation and providing collaboration platform
- b) The Atal Innovation Mission (AIM) with self employment and talent utilization program to promote entrepreneurship and innovation,
- c) Setting up of 70 incubators across the country,
- d) Building Innovation centres to augment R & D efforts in the country
- e) Setting up 7 new research parks with initial investment of Rs.100 crores each,
- f) Promoting start ups in Biotechnology sector

❖ Many more can be added under SAP

- a) The Startups could be given more relaxation on VAT, Service Tax, Professional Tax and other laws and its compliances in initial three years so that they could focus more for the business, innovation and growth.
- b) Any litigation with these startup entities should be resolved with maximum one month time with the help of speedy Arbitration Rules
- c) Expert of each field like finance, legal, accounts, taxation, technology etc be made available at the Hub
- d) The skill development program to be linked with SAP
- e) Corporate Social Responsibility (CSR) activities be widened to corporate for creating funds as incubator under SAP

INSPIRATIONAL QUOTES



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