



# Monthly Newsletter

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## Secretary's Desk



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Secretary, MCA

It gives me immense pleasure to re-introduce the monthly newsletter, which aims to highlight the major developments of Ministry of Corporate Affairs on a regular basis.

India is going to witness a faster economic growth in 2017 and 2018 at 6.7% and 7.4% respectively while the global output is expected to rise marginally from 3.2% in 2016 to 3.6% in 2017 and 3.7 %in 2018 backed by pickups in investment, trade, and industrial production, coupled with strengthening business and consumer confidence. In the recent World Bank's Ease of Doing Business rankings, India has jumped 30 places to reach 100th position.

Recent government measures such as GST and Demonetization will ensure a simpler tax regime, greater transparency, greater digitization, greater formalization of the economy and generate huge long term benefits to ensure that India continues to be one of the most sought after business and investment destinations.

Ministry of Corporate Affairs has, from time to time, undertaken simplification of procedures, including reduction in timelines and fee to promote ease of doing business, and making the starting, running and winding up a business simple and fast. Some of the key initiatives include integration of MCA-21 with CBDT for issuance of PAN & TAN; launch of SPICe; establishment of Central Registration Centre (CRC); wide ranging simplification and rationalization of Companies Act, 2013 and related rules and guidelines to make them more business and growth friendly, launch of Insolvency and Bankruptcy Code (IBC), 2016 and establishment of Insolvency and Bankruptcy Board of India (IBBI).

A year has passed since IBC is at work, albeit at a fast pace. The deadlines for the Resolution as contained in the Companies Act, 2013 and the IBC, 2016 are being met in a satisfactory manner by NCLT. So far, 5 companies referred for insolvency have got revival plans from different NCLT benches, namely, Synergies-Dooray, Chhaparia Industries, Sree Metaliks, the West Bengal Essential Commodities Supply Corporation, and Prowess International. Operational Creditors initiated 43% of admitted cases for insolvency while Financial Creditors took the lead for 35% of the cases though the bad loans for Financial Creditors far outweigh than those from others. In the coming year, many resolutions are likely to fructify as many cases initiated this year approach their deadlines.

In November, 2017, Government promulgated an Ordinance to amend the IBC to keep willful defaulters, undischarged insolvents and disqualified Directors away from bidding for the assets of the companies that got derailed under their supervision. This has been the result of lengthy deliberations and is expected to improve the lending and borrowing culture in the country. Till now, borrowers had a very comfortable environment while lenders were facing all the heat. Under the changed law, non-payment is no more an option for borrowers anymore.

## Apex Level Appointment

**Shri Injeti Srinivas**, an Odisha Cadre officer of the IAS, 1983 batch took charge as Secretary, Ministry of Corporate Affairs with effect from 11<sup>th</sup> October, 2017. He replaced **Shri Tapan Ray**, a Gujarat cadre IAS officer of 1982 batch who demitted office as Secretary, Ministry of Corporate Affairs, upon his superannuation on 30<sup>th</sup> September, 2017.

## Companies struck-off by MCA

2.24 lakh companies have been struck-off till 5<sup>th</sup> November, 2017 for remaining inactive for a period of two years or more. Simultaneously, about 3.09 lakh Directors were disqualified, who were on the Board of Companies that failed to file Financial Statements and/or Annual Returns for a continuous period of three financial years during 2013-14 to 2015-16.

Over 3,000 disqualified Directors were found to be directors in more than 20 companies which is beyond the limit prescribed under the law. To address the criminality angle of this issue, the Director, Additional Director or Assistant Director of SFIO have been recently authorized to arrest any person believed to be guilty of any fraud punishable under the Act. Steps are also underway for setting-up National Financial Reporting Authority (NFRA), an independent body, to test check Financial Statements, prescribe Accounting Standards and take disciplinary action against errant professionals. A separate initiative is underway to develop a State-of-the-Art software application to put in place an «Early Warning System» (EWS) to check frauds and to strengthen the regulatory mechanism of MCA.

Following the action of striking-off defaulting companies, restrictions have been imposed on operation of their bank accounts in accordance with the law. Further, Preliminary Enquiry on the basis of information received from 56 banks in respect of 35,000 companies involving 58,000 accounts has revealed that an amount of over Rs. 17,000 crore was deposited and withdrawn post demonetization. In one case, a company which had a negative Opening Balance on 8<sup>th</sup> November, 2016, deposited and withdrew Rs. 2,484 crore post-demonetization. Apart from the restrictions on bank accounts, action has also been taken to restrict sale and transfer of moveable and immoveable properties of struck-off companies until they are restored. The State Governments have been advised to take necessary action in this regard by disallowing registration of such transactions.

Prime Minister's Office has constituted a Special Task Force (STF) under the Joint Chairmanship of Revenue Secretary and Secretary, Corporate Affairs, to oversee the drive against such defaulting companies with the help of various enforcement agencies. The STF has met five times and action has been initiated against several defaulting companies, which is expected to help in the drive against black money.

With a view to checking the problem of Dummy Directors, action is underway to seed DIN with PAN and Aadhaar at the stage of DIN application through biometric matching for new applications. The same may be extended to legacy data in due course.

## IBBI strengthens its Due Diligence Framework under the IBC, 2016

Insolvency and Bankruptcy Board of India (IBBI) has amended its Corporate Insolvency Resolution Process Regulations to ensure that prior to approval of a Resolution Plan, the antecedents, credit worthiness and credibility of a Resolution Applicant, including promoters, are taken into account by the Committee of Creditors.

Prior to approval of a Resolution Plan, the Resolution Applicants, including promoters, will now be put to a stringent test with respect to their credit worthiness and credibility. Amendments to the IBBI's Insolvency Resolution Process for Corporate Persons, 2016 impose a greater responsibility on the Resolution Professionals and the Committee of Creditors in discharging their duties.

## Ordinance amending IBC

An Ordinance has been promulgated on 23<sup>rd</sup> November, 2017 to amend Insolvency and Bankruptcy Code, 2016 (Code) in order to further strengthen the insolvency resolution process by prohibiting certain persons from submitting a resolution plan who, on account of their antecedents, may adversely impact the credibility of the processes under the Code and further make provisions to specify certain additional requirements for submission and consideration of the resolution plan before its approval by committee of creditors.

## Constitution of ILC

MCA has constituted Insolvency Law Committee (ILC) on 16<sup>th</sup> November, 2017 with a view to examine the suggestions received regarding Insolvency and Bankruptcy Code, 2016 (Code) and other related matters. The Committee shall take stock of the functioning and implementation of the Code, identify the issues that may impact the efficiency of the corporate insolvency resolution and liquidation framework prescribed under the Code and make suitable recommendations to address such issues, enhance efficiency of the processes prescribed and for effective implementation of the Code. The Committee may also make any other relevant recommendation as it may deem necessary.

## Continuation of scheme for IICA beyond 12<sup>th</sup> Plan Period

The Union Cabinet chaired by the Hon'ble Prime Minister Shri Narendra Modi has approved for continuation of the scheme for Indian Institute of Corporate Affairs (IICA) for another three financial years (FYs 2017-18 to 2019-20) and providing Grants-in-aid of Rs.18 crore to the Institute in its meeting held on 22<sup>nd</sup> November, 2017. The Institute is expected to become self-sustainable by the end of FY 2019-20.

## National Entrepreneurship Day 2017

IICA, Atal Innovation Mission (AIM), and Haryana Vishwakarma Skill University (HVSU) celebrated National Entrepreneurship Day on 8<sup>th</sup> November, 2017. Speaking on the occasion, Shri Injeti Srinivas, Secretary, MCA said that this collaboration can become a good model on synergetic action. Secretary also mentioned about the great opportunity provided by these partnerships on skill development and entrepreneurship, to align with the National Priority Areas. He added that quality deliverables under these collaborations will go a long way in initiating and sustaining innovative approaches towards strengthening the enterprise movement in the country. Two MoUs were also signed between IICA and AIM, Niti Aayog and HVSU respectively in this regard.

## Corporate Social Responsibility

Companies mandated to make CSR expenditure have to make annual disclosure of the same in their Board Report, details of which are also included in the e-Form AOC-4 filed by a company on the MCA21 portal. CSR expenditure as disclosed by 5,097 companies for the year 2015-16 aggregated to Rs. 9,822.3 Crore.

## Review of Corporate Sector:

As on 31<sup>st</sup> October, 2017, the number of companies registered under the Companies Act stood at 17,04,319. Of these, 5,34,674 companies are closed companies; 5,957 companies are under liquidation; 31,666 companies are in the process of being struck-off from the register; 112 companies are in the process of being re-activated; 1,123 companies have obtained the "dormant" status as per Section 455 of the Companies Act, 2013; and 3 companies have not filed their Annual Returns/ Balance Sheets for the past two consecutive years or more and, therefore, not counted as active. Thus, there are 11,30,784 active companies, including 1,56,787 companies which were incorporated within the preceding eighteen months (not due for Annual Statutory Filings).

A total of 7,556 companies, including 463 One Person Companies (OPCs), were registered under the Companies Act, 2013 during October, 2017 with authorized capital of Rs. 1,394.61 Crore. The breakup of the newly incorporated companies by type is as follows:

Type of Company	No. of Companies registered in October, 2017	Total Authorized Capital (In Rs. Crore)
(1)	(2)	(3)
Company limited by shares	7,524	1,394.09
Of which,		
(a) Private	6,916	818.78
Of which,		
One Person Companies	463	9.41
(b) Public	145	565.90
Company limited by Guarantee	32	0.52
Of which,		
(a) Private	31	0.52
(b) Public	1	0
Unlimited Company	-	-
<b>Grand Total</b>	<b>7,556</b>	<b>1,394.61</b>

Under the category of companies registered as limited by shares during the Month of October, 2017, Maharashtra had maximum number of registrations (1,413) followed by Delhi (1,079) and Uttar Pradesh (758). "Business Services" topped the economic activity-wise classification (4,242) of newly registered companies.

During October, 2017, 4 State Level Public Enterprises (SLPEs) were registered. The aggregate authorized capital of these companies was Rs. 400.15 crore.

For more statistical details about the growth of

the corporate sector, the reader is invited to the 'Monthly Information Bulletin on Corporate Sector', at URL: [mca.gov.in/MinistryV2/InformationBulletin.html](http://mca.gov.in/MinistryV2/InformationBulletin.html).

## Notifications

Vide notification S.O. No. 3529(E), issued on 3<sup>rd</sup> November, 2017 this Ministry has designated a Special Court with the concurrence of the Chief Justice of the High Court of Judicature at Madras for the State of Tamil Nadu except Districts of Coimbatore, Dharmapuri, Dindigul, Erode, Krishnagiri, Namakkal, Nilgiris, Salem and Tiruppur for providing speedy trial of offences punishable with

imprisonment of two years or more under the Companies Act, 2013.

Vide notification G.S.R. No. 1372(E), issued on 6<sup>th</sup> November, 2017 this Ministry has amended the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 to bring in its ambit companies required to comply with Companies (Indian Accounting Standards) Rules, 2015 and power sector companies for the purpose of filing their financial statements.

Vide notification G.S.R. No. 1371(E), issued on 7<sup>th</sup> November, 2017 Companies (Accounts) Rules, 2014 have been amended for substituting the AoC-4 for capturing the demonetization data and auditors reporting thereon.

## Major Events:

- (i) A meeting of Official Liquidators (OLs) under the chairmanship of Additional Secretary, MCA to review the performance of the OLs during the quarter July-Sept, 2017 was held on 10-11<sup>th</sup> November, 2017 at New Delhi. Targets for the next two quarters were also delineated for all offices of OLs.
- (ii) Shri. D.K. Sikri, Chairperson, Competition Commission of India (CCI), Shri. Augustine Peter, Member, Ms. Smita Jhingran, Secretary and Shri. K.P.Anand, Deputy Director (Law), participated in the 5<sup>th</sup> BRICS International Competition Conference during 8<sup>th</sup>-10<sup>th</sup> November 2017 in Brasilia, Brazil.
- (iii) The National Company Law Tribunal organised a two days residential Colloquium on 'Issues Under the Insolvency and Bankruptcy Code 2016' for its Members on 30<sup>th</sup> and 31<sup>st</sup> October, 2017 in Goa. Various issues arising under IBC, 2016 were discussed in different sessions of the Colloquium for bringing uniformity in judgements given by different benches of the Tribunal. During the Colloquium, discussion also took place, inter alia, on the following topics/issues: (i) Rules and Regulations of IBC, 2016; (ii) Perspective of Income Tax in Mergers and Demergers; (iii) Panel Discussion on issues related to Financial Creditor of IBC with Rules & Regulations; (iv) Panel Discussion on issues related to Operational Creditor of IBC with Rules & Regulations; and (v) Panel Discussion on Resolution Professional and procedure after submission of resolution plan with Rules & Regulations.



## Senior Level Appointments:

The following Junior Administrative Grade (JAG) officers of Indian Corporate Law Service (ICLS) were promoted to Senior Administrative Grade (SAG): (i) Shri Manmohan Juneja, DII, HQ; (ii) Shri M.R. Bhat, RD (SER), Hyderabad; (iii) Shri M.P. Shah, RD (NWR), Ahmedabad; (iv) Shri D. Bandopadhyay, RD (NER), Shillong; (v) Shri M.V. Chakranarayan, RD (WR), Mumbai; (vi) Shri M. Chandnamuthu, RD (SR), Chennai; and (vii) Shri D.P. Ojha, DII, HQ.

## Online forms

- (i) Issues being faced with respect to payments through Union Bank of India (UBI) Credit Card gateway are in the process of being resolved. In the meantime, Stakeholders are advised not to choose UBI Payment Gateway for making the payment through Card. Stakeholders can, however, choose any of the other payment options available.
- (ii) AoC-4 Non-XBRL and AoC-4 XBRL (Non-Ind AS) forms have been revised and notified on 7<sup>th</sup> November, 2017 including therein demonetization related changes. Stakeholders shall take note and file using only the revised forms w.e.f. 8<sup>th</sup> November, 2017.
- (iii) As part of its continuous efforts for simplifying Incorporation related process for providing Ease of Doing Business to stakeholders, MCA will be dispensing with the requirement of separately uploading Forms 49A and 49B after filing SPICe e-forms. Accordingly, with effect from 6 PM of 4<sup>th</sup> November, 2017, stakeholders will **NOT** be required to upload signed 49A/49B using "Submit application for PAN/TAN" service, in respect of any fresh SPICe submission or Resubmission cases. PAN and TAN will continue to be issued as before based on the details submitted in the SPICe form itself.