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## Enforcement of provisions of section 1 and 4 of Companies (Amendment) Act, 2017

The companies amendment act was passed on 3<sup>rd</sup> January, 2018 but notification of enactment of sections was yet pending. As per MCA notification dated 23<sup>rd</sup> January, 2018, the following provisions of section 1 and section 4 of the Companies (Amendment) Act 2017 have come into force w.e.f 26<sup>th</sup> January, 2018



S. No	Related Sub-section	Provision
1	Sub-section (2)	Commencement of the Act
2	Sub-section (5), for clause (i)	The Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed. Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval.

## Changes in process of Incorporation of Companies

a) RUN (Reserve Unique Name) for company name

Form INC – 1 may now be filed without digital signatures and without requisites software as required for other e-forms used by MCA.

b) Exemption of fees payable on Incorporation in certain cases  
Fee on INC-32 (SPICe) shall not be applicable for the below mentioned companies incorporated, with effect from the 26th day of January, 2018

- with a nominal capital of less than or equal to rupees ten lakhs or
- in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty.

c) AMENDMENT OF INCORPORATION RELATED FORMS

- Forms INC – 33 and INC – 34 have been amended.
- Newly substituted forms are RUN Form INC – 1, INC – 3, INC – 12, INC – 22, INC – 24, and INC – 32

d) Allotment of Director Identification Number  
Director Identification Number (DIN) can now be applied simultaneous with the incorporation of a company

e) Appointment of Director without DIN possible  
Now it is possible to propose a person without DIN to be a director in an existing company.  
This is an ease where companies were required to put an appointment of a director on hold just for want of Director Identification Number.



f) New Form DIR-3 does not require certification of a chartered accountant in practice or a company secretary in practice or a cost accountant in practice.

Below are the vital points for company incorporation under new regime:

➤ Only one name can be applied through SPICe e-form. However for reservation of a name prior to filing SPICe (INC-32), you may use RUN service and then input the SRN of approved RUN into SPICe.



➤ No resubmission is allowed for RUN. The name applied for will either be approved or rejected and no resubmission is allowed. A fresh payment of Rs.1000 has to be made for every application submitted using the RUN service.

➤ A name which has been approved using RUN service can be entered in SPICe against the field SRN of RUN. Based on the SRN entered, the Entity type, proposed name and any other relevant fields will be auto-filled by the system. Please use the same user login ID which was used for reserving the name for submitting and uploading SPICe, INC-12 and INC-24 forms.

➤ The same user login ID which was used for reserving the name has to be used for submitting and uploading SPICe, INC-12 and INC-24 forms. Therefore, a user who has approved name using the RUN service cannot permit other user/applicants to use the name.

➤ INC-22 is not required to be filed with SPICe (INC-32) if a company is registered with the same address as the address for correspondence (in INC-32). In case the registered address is

different, INC-22 is required to be filed within 30 days of its incorporation, for intimating the registered office address.

➤ Physical copies of MoA/AoA is required to be signed and attached in case non-individual first subscribers are based outside India or individual foreign subscribers do not possess a valid business visa.

In case physical copies of MoA/AoA is required to be submitted, then e-MoA/e-AoA shall not be attached.

➤ Section 8 companies are mandatorily required to file MOA and AOA as pdf attachments to SPICe (INC-32).

➤ Two resubmissions are required in SPICe form

➤ For writing the object in e-MOA The word limit for main Objects (Field 3(a)), character limit is 20,000 and for furtherance of objects (Field 3(b)), it is 1,00,000 characters.

➤ SPICe e-MoA and e-AoA have to be uploaded as 'Linked Forms' to SPICe (INC-32).

➤ If SPICe form get rejected refund of MCA Challan fee can be claimed.

### SEBI issues directions to AXIS Bank to probe the leakage of its financial results on popular social networking platform- Whatsapp

Upon a preliminary examination in the matter of circulation of Unpublished Price Sensitive Information ("UPSI") through WhatsApp groups, SEBI observed with respect to Axis Bank Ltd., that certain messages circulated on Whatsapp group matched with the quarterly financial results of quarter ended June 30, 2017.



It was observed that although these financial results were released on July 25, 2017 at 16:23 hours, they were in circulation on Whatsapp July 25, 2017 since 9:12 AM. On analysing the reply received from Axis Bank, SEBI observed that, it prima facie appeared that the financial results were finalized on July 24, 2017, which was before circulation of WhatsApp message on July 25, 2017.



SEBI, vide directions dated 27.12.2017, held that the resemblance of the information circulated in the WhatsApp groups with the actual financial results prima facie indicated that the financial figures of Axis Bank, were in circulation prior to official announcement / publication by Axis Bank, which could not have been possible without leakage of information from the persons, who were privy to the information relating to financials prior to its official announcement. It held the above mentioned acts to be in contravention of regulation 3(1) and (2) of SEBI (Prohibition of Insider Trading) Regulations 2015 (“PIT Regulations”).

### **SEBI issues directions Bans Price WaterHouse Entities from issuing Audit Certificates in India for two years**

SEBI, in the matter pertaining to Satyam Computer Services Ltd (“SCSL”), vide order dated 10.01.2017, issued directions to Price WaterHouse Entities w.r.t their role in conniving with the directors and employees of SCSL in overstatement, fabrication, falsification and misrepresentation in the books of account and financial statements of SCSL.

SEBI, while observing a violation in respect of of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities

Market) Regulations, 2003 on behalf of the PW Entities, directed that the Entities/firms practising as Chartered Accountants in India under the brand and banner of PW and S. Gopalakrishnan and Srinivas Talluri, shall not issue any certificate of audit of listed companies, compliance of obligations of listed companies and intermediaries registered with SEBI for a period of two years and three years respectively.

It has directed Price WaterHouse, Bangalore along with S. Gopalakrishnan and Srinivas Talluri, to disgorge the wrongful gains of ₹13, 09, 01,664/- with interest calculated at the rate of 12% per annum from January 07, 2009 till the date of payment. However, to remove operational difficulties, SEBI has clarified that the order will not impact audit assignments relating to the financial year 2017-18 undertaken by the firms forming part of the PW network.

A pertinent issue raised in the captioned matter by PW Network Entities was whether SEBI, the regulator of securities market, had the jurisdiction to issue directions against it, as it cannot be said to have ‘dealt in securities’ nor is it a ‘person associated with the securities market’. PW Network Entities had filed Writ Petitions before the High Court of Bombay, for quashing the proceedings initiated by SEBI on the grounds of lack of jurisdiction and that the issuance of the same amounted to encroachment upon the jurisdiction of ICAI.

The High Court of Bombay, while rejecting the Writ Petitions held that the Show Cause Notices issued by SEBI were not in excess of its jurisdiction. SEBI in the said order observed that in both the Show Cause Notices and the order of the High Court, various possibilities of involvement of auditors have been



articulated in different ways like intention, knowledge, complicity, mens rea, connivance, collusion etc. SEBI laid down that in order to pass directions, there has to be reasonably sufficient material evidence to suggest that there has been such an engagement of auditors such that all of the above elements are brought out. SEBI as a securities market regulator, is empowered to protect the interest of the investors and can proceed to pass appropriate directions as proposed in the SCNs if there is a possibility of there being a role of the auditors in the alleged fraud.

The uniqueness of this case lies in the reason stated by SEBI for holding liable not only the entities involved in the fraud but also the connected entities. SEBI said that enforcement measures will not fulfill their preventive and remedial object unless the PW Network is brought within the purview of the directions. In this context, SEBI further added that the objective of insulating the securities market from such fraudulent accounting practices perpetrated by an international firm of repute will be ineffective if the directions do not bring within its sweep, the brand name of Price Water House.



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