



EDITORIAL



Manoj K. Singh
Founding Partner

Singh & Associates, Founder-Manoj K. Singh, Advocates and Solicitors is thankful to all readers of our Newsletter “**Indian Legal Impetus**” who have always bestowed overwhelming support to us as a result of which we have been successful enough to bring **August 2016 edition** covering the latest legal developments in India.

In current edition, we start with two articles discussing the importance and effect of recent developments in Patents field in India. The Patent Amendment Rules, 2016 has come with very good changes which will benefit the applicants in procedural difficulties as well as reducing the pendency time in patent prosecution. The first article “Entering India National Phase with lesser Claims -A step ahead by IPO” discusses the importance of much required amendment with regards to direct Claim reduction in National Phase. Further the article “Expedite Examination Scheme by IPO” discussed the new possibilities of expediting the examination procedure in Patents.

IP section also covers article discussing the importance of Two Step Patent Opposition system in India. Further an article discussing Cloud Computing and the IP challenges related to the same. Also the legality of Metag-ing, Linking & Framing has been discussed in detail.

Under the corporate segment, the present edition includes write-up on recent amendments to Companies (Share Capital and Debentures) Rules thereby analyzing the proposed changes to ease of raising fund for corporate and start-ups. Further, rules for conversion of unlimited liability company into a limited liability company by shares or guarantee have been discussed to throw light on pros & cons of such conversion. Also, an in-depth analysis of waiver or release forms which are rampantly used by adventure sports organizers and legal validity of such forms has been presented in the form of an article; followed by write-up on two recent bills firstly regarding conduct of shops & establishments and secondly on maternity benefits.

We hope this issue also helps us in further achieving our objective of making our readers understand and interpret the recent legal developments in India and find the provided information useful. We welcome all suggestions and comments for our newsletter and hope that the valuable insights provided by our readers would make “Indian Legal Inputs” a valuable reference point and possession for all. You may send your suggestions, opinions, queries or comments to newsletter@singhassociates.in

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ENTERING INDIA NATIONAL PHASE WITH LESSER CLAIMS - A STEP AHEAD BY IPO

Suchi Rai & Nidhi Yadav¹

Patent Amendment Rules 2016 as published on 16 May 2016 by the Government of India, Ministry of Commerce and Industry {Department of Industrial Policy and Promotion} has brought many positive changes in the procedure for Patent Grant in India. The amended Rules make an effort to restructure the patent procedures with an important objective of reducing the pendency time and providing other benefits to the applicants.

There are many important amendments including but not limited to:

- Reduction in time period for filing response to FER
- Remote Hearing, Restriction on adjournments
- Claim deletion at National Phase Entry
- No extension of 31 months for National Phase entry
- Sequence Listing Maximum Official fees
- Refund of Examination Request Fee
- Expedited Examination
- Electronic Submission mandatory for Agents
- New Entity: "Start-up"

In this article we will be discussing the importance of amendment with regards to Claim deletion at National Phase entry. As per the amendment rules, an applicant can now directly delete claims while entering national phase in India without filing amendment application and without paying excess claims fees. As per the meaning of amended rule, it does not suggest any other form of amendment in claims except for deletion.

Earlier an applicant entering India National Phase had to pay excess claim fees while filing application and then file amendment application to delete the claims,

thereby unnecessarily paying the excess claim fee for filing the claims which the applicant intends to delete in national phase application.

Before the Patent Amendment Rules 2016 were notified, the Indian National Phase application was required to be filed as it is as filed in the PCT International Phase application. The problem with such a practice was that, in India there is an official fee for claims in excess of 10 and each claim above 10 and each page above 30 charged an official fees. When a PCT International Application was filed with many claims and applicant intends to file a National Phase in India, then applicant had to pay official fees for all claims in excess of 10. Even when the applicant intended to reduce the number of claims while entering India National Phase, he had to first file the application as it is filed in International Phase with excess claim fees and then submit amendment application to delete the claims in national phase.

However with the new amendment rules, applicant can now delete the claims while entering national phase and is now not required to pay official fees for claims the applicant is not intending to keep in the national phase patent application. It is also to be noted that new rules only allow the deletion of claims while entering national phase and it does not allow any amendment or addition to claims directly.

Below are the Patent Amendment Rules 2016 in this regards:

In the principal rules, for rule 14, the following rule shall be substituted, namely:-

14. AMENDMENTS TO SPECIFICATIONS.-

(1) When amendments are made to a provisional or complete specification or any drawing accompanying it, the pages incorporating such amendments shall be retyped and submitted to form a continuous document.

(2) A marked copy clearly identifying the amendments carried out and a statement clearly indicating the por-

1. Legal Intern



tion (page number and line number) of the specification or drawing being amended along with the reason shall also be filed.

(3) Amendments shall not be made by slips pasted on, or as footnotes or by writing in the margin of any of the said documents.

(4) When a retyped page or pages incorporating amendments are submitted, the corresponding earlier page shall be deemed to have been superseded and cancelled by the applicant.

In the principal rules, in rule 20, for sub-rule (1), the following sub-rule shall be substituted, namely:-

-1) An application corresponding to an international application filed under Patent Cooperation Treaty may be made in Form 1 under sub-section (1A) of section 7.

Explanation.- For the purpose of this rule, "an application corresponding to an international application means an international application as filed under Patent Cooperation Treaty which includes any amendments made by the applicant under Article 19 and communicated to Designated Office under Article 20 or any amendment made under sub-clause (b) of clause (2) of Article 34 of the Treaty:

PROVIDED THAT THE APPLICANT, WHILE FILING SUCH APPLICATION CORRESPONDING TO AN INTERNATIONAL APPLICATION DESIGNATING INDIA, MAY DELETE A CLAIM, IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN RULE 14.

Earlier to this, there was provision to accept the amendments as filed in International Phase Application, meaning thereby if the desired amendments in claims including addition and deletion are already filed with International Application, then the same amendments were accepted at India National Phase and there was no need to file amendment application in India and applicant could proceed directly with filing amended application. The said provision from Patents Act, 1970 is produced below for ready reference.

Section 138 (6) of Patents Act, 1970

SUPPLEMENTARY PROVISIONS AS TO CONVENTION APPLICATIONS.—

Amendment, if any, proposed by the applicant for an international application designating India or designating and electing India before international searching authority or preliminary examination authority shall, if the applicant so desires, be taken as an amendment made before the patent office.

In this regards, with the patentability reports of International Application like Written Opinion and International Preliminary Report on Patentability, applicant gets the idea with regards to amending the Patent Application specifically Claims, as the report provide the idea of three specific features for Patent Grant i.e. Novelty, Inventive Step and Industrial application. With these reports an applicant can either amend the application in International Phase itself which is acceptable at Indian Patent Office for filing of direct amended application, or the applicant can chose to amend the application in National Phase. In this respect, in India applicant had to first pay excess claim fee for entering national phase and then file amendment application to delete the claims based on the previous International Patentability reports.

With the recent amendment, it will remove the financial burden of paying official fee for claims which the applicant is desirous of deleting in National Phase. It is a wise and much appreciated amendment rule, which will benefit all the applicants entering National Phase in India. This was especially annoying when an applicant had more than 20 extra claims to be deleted and more than one patent application to be filed. The same was an unnecessary financial burden as well for the applicant.

In a past decision by Hon'ble Smt. Justice Prabha Sridevan (Chairman) and Hon'ble Shri D.P.S. Parmar (Technical Member, Patents) via order OA/60/2012/PT/DEL² dated 23rd January 2013, it was suggested to the patent office to implement a revised numbering scheme for applications. This decision was issued to direct the patent office to accept a national phase application filed with less than prescribed fee. Where an applicant filed a PCT International application with 20 claims, entry at the national stage was made by deleting three claims and the applicant seeked to submit the application submitting fees for 17 claims only. The application was duly filed within the 31 months time period. However, the controller returned

² MANU/IC/0007/2013



the application on the ground that the fee was insufficient. The application was rejected on the ground of less fees being submitted with

there was no examination of the cancelled or deleted claims.

The aggrieved applicant then approached IPAB. IPAB in this matter directed the Controller to take the application on record, since rejecting the application on this ground was not acceptable specially when the applicant was not given chance to rectify the mistake and pay the appropriate fee as applicable according to the Patent Rules at that time. Moreover the rejection was beyond the 31 months time period and applicant could not rectify the miscalculation error in fee.

As regards the case discussed here and the recent amendment in Patent Rules, it will now be easier for applicants to calculate the applicable fee and also they will not be getting annoyed with unnecessary procedure of first filing complete claims and then filing amendment application in India to delete the claims they do not want to get examined in India. This will also remove the financial burden of paying unnecessary official fee.

Under section 138 (4) of the Patents Act, 1970, a PCT application designating India has the effect of filing an application for patent under section 7, 54 and 134 and the title, description, claims, abstract and drawings, if any, filed at the international application stage are to be taken as complete specification for the purposes of the Act. Section 139 provides that all the provisions of Act apply to a convention application.

Further allowing the appeal from the applicant, it was directed to the Patent Office to accept a national phase application filed with less than the prescribed fees and suggesting the patent office to implement a revised numbering scheme for applications. Accordingly, there would be 2 stages which if followed properly then the situations which arose in the said case, proceeding further would be easy. The first step being where the application is merely received and a provisional No. is given and the second, when the application is taken on record and an application number is given as per the provisions stated in Rule 11.

It was then directed to delete the 3 claims and proceed with the application, as Controller was directed to take the application on record. It was made clear that no amendments are permitted in the claims and only deletion was allowed.

Conclusion: Till yet patent office was receiving extra fee from applicants in respect of claims they intended to reduce in national phase than at the International filing stage. The applicants had to pay this fee, even when



EXPEDITE EXAMINATION SCHEME BY IPO- AN INTRODUCTION

Aayush Sharma

INTRODUCTION:

In the recent amendments made by the Indian patent office 'The Patent Amendment rules, 2016' introduces the expedite examination scheme for the Patent applicants in India. Earlier, there was no such provision of expedite or express examination for the Applicants except in case of PCT national phase entry where the Applicant who wishes to file the PCT national phase application can opt along with PCT Application for requesting examination well before 31 months timeline. In the normal examination procedure, the Applicant has to file request for examination within 48 months time period from date of Priority or Date of filing in India (*whichever is earlier*). Upon receipt of RFE application and after publication of Application in the official journal, the IPO considers the application for examination and the Ld. Controller assigns the application for examination to the Ld. Examiners. The Ld. Examiner upon receipt of application from Controller, examine the application and will issue first examination report [FER] to the Applicant and then the Applicant needs to respond to the same within six months (Patent Amendment Rules, 2016) from the date of receipt of the FER. This whole process of examination takes 2-4 years for putting the application to grant. This is a very serious issue on part of Applicant that from the valuable time of 20 yrs for holding the Patent rights, 5-6 yrs has been lapsed because of such lengthy examination course of action. Thinking from the Applicants side, this a huge loss for the Applicant for claiming the Patents right up to 20 yrs. Considering the above situations many patent offices have introduced Patent prosecution highway [PPH] or expedite examination programme where the examination of Patent application shall be done within a short span of time and the Patent application has been put for grant in timely manner.

USA:

In US patent and trademark office, under PPH, when an applicant receives a final ruling from a first patent office that at least one claim is allowed, the applicant may request fast track examination of corresponding claim(s) in a corresponding patent application that is pending in a second patent office. PPH leverages fast-

track examination procedures already in place among participating patent offices to allow applicants to reach final disposition of a patent application more quickly and efficiently than standard examination processing.

JAPAN:

In the JPO and under the following circumstances, the Applicant is allowed to expedite prosecution:

- 1) If the application has been filed in a foreign country (any countries outside Japan).
- 2) If an applicant or licensee of the application is using or selling the invention in Japan.

To expedite examination, first, a request for examination must be filed. Then, it is necessary to file a petition for expedited examination with the JPO after the examination request is filed.

EPO:

When accelerated examination is requested, the EPO makes every effort to issue the first examination communication within three months of receipt by the Examining Division of the application, the applicant's response under Rule 70a or the request for accelerated examination within 6 months of receiving FER. Whereas, for Euro-PCT applications too, accelerated examination may, in principle, be requested at any time. However, to be as effective as possible, it should preferably be requested: on entry into the European phase before the EPO, or together with any response to the WO-ISA, IPER or SISR required under Rule 161(1). If requested on entry into the European phase, accelerated prosecution covers formalities examination, the supplementary European search report and/or substantive examination, as applicable. Now coming back to Indian Patent law, in the recent Patent Amendment rules, 2016, the IPO has launched expedite examination scheme which helps the Applicant with reduction in time as well timely disposition of the Application. The IPO has introduced said express examination procedure under only two conditions:



Indication of India as International Searching Authority (ISA) or election of India as International Preliminary Examining Authority (IPEA) in the corresponding international patent application.

ELIGIBILITY OF APPLICANT AS START UP

Only when an Applicant satisfies the either of the above said conditions, then only expedite examination request can be entertained by the IPO. These steps are introduced to invite more and more companies to file Patent Application in India and to make India as a popular patent filing hub. Now many applications for initial examination are filed in US, EP, Japan, and China. To minimise such practise for foreign applicants, India has introduced express examination scheme. Secondly, the scheme is introduced for new class of inventors 'Start up' companies who are recognised as a start up by the Government of India. The India Patent law has provided express examination provision for Star up so that within short span of time Patent rights are been given to new and useful inventions and more preferably bright inventors are able to come in the Indian Patent arena.

The official fee for filing expedited examination is also more as compared to normal examination fee. This request is to be made in form 18A and fees applicable for natural person(s) and/or Start up is INR 8,000, for small entity is INR 25,000, and for others is INR 60,000. The IPO has also introduced new provision for those applicants who has previously filed normal examination request and now wants to prosecute fast examination procedure. Fees applicable for Converting an earlier filed request for examination (non-expedited) into expedited examination are INR 4,000 for natural person(s) and /or Start up, INR 15,000 for small entity and INR 40,000 for others. This conversion can also be done through form 18A. It is worth to note that form 18A can only be filed through electronic mode and not by physical mode.

The provision of introducing the expedite examination in the Patents amendment rules, 2016 is a good step by the IPO. Such step was heartedly welcome by the IPR industry not only in India but also around the world. Since, from the launch of the express examination provisions, large number of request has been filed till date by the start-up as well as by the foreign entities. On seeing such huge response, the IPO has put limit on the number of expedite examination to 1000 request

per year. More and more such steps should be introduced in the Patent law so that inventors may feel best protection sought for Patents in India. Also, we expect introduction of expedite examination procedure for other applicants and application types such as PCT national phase filing, ordinary application etc. This should not be limited to start up or for Applicants who indentify India as a first ISA or IPEA.



THE TWO- STEP PATENT OPPOSITION SYSTEM IN INDIA----- MULTIPLICITY OF LEGAL PROCEEDINGS OR SPEEDY RECOURSE TO JUSTICE?

Nilofar Absar¹

PRE-GRANT OPPOSITION OF PATENTS:

- The major difference between “pre” and “post” grant oppositions of patents is that one need not be an interested party in order to oppose the grant of application.
- Any party or individual or government can oppose the application simply by submitting a written statement to the Controller (The Indian Patent Office).
- No infringement proceedings lie from a pre-grant opposition because the Patent is still in the “Application Stage”.
- Once the statement and evidence filed by the applicant and the representation including the statement and evidence filed by the opponent and submissions made by the parties has been made and after the parties have been heard, if so requested, the Controller will either reject the representation or require the complete specification and other documents to be amended to his satisfaction before the patent is granted or application is refused.

Remedies available to the Applicant in case the pre-grant opposition is accepted :

EARLIER VIEW:

The Intellectual Property Appellate Board (IPAB) has held on multiple occasions, there is no remedy against an order of the Controller in a pre-grant opposition, except to file a writ petition under the Indian Constitution. (Article 226).

CURRENT VIEW:

1. Legal Intern, symbiosis law school pune

A recent order by the Madras High Court shed some light on the existing ambiguities in the pre-grant opposition proceedings in the judgement of *Yahoo! Inc v Assistant Controller of Patents and Designs and Rediff.com India Ltd.* Rediff .com India Ltd had filed a Pre Grant Opposition against grant of patent to Yahoo! Inc. for a patent application the subject matter of which is related to a computer network search system, which was published on 20.04.2004 in Patents Journal No.16 of 2007. The Controller accepted the representation and refused to grant patent by holding that the invention of the applicant, lacked novelty and did not pass the test of patentability either. Challenging the above order, an appeal was preferred by Yahoo before IPAB.

However, the appeal in question was not discussed by the IPAB on the technical ground, that no appeal under Section 117-A can lie against an order under Section 25(1) of the Patents Act, 1970. Challenging said order of refusal to entertain the appeal filed by Yahoo, a writ petition was filed before the High Court of Madras. Consequently, setting aside the order of the IPAB, Madras High Court adjudged that an appeal under Section 25 of the Patent Act lies under Section 117 A and that in the process of hearing such an appeal the party which had filed a Pre- Grant Opposition should be given a fair hearing before arriving at a conclusion on the facts presented by the Opposition, thereby providing clarities with regards to any remaining ambiguities.

POST-GRANT OPPOSITION OF PATENTS:

- The grounds for filing a post- grant opposition to a patent application are identical to the grounds for pre- grant opposition and can be found in S 25 (1) (a) to (k) of the amended Act.
- Only “ interested” parties can file for such an opposition and the opposing party has to be granted a hearing regardless of the merits of



the case.

- Infringement proceedings are now allowed as the patent is no longer in the application stage.
- Appeals can lie from any decision or order of the Appellate Board now.

More often than not Patent disputes in India are characterized by multiple proceedings running parallel to each other in different jurisdictions. A single patent becomes the subject matter of opposition suits before the Controller, revocation suits before the Intellectual Property Appellate Board ("IPAB"), patent infringement suits filed by the patent holder in a district court and a counter claim filed by the defendant before the High Court, seeking to revoke the patent in question. The stakeholders in most patent disputes are usually "Big Fish" with extensive financial wealth who manipulate the statutory provisions and intentionally launch multiple proceedings, putting away the court's precious time to waste in an already overburdened legal system. In a recent development, the Supreme Court of India has shed some light on the procedure for revocation of patents in India by delivering a judgement that prevents opponents from contesting the validity of patents before more than one forum running parallel to each other. This drift from the older view has been aptly captured in the judgement of *Dr. Alloys Wobben and Another v. Yogesh Mehra and Others*¹ in which it has been held that revocation of a patent can be sought either by filing a revocation petition before the IPAB or by filing a counter claim in a patent infringement suit before the High Court – however, both the recourses are not available to the opponent at the same time and they have to choose either one.

If an "interested party" has initiated proceedings under section 25 (2) of the Indian Patents Act, 1970; then the same would intercept his/her right to seek remedy under Section 64(1) of the Act. (Revocation Petition). This is for the simple reason that Section 64 is launched with the words "Subject to the provisions contained in this Act" and not with the words, "Without prejudice to the provisions contained in this Act", or "Notwithstanding the provisions contained in this Act". Hence the legislature clearly intends to imply that the provisions contained in Section 64 are subject to all the other provisions contained in the Patents Act.

If prior to the institution of an infringement suit against an interested party, such party chooses to act on the liberty vested in him/her under Section 64(1), he/she would be barred in law from seeking the revocation of the patent giving rise to the infringement suit, by means of a counter claim. This denial of the recourse available by way of a "counter-claim" under Section 64(1) of the Act is based on the principle of "Res Judicata" that is the essence of Section 10, read with Section 151 of the Code of Civil Procedure, 1908. A counter-claim is of the nature of an independent, fresh suit and hence it cannot be allowed to proceed, where the Respondent has already instituted a suit against the plaintiff (by way of revocation proceedings before the IPAB) on the same cause of action. The underlying principle behind this section is simple that the same cause of action cannot be the subject matter of a suit more than once if it has already been disposed off by a court of competent jurisdiction.

CONCLUSION:

The Rationale behind the provision for pre-grant opposition procedure is speedy redressal in the initial stages of patent application itself with the aim of preventing the matter from going into further litigation and for the entire process to be more cost effective. Even from the business perspective it could be a welcome provision as it would give business competitors a chance to be on the look for possible violations of The Patents Act and bring possible infringements and malpractices to the courts notice at the earliest possible chance. However with the new developments in the Indian Courts in recent times, the liberal approach has only lead to multiplicity of proceedings with parties contesting the grant of application at both pre and post stages of grant of application as we notice in the case mentioned above. Such practices are technically Res Judicata and hence barred from being tried again.



CLOUD COMPUTING & IP CHALLENGES

Himanshu Sharma & Martand Nemana

INTRODUCTION TO CLOUD COMPUTING & IP

Cloud computing in simple terms can be defined as storing and accessing data and programs over the Internet instead of your computer's hard drive. It doesn't just end there. Cloud in the term of Cloud Computing refers to set of hardware, networks, storage, services, and interfaces that combine to deliver aspects of computing as a service. So, it is not just that you are going to share information but in cloud computing even the infrastructure can be shared on real time basis on the internet. The definition of cloud computing as given by then US National Institute of Standards and Technology (NIST) which has been widely adopted and also relied upon by the Government of India; it states:

"Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a shared pool of configurable computing resources (e.g. networks, servers, storage, application and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction."

As implied by the term "cloud," one aspect of cloud computing is the lack of a clear locality of hardware and data. Services may be sold to a client in a particular jurisdiction, and that client's data may be stored and processed at one or more locations in the same or other jurisdictions. The client may not have any knowledge of where the data is stored or processed. Data may be stored redundantly in multiple locations and in multiple jurisdictions, and may be split up and fragmented in storage. For example, data may be stored in different countries at different times making it difficult to determine where data is stored at a given time. Various parts or steps of data processing may also occur in different jurisdictions.

TYPES OF CLOUD COMPUTING –

SOFTWARE-AS-A-SERVICE (SAAS):

SaaS is a method of remotely delivering access to software and its functions to end users, usually as a Web-based service. Also known as "hosted applications," SaaS allows organizations to access the software typically at a cost less than paying for licensed

applications because SaaS pricing is subscription-based or pay-per-use. A particular feature of SaaS is that it hosts software remotely, thereby eliminating the need for end users to invest in additional hardware. Additionally, because the service is remotely maintained and delivered, SaaS also removes the need for organizations to handle the installation, set-up and routine upkeep and maintenance. A few examples are: Google Apps, Salesforce, Workday, Concur, Citrix GoToMeeting, Cisco WebEx., etc.

INFRASTRUCTURE-AS-A-SERVICE (IAAS):

IaaS is typically an offering of on demand computing capacity. This type of service replaces the need for customers to buy and maintain servers and other hardware and equipment within its own data center. By accessing the requisite servers from a service provider through the Internet or a private network as IaaS, the customer benefits from a scalable and elastic infrastructure, accessed through the cloud. A few examples are: Amazon Web Services (AWS), Cisco Metapod, Microsoft Azure, Google Compute Engine (GCE), Joyent, etc.

PLATFORM-AS-A-SERVICE (PAAS):

PaaS will offer platforms (programming languages and tools for development and testing of applications that are independent of infrastructure) on-demand. Production environment will also be provided for hosting of applications on the cloud. A few examples are: Increases developer productivity and utilization rates while also decreasing an application's time-to-market.

MEETHODS OF CLOUD COMPUTING:

PRIVATE CLOUD:

The cloud infrastructure is provisioned for exclusive use by a single organisation comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organisation, a third party, or some combination of them, and it may exist on or off premises.



COMMUNITY CLOUD:

The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organisations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organisations in the community, a third party, or some combination of them, and it may exist on or off premises.

PUBLIC CLOUD:

The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organisation, or some combination of them. It exists on the premises of the cloud provider.

HYBRID CLOUD:

The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds).

THREATS FACED BY USING CLOUD COMPUTING

Despite being futuristic and efficient, Cloud Computing still has a few problems which are to be addressed for gaining further acceptability amongst the consumers. Cloud computing has been designed with an architecture to let the customer access data from almost anywhere on a real-time basis, however the following challenges still persist; which makes way for hindrances:

SECURITY AND PRIVACY:

Information housed on the cloud servers mostly compromises of confidential information and intellectual property (IP). Risk of inappropriate access to personal and confidential information always possess an imminent threat.

APPLICATION DESIGN:

Keeping in mind the need of various software based applications, it has to be understood that the traditional application process is different from cloud based application process. Hence, it should be of prime

importance that all new applications must be designed in compliance with the basic cloud design premises.

LICENSING:

Existing software licensing models may not facilitate cloud deployment especially from the point of cloud service delivery.

LOCATION OF DATA:

Since, the data hosted on the cloud shall not be present in a traceable static location concerns over the ownership, accessibility, privacy and security of the data are of prime concern; which paves way for jurisdictional conflict.

LOSS OF CONTROL:

Loss of control may lead to resistance to change. As the need to maintain servers and other data centre infrastructure diminishes, the form of the IT function in government may change.

The following processes are seen as necessary steps for ensuring protection which using the cloud computing services:

UP FRONT DUE DILIGENCE:

One of the best ways to host a successful cloud computing platform experience is to perform appropriate due diligence on the potential vendors. Usually, multiple vendors are able to provide for the required cloud computing services.

NEGOTIATION:

There has to be absolute clarity between the service provider and the recipient customer who are going to operate and function on this model of cloud computing. All the liabilities, risks and management options should clearly be discussed and it shall be a mandate for both the parties, to keep track and change of any developments whatsoever.

AUDIT AFTER THE AGREEMENT:

After the contract is executed and the services have begun, it is still necessary to audit the service provider to ensure compliance with the terms of the agreement. Generally, in-person involvement in auditing helps expedite the process.



DATA OWNERSHIP:

One of the primary concerns expressed by companies considering the use of cloud services is the issue of data ownership. Once data leaves the confines of the company's own computer system, questions immediately arise over who owns that data.

OWNERSHIP PROVISIONS IN A CONTRACT:

Although this issue is frequently discussed, it is rare that the issue becomes a significant issue in the decision to use cloud computing services. This is because vendors realize that they cannot claim ownership over their customers' data if they expect to survive in the marketplace. Customers need to request that their service contract include specific provisions that clearly spell out that the customer owns all of the data that is placed on the system, as well as any modifications that are made to that data.

CONFIDENTIALITY / NON-DISCLOSURE:

If the service provider must have access to the content of data, then it is extremely important that the agreement include some type of nondisclosure provision.

ACCESS AND CONTROL:

While potential customers of cloud services usually express concern about data ownership issues, frequently their concerns have more to do with access and control over the data.

DATA LOSS AND BACKUP:

While all potential customers of cloud services are concerned about data loss, in reality most reputable cloud service providers provide a more robust system for ensuring data against loss than almost any of their customers can provide. That does not however mean that losses don't occur.

CONCLUSION

Specific recommendations and outcomes related to complex cloud computing legal issues will be fact-specific. In many cases it is unclear how the law will be applied, because the issues have yet to be considered by the courts. Nevertheless, cloud computing providers and users alike should at least be aware of the issues identified above when considering how to best protect their intellectual property and how to avoid potential infringement pitfalls. Keeping in mind the scenario of

growth and chances for expansion, it should be considered that cloud computing is the next biggest quantum leap in the era of technology and the next biggest hurdle for legal agencies to device out a model for smooth functioning. Given the challenges mentioned above it should be of importance and consideration to the service-seeker to understand the bundle of risks and challenges associated with the services and prepare adequately for the same.



LEGALITY OF METAG-ING, LINKING & FRAMING.

Himanshu Sharma & Martand Nemana

INTRODUCTION:

The Internet as we experience it is witness to a major change with the process of constant development. It has to be ascertained that the magnitude of development paves way for the force to attract malware and malicious activities. Like all client based industry the biggest asset for the internet industry is the user base. Depending on the amount of understanding the user possesses, they fall prey to the traps laid down to various kinds of cyber crimes. Despite being in disguise of useful information, trails like meta-tagging, linking and framing are the shadows which follow the user without revealing the identity, which upon refining comes out to be a different pretext altogether. The voluminous increases in types of crimes have further boosted the number of victims which fall prey to internet activities. The success-rate of meta-tagging, linking and framing is higher from other crimes making them the most practiced events, which pave way to a lot of legal actions as well. Despite having been in existence and recognition for a long time now, a binding statute is yet to be made to govern the atrocities these activities are capable of, though there have been case laws which speak about the necessary course of actions, but they fail to lay down concrete measures. The most affected are the innocent companies which fall prey to the trap mechanism, primarily targeting their Intellectual Property mostly Trademark, Goodwill, and Copyright.

LINKING

"A "link" is a set of commands in Hypertext Markup Language (HTML) that when actuated by right-clicking a mouse directs your browser to another page. The new page could be in the website you're viewing or it could be a page in another website.

Three other well known type of links are: "intra-page, intra-system, and inter-system. Intra-page links connect different parts of the same document. For example, a long document may have a link at the end which takes the user back to the beginning. Intra-system links connect different documents on the same server. An intra-system link on a university's server might connect the home pages of two different departments. An inter-system link connects documents on different servers.

Thus, a document concerning intellectual property law on a university's server might be connected to the home page of the Government's Patent Office"

Some relevant cases in order to provide on a general perspective for linking:

Shetland Times, Ltd. v. Jonathan Wills and Another, ¹is considered the first "linking" case; "the issue presented in *Shetland Times* was whether the *Shetland News's* ("News") "deep link" to embedded pages of the *Shetland Times's* ("Times") web site, through the use of Times' web site's news headlines, was an act of copyright infringement under British law. The matter settled on the day of trial, shortly after the court had issued a preliminary injunction precluding the deep link. Although much discussed, this opinion has proved to be of little legal significance, in part because of the extremely low evidentiary standard applied by the court."

Nottinghamshire County Council v. Gwatkin, ²"the Nottingham shire County Council filed suit against three British journalists and a web site operator claiming that their Internet posting of a long suppressed government report critical of Nottingham's Social Services Department's investigation into allegations of Satanism and child abuse in the late 1980s infringed on the Council's copyright to the report."

One of the most well known cases it was *Ticket master v. Microsoft* - The first major case involving the practice of deep linking involved Microsoft's use of deep links from its "Sidewalk" web guides. These web guides spotlighted, among other things, upcoming events in a particular area, and would provide deep links to information on specific events on interior pages of the Ticket master web site. At that time, Ticket master had recently signed an agreement to provide event information and ticket-ordering links to a competing web guide service, City Search. Through this agreement, City Search was paying Ticketmaster for what Microsoft was taking for free. Ticketmaster filed suit against Microsoft on April

1 1997 F.S.R. (Ct. Sess. O.H.), 24 October 1996

2 (High Court of Justice, Chancery Division, June 3, 1997)



28,1997, arguing that Microsoft's practices devalued Ticketmaster's site by bypassing its home page.

In addition most of copyright laws are clear about the fact of qualifying as infringer to anyone who breaks up or violates any of the right that the law has protected as the consequence of the authorship. Facing the facts, there is not a unique position about if all linking process involves a copyright infringement. In that sense is necessary to recall some cases in law as *Sony Corp. of America v. Universal City Studios, Inc.* Where the test was if the device had some legal use. In this sense the opinion of Edward A. Cavazos and Coe F. Miles in the case of Dilbert cartoons is "If the link in question is an auto-load link, however, it may be the case that the link looks and functions more like a "means to infringe" or that the linking party so substantially participates in the user's acts that the linking party can be deemed a participatory infringer.

FRAMING

Framing is a method of splitting one window into two or more screens. A web page can be inserted into a frame, and that portion of the screen will remain static as a user moves through other web pages. This method is called "framing," because it allows a webmaster to send an individual through numerous web pages while retaining the appearance and the utility of the frame inserted.

Most of the "Intellectual Property in Cyberspace" pages utilize frames. The pages in this technical primer have been set to open outside of the frames." Technically explained, a framing process works as follow: "The frames may contain either highlighted URL addresses of other Web pages that are intended to be "selected" by the framing page user or other pages within the same Web site.

LEGALITY OF FRAMING

Nevertheless the most accepted legal concept is that framing can cause consumer confusion and thereby violating trademarks laws and under particular laws can be unfair competition. The problem with a finding of copyright infringement of a literary work where such links are concerned is similar to that raised in respect of meta-tags because these hypertext links are likely to contain only relatively short phrases. The case of Shetland Times is unlikely to be helpful as it was only an interim decision and thus decided on a lower

standard of proof. An example of such a pictorial link would be that found in *Ticketmaster Corp v Microsoft Corp* where the link from the defendant's web site to the plaintiff's site comprised the plaintiff's logo.⁹⁸ In that case, the plaintiff sold and marketed tickets to various entertainment events through its web site 'http://www.ticketmaster.com' on the internet. The home page of the plaintiff displayed advertisements, products and services of other parties with which the plaintiff had contracts, thus providing it with an important source of revenue. The defendant set up a web site 'http:// seattle.sidewalk.com' and initially entered into negotiations with the plaintiff to have hyperlinks from their Seattle Sidewalk site to the plaintiff's Ticketmaster site. When the negotiations failed, the defendant established the links anyway.

META-TAGGING

Every domain name can be translated to any IP address and there is no logical connection between an individually selected domain name and the IP address. The value of a simple and memorable domain name is incalculable to a business and has no doubt fuelled the aforementioned litigation over domain names. Very often, a customer who is unsure about a company's domain name will often guess that the domain name is also the company's name.

TRADE MARK INFRINGEMENT

The cause of action of choice at present however appears to be that of trade mark infringement. In *Playboy Enterprises Inc v Calvin Designer Label*, Legge J found that the plaintiff 'is likely to succeed on the merits in proving inter alia trademark infringement ... in Defendants' ... repeated use of the PLAYBOY trademark in machine readable code in Defendants' Internet Web pages, so that the PLAYBOY trademark is accessible to individuals or Internet search engines which attempt to access Plaintiff under Plaintiff's PLAYBOY registered trade mark.'

In *Instituform Technologies Inc v National Envirotech Group* LLC, the parties settled under terms that permanently enjoined the defendant from using the plaintiff's trademarks as meta-tags in their web site. Other cases followed, culminating in the Ninth Circuit Court of Appeal's decision in *Brookfield Communications Inc v West Coast Entertainment Corp* in which the Ninth Circuit issued a preliminary injunction against the defendant from, inter alia, using 'moviebuff.com' in



meta-tags on its web site as such use was likely to infringe the plaintiff's trade mark 'MovieBuff'.

COPYRIGHT INFRINGEMENT

There are various intellectual property regimes which are potentially available to a plaintiff in a litigation involving meta-tags. Copyright is one such possibility which cannot be discounted in the light of the extremely unconvincing reasoning of the English Court of Appeal in the case of Exxon Corporation v Exxon Insurance Consultants International Ltd.

In that case, the plaintiff sought to restrain the defendant from infringing the plaintiffs' alleged copyright in their corporate name 'Exxon'. The English Court of Appeal dismissed the plaintiff's action on the basis that the word 'Exxon' was not a 'literary work' in which copyright could subsist. Stephenson LJ was of the view that 'a literary work [is] something which is intended to afford either information or instruction, or pleasure in the form of literary enjoyment'. The Court of Appeal found that the word 'Exxon' provided no information, instruction or pleasure and thus, copyright did not subsist in the word. Accordingly, the plaintiff's action failed. The result achieved by the courts is not doubted by the majority of commentators.

The preferable justification for denying copyright in such cases would be the maxim de minimis non curat lex; Unless this is so, the useful working rule that simplicity and brevity are not bars to copyright could easily be carried too far, creating monopolies over any two alphabets joined together. Such an interpretation of the phrase 'literary work' would be wholly alien to its natural meaning in ordinary parlance; hence the need for the maxim of de minimis non curat lex to restrict the ambit of 'literary work' within reasonable limits. If the maxim were embraced by the courts to rationalize the Exxon case, it is unlikely that any action in copyright infringement can be sustained in respect of disputes concerning meta-tags which are independently created by the web author.

CONCLUSION

The evolving times have created a dire need for a reform to address and handle all the challenging scenarios at hand. The biggest obstacle is to identify and try to mould the present conventional laws and try to address the problem under the umbrella of the same. The distinction at both national and international

level regarding the absence of absolutely applicable laws is a striking factor.

It must be taken into account that apart from the threats possessed by the acts of framing, linking and meta-tagging; the biggest challenge lies in form to the impact which is given to the intellectual property when incidents relating to these occur. The intellectual property in either of the forms is irrevocably hurt and being very fragile upon being hurt once the damage caused is irreversible.



AMENDMENTS IN COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES: EASE OF RAISING FUND FOR CORPORATE AND START-UPS

Kumar Deep

INTRODUCTION:

The Ministry of Corporate Affairs ("MCA") vide Notification¹ dated 19.07.2016 amended the Companies (Share Capital and Debentures) Rules, 2014 (hereinafter referred as "**Principal Rules**") vide Companies (Share Capital and Debentures) Third Amendment Rules, 2016 (hereinafter referred as "**Amendment Rule**") to carry on major changes with respect to issuance of equity shares with differential voting rights, privileges to Start-ups, issuance of partly-paid up securities, conversion price for convertible securities, creation of security for secured debentures, premature redemption of transfer of amount to debenture redemption reserve etc.

The major changes and impacts thereof as provided by the Amendment Rules have been summarized in this Article in the manner listed herein below.

DEFAULTER COMPANIES MAY ISSUE EQUITY SHARES WITH DIFFERENTIAL VOTING RIGHTS

Pursuant to the provisions of section 43 of the Companies Act, 2013 ("**Act**"), a company can issue equity shares with differential voting rights as to dividend, voting or otherwise in accordance with such rules as may be prescribed. Further, Rule 4 of the Principal Rules provides certain conditions to be complied by the company for issuing equity shares with differential voting rights. One of the other conditions is that the company had not defaulted in any of the following:

- Payment of the dividend on preference shares; or
- Repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon;

- Payment of dues with respect to statutory payments relating to its employees to any authority; or
- Crediting the amount in Investor Education and Protection Fund to the Central Government.

Therefore, as per Principal Rules, a company which has defaulted in any of the above mentioned payment is not eligible to issue equity shares with differential voting rights as to dividend, voting or otherwise.

Now, the present Amendment Rules has inserted a Proviso after sub clause (g) of sub-rule (1) of Rule 4 of the Principal Rules which provides that such companies may issue equity shares with differential voting rights as to dividend, voting or otherwise upon expiry of 5 years from which such default was made good.

BENEFITS TO STARTUPS

The Amendment Rules provide certain benefits and privileges with respect to issue of sweat equity shares and ESOPs to Startups which would not otherwise available to other companies. It may be noted here that startup has been defined as per Notification² number G.S.R. 180(E), dated 17th February, 2016 issued by the Department of Industrial Policy and Promotion ("DIPP"), Ministry of Commerce and Industry, Government of India.

As per the said Notification of DIPP dated February 17, 2016 an entity is considered as a 'startup' if it is incorporated or registered in India not prior to five years, with an annual turnover not exceeding Rs. 25 Crore in any preceding financial year and at the same time, it should be working towards development, deployment or commercialization of new products, processes or services driven by technology or

¹ http://mca.gov.in/Ministry/pdf/Rules_19072016.pdf

² http://dipp.nic.in/English/Investor/startupindia/Definition_Startup_GazetteNotification.pdf



intellectual property. Further, Startups would need to get a certificate from the Inter-ministerial Board of Certification to get the status of startup.

The benefits which are available to Startups under the Amendment Rules are as under:

LIMIT ENHANCED FOR ISSUE OF SWEAT EQUITY SHARES BY START-UPS

Pursuant to Rule 8(4) of the Principal Rules, a company shall not issue sweat equity shares for more than 15% of the existing paid up equity share capital in a year or shares of the issue value of Rs. 5 Crore, whichever is higher. Further, the issuance of sweat equity shares in the company shall not exceed 25% of the total paid up equity capital of the company at any time.

Now, with the objective of promoting Start-ups, a proviso has been inserted in the Amendment Rules which allows a startup company to issue sweat equity shares not exceeding 50% of its paid-up share capital upto 5 years from the date of its incorporation or registration.

BROADER CATEGORY OF 'EMPLOYEES' FOR ESOPS FOR START-UPS FOR AN INITIAL PERIOD OF 5 YEARS

Rule 12 (1) of the Principal Rules provides certain conditions for issue of Employees Stock Option Scheme (ESOP) and accordingly certain category of persons are not eligible for ESOP. Such categories of persons are:

- (i) An employee who is a promoter or a person belonging to the promoter group; or
- (ii) A director who either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10% of the outstanding equity shares of the company.

The Amendment Rule, in order to promote startups, vide insertion of Proviso to the clause (c) of the sub rule (1) of Rule 12 in the Principal Rules, provides that, in case of Startups, the above mentioned category of persons would also be eligible for ESOPs upto 5 years from the date of incorporation or registration of such Startups.

AMENDMENTS IN PROVISIONS RELATING TO ISSUES OF SHARES ON PREFERENTIAL BASIS

a) Partly-paid up Securities may now be issued

There was a prohibition on issue of partly paid up securities on preferential issues basis as under Rule 13(2) (c) of the Principal Rules, the securities allotted by way of preferential offer shall be made fully paid up at the time of their allotment. Now, the Amendment Rules provides omission of the said clause (c) which prohibited issue of partly-paid up shares on preferential basis. Accordingly company may issue shares on preferential basis as partly paid up at the time of allotment.

b) Relaxation in disclosure of upfront conversion price for issuance of Convertible Securities

As per Rule 13(2) (h) of the Principal Rules, in case of issue of convertible securities on a preferential basis with an option to apply for and get equity shares allotted, the price of the resultant shares shall be determined beforehand and on the basis of a valuation report of a registered valuer. In order to simplify the procedure for determining conversion price in case of preferential allotment of convertible shares, the Amendment Rules provide that the conversion price for convertible securities can be determined in following manner, provided the company discloses such manner upfront at the time of offer of such securities:

- (i) The price can be determined upfront at the time when the offer of convertible securities is made, on the basis of valuation report of the registered valuer given at the time of making such offer; or
- (ii) The price can be determined at the time, which shall not be earlier than 30 days to the date when the holder of convertible security becomes entitled to apply for shares, on the basis of valuation report of the registered valuer given not earlier than 60 days of the date when the holder of convertible security becomes entitled to apply for shares.

Therefore, the requirement of upfront disclosure of conversion price in case of convertible securities on preferential basis has been done away with the amended provision which provide an option to choose any one of the above mentioned manner to determine the conversion price. However, the company has to take decision to take up either of the above mentioned method at the time of making offer of such convertible securities and to disclose the same in the explanatory



statement to be annexed to the notice of general meeting in which such offer is proposed to be considered in accordance with the provisions of the Act and Amendment Rules.

NOTICE TO BE FILED WITH ROC FOR INCREASE OF NUMBER OF MEMBERS

The Amendment Rules provide that a company which does not have share capital is now required to disclose the increase in number of its members in Form SH-7 to the ROC. This is an additional requirement which has been provided by the Amendment Rules by insertion of the words "or a company not having share capital increases number of its members" in the existing Rule 15 of the Principal Rules.

WIDENING THE SCOPE OF CREATION OF SECURITY ON ISSUE OF SECURED DEBENTURES

Rule 18 of the Principal Rules provides certain conditions for issue of secured debentures, such conditions *inter alia* includes that an issue of debentures shall be secured by the creation of a charge on the properties or assets of the company having a value which is sufficient for the due repayment of the amount of debentures and interest thereon. This means for issue of secured debentures, companies are required to secure such an issue with a charge on their own assets and properties only.

Now, the Amendment Rules provide that the issue of secured debentures can be secured by the creation of a charge on the properties or assets of the company or its subsidiaries or its holding company or its associates companies, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon. The Amendment Rules further provide that such security can be created on any specific movable property of the company or its holding company or subsidiaries or associate companies or otherwise.

PROVISIONS RELATING TO CREATION OF DEBENTURE REDEMPTION RESERVE AND PREMATURE REDEMPTION OF DEBENTURES

Under sub rule 7 of the Rule 18 of the Principal Rules, the provision for creation of Debenture Redemption Reserve (DRR) is required to be created for the purpose of redemption of debentures in accordance with the conditions provided under the said rule itself. The

conditions *inter alia* provided that the adequacy of the DRR should be 25% of the value of debentures issued. The Amendment Rules provide clarification that the adequacy of DRR should be 25% of the value of the outstanding debentures rather than the value of debentures issued.

Further, the Amendment Rules vide insertion of proviso in clause (b) after sub-clause (iii) of Rule 18(7) provide that, a company intending to redeem debentures prematurely i.e. before time may transfer such amount in DRR as is necessary for redemption of such debentures even if it exceeds the limit specified in this rule.

CONCLUSION

The notification of Amendment Rules is a step forward for making provisions of the Companies Act, 2013 simpler so far it is relating to issue of securities and to promote the Start-ups. The Amendment Rules provide certain relaxations to the Start-ups which are otherwise not available to other companies. The Start-ups are in very need of funds during its initial period of operation and thus, such relaxations as provided by the Amendment Rules undoubtedly help them. The fund raising will become less complicated for the corporate facing fund related problems in India. By providing more options to raise funds and allowing the assets belonging to their subsidiaries, holding and associate companies for securing debentures, the Amendment Rules provide flexibilities in raising funds.



WAIVER / RELEASE FORMS (ADVENTURE SPORTS) – A PERSPECTIVE

This article discusses waiver / release form (hereinafter referred to as “Participation Form”) which is signed by the participants or their parents/guardians, as the case may be to enter into adventure sports / games. Herein, certain broad issues have been discussed, namely (i) waiver under law, (ii) negligence vis-à-vis right to sue, and (iii) legality of Participation Form signed by guardian/parents for participation of their minor children.

Generally speaking, adventure sport(s) indulge participants above the age of 8 years who will be divided into two age groups, i.e. one of age 8 to 15 years as the ‘kids group’ and another age group of 16 years and above as the ‘adult group’. In the adventure sport(s) for ‘kids group’, one parent/guardian will accompany the child on the course in order to monitor them. While the parent/guardian will not be allowed to participate in the adventure sport(s), they are merely there to cheer their children on and ensure they follow the rules of completing the adventure sport(s) safely. Adventure sport(s) has certain inherent risks and dangers which the participants may be exposed to while undertaking / participating in the adventure sport(s). These risks may include serious bodily injury, sickness and disease, permanent disability, drowning, near-drowning, sprains, strains, fractures, heat and cold injuries, over-use syndrome, injuries involving vehicles or other convenience, animal bites and/or stings, contact with poisonous plants, leading to heart attack and permanent paralysis and/or death. In order to make participants aware and for safeguarding the interests of Organizer(s) from any legal actions that may be initiated by the participants arising out of accidents during the adventure sport(s), Organizer(s) would require the participants to execute a participation form containing terms & conditions of participations which shall include terms related to assumption of risk, release of liability,

indemnity, participants’ sole responsibility for their own conduct and actions while participating in the adventure sport(s).

We now discuss the relevant legal provisions under the applicable legal provisions in relation to the Participation Form, as under:

LEGAL PROVISIONS:

- 1.1. As per relevant provisions¹ of the Indian Contract Act 1872 (“ICA”), all agreements are contracts if they are made by the free consent of the parties for a lawful consideration² and with a lawful object and are not declared void under the ICA. The free consent is an essential requirement of a valid contract. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misinterpretation, or mistake.
- 1.2. The consent must be taken from persons competent to contract³, i.e., the parties should have the capacity to enter into a contract; and as per Indian law, only the following persons are competent to enter into a contract:
 - (i) Persons who are of sound mind;
 - (ii) Persons who are of age of majority, i.e., 18 years or older;
 - (iii) Persons who are not disqualified from contracting by any applicable law to

1. Section 10 (What Agreements are Contracts), section 11 (Who are Competent to Contract), section 13 (Consent) and section 14 (Free Consent) of ICA

2. When, at the desire of the promisor*, the promisee** or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise. (Section 2 (f) of the ICA)

* Person making the proposal.

** Person accepting the proposal.

3. Section 11 of ICA



which they are subject.

- 1.3. According to section 3(1) of the Indian Majority Act, 1875⁴, every person domiciled in India shall be deemed to have attained the age of majority when he shall have completed the age of 18 years, except for persons for whom a guardian has been appointed by the court, who shall attain majority at the age of 21 years and not before.
- 1.4. Section 4(a) of the Hindu Minority and Guardianship Act, 1956 states that 'minor' means a person who has not completed the age of eighteen years. The Hindu Minority and Guardianship Act, 1956 is applicable not only to Hindu minor but also to a minor who is a Buddhist, Jain or Sikh by religion. So far as Muslim law is concerned, the father is recognized as guardian which term in the context is equivalent to natural guardian and the mother in all schools of Muslim law is not recognized as a guardian, natural or otherwise, even after the death of the father⁵.
- 1.5. Section 8 (1) of the Hindu Minority and Guardianship Act, 1956 states that the natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.

- 1.6. The Hindu Minority and Guardianship Act, 1956 defines 'Guardian' as a person having the care of the person of a minor or of his property or of both his person and property, and includes:
 - (i) a natural guardian,
 - (ii) a guardian appointed by the will of the minor's father or mother,
 - (iii) a guardian appointed or declared by a court, and
 - (iv) a person empowered to act as such by or under any enactment relating to any Court of ward.
- 1.7. Natural Guardians: The natural guardians of a Hindu minor, in respect of the minor's person as well as in respect of the minor's property (excluding his or her undivided interest in joint family property), are defined under Section 6 of the the Hindu Minority and Guardianship Act, 1956 as follows:
 - (i) in the case of a boy or an unmarried girl—the father, and after him, the mother; provided that the custody of a minor who has not completed the age of five years shall ordinarily be with the mother;
 - (ii) in the case of an illegitimate boy or an illegitimate unmarried girl—the mother, and after her, the father.
- 1.8. Section 11 of ICA declares "minors" incompetent to contract. However,

4. *Subject as aforesaid, every minor of whose person or property, or both, a guardian, other than a guardian for a suit within the meaning of Chapter XXXI of the Code of Civil Procedure, has been or shall be appointed or declared by any Court as Justice before the minor has attained the age of eighteen years, and every minor of whose property the superintendence has been or shall be assumed by any Court of Wards before the minor has attained that age shall, notwithstanding anything contained in the Indian Succession Act or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before. Subject as aforesaid every other person domiciled in India shall be deemed to have attained his majority when he shall have completed his age of eighteen years and not before.*

5. *Meethiyani Sidhiqu vs Muhammed Kunju Pareeth Kutty & Ors [1996 SCC (7) 436]*

6. *(1) The natural guardian of a Hindu minor has power, subject to the provisions of this section, to do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate; but the guardian can in no case bind the minor by a personal covenant.*



section 8 of the Hindu Minority and Guardianship Act, 1956⁶ and section 24 of the Guardians and Wards Act, 1890⁷ legal as well as natural guardians can do all acts which are necessary or reasonable and proper for the benefit of the minor or for the realization, protection or benefit of the minor's estate.

1.9. Further, section 87⁸ of the Indian Penal Code, 1860 (IPC), also provides 18 years as the age for giving consent for acts not intended and not known to be likely to cause death or grievous hurt.

1.10. Promisee's Waiver: As per section 63⁹ of ICA, a promisee in its discretion may i) dispense with or remit (wholly or in part) the performance of the promise made to him; or ii) extend the time for such performance; or iii) accept instead of it any satisfaction which he thinks fit.

1.11. Thus:

(i) An agreement which is made by the free consent of the parties competent to enter into an agreement for a lawful consideration and with a lawful object shall be termed as a valid contract and minors are incompetent to enter into a contract.

(ii) Section 11 of the ICA disqualifies a minor himself entering into a contract but does not prohibit a minor entering into a contract through a guardian.

(iii) Section 63 entitles a promisee to waive

(wholly or in part) the performance of the promise made by a promisor towards him or extend the time of such performance.

(iv) Relatives other than the actual parents or legal guardians cannot sign the waiver for a minor by law.

JUDICIAL AUTHORITIES:

WAIVER :

(i) A waiver is the abandonment of a right and is either express or implied from conduct. A person who is entitled to the benefit of a statutory provision may waive it and allow the transaction to proceed as though the provision did not exist. (See: **Gangadhar Vs. Election Tribunal, Vindhya Pradesh and others** (AIR 1954 VP 44))

(ii) Waiver is a "voluntary and intentional relinquishment or abandonment of a known, existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed. Waiver is express or implied; express, when the person entitled to anything expressly and in terms gives it up, in which case it nearly resembles a release; implied, when the person entitled to anything does or acquiesces in something else which is inconsistent with that to which he is so entitled. (See: **Badri Narayan Harnand Roy Vs. Jawahar Singh Maniram and Anr.** (AIR1961MP29))

7. *A guardian of the person of a ward is charged with the custody of the ward and must look to his support, health and education, and such other matters as the law to which the ward is subject requires.*

8. *Section 87, IPC (Act not intended and not known to be likely to cause death or grievous hurt, done by consent) - Nothing which is not intended to cause death, or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person, above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm. Illustration: A and Z agrees to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.*

9. *Section 63 ICA (Promisee may dispense with or remit performance of promise) — Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.*



- (iii) It is settled law that as per Section 63 of the ICA, it is open to a promisee to dispense with or remit, wholly or in part, the performance of the promise made to him or he can accept instead of it any satisfaction which he thinks fit. Waiver is the abandonment of a right which normally everybody is at liberty to waive. "A waiver is nothing unless it amounts to a release. It signifies nothing more than an intention not to insist upon the right." (See: **Jagad Bandhu Chatterjee vs. Smt. Nilima Rani and Ors.** [(1969 3 SCC 445] and **Woman Shriniwas Kini v. Ratilal Bhagwandas & Co.** [1959 Supp. 2 S.C.R. 217])
- (iv) A release/waiver is contractual in nature and is governed by the law of contracts. Therefore, a valid release/waiver must exhibit all the ingredients of a valid contract keeping in mind that a release is the relinquishment of a right, claim, or privilege by a person in whom the right, claim, or privilege exists to the person against whom it might have been demanded or enforced.

NEGLIGENCE VIS-À-VIS RIGHT TO SUE:

- (i) If a person is fully conscious of risks of failure of the procedure/operation and if such person consents in writing that neither she nor her family members or any other person will make the doctor/health facility centre conduction operation responsible for unsuccessful operation, the claim of such person for compensation on account of failure of the sterilization procedure cannot be entertained by the Court unless negligence is proven on the part of the attended doctor. [See: **Mala Devi vs. The State Govt. of NCT of Delhi [W.P.(C) 7178/2012]** and **Smt. Madhubala vs. Govt. of NCT of Delhi and Ors.** [118 (2005) DLT 515]]
- (ii) **Klaus Mittelbachert vs. East India Hotels Ltd.** [1999 ACJ 287]

In this matter while deciding the issue whether

hotel was negligent or not, it was observed by the Court that presence of a diving board at the head of the swimming pool is an invitation for the guests to use it and dive in the swimming pool. In a hotel, the swimming pool filled with water carries an implied warranty as to safety that the swimming pool is structurally and from architectural point of view so designed as to be safe, that the water is free from infection, that the depth of the water is safe for swimming. Any latent defect in its structure or service, which is hazardous to guests, would attract strict liability to compensate for consequences flowing from its breach of duty to take care. The Court observed that three conditions must be satisfied to attract applicability of *res ipsa loquitur* (the thing speaks for itself): (i) the accident must be of a kind which does not ordinarily occur in the absence of someone's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant; (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff. The Court held that the swimming pool was a trap on account of its having a latent hazard in structure and designing- providing not a safe depth of water at the plummet point and the hotel and owner of the hotel were held liable to indemnify the plaintiff for the injuries suffered by him.

- (iii) The precept of "negligence" means failure to observe, for the protection of the interests of another person, that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person suffers injury. The test of negligence lies in default to exercise the ordinary care and caution which is expected of a prudent man in the circumstances of a given case. [See: **M.N. Rajan And Ors. Vs. Konnali Khalid Haji And Anr** [III (2004) ACC 273]]
- (iv) While deciding whether the organizers of an air show had taken reasonable care in conducting the air show, it was observed by the Court that the air show organizers had no experience in arranging such events in the past and no written procedures on operation of aircraft during the show were laid down and circulated to the participants before conducting the show. Based on the above observations, the Court held that the

organizers were reckless in conducting the air show and liable for the compensation. [See: **Sudha S. and Others Vs. Union of India and Others** ILR2013(3)Kerala245]

- (v) Keeping in view the above stated precedents, if a person gives his consent that he/she will not take any action against the other party for occurrence/non-occurrence of any specific event(s), such person cannot initiate any action against for occurrence/non-occurrence of such specific event(s). If any such specific event(s) is occurred/not occurred due to negligence of the other person (organizer) and where such other person (organizer) owes a duty to take care towards the person who provided his consent, the person (who provided his consent) shall be entitled to claim the cost/damages/compensation for the negligence of such other person.

PARTICIPANT FORM SIGNED BY PARENT / GUARDIAN FOR PARTICIPATION OF MINORS:

- (i) When the age of majority has been provided by law to be 18 years, any person less than that age, even by a day would be a minor in law. [See: *Bhim Mandal v. Magaram Corain* (AIR 1961 Pat 21)]
- (ii) A minor has no legal competency to enter into a contract or authorize another to do so on his behalf. A guardian therefore steps in to supplement the minor's defective capacity. Capacity is the creation of law whereas authority is derived from the act of parties. The guardian can only function within the doctrine of legal necessity or benefit. The validity of the transaction is judged with reference to the scope of guardian's power to enter into a contract on behalf of the minor. [See: **Vadakattu Suryaprakasham v. Ake Gangaraju** (AIR1956AP33)]
- (iii) Under the Hindu Law, the natural guardian is empowered to enter into a contract on behalf of the minors and the contract would be binding and enforceable if the contract is for the benefit of the minor. (See: **Manik Chand And Anr vs**

Ramachandra Son Of Chawriraj 1981 AIR 519 & **Roomal And Ors. vs Siri Niwas** AIR 1985 Delhi 153)

- (iv) The provision of sub-section (1) of Section 8 of the Act (as mentioned herein above under 3.3. (iii)) makes it expressly clear in unqualified terms that *no personal covenant of the guardian shall be binding on the minor*. (See: **Darbara Singh Vs. Karminder Singh and Ors.** AIR1979P&H215)
- (v) It is well settled law that the guardian can in no case bind the minor by a personal covenant. As per Black's Law Dictionary '*personal covenant*' means *a covenant that creates a personal right or obligation enforceable only between the covenanting parties and that is not binding on the heirs or assigns of the parties*.
- (vi) In the instant matter, the Participant Form is a contract and will be binding upon the participants so long as the conditions of a valid contract are satisfied. So far as minors are concerned, they are incompetent to enter into a contract and therefore a minor participant should not sign the Participant Form on his/her own.
- (vii) As the age of majority is 18 years under law, any person less than 18 years of age, even by a day will be a minor in law. Therefore, the participation of minors ought to be facilitated by the parent / guardian¹⁰ of such minor participant to the adventure sport(s) by signing the Participation Form.
- (viii) Further the parents/guardians of the minor participants shall be bound by the terms and conditions of the Participation Form. However, keeping in view the applicable laws, the terms and conditions of the Participation Form shall not bind the minor participants. Meaning thereby, the terms and conditions of the Participation Form cannot be enforced against the minor participants and such minor participants may raise/make claims against Organizer(s) for any injury/loss/damage caused to such minor participants during the Obstacle Race.
- (ix) Inclusion of indemnification provisions in the Participation Form to be given by the parent/guardian of the minor participants is suggested. Wherein the parent/guardian agrees to indemnify,

¹⁰ In case of Hindu/Sikh/Christian minors - Father (and in absence of father, mother).
 In case of Muslim minors - Father (and in absence of father, grandfather or an appointed executor)



defend and hold harmless Organizer(s) (among other things) from and against any and all liability/claim(s) made by his child (minor participant) which may arise out of, result directly or indirectly from, or relate to his child's participation in the adventure sport(s). Therefore, if any action is initiated by a minor participant against Organizer(s), the parent/guardian of such minor participant shall be liable to make good any loss/cost suffered by Organizer(s) from such action initiated by the concerned minor participant.

CONCLUSION

Based on the legal provisions, precedents and analysis made herein above, a Participation Form which is duly signed by the participant (competent person or through parent/guardian) shall bind such participant with the terms and conditions of the Participant Form. Organizer(s) ought to make aware all the participants with respect to the rules, regulations, procedures, safety instructions, method (if any), course of action, policy, guiding principles and such other instructions howsoever named, in relation to the adventure sport(s). In case a participant is a minor (below the age of 18 years on the day of his/her participation on the adventure sport(s)) then the parent/guardian of such minor participant ought to sign the Participation Form for participation of such minor in the adventure sport(s). The terms and conditions of the Participation Form cannot be enforced against the minor participants. Organizer(s) has a duty to take care towards the participants of the adventure sport(s). If any damage, injury, disability, harm, liability, loss, or expense is caused to any participant(s) due to negligence of Organizer(s) in conducting or organizing the adventure sport(s), in such cases the concerned participant may initiate civil/criminal action including claim for damages / compensation against Organizer(s).



EMPLOYMENT LAW UPDATES

Harsimran Singh

MODEL SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) BILL, 2016 – AN OUTLINE

Recently (*end of June 2016*), the Model Shops and Establishment (Regulation of Employment and Conditions of Service) Bill, 2016 ("Model Bill") was finalized and approved by the central government.

The salient features of the Model Bill are as under:

- * Applicable to establishments employing ten or more workers (except manufacturing units);
- * Provides for freedom to operate 365 days in a year and opening/closing time of establishment. Due to enhanced working hours, more job opportunities would be created;
- * Women to be permitted during night shift, if the provision of shelter, rest room ladies toilet, adequate protection of their dignity, transportation and such other amenities are available. This is aimed to enhance the gender diversity at work places and will also do away with the "protective discrimination" faced by women, who were exempted from working in night shift. The establishments will have to ensure safety and better working conditions for female employees by providing facilities such as late-night drops and crèches;
- * Absolutely no discrimination against women in the matter of recruitment, training, transfer or promotions;
- * Introduction of one common online registration through a simplified procedure;
- * Adequate provisions on provisioning of clean and safe drinking water;
- * A progressive step for providing lavatory, crèche, first aid and canteen by group of establishments, in case, it is not possible due to constraint in space or otherwise by individual establishment;
- * It provides for paid holidays for the workers which will be 18 days Earned Leaves, 8 days Causal Leaves,

weekly holiday and 5 festival leaves in addition to National holidays;

- * Exemption of highly skilled workers (e.g. workers employed in IT sector, R&D divisions etc.) from daily working hours of 9 hours and weekly working hours of 48 hours subject to maximum 125 overtime hours in a quarter. This flexibility will enable the establishment to better services to respective clients / international customers especially in the IT sector.

Without a doubt, the Model bill is intended to, including without limitation, (i) improving the working conditions of workers (ii) creating many more job opportunities for women along with safer working environment and (iii) providing favorable environment for doing business. At the moment almost all states have and follow modified and adopted version of the central Shops & Establishment Act and rules made thereunder. Likewise, the States have the discretion to either adopt the Model Bill or modify its provisions based on practical requirements or otherwise. Having said that, in case the Model Bill is adopted as it is by the states, the uniformity in legal provisions across states will enable the employers to have uniform human resource policies / manuals for all of its establishments in different states. This will also promote and improve the governance and ease of doing business across nation.

The Model Bill is expected to generate competitive and challenging spirit amongst the States and create an environment which is conducive for large scale employment generation at every level, especially in smaller and medium towns. It will also give a boost to employment opportunities to women as they will be permitted to work during night shifts with adequate safety and security provisions. Hailed as a welcome legislation the Model Bill is intended to encourage trade and commerce and bring uniformity in the varied laws applicable to establishments across all states and encourage conducive employment conditions across the Indian jurisdictional landscape.

Another underlying / indirect benefit from the Model Bill is the elimination of the licensing bureaucracy (since introduction of online registration) and therefore a lot of interaction with officials and/or procedural delays



are done away with. This could be particular interest to foreign companies having or planning to have business operations in India.

The Model Bill is also seen as a medium for the State governments to accelerate economic activity(ies) and generate higher revenues; hence the law should be adopted immediately. Having said that, few areas that need attention for proper implementation of Model Bill may include:

- (i)
- (i) Steadfast, capable and trustworthy public transport;
- (ii) strong law enforcement;
- (iii) security arrangements to ensure safe travel;
- (iv) apt health care support (by way of standalone or group insurance policies), etc.

It is sincerely hoped that these issues will be tackled by the government agencies while adopting the Model Bill in letter & spirit.

Definitely issued in 'public interest', this piece of legislation is very promising and should uplift the working standards and make better the existing procedural mechanism; hence favorable to both employees and employers.

THE MATERNITY BENEFIT (AMENDMENT) BILL, 2016 – HIGHLIGHTS

Council of States being the upper house of the Parliament of India (or *Rajya Sabha*) recently passed the Maternity Benefit (Amendment) Bill, 2016 (the "Bill") for amending the Maternity Benefit Act, 1961 (the "Act").

The Act regulates the employment of women in certain establishments (including factory, mines, plantations, shops and other establishments), employing ten or more persons (except employees covered under Employee's State Insurance Act, 1948), for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits.

The key amendments as per the Bill include as under:

1. The maternity benefit leaves are proposed to be increased from 12 weeks to 26 weeks;

2. The above leaves are now proposed to be availed eight weeks prior instead of earlier period of six weeks prior to the date of expected delivery. However, in case of a female employee who has two or more children, the maternity benefit will continue to be 12 weeks, which cannot be availed before six weeks from the date of the expected delivery;

3. A new provision has been introduced under the Bill for granting 12 weeks of maternity leave to:

- (i) a female employee who legally adopts a child below three months of age; and
- (ii) a commissioning mother, i.e. a biological mother who uses her egg to create an embryo implanted in another female employee;**

** In case of adoptive or commissioning mother, the 12-week period of maternity benefit leaves will be calculated from the date the child is handed over to such mother.

4. The Bill also introduces a provision that provides for an employer to permit a female employee to work from home; subject to nature of work assigned to the female employee permits her to work from home. Further, work from home option can be availed after the period of maternity benefit leaves for such duration as is mutually decided between the employer and the female employee.

5. Another provision introduced by the Bill requires every establishment with 50 or more employees to provide crèche facility within a prescribed distance, either separately or with common facilities. And that the female employee will be allowed four visits to the crèche in a day which visits will include rest interval available to her.

6. The Bill mandates every establishment to inform (in writing and electronically) female employees at the time of appointment regarding available maternity benefits.



On a different note, below are details of maternity benefits of a few countries¹

Country	Length Of Maternity Leave (in weeks)
United States	12
Germany	14
Japan	14
Switzerland	14
France	16
Spain	16
Australia	18
Canada	52
United Kingdom	52

The Bill definitely puts India (with proposed 26 weeks for maternity benefit leaves) way up in the above chart. The Bill will come into effect from the date that it is notified in the Official Gazette after being passed by the Lok Sabha and receiving Presidential assent. There are reports that until the Bill is notified the proposed changes may be introduced in the form of an ordinance in order to bring earliest reprise to female employees.

¹ http://www.huffingtonpost.ca/2012/05/22/maternity-leaves-around-the-world_n_1536120.html



RULES FOR CONVERSION OF UNLIMITED LIABILITY COMPANY INTO A LIMITED LIABILITY COMPANY BY SHARES OR GUARANTEE

Arpita Karmakar

The Ministry of Corporate Affairs (MCA) vide its Notification dated 27.07.2016, published the Companies (Incorporation) Third Amendment Rules, 2016. Among various amendments to the principal Rules i.e. Companies, (Incorporation) Rules, 2014, the government inserted a new rule as *Rule 37*, dealing with the provisions of conversion of an unlimited liability company into a limited company by shares or guarantee.

The frameworks of the provisions framed as sub-rules under the new Rule 37 are laid below:

1. For effecting the conversion of an unlimited liability company with or without share capital into limited liability company by shares or guarantee, such a company shall pass a special resolution in a general meeting and thereafter, an application will be filed in Form No. INC- 27 in the manner provided in sub-rules (2) and (3) of Rule 37.
- 2 The Company shall within 7 days from the date of passing of the special resolution in a general meeting, publish a notice, in Form No. INC-27A of such proposed conversion in two newspapers (one in English and one in vernacular language) in the district in which the registered office of the company is situated and shall also place the same on the website of the Company, if any, indicating clearly the proposal of conversion of the company into a company limited by shares or guarantee, and seeking objections if any, from the persons interested in its affairs to such conversion and cause a copy of such notice to be dispatched to its creditors and debentures holders made as on the date of notice of the general meeting by registered post or by speed post or through courier with proof of dispatch. The notice shall also state that the objections, if any, may be intimated to the Registrar and to the company within 21 days of the date of publication of the notice, duly indicating nature of interest and grounds of opposition.
- 3 The Company shall within 45 days of passing of the special resolution file an application, as mentioned above, for its conversion into a company limited by shares or guarantee along with the fees as provided in the Companies (Registration offices and Fees) Rules, 2014 by attaching the following documents, namely:
 - a Notice of the general meeting along with explanatory statement;
 - b Copy of the resolution passed in the general meeting;
 - c Copy of the newspaper publication;
 - d A copy of altered memorandum of association as well as articles of association duly certified by any one of the directors duly authorised in this behalf or company secretary of the company, if any.
 - e Declaration signed by not less than two directors of the company, including managing director, if any, that such conversion shall not affect any debts, liabilities, obligations or contracts incurred or entered into by or on behalf of the company before conversion (except to the extent that the liability of the members shall become limited).
 - f A complete list of creditors and debenture holders, to whom individual notices have been sent under sub-rule (2) setting forth the following details, namely:
 - i The names and address of every creditor and debenture holder of the company;



- ii The nature and respective amounts due to them in respect of debts, claims or liabilities
 - iii Declaration by a director of the company that notice as required under sub-rule (2) has been dispatched to all the creditors and debenture holders with proof of dispatch.
- g A declaration signed by not less than two directors of the company, one of whom shall be a managing director where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency are proper estimates of the values of such debts and claims and that there are no other debts or claims against the company to their knowledge.
- h A declaration of solvency signed by at least two directors of the company, one of whom shall be the managing director, where there is one to the effect that the board of directors of the company have made a full inquiry into the affairs of the company, as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration, through a resolution, passed in a duly convened meeting or by circulation.
- i The company shall also obtain a certificate from the Auditors that the company is solvent and that it is a going concern as on the date of passing of resolution by the Board certifying solvency as per clause (h) above.
- j No Objection Certificate from sectoral regulator, if applicable.
- k No Objection Certificate from all secured creditors, if any.
- 4** Declaration signed by not less than two Directors including Managing Director, where there is one, that no complaints are pending against the company from the members or investors and no inquiry, inspection or investigation is pending against the company or its Directors or officers;
- 5** The Registrar shall, after considering the application and objections if any, received by the Registrar and after ensuring that the company has satisfactorily addressed the objections received by the company, suitably decide whether the approval for conversion should or should not be granted.
- 6** The certificate of incorporation consequent to conversion of unlimited liability company into a company limited by shares or guarantee will be in Form INC-11A issued to the company upon grant of approval for conversion.
- 7** Conditions to be complied with, subsequent to conversion:
- i Company shall not change its name for a period of one year from the date of such conversion.
 - ii The company shall not declare or distribute any dividend without satisfying past debts, liabilities, obligations or contracts incurred or entered into before conversion.
- Explanation: For the purpose of this clause, past debts, liabilities, obligations or a contract does not include secured debts due to banks and financial institutions.
- 8** An Unlimited Liability Company shall not be eligible for conversion into a company limited by shares or guarantee in case-
- a Its networth is negative, or
 - b An application is pending under the provisions of the Companies Act 1956 or the Companies Act, 2013 for striking off its name, or
 - c The company is in default of any of its annual returns or financial statements under the provisions of the Companies Act, 1956 or the Companies Act, 2013, or
 - d A petition for winding up is pending against the company, or



- e The company has not received amount due on calls in arrears, from its directors, for a period of not less than six months from the due date; or
- f An inquiry, inspection or investigation is pending against the company.

The Registrar of Companies shall take a decision on the application filed under these rules within 30 days from the date of receipt of application and thereafter issue the certificate.



NEWSBYTE

AUTOMATION OF REGISTRATION CERTIFICATE OF TRADEMARK

Taking a step further towards Digitization, the Indian Trademark Office on 28/07/2016 issued a public notice, facilitating automation and digital generation of trademark registration certificate for the trademark applications having fulfilled certain guidelines. Being effective from 1st August, 2016 the trademark application meeting the following criteria shall be eligible for automatic generation of trademark certificate:

- * Trademark Application published in the Trade Marks Journal Number 1720 dated 23.11.2015 and thereafter,
- * No request for amendment on behalf of applicant is pending for disposal,
- * The copy of original trademark application being available in the Trademark Registry's database,
- * The application being completely compliant without having any pending requirement for submission of fee, Power of Attorney, or other relevant necessary documents. And,
- * The applications which have not been specifically prohibited or barred by any court, IPAB or any competent authority for registration.

This move is further seen to be one with the changing and evolving needs of time. It is also pertinent to mention that the generated trademark registration certificate shall be transmitted to the registered email address of the applicant/agent and further shall also be available on the official website (www.ipindia.nic.in). Moving further to facilitate the process the applicant/agent have been asked to register the correct details of communication and email address for a further smooth flow of operations.



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