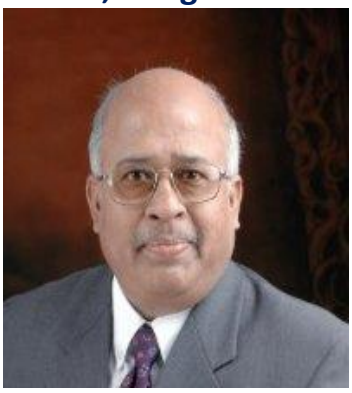
iComply

Editorial

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Interview with Mr. S Srikrishna, Principal Partner-Business Incubation, CandorHUB the state-of-art start-up incubation centre, Bangalore



1. CandorHUB is a unique concept in the domain of incubation centers? What are the major benefits of housing this incubation center in a metro station in Bangalore?

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Read more…

Compliance calendar



Due dates for Professional tax, Goods and Service Tax, Companies Act, 2013 among others has been captured for your ready reference. View the list…

Gist of Regulatory Changes in Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 in the month of September, 2017

Seven Regulatory changes in Companies Act, 2013 and Insolvency & Bankruptcy Code, 2016 was made in the month of September.
View the list…

The Birth of Private Limited Companies: Germany -1892, England -1908, France -1925



By Shankar Jaganathan

Context:
Private companies emerged pretty late in the five hundred year evolution path of joint stock companies, with legal recognition being granted to them only in 1892 in Germany, 1908 in England and 1925 in France.
Read more…

A Survey by CimplyFive: Shell Companies Cracked



Considering the importance of 'Shell' companies in shaping the Indian regulatory world, we have initiated a short survey of 6 questions to get the pulse of 20,000+ professionals who deal with companies. Please participate in the survey and share your thoughts.

Click here to participate

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Editorial

September 2017 marks a turning point in the corporate world as for the first time penalties that existed in statutes were enforced with a vigour that shook the board rooms across India. More than 2 lakh companies were struck off the books of Register of Companies and 1 lakh Directors disqualified for not filing Annual Returns bringing home the enormous cost of non-compliance as MCA took to naming and shaming Directors of non-compliant companies.

Given the impact, it looks as if the Indian corporate landscape will not be the same ever again when it comes to the attention it pays to compliance.

Turning to this issue of iComply, we have **interviewed** CA S Srikrishna, Lead Principal of candorHUB the state of art incubation centre located in the Trinity Circle Metro station in Bangalore to get his views on the trends and challenges faced by start-ups in India. Given their exposure to early stage start-ups and entrepreneurs this interview provides fresh insights into the world of start-ups and their need for compliance.

Continuing our series in the **First of Firsts**, this month we trace the origin of Private Limited Companies in the last decade of the 19th century and the reason they were given diluted regulations to comply with. From there, we have analysed the current state of exemptions provided to private limited companies and the rationale for their widespread usage. Our other regular features –**Gist of Changes in the Companies Act** and the **Statutory Compliance Calendar** is also included in this issue.

Please feel free to share your feedback with us at contact@cimplyfive.com. We look forward to your feedback with interest and as ever strive to improve the quality of everything we do.

Happy reading,

Shankar Jaganathan
Editor of iComply
October 5, 2017

Interview with Mr. S Srikrishna, Principal Partner-Business Incubation, CandorHUB the state-of-art start-up incubation centre, Bangalore

1. **CandorHUB is a unique concept in the domain of incubation centres? What are the major benefits of housing this incubation centre in a metro station in Bangalore?**
   The incubation initiative at Trinity Metro Station is said to be a first-of-its-kind in India, and is in line with the government's efforts to list Bengaluru in top start-up ecosystems of the world. The basic purpose of housing the incubation facility in a Metro Station as a transit oriented destination (TOD) is to raise the productivity levels of first-time entrepreneurs by facilitating their easy access and commutation. Our unique concept is centered on Thinkubation of very early stage start-ups with a mission to promote the development and growth of open source entrepreneurship. The bottom line is to contribute to the economic development by creating wealth for the entrepreneur and for the people that are employed as a result.

2. **What are the positives you see in your interaction with entrepreneurs and start-ups that could make them successful?**
   While interacting with first-time entrepreneurs I see their whole-hearted willingness to take risks to chase their passion for turning their ideas into reality with an eye to innovation. In fact, they believe in living their values and character to solve societal problems which cannot be measured in purely monetary terms.

   Our Thinkubation theme treats entrepreneurs as a resource with an individual right to make success their choice by embracing failure as a learning opportunity for building their skills.

3. **Have you identified any specific areas where entrepreneurs and start-ups need assistance and guidance to increase their chance of success?**
   The problems entrepreneurs confront every day overwhelm most incubators like us. These problems can be divided into two categories-creative and mechanical. In both these categories there is widespread prevalence of conflicting advice founders of early-stage start-ups confront on a range of options and problems. This is further compounded by lack of coherent strategies, competitive strengths, problem-solution validation, talented employees, adequate governance-controls, and clear reporting

relationships. We as an incubator will provide holistic support to entrepreneurs in managing these challenges effectively for realizing their dreams.

4. **What is the importance that entrepreneurs and start-ups give to compliance? In your experience do you see any correlation between the profile of start-ups and the importance they give to compliance?**
There is a steady rise in the number of non-compliant startups. In fact, every start-up will have its own story to tell about their compliance levels. Entrepreneurs aspiring to take their business to the next level and get investors pumping capital in their business will find the exercise very challenging.

   We believe that governance and compliance is a key requirement for start-ups to succeed in their endeavor. Without a disciplined approach it is very unlikely entrepreneurs can successfully endure the journey path for achieving sustainable results. In fact, any shortcomings in this regard can accelerate start-ups failure.

5. **Given the increased focus on black money, company law regulators have become effective enforcers of stringent penal provisions. How does this effect the status of entrepreneurs and start-ups?**
Complying with various regulations continues to haunt every start-up. One of the challenges is the cost of compliance and cash flow management. So far it has been a tricky issue for start-ups. The way forward is for the incubation process to push early-stage start-ups to proactively deal with stringent enforcement by red flagging deficiencies for corrective action. In this context, use of SaaS based compliance software like BLISS that reduce the cost of compliance and proactively flag compliance requirements can be a significant value add in enhancing the success rate for Start-ups.

The Birth of Private Limited Companies: Germany -1892, England -1908, France -1925

By Shankar Jaganathan

Private companies emerged pretty late in the five hundred year evolution path of joint stock companies, with legal recognition being granted to them only in 1892 in Germany, 1908 in England and 1925 in France. Private Limited Companies are a hybrid for they combine the merits of privacy found in partnership firms with the benefit of limited liability given only to a joint stock company.

The Concept

Commercial organizations undertaking business fall under one of the two categories. They are either:

- Associations of People as in partnerships where the individuals who are party to the contract are of essence, or
- Associations of Capital as in joint stock companies, where the capital contributed by investors is of essence and the contributors themselves only incidental to the organization.

The main advantage of partnerships is that they provide privacy of business affairs as the partners are under no obligation to disclose their financial details to external parties. Further, they offer each and every partner, irrespective of their stake, an equal say in decision making including appointment of new partners.

On the other hand, joint stock companies provide limited liability to its shareholders, with the result a large pool of capital can be mobilized for undertaking ventures like discovery of new products or long gestation period projects like infrastructure projects or projects requiring huge capital investments. In addition to limited liability, joint stock companies also promote speedy decision making by providing for decisions by majority holders of equity shares in place of consensus required in partnerships. In return for this decision making mode, companies provide dis-satisfied shareholders with option to exit by selling their shares.

Private Limited Companies emerged by fusing the benefits of partnership and joint stock companies. They offered some features of joint stock companies

like limited liability to shareholders, the right of shareholders to transfer their shares and decision making by majority holders of equity shares. To this they added the advantages of a partnership by providing privacy of information and limiting the rights of shareholders to transfer their shares by giving the Board of directors a veto right on undesirable transfers.

The First of First

In the 16th century, joint stock companies were formed primarily to undertake exploratory sea voyages to discover new lands and supplies or large infrastructure projects like construction of canals and railways. A reason for the limited use of companies was the requirement to get an act of parliament passed for creating a company, which was both expensive and time consuming. The nature of joint stock companies formed continued to be large projects until the second half of 19th century, when for the first time companies could be formed by registration with a designated authority after complying with a few prescribed conditions, a relatively inexpensive process.

The advent of industrialisation with steam power introduced large-scale in almost all spheres of life. Traditional occupations too grew in scale beyond the reach of financial resources available to a family needing external supplement in the form of either loans or equity investments.

Limited liability became an essential feature to attract finance in these traditional family firms. While borrowing loans, the promoter wanted limited liability to insulate his personal assets in case of business failure, and if equity investments was sought to be raised, the new investors wanted limited liability for the same reason, i.e. to insulate their personal assets.

This pressing need for limited liability was met by incorporating a company. However, many promoters circumvented the spirit of law by meeting only the letter of law, exemplified in the Salomon vs. Salomon & Company Limited case decided by the House of Lords in the year 1897. Aaron Salomon the promoter of Salomon & Company Limited incorporated it by meeting the minimum of seven shareholders required to form a company by having his wife and five sons along with himself becoming shareholders. When this company failed, unsecured creditors had to bear the brunt of the losses.

Practices similar to the Solomon case triggered an uproar among lenders and creditors who lost money resulting in the appointment of Davey Committee in the year 1895. Based on the recommendation of this committee, the Companies Act, 1900 introduced strict regulations on companies raising capital. This law required new companies to:

- File a prospectus with detailed information on balance sheets,
- Restricted company's ability to allot shares to vendors and promoters for consideration not received in cash, and
- The law provided for personal liability of directors who failed to comply with these provisions.

These provisions to protect the investors and lenders had the effect of raising the cost of company registration, resulting in a sharp decline in the number of companies formed. As a consequence Loreburn / Warmington Committee was appointed in 1905 to review the situation and redress it. The result was the Companies Act, 1907 that created private limited companies with reduced compliance requirements. To qualify as a private limited company and avail of these benefits, Section 37 (1) of this Act required these companies to voluntarily restrain themselves by having terms in their Articles of Association that:

1. Restricts the right to transfer its shares, and
2. Limits the number of its members (excluding employees) to fifty, and
3. Prohibits any invitation to public to invest in any shares or debentures issued by the company.

In return for accepting these restrictions, private limited companies were granted exemption from filing their annual balance sheet and the need to issue prospectus for raising capital. In addition they were permitted to be formed with only 2 members in contrast to 7 members required to form a public limited company and they are also permitted to allot shares for consideration received in kind and not cash.

Though a similar precedent for private limited companies existed in Germany from 1892 for identical reasons, there was a separate law for incorporating and regulating these entities that carry the suffix GmbH, standing for companies with limited liability. This is in contrast to the suffix AG, which stands for Corporations with limited liabilities, affixed to the equivalent of public limited company.

The advent of private limited company ensured that joint stock companies as a form of business organization became wide-spread and well accepted for all medium and large sized enterprises.

Rationale for Private Limited Companies

Private Limited Company is the ideal form of organization for businesses that seeks one or more of the following:

1. Collaboration among a handful of investors where all decisions cannot be made unanimously, by providing for decision making by the majority.
2. Need to have investors who want to share the risk-reward from the business and can contribute to it but take minor stakes, assured by the limited liability protection offered.
3. Need for the business to change hands as the business grows and evolves, as shareholders can transfer their shares to permit new owners to step in.

The primary disadvantage of private limited companies over partnerships is in its limitations to raise loans or borrow money due to limited liability available to shareholders who are the owners. In practice, lenders and promoters overcome this limitation by providing personal guaranteed of the promoters to lenders for their loans thereby voluntarily giving up the limited liability protection offered by private limited companies.

Companies Act, 2013

The Act, though a notification issued on June 5, 2015, provides private limited companies with substantial exemption from disclosures and flexibility in decision making. Major exemptions provided in this notification and other similar changes are:

- Can issue shares with differential voting rights and non-voting shares as specified in their Articles of Association.
- In case of rights issue, the time provided for shareholders to exercise their option can be shortened if more than 90% of shareholders have exercised their option.
- Buy-back their own shares without complying with the stiff conditions laid down for a public company.
- Introduce ESOP schemes for its employees by passing an ordinary resolution compared to special resolution required for public companies.
- Accept deposits from its members up to 100% of their net worth, without fulfilling the conditions laid down for a public company
- Related parties of a private company are permitted to vote on a contact in which they are interested.

Current Usage (As of March 31, 2017)

Private limited companies are the most common form of corporate entities found across the world, including in India. Of the 1,162,181 active companies in India, 94% or 1,097,312 are private limited companies. It is not necessary that all private limited companies should be small in size. There were 177 companies with more than Rs.1000 crores authorized share capital and a further 1513 companies with authorized share capital of over Rs.100 crores.

Compliance Calendar

October 10th	GSTR-1 for July, 2017
October 7th	TDS return for September, 2017.
October 11th to 31st	GSTR-2 for July, 2017
October 15th	Pay PF contribution for September, 2017
	ESIC monthly deposit
October 20th	Professional Tax payment
	GST Payment for September, 2017- GSTR 3B
October 25th	PF Return for September, 2017

Gist of regulatory changes in Companies Act, 2013 in the month of September, 2017

- **05.09.2017**

  General Circular 09/2017

  This circular defines the term "joint venture" mentioned in Rule 4(2) of Companies (Appointment and Qualification of Directors) Rules, 2014 which exempts the classes of unlisted public companies from requiring to appoint an independent director.

  "Joint venture" is defined to include a joint arrangement, entered into in writing, whereby the

parties that have joint control of the arrangement, have rights to the net assets of the arrangement.

- **06.09.2017**

  Delegation of powers and functions by Central Government to Regional Directors

  By this notification the powers and functions vested in Central Government under section 66(2) of the Companies Act, 2013 is delegated to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong. These powers pertain to making representations on notice given by Tribunal on the applications made by the companies for reduction of share capital.

  The notification also provides that the delegation of powers may be revoked if the Central Government is of the opinion that it is necessary to do so in the public interest.

- **13.09.2017**

  Clarification on Implementation of Indian Accounting Standards vide circular no. 10/2017

  Answering a specific query from the holding companies of Payment Banks and Small Finance Banks MCA vide this circular has clarified that the Payment Banks and Small Finance Banks need to only follow the Banking Sector roadmap prescribed by the RBI on implementing Ind AS. However, Payment Banks and Small Finance Banks need to provide Ind AS financial statement for the purpose of consolidation to their holding company.

- **19.09.2017**

  The Companies (Acceptance of Deposits) Second Amendment Rules, 2017

  MCA vide this rule has substituted the proviso to rule 3 of the Companies (Acceptance of Deposits) Rules, 2014.Consequently, Specified IFSC Public company is now allowed to accept or renew any deposit from its members up to hundred per cent of the aggregate of the Paid-up share capital, free reserves and securities premium account of the company.

  Further, it exempts private companies that are a start-up for its first five years and a private company that is not a subsidiary or an associate of any other company from applicability of the maximum limit of hundred percent for acceptance of deposits from members.

- **20.09.2017**
  - Commencement notification of proviso to clause (87) of section 2 of the Companies Act, 2013

    The proviso for restricting the number of layers of subsidiary companies to two under section 2(87) of the Companies Act, 2013 has been notified with effect from September 20, 2017.

  - The Companies (Restriction on number of layers) Rules, 2017

    MCA has notified the Companies (Restriction on number of layers) Rules, 2017, with effect from September 20, 2017.

- **27.09.2017**

  Clarification on availability of new form DPT-3 for e-filing vide General Circular no. 11/2017

  Answering a specific query relating to the applicability and availability of the new form DPT-3 substituted vide the Companies (Acceptance of Deposits) Second Amendment Rules, 2017, the MCA has hereby clarified that the new form DPT-3 shall be available for e-filing purpose post November, 2017 and the existing form should be used till such availability.

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About us

CimplyFive Corporate Secretarial Services Pvt Ltd

Vision:
Leverage research and technology to eliminate procedural non-compliance risk for entities regulated by the Indian Companies Act, 2013

Mission:

Provide a cost-effective, secure web-based, menu driven, subscription services that provides curated resolutions, timely alerts and informative dashboards to free the management bandwidth for pursuing business goals

BLISS
(Board Leaders Integrated Software Solution)

Our product BLISS (Board Leaders Integrated Software Solutions)

- A digital productivity tool for Compliance with the Companies Act,2013
- Provides comprehensive coverage of Board meetings, Shareholder meetings and Sub-committee meetings
- Rich bank of curated but editable resolutions
- Fully integrated modules- Agenda, Minutes, Registers and Returns
- Timely alerts and reminders
- Rich and real-time dashboard

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