

# Benefits under Companies Act, 2013

## Startup Series #10

*Adherence to rules and regulations and managing the compliances obligations for a company plays a vital role in carrying out the business. To boost entrepreneurship, encourage new business ideas and for economic growth, the Government has come up with relaxations and reduced compliances for startup companies under Companies Act, 2013.*

*This would help reduce the cost of compliances and save time, thereby letting entrepreneurs to work efficiently towards their product/service innovation, development and improvement.*

*In continuation to our '**Startup Series**', we would now look at the benefits available to startups recognized by DPIITs under Companies Act, 2013 in **#10** of the Series.*

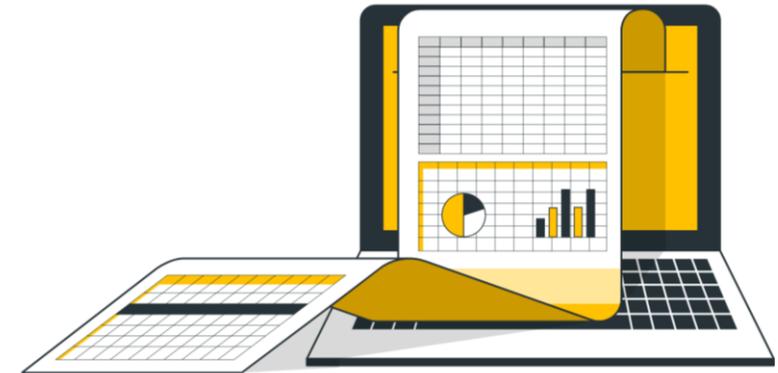
# Cash Flow Statement and Annual Return

## A. CASH FLOW STATEMENT

At every annual general meeting of a company, the board of directors of the company shall lay before such meeting financial statements for the financial year.

*Financial statement, includes –*

- (a) a balance sheet as at the end of the financial year
- (b) a profit and loss account, or an income and expenditure account, as the case maybe, for the financial year
- (c) cash flow statement for the financial year
- (d) a statement of changes in equity, if applicable; and
- (e) any explanatory note annexed to, or forming part of, any document referred to in (a) to (d) above.



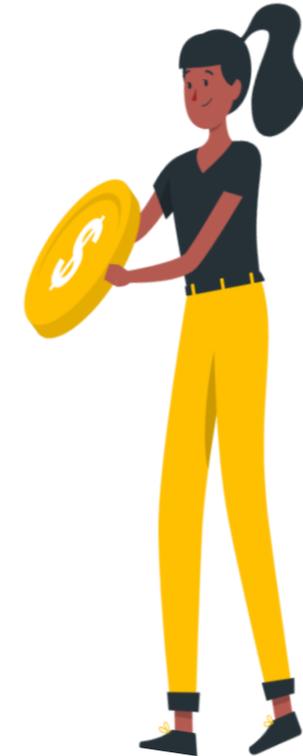
**The financial statement with respect to a start-up company ([refer definition in #1](#)) need not include the cash flow statement.**

## B. ANNUAL RETURN

- Every company shall prepare an annual return in the prescribed form & shall be signed by a director & the company secretary (CS).
- **In relation to start-up, the annual return shall be signed by the CS, or where there is no CS, by the director of the company.**

# Acceptance of Deposits (1/2)

- Section 73 of the Act, states that no company shall invite, accept, or renew deposits from the public except for those companies who satisfies the conditions as provided by the Act.
- A company may subject to the passing of a resolution in general meeting and rules prescribed by RBI, accept deposits from its members subject to fulfilment of the following conditions, namely –
  - a) issuance of circular to its members which includes financial position, credit rating, number of depositors, etc., in such a form and manner as prescribed.
  - b) filing a copy of circular with the Registrar.
  - c) depositing, on or before the 30th of April each year, such sum which shall not be less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account.
  - d) certifying that the company has not committed any default in the repayment of deposits accepted or interest on such deposits.
  - e) providing security, if any for due repayment of deposit or the interest thereon. In case the deposit is not secured, then deposit shall be termed as ‘unsecured deposit’ and shall be quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits.



The above-mentioned conditions from (a) to (e) **are not applicable to a start-up for 5 years from the date of its incorporation.** Provided that the company shall file the details of monies accepted to the Registrar in such manner as may be specified

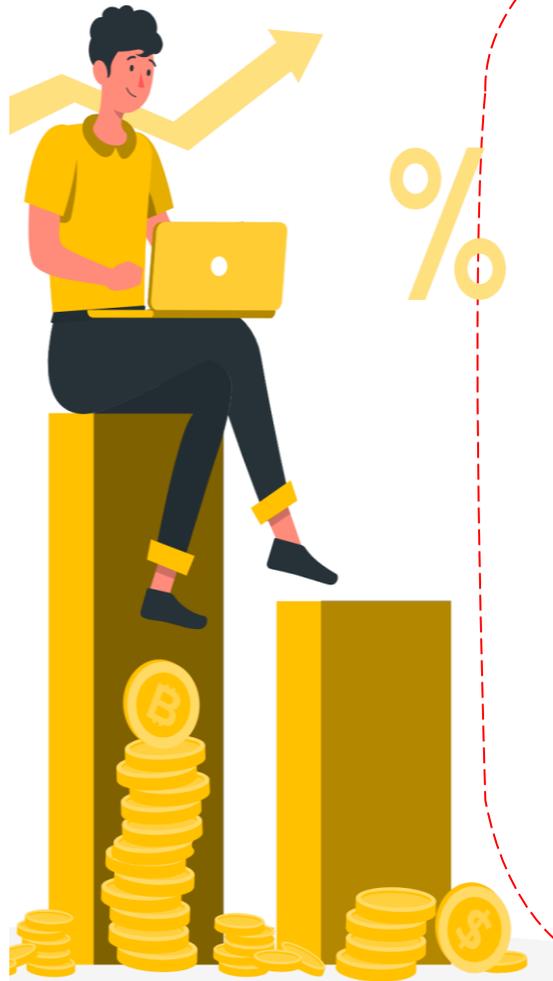
# Acceptance of Deposits (2/2)



Deposit includes any receipt of money by way of deposit or loan or in any other form, by a company, but **does not include** – an amount of **Rs. 25 Lakh or more** received **by a start-up company**, by way of a **convertible note** (convertible into equity shares or repayable **within a period not exceeding 10 years from the date of issue**) in a **single tranche**, from a person.

Convertible note means an instrument evidencing receipt of money initially as a debt, which is repayable at the option of the holder, or which is convertible into such number of equity shares of the start-up company upon occurrence of specified events and as per the other terms and conditions agreed to and indicated in the instrument.

# Issue of Employee Stock Options



- A company, other than listed company, shall not offer shares to its employees under a scheme of employees' stock option, unless it complies with the requirements as prescribed under the Act.
- Employee means –
  - a permanent employee of the company who has been working in India or outside India; or
  - a director of the company, whether a whole-time director or not but excluding an independent director; or
  - an employee as defined above of a subsidiary, in India or outside India, or of a holding company of the company but does not include -
    - an employee who is a promoter or a person belonging to the promoter group; or
    - 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.
- In case of startup company, for up to 10 years from the date of its incorporation, employees covered would be **same as above except that it shall even include an employee who is a promoter or a person belonging to the promoter group and 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.

# Issue of Sweat Equity Shares

**Sweat equity shares** means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for **providing their know-how or making available rights** in the nature of intellectual property rights or value additions, by whatever name called.



**A**

A company, other than listed company, shall not issue sweat equity shares to its directors or employees, unless the issue is authorized by a special resolution passed by the company in general meeting.

**B**

The issuance of sweat equity shares in the company shall not exceed 25% of the paid-up equity capital of the company at any time.

**C**

In case of startup company for up to 10 years from the date of its incorporation, may **issue sweat equity shares not exceeding 50% of its paid-up capital.**

**D**

The sweat equity shares issued to directors or employees shall be locked in / non-transferable for a period of 3 years from the date of allotment.

# Fast Track Merger (1/2)

A

A fast-track merger does not require approval from National Company Law Tribunal (NCLT), does not require advertisement in newspaper, etc. and is much faster in comparison to a normal merger.

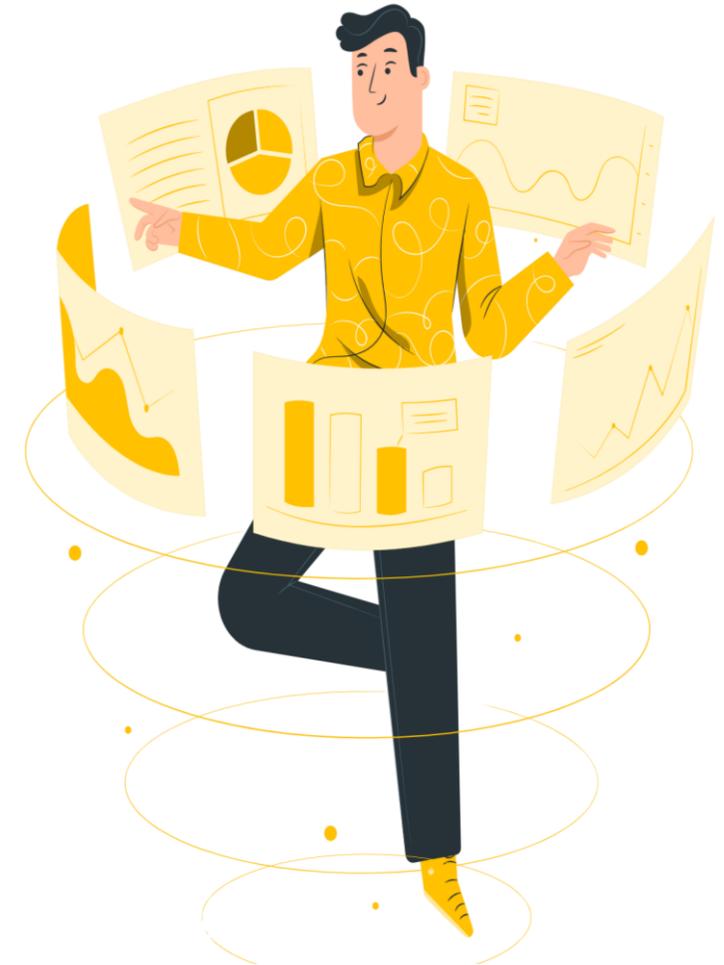
C

The scheme of merger or amalgamation under fast-track merger is approved by the Regional Director (RD).

B

A scheme of merger or amalgamation under fast-track merger **would also be permitted between** the following class of companies, namely:

- two or more start-up companies; or
- one or more start-up company with one or more [small company](#).





- Small company means a company, other than a public company, having –
  - a. paid-up share capital of which does not exceed Rs. 50 lakh or such higher amount as may be prescribed which shall not be more than Rs. 10 crores; and
  - a. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed Rs. 2 crore or such higher amount as may be prescribed which shall not be more than Rs. 100 crores.
- Further, a company is not a small company, if it is -
  - i. a holding company
  - ii. a subsidiary company
  - iii. a company registered under section 8
  - iv. a company or body corporate governed by any special Act.

## LESSER PENALTIES

If **penalty is payable for non-compliance** of any of the provisions of the Act **by a start-up company** or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty.

The penalty **shall not be more than one-half of the penalty** specified in such provisions subject to a **maximum of Rs 2 Lakhs** in case of a company and **Rs 1 Lakh** in case of an officer who is in default or any other person, as the case may be

Section 173 of the Act mandates that every company shall hold a **minimum of 4** board meetings in a year with a **gap of not more than 120 days between any 2 meetings.**

A start-up is **deemed to have complied** with such provision if at least one meeting of the board of directors has been conducted in **each half of a calendar year** and the **gap between the 2 meetings is not less than 90 days.**

## MEETINGS OF THE BOARD

# Stay tuned for more updates on Startups!

*In case you have missed the previous alerts, click on the hyperlinks to refer the same.*



[Startup recognition](#)



[Capital gains exemption on investment in startups](#)



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