

SUGGESTIONS SUBMITTED TO THE HON'BLE UNION MINISTER OF STATE FOR CORPORATE AFFAIRS

First of all, we are thankful to the Hon. Union Minister of state for the Law and Justice and the Ministry of Corporate Affairs, for giving his precious time to the Bihar Chamber of Commerce & Industries, an apex trade organisation of the state of Bihar.

We are thankful to the Hon. Prime Minister Shri Narendra Modi Ji and entire Government of India for the e-governance initiatives implemented at all important departments including ministry of corporate affairs. With the implementation of e-governance, human interference has been reduced to a larger extent. But there are several challenges being faced by the corporates, which needs to be addressed and resolved in order to achieve the desired objective of ease of doing business and make the system flawless. With this memorandum, we would like to have this privilege to draw your kind attention to the difficulties faced by the trade and industries, particularly in running their business in corporate mode along with suggestions from our side:

Compliances by Companies

- We can not ignore the contribution of MSMEs in the growth of the nation. As a matter of fact, MSMEs contribute approx. 40% to the economy. Several measures have been taken by the Government to protect the interest of this sector. The companies Act, 2013 also differentiate Small companies and Other than small companies and has provided relief from compliance burden to small companies. We request for similar reliefs from various compliances to all MSMEs irrespective of small companies.
- In recent times, companies/directors have been asked to file various forms such as DIR – KYC on annual basis, INC-22A (e form Active) with geo tagging of registered office of the company along with photograph with directors, DPT-3 with respect to loans and advances which are exempted deposit on a cut off date, as a one time compliance and thereafter annually, MSME-I to be filed twice in a year in addition to annual filing requirements of balance sheet and annual returns.

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Keeping in view, we request you that all such compliances should be clubbed in the annual return and only one time compliance should be asked under the companies Act.

- Further, along with every filing, a predetermined fee is charged which is based on the authorised capital of the company and in case of delay, huge additional fee is charged. We request that this fee should be based on the turnover of the previous year's turnover and also that additional fee should be rationalised.

- MSMEs survive mainly because of their cost optimisation as entire family participate in the business. All compliance related filings require digital signatures of CA/CS/CWA in addition to the signature of directors, and companies have to bear this additional cost every time. Therefore, we suggest that except annual returns requirement of digital signature of practicing CA/CS/CWA should be removed.

Operational Issues

With the introduction of the companies act 2013, most of the provisions, which were exclusively applicable to the public companies in the erstwhile companies act are now made applicable to the private limited companies. Few of such provisions are really disturbing and has adversely effected the ease of doing business initiative of the Government. We would like to draw your kind attention on such provisions.

1. Section 62 – Further issue of capital, we suggest that these provisions should be simplified for the private limited companies.

2. Section 73/74 – Regarding acceptance of Deposit and rules made thereunder. This provisions has adversely affected the business of closely held companies. Now a closely held company has also to comply with the requirements of this section and Acceptance of Deposit Rules, which are very restrictive in nature and cause hindrance in arranging fund for the business. Therefore, we suggest that these restriction should be completely removed from the private limited companies.

3. Section 89 – As private limited companies do not invite applications from general public therefore, filing of BEN forms should not be required in case of private limited companies.

4. Section 117 – Compliances of filing of resolutions should be further eased for private limited companies.
5. Section 135 – According to the companies act 2013, CSR is applicable to certain companies and section requires constitution of at least three directors, which means that the intention of the legislature was not to include private companies in this list, but in the rules private limited companies have also been included and requirement of CSR committee has been reduced to 2 directors, prima facie, it seems **ultra-virus**. To remove such difficulty we request you to take measures to remove the CSR compliance burden from the private limited companies, and if any private limited company voluntarily take such initiatives its expenses should be allowed as business expenditure under the income tax act.
6. Section 164 (2) – In large no. of cases, directors have been held disqualified due to non filing of financial statements by the companies, this has adversely affected other companies where he is one out of two directors. In most of the cases, due to some internal dispute in the management or for many other reasons companies failed to file financial statements for three consecutive years. As most of these companies are MSMEs, therefore, we request you to frame a **one time exit option** for such companies and also to remove disqualification of ignorant directors. Several High courts are giving stay orders or removing disqualification of directors. It is not possible for all the directors to approach High court and bear cost of litigation. Even otherwise High courts are overburdened with other important litigations and matters and this unnecessary increase the burden of pending matters on courts. Govt should launch a one-time uniform scheme wherein the disqualified directors shall be allowed to get their disqualification removed (after due diligence) and update the pendency in filing of various types of forms in various companies.

Other important issues

- A bench of **National Company Law Tribunal (NCLT)** and related matters should be **establish in Patna** which would help the people of Bihar to conduct their businesses more efficiently .

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- Winding up process to be made easy for a private limited company which does not have any creditors and consent of 100% shareholders have been obtained. Requirement of 2 years of discontinuance of business should be done away. Recent hike of fee to Rs. 10000.00 from Rs. 5000.00 should also be rolled back and should be reduced to Rs. NIL if strike off is opted by the company during suggested one time exit scheme.

There are many other operational issues, which a private limited company face during its day to day business. As a trade association, we will share these time to time with the ministry of corporate affairs and all other concerned departments. We are quite hopeful that in the dynamic leadership of our Hon'ble Prime Minister MSMEs will soon contribute more than 50% to the economy.

Dated : 17.05.2019