



# *Boost to Start-ups and one-person companies | Fast-track merger route provided for Start-ups | DPIIT launches Startup India Seed Fund Scheme for Start-ups and Incubators*

INSIGHTS

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The Ministry of Corporate Affairs (**MCA**) and the Department for Promotion of Industry and Internal Trade (**DPIIT**), have introduced certain measures to boost startup culture in the country, and to promote setting up of one person companies (**OPCs**).

MCA has allowed fast-track merger route for startup companies. Further, in line with the announcements made by the Finance Minister in the speech of Budget-2021 on February 1, 2021, (i) ambit of “small company” has been widened; (ii) non-resident Indian citizens have been allowed to incorporate OPCs; (iii) revamped and easier process for conversion of OPCs into private or public companies is introduced, and (iv) conversion of private companies into OPCs is made easier by removal of minimum paid-up share capital and turnover requirements.

DPIIT has launched a scheme called ‘**Startup India Seed Fund Scheme**’ to provide financial assistance to startups to the tune of INR 945 Crore, for proof of concept, prototype development, product trials, market entry and commercialization. This corpus will be disbursed through selected incubators across India in 2021-25.

Afore-mentioned changes are analyzed below:

## **A. Fast track merger for start-up companies**

Section 233 of the Companies Act, 2013 (**CA2013**), permits fast track merger/amalgamation between: (i) two or more small companies; or (ii) a holding company and its wholly-owned subsidiary. This avenue is now made available to the scheme of merger or amalgamation entered into between:

- two or more start-up companies; or
- one or more start-up company with one or more small company.

The change will help consolidation and acquisition of start-ups inter-se, especially with the scope of small companies have been widened. The change has been made effective vide the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 dated February 1, 2021 ([available here](#)).

## **B. Scope of “Small Company” under CA2013**

The definition of “small company” under Section 2(85) the CA2013 has been widened. The threshold limit for paid-up share capital has been increased from existing INR 5,000,000 to INR 2,00,00,000 and turnover from INR 2,00,00,000 to INR 20,00,00,000. As a result of this, more companies will be able to come under the purview of the small companies and will benefit from the lesser penalty provisions, relaxations and exemptions provided under the CA2013 for small companies.

The thresholds have been increased vide the Companies (Specification of Definitions Details) Amendment Rules, 2021 dated February 1, 2021 ([available here](#)).

## **C. OPCs - Incorporation by NRIs allowed & Revamped conversion process**

- The restriction that an OPC can be incorporated only by a natural person who is an Indian citizen and resident in India, has been revised. A natural person who is an Indian citizen and whether resident in India or otherwise, is allowed to incorporate an OPC.
- Residency requirement has been revised. For a person to be resident in India such person should have stayed in India for a period of not less than 182 days during the immediately preceding financial year. The requirement of 182 days is now shortened to 120 days.
- Conditionality of being in existence for minimum 2 years prior to conversion into any other form has been deleted. This condition provided that no OPC can convert voluntarily into any kind of company unless two years is expired from the date of incorporation of OPC.
- Further, in case an OPC breached certain paid-up share capital and turnover, it would have ceased to be an OPC and had to get itself converted. This too has been deleted. The condition provided that where paid-up share capital exceeded INR 50,00,000 and its average annual turnover during the relevant period exceeded INR 2,00,00,000.

- An OPC can now easily convert itself into a private or public company, other than a company registered under section 8, after increasing the minimum number of members and directors, and maintaining the minimum paid-up capital as per the requirements of the CA2013 for such class of company. The OPC is required to file an application in revised e-Form No.INC-6 for its conversion.
- For a private company to convert into an OPC, it had to meet the requirement of having paid-up share capital of INR 50,00,000 or less and average annual turnover during the relevant period INR 2,00,00,000 or less. These parameters have been omitted and hence, a private company can now easily convert itself into an OPC.

Aforementioned changes are notified vide the Companies (Incorporation) Second Amendment Rules, 2021, dated February 1, 2021 ([available here](#)), and will come into effect from April 1, 2021.

#### D. Startup India Seed Fund Scheme

Certain key features of the scheme are:

- **Sector agnostic scheme:** The Scheme is a sector-agnostic scheme to support start-ups across all the sectors and will be implemented by DPIIT. The scheme shall have a central common application on Startup India portal for start-ups and incubators on an ongoing basis.
- **Eligibility criteria for start-ups:** To avail benefit of the Scheme by a start-up, there are certain eligibility criteria, which *inter alia* include: (i) a start-up recognized by DPIIT must be incorporated not more than 2 years ago at the time of application; (ii) shareholding by Indian promoters in the start-up should be at least 51% at the time of application to incubator for the Scheme, etc.
- **Eligibility criteria for incubators:** To avail benefit of the Scheme by an incubator, there are certain eligibility criteria, which *inter alia* include: (i) incubator must be a legal entity having prescribed form; (ii) incubator should be operational for at least 2 years on the date of application to the Scheme, etc.

Other details are provided in the notification dated January 21, 2021 ([available here](#)),

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com)

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