

GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF ECONOMIC AFFAIRS

LOK SABHA
UNSTARRED QUESTION NO. 1002
TO BE ANSWERED ON 29TH APRIL, 2016

STARTUP COMPANIES

QUESTION

1002. SHRI P.P. CHAUDHARY:
SHRI CHANDRA PRAKASH JOSHI:
ADV. JOICE GEORGE:
SHRI GAJENDRA SINGH SHEKHAWAT:

Will the Minister of FINANCE be pleased to state:

- (a) whether a number of startup companies have received capital through private placements and stake sales;
- (b) if so, the details of such transactions over the last three years;
- (c) whether such transactions have taken place at high valuations;
- (d) whether there is a system for regulation of such capital raising and ensuring prudent valuations of startup companies to protect investors and the public;
- (e) if so, the details thereof; and
- (f) if not, the reasons and implications thereof?

ANSWER

MINISTER OF STATE IN THE MINISTRY OF FINANCE
(SHRI JAYANT SINHA)

(a): Startup companies are neither defined under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations") nor in the Companies Act, 2013. However, the Government of India has announced 'Startup India' initiative for creating a conducive environment for startups in India. The Ministry of Commerce and Industry (Department of Industrial Policy and Promotion) vide notification 5(91)/2015-BE.1, dated 17.02.2016 has notified that an entity shall be considered a 'start-up' as given in **Annexure-A**.

(b) & (c): The information sought is not maintained.

(d), (e) & (f): Private placement by unlisted companies is not covered under the ICDR Regulations which is applicable for equity shares and convertible securities. Chapter III and IV of the Companies Act, 2013 provides for provision w.r.t. Prospectus and Allotment of Securities & Share Capital and Debentures respectively. Part I (Section 23 to 41) of Chapter III deals with Public Offer and Part II (section 42) of Chapter III deals with Private Placement.

The provisions of Section 42 of the Companies Act, 2013 dealing with private placement are applicable to all the companies. Section 62 of the Companies Act, 2013 provide for the requirements which are applicable when a company issues further shares. Section 62(1)(c) and rules made thereunder read with Section 42 of the Act require the valuation of shares in case the shares are offered by a company to persons other than existing member or employee of the company.

The requirement under Section 62(1) (c) and Section 42 read with relevant rules provides for making adequate disclosures and valuation requirement. These are aimed at protecting the interest of investors and the public.

ANNEXURE-A

To bring uniformity in the identified enterprises, an entity shall be considered as a 'startup'-

- a) Up to five years from the date of its incorporation/registration,
- b) If its turnover for any of the financial years has not exceeded Rupees 25 crore, and
- c) It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property;

Provided that any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered a 'startup';

Provided further that in order to obtain tax benefits a startup so identified under the above definition shall be required to obtain a certificate of an eligible business from the Inter-Ministerial Board of Certification consisting of:

- a) Joint Secretary, Department of Industrial Policy and Promotion,
- b) Representative of Department of Science and Technology, and
- c) Representative of Department of Biotechnology.

Explanation:

1. An entity shall cease to be a startup on completion of five years from the date of its incorporation/registration or if its turnover for any previous year exceeds Rupees 25 crore.
2. Entity means a private limited company (as defined in the Companies Act, 2013), or a registered partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2002).
3. Turnover is as defined under the Companies Act, 2013.
4. An entity is considered to be working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property if it aims to develop and commercialize:

- a. A new product or service or process, or
- b. A significantly improved existing product or service or process that will create or add value for customers or workflow.

Provided that the mere act of developing:

- a. products or services or processes which do not have potential for commercialization, or
- b. undifferentiated products or services or processes, or
- c. products or services or processes with no or limited incremental value for customers or workflow would not be covered under this definition.