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Company Secretaries of India

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SUPPLEMENT EXECUTIVE PROGRAMME (OLD SYLLABUS)

For

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(Supplement covers amendments/developments from Aug 21 to Nov 23)

COMPANY

LAW

MODULE 1

PAPER 2

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Lesson 1- Introduction to Company Law

1. The Companies (Specification of Definition Details) Amendment Rules, 2022 (MCA Notification No. G.S.R 700(E) dated 15th September, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated September 15, 2022 has notified “the Companies (Specification of Definition Details) Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. According to the amendment the definition of Small Company is modified as under:

“For the purposes of section 2(85)(i) and (ii) of the Companies Act, 2013, the paid up capital and turnover of the small company shall not exceed rupees four crore and rupees forty crore respectively.”

Brief Analysis:

Through this notification the Ministry has amended the definition of small company w.e.f. 15.09.2022 by amending the limit of paid up capital and turnover for the small company. Earlier, definition of “small companies” under the Companies Act, 2013 was revised by increasing their thresholds for paid up capital from “not exceeding Rs. 50 lakh” to “not exceeding Rs. 2 crore” and turnover from “not exceeding Rs. 2 crore” to “not exceeding Rs. 20 crore”. This definition has, now, been further revised by increasing such thresholds for paid up Capital from “not exceeding Rs. 2 crore” to “not exceeding Rs. 4 crore” and turnover from “not exceeding Rs. 20 crore” to “not exceeding Rs. 40 crore”.

It seems that MCA frequently amending the definition of Small Company to provide many advantages to Corporates. This move of MCA is expected to provide lenience for the compliance burden of about various small companies in India. The move is likely to get more companies under the ‘small’ category and advantage them in terms of the compliance requirements. As due to this move, many Companies will get exemptions of so many compliances of the Companies Act, 2013.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=tiMs9IFJ8xuPm%252B%252F0xc6fUw%253D%253D&type=open>

2. MCA Establishes Centre for Processing Accelerated Corporate Exit (MCA Notification S.O. 1269(E) dated March 17, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated March 17, 2023 has notified that in exercise of the powers conferred by section 396(1) of the Companies Act, 2013, the Central Government establishes a Centre for Processing Accelerated Corporate Exit (C-PACE). The C-PACE shall be located at the Indian Institute of Corporate Affairs (IICA), Manesar, Gurugram. This notification shall come into force with effect from the 01st day of April, 2023.

Brief analysis:

Hon’ble Finance Minister Smt. Nirmala Sitharaman during Budget speech 2022 stated that “Center for accelerated corporate exit to be set up to accelerate corporate exits”. In view of the same the MCA vide issuing notification dated March 17, 2023 has established the Centre for Processing Accelerated Corporate Exit (C-PACE). The C-PACE be located at the Indian Institute of Corporate Affairs (IICA), Manesar, Gurugram. It will be effective from 01st April, 2023.

C-PACE is a significant step towards providing ease to companies for closing their business and getting their names removed from the Register of Companies. It caters to make the process of removal of names more streamlined and efficient, saving time and effort for companies.

For details:

<https://egazette.gov.in/WriteReadData/2023/244467.pdf>

Lesson 2- Share and Share Capital

1. The Companies (Share Capital and Debentures) Amendment Rules, 2022 (MCA Notification No. G.S.R. (E) dated 04th May, 2022)

The Ministry of Corporate Affairs (MCA) vide its Notification dated May 04, 2022 has notified the Companies (Share Capital and Debentures) Amendment Rules, 2022 which shall come into force on the date of its publication in the Official Gazette. According to the amendment, in the annexure to the Companies (Share Capital and Debentures) Rules, 2014, in Form No. SH-4 (Securities Transfer Form), before the enclosures, the following declaration shall be inserted, namely:-

- Transferee is not required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to transfer of shares; or
- Transferee is required to obtain the Government approval under the Foreign Exchange Management (Non-debt Instruments) rules, 2019 prior to transfer of shares and the same has been obtained and is enclosed herewith.”

Brief Analysis:

According to this amendment a declaration has to be made by the transferee prior to share transfer in Form No. SH-4 regarding whether he/she is required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019. Earlier no such declaration was required to be made by the transferee.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=z0TPPBoxhsbnobHAN7dyxw%253D%253D&type=open>

2. The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 (MCANotification No. G.S.R. 338(E). Dated 05th May, 2022)

The Ministry of Corporate Affairs (MCA) vide its Notification dated May 05, 2022 has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 which shall come into force on the date of its publication in the Official Gazette. The amendments inter alia provide following-

(i) Insertion of new proviso to Rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 stating that, no offer or invitation of any securities under rule 14 shall be made to a body corporate incorporated in, or a national of, a country which shares a land border with India, unless such body corporate or the national, as the case may be, have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter.

(ii) in Annexure, in Form PAS-4, in Part-B, after serial number (vii), the following shall be inserted, namely :-

“(viii) Tick whichever is applicable:-

(a) The applicant is not required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares.- ;

The applicant is required to obtain Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith. ”.

Brief Analysis:

Through this amendment the MCA has inserted a new proviso in rule 14 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 stating that no offer or invitation to securities shall be made to the nationals of or entities incorporated in a country sharing border with India until and unless they have obtained Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 and attached the same with the private placement offer cum application letter and the relevant modification to be made in Form PAS-4.

For details:

<https://egazette.nic.in/WriteReadData/2022/235565.pdf>

3. The Companies (Share Capital and Debentures) Amendment Rules, 2023 (MCA Notification No. G.S.R. 43(E) dated January 21, 2023)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Share Capital and Debentures) Amendment Rules, 2023 to further amend the Companies (Share Capital and Debenture) Rules, 2014. The provisions have come into effect from 23.01.2023.

Brief Analysis:

Through amendment in rule 17(14) the changes to the provision relating to buy-back of shares or other securities has been made. The requirement of annexing a certificate along with the return in Form SH.11 has been substituted with submitting of a declaration instead. This declaration must be signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

Additionally, the amendment has also brought about revisions in the following forms:

Form No. SH. 7- Notice to Registrar of any alteration of share capital

Form No. SH. 8- Letter of Offer

Form No. SH. 9 – Declaration of Solvency

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjUwNjU2NDY4&docCategory=Notifications&type=open>

4. The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023 (MCA Notification No. G.S.R. 37(E) dated January 20, 2023)

The Ministry of Corporate Affairs has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023 to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014. The provisions have come into effect from 23.01.2023. Through amendment rule 12(6) has been omitted which was earlier requiring, in the case of the issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3. Also that, Form PAS-2, Form PAS-3 and Form PAS-6 are substituted.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMTMwNDA2&docCategory=Notifications&type=open>

5. Case Law: Utilisation of Securities premium

Utilisation of securities premium account for selective capital reduction

Brillio Technologies Pvt. Ltd. (Appellant) vs. Registrar of Companies, Karnataka & Ors. (Respondents) dated April 19, 2021

The NCLAT observed that Security Premium Account can be utilized for making payment to non-promoter shareholders. Further, it can be held that selective reduction is permissible if the non-promoter shareholders are being paid fair value of their shares, whose shares have been extinguished pursuant to selective capital reduction, after obtaining prior approval of the NCLT.

6. Case Law: Transfer or Transmission of Securities

A company cannot register transfer of shares unless the instrument of transfer is duly stamped and is delivered to the company. The expression “duly stamped” has to be construed with reference to the provisions of Section 2(11) of the Indian Stamp Act, 1899 and the document in question would be an invalid one if the stamp affixed there on has not been cancelled. Under Section 108(1) of the Companies Act, 1956 [Corresponds to section 56(1) of the Companies Act, 2013] it is mandatory that the company shall not register the transfer of shares unless a properly executed instrument of transfer duly stamped has been delivered to the company. [Shri Parveen Sharda vs. Chopsani Ice Aerated Water and Oils Mills Ltd., Appeal No. 1 of 1982 decided on 10.1.1983 (CLB)].

In Vardhaman Publishers Ltd. vs. Mathrubhumi Printing & Publishing Co. Ltd. (1990), the Kerala High Court held that affixing stamps on a separate sheet of paper and attaching it to the transfer application or cancellation of stamps by drawing a line across the stamp was not improper and would not invalidate the said application. On the question of whether a newly added Article empowering the Board to reject transfer of shares would affect transactions of sale of shares entered into before the insertion of the Article, the Court held that the property in the shares passes on the date of transfer and the right to have the shares registered in the transferee’s name becomes crystallised on that day itself. Any alteration of articles will not affect concluded transactions and in respect of such transactions, the existing articles would prevail. So, if the original (unaltered) Articles as on the date of transfer permit free transfer of shares, the Board cannot refuse registration of the transfer.

7. The Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023 (MCA Notification No. G.S.R. 802(E) dated October 27, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated October 27, 2023 has notified “the Companies (Prospectus and Allotment of Securities) Second Amendment Rules, 2023” which has come into force on the date of its publication in the Official Gazette. The amendments are made with respect to:

- (a) issued share warrants under the erstwhile the Companies Act, 1956; and
- (b) issue of securities in dematerialised form by private companies excluding small companies and government companies.

Brief Analysis:

- i) According to the amendment every public company which issued share warrants prior to commencement of the Companies Act, 2013 and not converted into shares shall:
 - a) within a period of 3 months of the commencement of the aforesaid amendment rules shall inform the Registrar about the details of such share warrants in Form PAS-7; and
 - b) within a period of 6 months of the commencement of the aforesaid amendment rules, require the bearers of the share warrants to surrender such warrants to the company and get the shares dematerialised in their account and for this purpose the company shall place a notice for the bearers of share warrants in Form PAS-8 on the website of the company, if any and shall also publish the same in a newspaper in the vernacular language which is in circulation in the district and in English language in an English newspaper, widely circulated in the State in which the registered office of the company is situated.
 - c) Further in case any bearer of share warrant does not surrender the share warrants within the period referred, the company shall convert the such share warrants into dematerialised form and transfer the same to the Investor Education and Protection Fund established under section 125 of the Act.

According to the amendment now mandatory dematerialisation requirement is applicable on all securities of every private company also, but excluding small companies and government companies. A timeline of 18 months is provided from the closure of the financial year in which a private company is not a small company for the compliance with the mandatory dematerialisation requirements.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ZvNqoKdfvPrRcqeogzGdDg%253D%253D&type=open>

8. Reduction of timeline for listing of shares in Public Issue from existing T+6 days to T+3 days (Circular No. SEBI/HO/CFD/TPD1/CIR/P/2023 /140 dated August 09, 2023)

SEBI, consequent to extensive consultation with the market participants and considering the public comments received pursuant to consultation paper on the aforesaid subject matter, reduced the time taken for listing of specified securities after the closure of public issue to 3 working days (T+3 days) as against the present requirement of 6 working days (T+6 days). 'T' being issue closing date.

The T+3 timeline for listing shall be appropriately disclosed in the Offer Documents of public issues. The timelines for submission of application, allotment of securities, unblocking of application monies and listing shall prominently be made a part of pre-issue, issue opening and issue closing advertisements issued by the Issuer for public issues in terms of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

For details:

https://www.sebi.gov.in/legal/circulars/aug-2023/reduction-of-timeline-for-listing-of-shares-in-public-issue-from-existing-t-6-days-to-t-3-days_75122.html

Lesson 3- Members and Shareholders

1. The Companies (Management and Administration) Amendment Rules, 2022 (MCA Notification No. G.S.R. 279 (E). Dated 06th April, 2022)

The Central Government notified the Companies (Management and Administration) Amendment Rules, 2022, the said amendment rules *inter-alia* consist provisions pertaining to inspection of registers and returns as mentioned under rule 14 of the Companies (Management and Administration) Rules, 2014 by inserting sub rule 3;

“Notwithstanding anything contained in sub-rules (1) and (2), the following particulars of the register or index or return in respect of the members of accompany shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of section 94, namely-address or registered address (in case of a body corporate); e-mail ID; Unique Identification Number; PAN Number.”

Brief Analysis:

Through this amendment, MCA has inserted a new Rule 14(3) to restrict the inspection of register or index or return in respect of the members of accompany. According to the Amendment, particulars of the register or index or return in respect of the members of a Company related to Address or Registered Address (in case of a body corporate); e-mail ID; Unique Identification Number; PAN Number, shall not be made available for any inspection under sub-section (2) or for taking extracts or copies under sub-section (3) of Section 94 other Companies Act, 2013.

For details:

<https://egazette.gov.in/WriteReadData/2022/234911.pdf>

2. The Companies (Management and Administration) Second Amendment Rules, 2023 (MCA Notification No. G.S.R. 801(E) dated October 27, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated October 27, 2023 has notified “the Companies (Management and Administration) Second Amendment Rules, 2023” which has come into force on the date of its publication in the Official Gazette. According to the amendment under rule 9 (Declaration in Respect of Beneficial Interest in Any Shares) of the Companies (Management and Administration) Rules, 2014 five new sub-rules are introduced stating:

- i) To designate a responsible person for providing information to the Registrar or any authorized officer regarding beneficial interests in the company’s shares;
- ii) Options for designating a responsible person, which may include a company secretary, key managerial personnel (other than the company secretary), or every director (if there is no company secretary or key managerial personnel);
- iii) Until a responsible person is designated, certain specified individuals under rules are deemed to have been designated;
- iv) Every company shall inform the details of the designated person in Annual return; and
- v) Further, in case of any change in designated person, the company shall intimate the Registrar vide E Form GNL-2.

Brief Analysis:

Vide issuing the Companies (Management and Administration) Second Amendment Rules, 2023 in rule 9, after sub-rule (3), the MCA has inserted following sub-rules:

- i) Sub-rule(4): Every company shall designate a person who shall be responsible for furnishing, and extending co-operation for providing, information to the Registrar or any other authorised officer with respect to beneficial interest in shares of the company. **(To designate a responsible person)**
- ii) Sub-rule (5): For the purpose of sub-rule(4), the company may designate-
 - a. a company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
 - b. a key managerial personnel, other than the company secretary; or
 - c. every director, if there is no company secretary or key managerial personnel. **(Options to choose responsible person)**
- iii) Sub-rule (6): Until a person is designated as referred under sub-rule (4), the following persons shall be deemed to have been designated person;
 - a. company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
 - b. every Managing Director or Manager, in case a company secretary has not been appointed; or
 - c. every director, if there is no company secretary or a Managing Director or Manager.**(Persons deemed to be designated as responsible person)**
- iv) Sub-rule (7): Every company shall inform the details of the designated person in Annual return.**(Disclosure in Annual Report)**
- v) Sub-rule (8): If the company changes the designated person at any time, it shall intimate the same to the Registrar in e-form GNL-2 specified under the Companies (Registration Offices and Fees) Rules, 2014.**(Intimation to RoC in case of change of designated person)**

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Mzc2Nzk4OTY0&docCategory=Notifications&type=open>

Lesson 4 – Debt Capital and Deposits

1. The Companies (Acceptance of Deposits) Amendment Rules, 2022 (MCA notification no. G.S.R (E) dated 24th August, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 29, 2022 has notified “the Companies (Acceptance of Deposits) Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. According to the amendment in rule 16 of the Companies (Acceptance of Deposits) Rules, 2014:

“Every company to which these rules apply, shall file return of deposit in E Form DPT-3 and furnish the information contained therein as on the 31st day of March of that year duly audited by the auditor of the company and declaration to that effect shall be submitted by the auditor in E Form DPT-3.”

Also, the E Form DPT-3 and E Form DPT-4 are substituted.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=99KwRbJSkMXjVLv09KTgJg%253D%253D&ty pe=open>

2. Case Laws: Debenture Redemption Reserve (DRR)

(1) The Regional Director has filed an affidavit on behalf of the central government in which two observations have been made. The first observation of the Regional Director is that at the meeting of the shareholders of the petitioner company, nine shareholders together holding 527 equity shares voted against the scheme. The second observation of the Regional Director is that in terms of section 117C(1) of the Companies Act, 1956 where a company issues debentures, it has to create a debenture redemption reserve for redemption of such debentures to which adequate amount has to be credited from out of its profits every year until such debentures are redeemed. [Britannia Industries Ltd vs. Unknown(2010)]

(2) The apex court has considered as to whether the debenture redemption reserve is a reserve within the meaning of the Companies Act. The Supreme Court has held in the said case that any amount set apart in the accounts of the company to redeem the debentures must be treated as monies set apart to meet a known liability. The debentures will have to be shown in the company’s balance sheet of the year as liability.

Merely because the debentures are not redeemable during the accounting period, the liability of redeemed debenture does not cease to exist. The Supreme Court further held that the debenture redemption Reserve must be regarded as a provision made by the assessee-company to enable it to redeem the said debentures when they become due for redemption. The Supreme Court further stated that the amounts set apart for redemption of debentures are not in the nature of charge against profit but are merely appropriation of profits. The said debenture redemption reserve account cannot be held to be a reserve on that ground itself. [Rayon Corpn. Ltd. (supra)]

(3) The mere fact that a Debenture Redemption Reserve is labeled as a reserve will not render it as a reserve in the true sense or meaning of that concept. An amount which is retained by way of providing for a known liability is not a reserve. Consequently, the Tribunal was correct in holding that the amount which was set apart as a Debenture Redemption Reserve is not a reserve within the meaning of Explanation (b) to Section 115JA of the Income Tax Act, 1961. [Alembic Limited, Baroda vs. Dy.Cit.,Circle-1(1)(2016)]

Lesson 5- Charges

1. The Companies (Registration of Charges) Amendment Rules, 2022

(MCA Notification No. G.S.R. (E). Dated 27th April, 2022)

The Ministry of Corporate Affairs (MCA) vide its Notification dated April 27, 2022 has notified the Companies (Registration of Charges) Amendment Rules, 2022 which shall come into force on the date of its publication in the Official Gazette.

The amendments inter-alia provide that in rule 3 pertaining to registration of creation or modification of Charge, a sub-rule (5) shall be inserted, namely: “Nothing contained in this rule shall apply to any charge required to be created or modified by a banking company under section 77 in favour of the Reserve Bank of India when any loan or advance has been made to it under sub-clause (d) of clause (4) of section 17 of the Reserve Bank of India Act, 1934.”

Brief Analysis:

MCA amended the Companies (Registration of Charges) Rules, 2014 to notify that the rule 3 shall not apply to any charge required to be created or modified by a banking company under section 77 (Duty to register charge) in favour of the Reserve Bank of India when any loan or advance made to it under section 17 (4) (d) of the RBI Act, 1934. Rule 3 of the Companies (Registration of Charges) Rules, 2014, casts a duty on the Company that the particulars of the creation or modification of the charges shall be filed with the ROC in E-form CHG-1 (for other than debentures) or Form CHG-9 (for debentures) as the case may be.

The Section 17 of the Reserve Bank of India Act, 1934 defines the manner in which the RBI can transact business. As per section 17 (4) (d) the RBI can grant loan against the security of promissory notes of any scheduled bank or State co-operative Bank, supported by documents of title to goods [such documents having been transferred], assigned, or pledged to any such bank as security for a [loan or advance made] for bona fide commercial or trade transactions, or for the purpose of financing agricultural operations or the marketing of crops.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=GigV%252BdVKmC9d16l5L5Kj5Q%253D%253D&type=open>

2. The Companies (Registration of Charges) Second Amendment Rules, 2022

(MCA notification no. G.S.R (E) dated 29th August, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 29, 2022 has notified “the Companies (Registration of Charges) Second Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. According to the amendment, rule 13 is inserted by stating that, signing of charge e-forms (i.e. Form No. CHG-1, CHG-4, CHG-8 and CHG-9) by insolvency professional or resolution professional or liquidator for companies under resolution or liquidation, as the case may be and filed with the Registrar.

Further, the E Form No. CHG-1 is substituted.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=4o6aHVQPvNWMaUqWvIFEow%253D%253D&type=open>

Lesson 6- Distribution of Profits – Dividend

1) **The Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021 (Notification No: G.S.R. 785(E), dated November 09, 2021)**

The Central Government has notified the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Second Amendment Rules, 2021, to further amend the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

This amendment is a major step towards the mission and vision of Government of India of Ease of Living and Ease of Doing Business, Ministry of Corporate Affairs (MCA) and has further simplified claim settlement process through rationalization of various requirements under Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

- For claimants, requirement of Advance Receipt has been waived off;
- Requirement of Succession Certificate/ Probate of Will/ Will has been relaxed up to Rs 5,00,000 (five lakh) both for Physical & DEMAT shares;
- Notarization of documents has been replaced with self-attestation and requirements of Affidavits and Surety relatively have been eased.

For companies, requirement of attaching documents related to Unclaimed Suspense Account has been eased and companies have been given flexibility to accept transmission document viz. Succession Certificate, Will etc. as per their internal approved procedures and Newspaper Advertisement requirement for loss of physical Share Certificate has been waived off up to an amount of Rs.5,00,000.

The focus of the change has been to make the process simpler and quicker for the claimants.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=70feLDgDYWpm%252BQo0V3%252Ft7A%253D%253D&type=open>

2. Case Law:

In the case of Gopal & Sons (HUF) v. CIT, Supreme Court

Is loan to HUF who is a shareholder in a closely held company chargeable to tax as deemed dividend?

Facts of the Case:

The assessee is a Hindu Undivided Family (HUF). During the previous year to the Assessment year, the assessee had received certain advances from one M/s G.S. Fertilizers (P) Ltd. (hereinafter referred to as the 'Company'). The Company is the manufacturer and distributor of various grades of NPK Fertilizers and other agricultural inputs. In the audit report and annual return for the relevant period, which was filed by it before the Registrar of Companies (ROC), it was found that the subscribed share capital of the said company was Rs.1,05,75,000/- (i.e. 10,57,500 shares of Rs.10/- each). Out of this, 3,92,500 number of shares were subscribed by the assessee which represented 37.12% of the total shareholding of the Company.

From this fact, the AO concluded that the assessee was both the registered shareholder of the Company and also the beneficial owner of shares, as it was holding more than 10% of voting power. On this basis, after noticing that the audited accounts of the Company was showing a balance of Rs.1,20,10,988/- as “Reserve & Surplus” as on 31st March, 2006, this amount was included in the income of the assessee as deemed dividend. In the appeal filed by the assessee, the aforesaid addition was affirmed by the CIT(A). The Tribunal reversed the CIT(A). The High Court reversed the Tribunal.

Before the Supreme Court, the assessee argued that being a HUF, it was neither the beneficial shareholder nor the registered shareholder. It was further argued that the Company had issued shares in the name of Shri. Gopal Kumar Sanei, Karta of the HUF, and not in the name of the assessee/HUF as shares could not be directly allotted to a HUF. On the basis, it was submitted that provisions of Section 2(22)(e) of the Act cannot be attracted.

Judgment

The Supreme Court held as the shares are issued in the name of the Karta, the HUF is not the ‘registered shareholder’ and so Section 2(22)(e) will not apply to loans paid to the HUF is not correct because in the annual returns filed with the ROC, the HUF is shown as the registered and beneficial shareholder. In any case, the HUF is the beneficial shareholder. Even if it is assumed that the Karta is the registered shareholder and not the HUF, as any payment to a concern (i.e. the HUF) in which shareholder (i.e., the Karta) has substantial interest is also covered.

Lesson 7- Corporate Social Responsibility

1) **Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)** **(General Circular No: 14/2021, dated August 25, 2021)**

In view of several amendments in Section 135 of the Companies Act, 2013 as well in the CSR Rules, the MCA has issued an updated set of Frequently Asked Questions (FAQs) on the Corporate Social Responsibility (CSR), in supersession of clarifications and FAQs issued vide General Circular no. 21/2014 (dated June 18, 2014), 36/2014 (dated September 17, 2014), 01/2016 (dated January 12, 2016), 05/2016 (dated May 16, 2016), clarification issued vide letter dated January 25, 2018 and General Circular no. 06/2018 (dated May 28, 2018), for better understanding and facilitating effective implementation of CSR.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=GTatbOatWaZKI7Zzifcd9O%253D%253D&type=open>

2) **The Companies (Accounts) Amendment Rules, 2022 (MCA Notification No. G.S.R.- (E). Dated 11th February, 2022)**

Central Government notified Form CSR-2 a report on Corporate Social Responsibility (CSR) and rule 12(1B) and provided that every company covered under the provisions of sub section (1) to section 135 shall furnish a report on Corporate Social Responsibility in Form CSR-2 to the Registrar for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

Provided that for the preceding financial year (2020-2021), Form CSR-2 shall be filed separately on or before 31st March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

Brief Analysis:

By means of this amendment, the MCA has introduced form CSR-2, which is required to be filed by those entities which fall under the provisions of Section 135 of the Companies Act, 2013. The MCA vide its notification dated 11th February 2022 had introduced form CSR-2 by inserting sub-rule (1B) in rule 12 of the Companies (Accounts) Rules, 2014. It was provided that for the preceding F.Y. (2020- 21), form CSR-2 shall be filed on or before 31st March 2022, after filing form AOC-4. However, due to technical difficulties being faced by the stakeholders, the MCA has extended the due date by 2 months by notifying Companies (Accounts) Second Amendment Rules, 2022.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=adQPpN3U8Y7LlcmY0C8FvA%253D%253D&type=open>

3) **Clarification on spending of CSR funds for "Har Ghar Tiranga" campaign-reg.(MCA General Circular No. 08/2022 dated 26th July, 2022)**

'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification

efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture. The companies may undertake the aforesaid activities, subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry thereof, from time to time.

Brief Analysis:

The Ministry of Corporate Affairs has issued clarification on spending of CSR funds for Har Ghar Trianga on 26th July, 2022. As per the clarification issued, spending of CSR funds for activities related to it like mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities will be eligible as CSR activities of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=dXH1ziMu%252FmN%252BBSRLHN9evw%253D%253D&type=open>

4) The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (MCA notification no. G.S.R 715(E) dated 20th September, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated September 20, 2022 has notified “the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. According to the amendment the proviso to rule 3(1) has been inserted stating that, a company having any amount in its Unspent Corporate Social Responsibility Account as per section 135(6) shall constitute a CSR Committee and comply with the provisions contained in sub-sections (2) to (6) of the said section.

In case of CSR implementation, the Board shall ensure that the CSR activities are undertaken by the company itself or through a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, established by the company, either singly or along with any other company; or a company as mentioned above is having an established track record of at least three years in undertaking similar activities.

Further, a Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed two percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher; and the format for the annual report on CSR activities to be included in the board’s report for financial year commencing on or after the 1st day of April, 2020 has been substituted.

Brief Analysis:

The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 was introduced on September 20, 2022 by the Ministry of Corporate Affairs. The following changes have been brought about by the Amendment Rules:

- (a) Companies are required to establish a CSR committee to monitor the execution of their CSR commitments and in particular any funds in their “Unspent Corporate Social Responsibility Account”.
- (b) The Amendment provide that the cost of social impact assessments, which can be considered as CSR spending, cannot be greater than 2% of all CSR expenditures for the applicable financial year or Rupees 50 lakh, whichever is higher.

(c) The Amendment also provide for a new format for the annual report on CSR activities. All companies are required to provide the information in the annual report with respect to brief explanation of its CSR policy, Information about the members of the CSR committee, Web-links to the company's website where the CSR Committee's membership, CSR policy, and CSR projects approved by the board are listed and Executive summary and web links for the impact assessments of CSR projects.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=1Wt3uUYzV0rGCr2Vxa8ztQ%253D%253D&type=open>

**5) The Companies (Accounts) Second Amendment Rules, 2023
(MCA Notification No. G.S.R. 408(E) dated May 31, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated May 31, 2023 has notified "The Companies (Accounts) Second Amendment Rules, 2023" which has come into force with effect from date of publication in the Official Gazette. According to the amendment in rule 12 (1B) a new proviso has been inserted stating: For the financial year 2022-2023, Form CSR-2 shall be filed separately on or before 31st March, 2024 after filing the Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS) as specified in Companies (Accounts) Rules, 2014 or Form No. AOC-4-XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015, as the case may be.

Brief Analysis:

The amendment quotes that for the financial year 2022-2023, a separate filing of Form CSR-2 is required, which is to be done on or before the March 31, 2024. This filing of Form CSR-2 should be done after submitting Form No. AOC4/Form No. AOC-4-NBFC (Ind AS)/Form No. AOC-4 XBRL, depending on the applicable case.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzM5MDg2ODEz&docCategory=Notifications&type=open>

6) The Companies (Accounts) Third Amendment Rules, 2022 (MCA Notification No. G.S.R. 407(E).—Dated 31st May, 2022

The Ministry of Corporate Affairs (MCA) vide its notification dated May 31, 2022 has notified the Companies (Accounts) Third Amendment Rules, 2022, which shall come into force on the date of its publication in the Official Gazette. According to the amendment under rule 12 of the Companies (Accounts) Rules 2014 below changes are mentioned:

- For financial year (2020-2021), Form CSR-2 shall be filed separately on or before 30 June 2022 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.
- For the financial year (2021-2022), Form CSR-2 shall be filed separately on or before 31st March, 2023 after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be".

Brief Analysis:

Though thus notification, MCA has extended the date of filing of report on Corporate Social Responsibility in Form CSR-2 till 30th June, 2022 for the Financial Year 2020-21 and 31st March, 2023 for the Financial Year 2021-22.

For details:

<https://egazette.gov.in/WriteReadData/2022/236165.pdf>

**7) The Companies (Accounts) Second Amendment Rules, 2023
(MCA Notification No. G.S.R 408(E)-Dated June 02, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated June 02, 2023 has notified “the Companies (Accounts) Second Amendment Rules, 2023” which shall come into force with effect from date of publication in the official gazette. According to the notification a new proviso to rule 12(IB) of the Companies (Accounts) Rules, 2014 has been inserted stating: "Provided also that for the financial year 2022-2023, Form CSR-2 shall be filed separately on or before 31st March, 2024 after filing Form No. AOC-4 or Form No. AOC-4-NBFC (Ind AS), as specified in these rules or Form No. AOC-4 XBRL as specified in the Companies (Filing of Documents and Forms in Extensible Business Reporting Language) Rules, 2015 as the case may be."

Brief Analysis:

The amendment quotes that for the financial year 2022-2023, a separate filing of Form CSR-2 is required, which is to be done on or before the March 31, 2024. This filing of Form CSR-2 should be done after submitting Form No. AOC4/Form No. AOC-4-NBFC (Ind AS)/Form No. AOC-4 XBRL, depending on the applicable case.

For details:

<https://egazette.gov.in/WriteReadData/2023/246244.pdf>

Lesson 8- Accounts, Audit and Auditors

1) The Companies (Indian Accounting Standards) Amendment Rules, 2021 (Notification No: G.S.R. 419(E), dated June 18, 2021)

The Central Government, in consultation with the National Financial Reporting Authority, has notified the Companies (Indian Accounting Standards) Amendment Rules, 2021 to further amend the Companies (Indian Accounting Standards) Rules, 2015, pertaining to various Indian Accounting Standards (Ind AS), including those related to:

Additional disclosures w.r.t. interest rate benchmark reform to enable users of financial statements to understand the effect of interest rate benchmark reform on an entity's financial instruments and risk management strategy, regarding this an entity shall disclose information about:

- (a) the nature and extent of risks to which the entity is exposed arising from financial instruments subject to interest rate benchmark reform, and how the entity manages these risks; and
- (b) the entity's progress in completing the transition to alternative benchmark rates, and how the entity is managing the transition.

Further amendments including changes in the basis for determining the contractual cash flows as a result of interest rate benchmark reform, additional temporary exceptions arising from interest rate benchmark reform etc., has been introduced.

For details:

<https://egazette.gov.in/WriteReadData/2021/227712.pdf>

2) The Companies (Accounting Standards) Rules, 2021 (MCA Notification G.S.R (E) dated June 23, 2021)

The MCA vide notification dated June 23, 2021 has notified the Companies (Accounting Standards) Rules, 2021 for Small and Medium sized companies (SMCs), with which the turnover and borrowing limits has been revised as well as disclosure requirements has been made less onerous for SMCs.

The revised definition of “Small and Medium Sized Company” (SMC) means, a company-

- (i) whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India;
- (ii) which is not a bank, financial institution or an insurance company;
- (iii) whose turnover (excluding other income) does not exceed two hundred and fifty crore rupees in the immediately preceding accounting year;
- (iv) which does not have borrowings (including public deposits) in excess of fifty crore rupees at any time during the immediately preceding accounting year; and
- (v) which is not a holding or subsidiary company of a company which is not a small and medium-sized company.

Explanation - For the purposes of this clause, a company shall qualify as a Small and Medium

Sized Company, if the conditions mentioned therein are satisfied as at the end of the relevant accounting period.

Obligation to comply with Accounting Standards

(1) Every company, other than companies on which Indian Accounting Standards as notified under Companies (Indian Accounting Standards) Rules, 2015 are applicable, and its auditor(s) shall comply with the Accounting Standards in the manner specified.

(2) The Accounting Standards shall be applied in the preparation of Financial Statements.

Qualification for exemption of relaxation in respect of SMC

An existing company, which was previously not a Small and Medium sized Company (SMC) and subsequently becomes a SMC, shall not be qualified for exemption or relaxation in respect of Accounting Standards available to a SMC until the company remains a SMC for two consecutive accounting periods.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=RKk43Bmg99ksfV0bUGr6XA%253D%253D&type=open>

3) The Companies (Accounts) Second Amendment Rules, 2022 (MCA Notification No.G.S.R.-(E). Dated 31st March, 2022)

MCA has notified the Companies (Accounts) Second Amendment Rules, 2022 which came into force on the date of their publication in the Official Gazette. Vide this notification, the date of applicability for the requirement relating to feature of recording audit trail in the Accounting Software has been extended from 01st April 2022 to 01st April, 2023. Further, MCA has extended the timeline for filing of Form CSR-2 for FY 2020-21 from 31st March, 2022 to 31st May, 2022.

Brief Analysis:

The Ministry of Corporate Affairs vide notification dated 31st March, 2022 has issued the Companies (Accounts) Second Amendment Rules, 2022. The amendment has extended the date of applicability for the requirement relating to Audit Trail feature in the Accounting Software from 01/04/2022 to 01/04/2023.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=3kjEo3H12bPQqpt2k18OTw%253D%253D&type=open>

4) The Companies (Indian Accounting Standards) Amendment Rules, 2022 (MCA Notification No. G.S.R 255(E). Dated 23rd March, 2022)

MCA has issued the Companies (Indian Accounting Standards) Amendment Rules, 2022 in consultation with the National Financial Reporting Authority (NFRA) to provide clarifications regarding Annual Improvements to Ind AS (2021). An entity shall apply Annual Improvements to IND AS (2021), to financial liabilities that are modified or exchanged on or after the beginning of the annual reporting period in which the entity first applies the amendment. An entity shall apply that amendment for annual reporting periods beginning on or after 1st April 2022. The notification has brought a few additions and substitutions in following Indian Accounting Standards (Ind AS):

- Ind AS 16- Property, Plant and Equipment;
- Ind AS 37- Provisions, Contingent Liabilities and Contingent Assets;
- Ind AS 41- Agriculture.
- Ind AS 101- First-time Adoption of Indian Accounting Standards;
- Ind AS 103- Business Combinations;
- Ind AS 109- Financial Instruments;

Brief Analysis:

MCA notifies Companies (Indian Accounting Standards) Amendment Rules, 2022 dated 23rd March, 2022 and further amended the Companies (Indian Accounting Standards) Rules, 2015. The notification has brought a following additions and substitutions in the below mentioned Indian Accounting Standards (Ind AS):

- **Ind AS 16- Property, Plant and Equipment:** The amendment has clarified the accounting treatment for “excess of net sale proceeds of items produced over the cost of testing”. The excess of net sale proceeds of items produced over the cost of testing, if any, should not be recognized in the statement of profit and loss account but deducted from the directly attributable costs considered as part of cost of an item of PPE. The amendment shall be effective for annual reporting periods beginning on or after 1st April, 2022.

- **Ind AS 37- Provisions, Contingent Liabilities and Contingent Assets:** The amendment states that the types of costs a company can include as the ‘cost of fulfilling a contract’ while assessing whether a contract is onerous as under:

- The incremental costs of fulfilling that contract like direct labour and materials, etc.
- An allocation of other costs that relate directly to fulfilling contracts- like an allocation of depreciation charge for an item of PPE used in fulfilling that contract.

The amendment apply for annual reporting periods beginning on or after 1st April, 2022 to contracts existing at the date when amendments are first applied.

- **Ind AS 41- Agriculture:** This Ind AS requires biological assets to be measured on initial recognition and at the end of each reporting period at its fair value less costs to sell. Through this amendment the requirement to exclude cash flows for taxation when measuring fair value was removed.

- **Ind AS 101- First-time Adoption of Indian Accounting Standards:** This amendment aims at simplifying the application of Ind AS 101 for subsidiary that becomes a first time adopter of the Indian Accounting Standards later than its parent. The amendment states that if a subsidiary, joint venture of associate adopts Ind AS later than its parent and applies para D16(a) then the subsidiary may elect to measure cumulative translation differences for all foreign operations at amounts included in the consolidated financial statements of the parent, based on parent’s date of transition to Ind AS.

- **Ind AS 103- Business Combinations:** The amendment have substituted the reference to the Framework for preparation and Presentation of Financial Statements with Indian Accounting Standards with reference to the Conceptual Framework for Financial Reporting under Indian Accounting Standards (Conceptual Framework), without changing the accounting requirements for business combinations. The amendment would be applicable to those business combinations for which the acquisition date is on or after 1st April, 2022.

- **Ind AS 109- Financial Instruments:** As per this accounting standard, a financial liability is derecognized when it is extinguished, which may inter alia happen when there is an exchange between an existing borrower and lender of debt instruments with substantially different terms or a substantial modification of the terms of an existing debt instrument (modification of terms).

The amendment clarifies that for the purpose of performing the 10% test for derecognition of financial liabilities, in determining fees paid, the borrower includes amounts paid by the borrower to or on behalf of the lender, and fees received include amounts paid by the lender to or on behalf of the borrower. The amendment is applied prospectively to modifications and exchanges that occur on or after the date the entity first applies the amendment.

For details:

<https://egazette.nic.in/WriteReadData/2022/234814.pdf>

**5) The NFRA Amendment Rules, 2022
MCA Notification no. G.S.R (E) dated 17th June, 2022)**

The Ministry of Corporate Affairs (MCA) vide its notification dated 17th March, 2022 has notified “The National Financial Reporting Authority (NFRA) Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. The amendment substituted rule 13 (Punishment in case of non-compliance) of the NFRA Rules, 2018 by stating that, whoever contravenes any of the provisions of these rules, shall be punishable with fine not exceeding Rs. 5,000, and where the contravention is continuing one, with a further fine not exceeding Rs. 500 for every day after the first during which the contravention continues.

Earlier to this amendment the contravention under aforesaid rules was punishable as per section 450 (punishment where no specific penalty or punishment is provided) of the Companies Act, 2013.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ALYJ%252BRnuB%252BCYMY4Llv02JA%253D%253D&type=open>

6) Ministry of Corporate Affairs (MCA): Clarification (MCA Clarification dated 26th September, 2022)

Amendment to Schedule III to the Companies Act, 2013 vide MCA Notification GSR. 207(E) dated 24th March 2021 mandates companies to round off the figures appearing in the Financial Statements depending upon their total income. However, if the companies provide absolute figures in e-forms i.e. AOC-4, the same shall not be treated as incorrect certification by the Professionals.

Brief Analysis:

The MCA vide Notification dated 24-03-2021 introduced an amendment in Schedule III of the Companies Act, 2013 whereby the companies were mandated to round off the figures appearing in the Financial Statements depending upon their total income. Now, the MCA has issued clarification that in case the companies provide an absolute figure in AOC-4, the same shall not be treated as an incorrect certification by the professionals.

For details:

<https://www.mca.gov.in/content/mca/global/en/home.html>

**7) The Companies (Indian Accounting Standards) Amendment Rules, 2023
(MCA Notification G.S.R. 242(E) dated March 31, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated March 31, 2023 has notified “the Companies (Indian Accounting Standards) Amendment Rules, 2023” which has come into force with effect from April 01, 2023. According to one of the amendment, a new para has been inserted in Ind AS 101, which states deferred tax related to assets and liabilities arising from a single transaction shall apply for annual reporting periods beginning on or after 01.04.23. Various other amendments in Ind AS 102, 103, 107, 109 and 115 have also been notified.

Brief Analysis:

The Ministry of Corporate Affairs (MCA) in consultation with National Financial Reporting Authority (NFRA) has notified the Companies (Indian Accounting Standards) Amendment Rules, 2023 to further amend the Companies (Indian Accounting Standards) Rules, 2015. Following Ind AS has been amended viz:

- Ind AS 101 (First-time adoption of Indian Accounting Standards);
- Ind AS 102 (Share based payment);
- Ind AS 103 (Business Combinations);
- Ind AS 107 (Financial Instruments: Disclosures);
- Ind AS 109 (Financial Instruments);
- Ind AS 115 (Revenue from Contracts with Customers);
- Ind AS 1 (Presentation of Financial Statements);
- Ind AS 8 (Accounting Policies, Changes in Accounting Estimates and Errors);
- Ind AS 12 (Income Taxes); and
- Ind AS 34 (Interim Financial Reporting).

For details:

<https://egazette.gov.in/WriteReadData/2023/244871.pdf>

Lesson 9 - Transparency and Disclosures

1. SEBI (Listing Obligation and Disclosure Requirements) (Sixth Amendment) Regulation, 2022 (SEBI Notification No. SEBI/LAD-NRO/GN/2022/103 dated November 14, 2022)

On November 14, 2022, the Securities & Exchange Board of India (SEBI) has notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022. According to the amendment in regulation 32, listed entities are mandated to submit a quarterly statement of deviation(s) or variation(s) to stock exchanges indicating if they have deviated or varied in using the proceeds from issue of the object stated for the issue, till the complete use of fund from proceed. Earlier to the amendment this statement had to be submitted for public, rights and preferential issues. With the amendment, SEBI had broadened the scope of disclosure and submission of such statement even in funds raised from Qualified Institutional Placements.

For details:

https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2022_65048.html

2. The Companies (Incorporation) Amendment Rules 2023 (MCA Notification No. G.S.R. 42(E) dated January 19, 2023)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Amendment Rules, 2023 to further amend the Companies (Incorporation) Rules, 2014. The provisions have come into effect from 23.01.2023. According to the amendment Forms INC-3 (One Person Company – Nominee Consent Form), INC-14 (Declaration), INC-15 (Declaration) and RD-GNL-5 (filing addendum for rectification of defects or incompleteness) has been omitted. Further, Forms RUN, INC-4, INC-6, INC-9, INC-12, INC-13, INC-18, INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, INC-28, INC-3I, SPICE+ (INC-32), INC-33, INC-34, INC-35 (AGILE-PRO-S) and RD-1 are substituted.

Brief Analysis:

(i) The amendment in rule 4(2) provides that the name of the nominee of the owner of an OPC shall be mentioned in the memorandum of One Person Company ((OPC) and such nomination details along with the consent of such nominee shall be filled in Form No. INC-32 (SPICE+) as a declaration and the said Form along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its e-memorandum and e-articles.

(ii) Rule 6(3)[Conversion of One Person Company into a Public company or a Private company] is amended to reduce the number of attachments which were required be enclosed in e-Form INC-6 by stating that, the company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA i.e. Further rule 6(4) is modified stating, on being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

(iii) Rule 7 (Conversion of private company into One Person Company) sub-rule 4 is modified to include an additional enclosure in Form no. INC-6 i.e. Copy of NOC of every creditor with the application of conversion.

(iv) Rule 20 is modified to introduce additional matter of consideration by the Registrar in case of issuing License under section 8 for Existing Companies i.e. the Registrar shall along with considering the objections, if any received, also consider two years financial statements immediately preceding the date of application or when the company has functioned only for one financial year, for such year including Board's reports and audit reports, relating to the existing companies.

(v) Rule 33 (Alteration of Articles) is modified to state that, subject to the provisions of sub-rule (1), for effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD-1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and e-Article of Association within fifteen days from the date of receipt of the order from the Regional Director.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQ2MzM0MjQ1&docCategory=Notifications&type=open>

**Lesson 10- An overview of Inter-Corporate Loans Investments,
Guarantees and Security Related Party Transactions**

1) Clarification on applicability of regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions (SEBI Circular No. - SEBI/HO/CFD/CMD1/CIR/P/2022/40 dated 30th March, 2022)

Impact of clarification:

SEBI vide this circular has clarified that for an Related Party Transaction (RPT) that has been approved by the audit committee and shareholders prior to April 01, 2022, there shall be no requirement to seek fresh approval from the shareholders. The RPT that has been approved by the audit committee prior to April 01, 2022 which continues beyond such date and becomes material as per the revised materiality threshold shall be placed before the shareholders in the first General Meeting held after April 01, 2022.

Further, provided that the explanatory statement contained in the notice sent to the shareholders for seeking approval for an RPT shall provide relevant information so as to enable the shareholders to take a view whether the terms and conditions of the proposed RPT are not unfavourable to the listed entity, compared to the terms and conditions, had similar transaction been entered into between two unrelated parties.

For details:

[https://www.sebi.gov.in/legal/circulars/mar-2022/clarification-on-applicability-of-regulation- 23-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-in-relation-to- related-party-transactions_57398.html](https://www.sebi.gov.in/legal/circulars/mar-2022/clarification-on-applicability-of-regulation-23-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-in-relation-to-related-party-transactions_57398.html)

Lesson 11- Registers and Records

1. The Companies (Management and Administration) Amendment Rules 2023 (MCA Notification No. G.S.R. 44(E) dated January 21, 2023)

The Ministry of Corporate Affairs has notified the Companies (Management and Administration) Amendment Rules, 2023 to amend the Companies (Management and Administration) Rules, 2014. The provisions have come into effect from 23.01.2023. Through amendment the Form MGT- 3 relating to Notice of situation or change of situation or discontinuation of situation, of place where foreign register shall be kept, has been substituted and Form MGT- 14 relating to Filing of Resolutions and agreements to the Registrar, has been substituted.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMTIwNzUz&docCategory=Notifications&type=open>

2. The Companies (Share Capital and Debentures) Amendment Rules, 2023 (MCA Notification No. G.S.R. 43(E) dated January 21, 2023)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Share Capital and Debentures) Amendment Rules, 2023 to further amend the Companies (Share Capital and Debenture) Rules, 2014. The provisions have come into effect from 23.01.2023.

Brief Analysis:

Through amendment in rule 17(14) the changes to the provision relating to buy-back of shares or other securities has been made. The requirement of annexing a certificate along with the return in Form SH.11 has been substituted with submitting of a declaration instead. This declaration must be signed by two directors of the company including the managing director, if any, certifying that the buy-back of securities has been made in compliance with the provisions of the Act and the rules made thereunder.

Additionally, the amendment has also brought about revisions in the following forms:

Form No. SH. 7- Notice to Registrar of any alteration of share capital

Form No. SH. 8- Letter of Offer

Form No. SH. 9 – Declaration of Solvency

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjUwNjU2NDY4&docCategory=Notifications&type=open>

3. The Companies (Registration Offices and Fees) Amendment Rules, 2022 (MCA Notification No. G.S.R.12(E)—Dated 11th January, 2022)

The Central Government has notified the Companies (Registration Offices and Fees) Amendment Rules, 2022 further to amend the Companies (Registration Offices and Fees) Rules, 2014. The said notified rules shall come into force with effect from 1st July, 2022.

In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in item I (Fee for filing under section 403 of the Companies Act, 2013), sub-item B, has been substituted.

Brief Analysis:

As per rule 12 of the Companies (Registration Offices and Fees) Rules, 2014, fees or additional fees is payable for filing, submission, registration or recording of the document. Item I, sub item A, in the Annexure to rule 12 covers the fees payable, whereas, sub-item B in the Annexure to rule 12 covers the additional fees payable for delay in filing of forms. The Companies (Registration Offices and Fees) Amendment Rules, 2022 substitute sub- item B in the Annexure.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=T%252F%252B384mFkSrHFx1liwRTnQ%253D%253D&type=open>

4. MCA Notifications No. S.O. 147(E) dated January 11, 2022

The Central Government appoints the 1st July, 2022, as the date on which the provisions of second and third proviso to clause (i) of section 80 of the Companies (Amendment) Act, 2017 shall come into force.

Brief Analysis:

MCA has notified section 80 of Companies (Amendment) Act, 2017 w.e.f. 1st July, 2022 which relates to amendment in Section 403 of Companies Act, 2013. Section 403 of Companies Act, 2013 deals with Fee for Filing, etc. It states that where any documents, fact or information required to be submitted, filed, registered or recorded within the period provided in respective sections it may be submitted, filed, registered or recorded, as the case may be, after expiry of the period so provided in those sections, on payment of such additional fee as may be prescribed, which shall not be less than one hundred rupees per day and different amounts may be prescribed for different classes of companies and where there is default on two or more occasions in submitting, filing, registering or recording of the document, fact or information, it may, without prejudice to any other legal action or liability under this Act, be submitted, filed, registered or recorded, as the case may be, on payment of a higher additional fee, as may be prescribed and which shall not be lesser than twice the additional fee as provided in the provisions of the Act. It also states that where a company fails or commits any default to submit, file, register or record any document, fact or information before the expiry of the period specified in the relevant section, the company and the officers of the company who are in default, shall, without prejudice to the liability for the payment of fee and additional fee, be liable for the penalty or punishment provided under this Act for such failure or default.”

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=VrIKR5%252BwlgL7%252BmN7eJV%252BIg%253D%253D&type=open>

Lesson 12- An overview of Corporate Reorganization

1. Amendment in the notification pertaining to application for Fast Track Corporate Insolvency Resolution Process (MCA notification no. S.O. 4142(E) dated 30th August, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 30, 2022 has notified the amendment in the notification no. S.O. 1911(E) dated June 14, 2017.

As per the amendment, an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors, namely:

- (a) A Small Company as defined under clause (85) of section 2 of Companies Act, 2013; or
- (b) A Startup (other than the partnership firm) as defined in the notification of the Government of India in the Ministry of Commerce and Industry number G.S.R. 127(E), dated the 19th February, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 19th February, 2019 and as amended from time to time; or”
- (c) An unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding rupees one crore.

Brief Analysis:

Through this notification, Government of India has notified that an application for fast track corporate insolvency resolution process may be made also by a Startup (other than the partnership firm).

For details:

<https://egazette.nic.in/WriteReadData/2022/238571.pdf>

2. The Companies (Registered Valuers and Valuation) Amendment Rules, 2022 (MCA Notification No. G.S.R.(E) dated November 21, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated November 21, 2022 has notified “the Companies (Registered Valuers and Valuation) Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. The highlights of the amendment are mentioned below:

- (a) Rule 3(2)(c) is modified by clarifying that a partnership firm or company shall not be registered as a registered valuer unless all the partners or directors are eligible to be under Rule 3(1) to be registered as registered valuers. Further, a new clause (f) to Rule 3(2) is inserted specifying that, such partner or director shall not be a member of more than one registered valuers organisation at one point in time and the partnership entity or company already registered as valuers to comply with the provisions within six months of date of commencement of Amended Rules 2022.
- (b) Rule 7A has been inserted, which mandates that a registered valuer must inform the authority (i.e. IBBI- powers delegated under section 458 of the Companies, Act, 2013) as to any change in the personal details or modification in the composition of directors or partners or any such change in the partnership deed or Memorandum of Association which may affect the registration of registered valuer.
- (c) Rule 14A has been inserted, which specifies that the registered valuers organisation must intimate the authority (IBBI) as to any change in the composition of its governing board, appellate panel or committee after payment of requisite fee.

(d) An explanation has been inserted into Clause 26(1)(b) of Annexure III, Part II of Serial Number IX (dealing with grounds for temporary surrender of membership), which clarifies that a member functioning as a wholetime director of a company registered as a valuer shall not be considered “employment” and hence not a ground for the temporary suspension.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=jf9MSWpybbeJiak1ynOMQQ%253D%253D&type=open>

3. The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 (MCA Notification No. G.S.R. 367(E) dated May 15, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated May 15, 2023 has notified “the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023” which shall come into force with effect from June 15, 2023. According to the amendment, rule 25(5) and (6) are substituted. The new sub-rules introduce provisions regarding objections, suggestions, and confirmation orders related to schemes of merger or amalgamation under section 233 of the Companies Act, 2013.

Brief Analysis:

As per the amendment, where no objection or suggestion is received within a period of 30 days of receipt of copy of scheme under section 233(2), from the RoC/official liquidator and the Central Government is of opinion that that the scheme is in public interest then, it may, within a period of 15 days after the expiry of 30 days, issue a confirmation order of such scheme in Form No. CAA-12.

However, if Central Government not issue the confirmation order within a period of 60 days of receipt of the scheme under section 233(2), then, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

Further, where objections and suggestions are received within a period of 30 days of receipt of order under section 233(2) from the RoC/Official Liquidator(OL) or both by Central Government(CG) and-

a) such objections or suggestions of RoC/OL are not sustainable and CG is of opinion that scheme is in public interest/creditors interest, then , it may within a period of 30 days after the expiry of 30 days as referred above, issue confirmation order in form No. CAA-12

b) the CG is of opinion that the scheme is not in public interest/creditors interest, then, it may within 60 days of receipt of scheme file an application before the Tribunal in Form No. CAA-13 by stating its objections/opinion and requesting Tribunal may consider the scheme.

In case CG does not issue confirmation order or does not file any application to Tribunal, then, it shall be deemed that it has no objection to the scheme and a conformation order shall be issued accordingly.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzE3MzkzNTgy&docCategory=Notifications&type=open>

Lesson 13- An Introduction to MCA- 21 and filing in XBRL

1) **The Companies (Incorporation) Fourth Amendment Rules, 2021 (Notification No: G.S.R. 392(E), dated June 07, 2021)**

The Central Government has made the Companies (Incorporation) Fourth Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014.

1. **In Rule 38 A of the Companies (Incorporation) Rules, 2014,**

(i) in the marginal heading, for the words, **“and Opening of Bank Account”**,

The following the words shall be substituted,

“Opening of Bank Account and Shops and Establishment Registration”

(ii) in the opening portion, for the letters “AGILE-PRO”, the letters “AGILE-PRO-S” has been substituted;

(iii) for clauses “(c) and (d)” relating to “Profession Tax Registration and Opening of Bank Account”, the following clauses shall be substituted, namely:-

“(d) Profession Tax Registration with effect from the 23rd February, 2020;

(c) Opening Bank Account with effect from the 23rd February, 2020;

(d) Shops and Establishment Registration.”

2. **In the Annexure to the Companies (Incorporation) Rules, 2014, for the e-Form No.INC-35 (AGILE-PRO), the e-Form INC-35 (AGILE-PRO-S) has been substituted**

BRIEF ANALYSIS:

Rules	Amendment Highlights	Effect
Rule 38A of the Companies (Incorporation) Rules, 2014	Change in the Heading Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration, Employees’ Provident Fund organisation (EPFO) Registration and Profession Tax Registration, Opening of Bank Account and Shops and Establishment Registration	the facility of obtaining Shops and Establishment Registration has been included.
	In the opening portion of the Rule, for the letters “AGILE-PRO”, the letters “AGILE-PRO-S” has been substituted;	The application for incorporation of a company in SPICe+ under Rule 38 of the Companies (Incorporation) Rules, 2014 shall be accompanied by the form AGILE-PRO-S (INC-35).
	(d) Profession Tax Registration with effect from the 23rd February, 2020.	Sequence revised and clause (f) w.r.t. Shop and

	(e) Opening of Bank Account with effect from 23rd February, 2020. (f) Shop and Establishment Registration.	Establishment Registration has been added.
Annexure to Rule 38A of the Companies (Incorporation) Rules, 2014	INC-35 “AGILE-PRO-S”	Form Name Revised to “INC-35 AGILE-PRO-S” and respective changes to the form has been notified.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=sbRk0d1avtQVOZrw%252BKs2GA%253D%253D&type=open>

2) The Companies (Incorporation) Amendment Rules, 2022 (MCA Notification No. G.S.R. 291 (E).—Dated 8th April, 2022)

The Central Government notified the Companies (Incorporation) Rules, 2022, the said amendment rules inserted the proviso to Rule 12 (Application for Incorporation of Companies) as mentioned below:

“Provided further that in case of a Company being incorporated as a Nidhi, the declaration by the Central Government under section 406 of the Act shall be obtained by the Nidhi before commencing the business and a declaration in this behalf shall be submitted at the stage of incorporation by the company.”

Further, the amendment rules substituted the Form INC-20A and inserted a declaration under Part B of Form INC-32 (SPICE+) pertaining to, all necessary approvals have been obtained before commencing business of Nidhi, the said forms are specified under the annexure to the Companies (Incorporation) Rules, 2014.

Brief Analysis:

The Ministry of Corporate Affairs (“MCA”) notified the Companies (Incorporation) Amendment Rules, 2022 to further amend the Companies (Incorporation) Rules, 2014 vide notification no. G.S.R. 291(E) dated April 8, 2022. Through this amendment, MCA has inserted a proviso to Rule 12 wherein a company being incorporated as Nidhi will require a declaration by the Central Government under section 406 of the Companies Act, 2013 before commencement of business and a declaration in this behalf shall be submitted at the stage of incorporation by the company. Further, INC-20A and Part B of Form INC-32 (SPICE+) has also been revised to capture the aforesaid declaration by a Nidhi Company.

For details:

<https://egazette.nic.in/WriteReadData/2022/234994.pdf>

3) The Companies (Incorporation) Second Amendment Rules, 2022 (MCA Notification No. G.S.R. (E).—Dated 20th May, 2022)

The Ministry of Corporate Affairs (MCA) vide its Notification dated May 20, 2022 has notified the Companies (Incorporation) Second Amendment Rules, 2022 which shall come into force with effect from June 01, 2022. As per the amendment, Form No. INC-9 (Declaration by Subscribers and First

Directors) has been substituted. The substituted Form inter-alia consist declaration in respect of compliance with Government approval under FEMA by inserting checkboxes;

- I am required to obtain the Government approval under the Foreign Exchange Management (Non-debt

Instruments) Rules, 2019 prior to subscription of shares and the same has been obtained, and is enclosed herewith; or

- I am not required to obtain the Government approval under the Foreign Exchange Management (Non- debt Instruments) Rules, 2019 prior to subscription of shares.

Further, the Ministry has inserted new declaration in Form No. INC 32 (SPICE+), in part B, in declaration, the following shall be inserted at the end, namely:

“I, on behalf of proposed directors, hereby declare that person seeking appointment is a national of a country which shares a land border with India, necessary security clearance from Ministry of Home Affairs, Government of India shall be attached with the consent.

Yes No. (if yes is opted, a copy of the security clearance is to be attached).”

Brief Analysis:

The Ministry of Corporate Affairs (“MCA”) notified the Companies Second (Incorporation) Amendment Rules, 2022 to further amend the Companies (Incorporation) Rules, 2014 dated May 20, 2022. As per the amendment, Form No. INC-9 (Declaration by Subscribers and First Directors) has been substituted to include declaration with respect to whether Government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 is required to be obtained or not.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=QJAZ8U7iIBs%252FRWVx91HwmQ%253D&type=open>

4) The Companies (Incorporation) Amendment Rules 2023 (MCA Notification No. G.S.R.42(E) dated January 19, 2023)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Amendment Rules, 2023 to further amend the Companies (Incorporation) Rules, 2014. The provisions have come into effect from 23.01.2023. According to the amendment Forms INC-3 (One Person Company – Nominee Consent Form), INC-14 (Declaration), INC-15 (Declaration) and RD-GNL-5 (filing addendum for rectification of defects or incompleteness) has been omitted. Further, Forms RUN, INC-4, INC-6, INC-9, INC-12, INC-13, INC-18, INC-20, INC-20A, INC-22, INC-23, INC-24, INC-27, INC-28, INC-31, SPICE+ (INC-32), INC-33, INC-34, INC-35 (AGILE-PRO-S) and RD-1 are substituted.

Brief Analysis:

(i) The amendment in rule 4(2) provides that the name of the nominee of the owner of an OPC shall be mentioned in the memorandum of One Person Company ((OPC) and such nomination details along with the consent of such nominee shall be filled in Form No. INC-32 (SPICE+) as a declaration and the said Form along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its e-memorandum and e-articles.

(ii) Rule 6(3)[Conversion of One Person Company into a Public company or a Private company] is amended to reduce the number of attachments which were required be enclosed in e-Form INC-6 by stating that, the company shall file an application in e-Form No. INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA i.e. Further rule 6(4) is modified stating, on being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

(iii) Rule 7 (Conversion of private company into One Person Company) sub-rule 4 is modified to include an additional enclosure in Form no. INC-6 i.e. Copy of NOC of every creditor with the application of conversion.

(iv) Rule 20 is modified to introduce additional matter of consideration by the Registrar in case of issuing License under section 8 for Existing Companies i.e. the Registrar shall along with considering the objections, if any received, also consider two years financial statements immediately preceding the date of application or when the company has functioned only for one financial year, for such year including Board's reports and audit reports, relating to the existing companies.

(v) Rule 33 (Alteration of Articles) is modified to state that, subject to the provision of sub-rule (1), for effecting the conversion of a public company into a private company, a copy of order of the Tribunal approving the alteration , shall be filled with the Registrar in Form No. INC -27 with fee together with the printed copy of altered articles within fifteen days from the date of receipt of the order from the Tribunal. And the requirement to mention Service Request Number (SRN) of Form No. RD- 1, pertaining to order of the Regional Director approving the alteration in Form No. INC -27 has been done away.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQ2MzM0MjQ1&docCategory=Notifications&type=open>

**6) The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023
(MCA Notification No. G.S.R. 37(E) dated January 20, 2023)**

The Ministry of Corporate Affairs has notified the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2023 to amend the Companies (Prospectus and Allotment of Securities) Rules, 2014. The provisions have come into effect from 23.01.2023. Through amendment rule 12(6) has been omitted which was earlier requiring, in the case of the issue of bonus shares, a copy of the resolution passed in the general meeting authorizing the issue of such shares shall be attached to the Form PAS-3. Also that, Form PAS-2, Form PAS-3 and Form PAS-6 are substituted.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQxMTMwNDA2&docCategory=Notifications&type=open>

7) The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 (MCA Notification No. G.S.R. 354(E) dated April 17, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated April 17, 2023 has notified “the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023” which shall come into force with effect from May 01, 2023.

Brief Analysis:

The amendments inter alia provide below mentioned changes:

1. An application for removal of name of company under section 248(2) shall be made to Registrar, Center for processing Accelerated Corporate Exit in Form No. STK-2 along with fee of Rupees 10,000. [Substituted rule 4(1)]
2. According to the amendment now the application in Form STK-2 shall not be accompanied by a copy of the special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application.[Omitted clause iv of rule 4(3)]
3. The Registrar, Center for Processing Accelerated Corporate Exit established under section 396(1) shall be the Registrar of Companies for the purpose of exercising functional jurisdiction of processing and disposal of applications made in Form no. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India. (Inserted sub-rule 3A to rule 4)
4. Further, Form No. STK-2 (Application by company to RoC for removing its name from register of companies), STK-6 (Public Notice) and STK-7 (Notice for striking off and dissolution) are substituted.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ab6Q0qvTuxNB7D4Ij6zO7Q%253D%253D&type=open>

8) The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 (MCA Notification No. G.S.R. 354(E) dated May 10, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated May 10, 2023 has notified “the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023” which shall come into force on the date of its publication in the Official Gazette. According to the amendment, under rule 4(1) [Application for removal of name of company] three provisos are inserted stating:

- a) the company shall not file an application for removal of name, unless it has filed overdue financial statements and overdue annual returns, up to the end of the financial year in which the company ceased to carry its business operations;
- b) in case a company intends to file the application for removal of name after the action under section 248(1) has been initiated by the Registrar, it shall file all pending financial statements and all pending annual returns, before filing the application;
- c) Further, once the notice of strike off under section 248(5) has been issued by the Registrar for publication in Official Gazette pursuant to the action initiated under section 248(1), a company shall not be allowed to file the application under this sub-rule.

Brief Analysis:

Ministry of Corporate Affairs has notified the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 dated May 10, 2023. Amendment introduces three provisos to Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. These three provisos impose requirements on companies seeking to file removal of its name applications, including the submission of overdue financial statements and annual returns before the filing the application, and limitations on filing the application for removal of name once the Registrar has initiated action or issued a notice under section 248(5).

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzE3MDAwMjI3&docCategory=Notifications&type=open>

Lesson 16 – Directors

1. **The Companies (Creation and Maintenance of databank of Independent Directors) Amendment Rules, 2021 (Notification No: G.S.R. 418(E), dated June 18, 2021)**

The Central Government has made the Companies (Creation and Maintenance of databank of Independent Directors) Amendment Rules, 2021, to further amend the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, namely:-

- **In Rule 3(7) in clause (a) of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019:**

after the words “for inclusion”, the words “or renewal” shall be inserted;

- **In Rule 3 after sub-rule (7) of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, before explanation, the following sub-rule shall be inserted, namely:-**

“(8) In case of delay on the part of an individual in applying to the institute under sub-rule (7) for inclusion of his name in the data bank or in case of delay in filing an application for renewal thereof, the institute shall allow such inclusion or renewal, as the case may be, under rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014 after charging a further fee of one thousand rupees on account of such delay.”

Brief Analysis:

Accordingly, with this amendment, a new sub-rule 8 has been inserted in Rule 3 of the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, which provides that in case of delay on the part of an individual in applying to the Indian Institute of Corporate Affairs for inclusion of name in the independent director’s data bank or in case of delay in filing an application for renewal thereof, the institute shall allow such inclusion or renewal, as the case may be, after charging a further fee of Rs.1000 on account of such delay.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjAxNDA=&docCategory=NotificationsAndCirculars&type=download>

2. **The Companies (Appointment and Qualification of Directors) Amendment Rules, 2021 (Notification No. G.S.R. 579(E), dated August 19, 2021)**

The MCA has notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2021 to further amend the Companies (Appointment and Qualification of Directors) Rules, 2014.

- (1) **In Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014, in the first proviso, for clause (B),**

the following clause has been substituted, namely:—

“(B) in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

- (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
- (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.”.

- (2) **after the second proviso, the following proviso has been inserted, namely:—**

“Provided also that the following individuals, who are or have been, for at least ten years:—

- (A) an advocate of a court; or
 - (B) in practice as a chartered accountant; or
 - (C) in practice as a cost accountant; or
 - (D) in practice as a company secretary,
- shall not be required to pass the online proficiency self-assessment test.”.

Brief Analysis:

The Amendment provides that an individual is exempted to pass the online proficiency self-assessment test to be included in independent directors’ databank if he has served for a total period of not less than three years as on the date of inclusion of his name in the data bank in the pay scale of Director or equivalent or above in any Ministry or Department, of the Central Government or any State Government, and having experience in handling,—

- (i) the matters relating to commerce, corporate affairs, finance, industry or public enterprises; or
- (ii) the affairs related to Government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.”.

It is further provided that an individual who are or have been, for at least ten years an advocate of a court or as a chartered accountant in practice or as a cost accountant in practice or as a company secretary in practice, shall not be required to pass the online proficiency self-assessment test.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0MTU=&docCategory=Notifications&type=open>

3. The Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021 (Notification No: G.S.R. 580(E), dated August 19, 2021)

The MCA has notified the Companies (Creation and Maintenance of databank of Independent Directors) Second Amendment Rules, 2021 to further amend the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019. In the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019, after rule 5, the following new rule 6 and the Schedule has been inserted, namely:-

“6. Annual report on the capacity building of independent directors:- The institute shall within sixty days from the end of every financial year send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director in format provided in the Schedule to these Rules.” The amendment also prescribes the format of Annual report on Capacity Building of Independent Director.

Brief Analysis:

With this amendment the Indian Institute of Corporate Affairs (IICA) shall within sixty days from the end of every financial year send an annual report to every individual whose name is included in the data bank and also to every company in which such individual is appointed as an independent director.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzU0MTY=&docCategory=Notifications&type=open>

4. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022(MCA Notification No. G.S.R. (E) dated 01st June, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated June 01, 2022 has notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 which shall come into force on the date of its publication in the Official Gazette. The amendments *inter - alia* provide that:

- a. In case the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs shall also be attached along with the consent (Form DIR -2).(Insertion of proviso to Rule 8)
- b. No application number shall be generated in case of the person applying for Director Identification Number (DIN) is a national of a country which shares land border with India, unless necessary security clearance from Ministry of Home Affairs has been attached along with application for DIN (Form DIR - 3).{Insertion of proviso to Rule 10(1)}
- c. In form DIR -12 a declaration is inserted to be opted by person seeking appointment as director as to whether the national of a country which shares land border with India has sought necessary security clearance from Ministry of Home Affairs or not.

Brief Analysis:

Through this amendment, MCA has introduced changes in its various forms relating to appointment of directors by aligning the forms with the Foreign Exchange Management (Non -Debt Instruments) Rules, 2019. As per the changes made, if the person seeking appointment is a national of a country which shares land border with India, necessary security clearance from the Ministry of Home Affairs shall also be attached along with the consent.

Similarly, no application number shall be generated in case of the person applying for Director Identification Number (DIN) is a national of a country which shares land border with India, unless necessary security clearance from Ministry of Home Affairs has been attached along with application for DIN (Form DIR -3).

In form DIR-12, a declaration is inserted which needs to be opted by person seeking appointment as director as to whether the national of a country which shares land border with India has sought necessary security clearance from Ministry of Home Affairs or not.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=U4Pl6Cz4l3T9YHrD1ZOq2g%253D%253D&type=open>

5. The Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022 (MCA notification no. G.S.R. 439(E) dated 10th June, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated June 10, 2022 has notified “The Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022” which shall come into force on the date of its publication in the Official Gazette. According to the amendment sub - rule 5 is inserted under rule 6 of the Companies (Appointment and Qualification of Directors) Rules, 2014, which is specifying, any individual whose name has been removed from the databank under sub - rule (4), may apply for restoration of his name on payment of fees of Rs. 1000 and the IICA shall allow such restoration subject to the following conditions, namely:

- his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self- assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial

- registration shall continue to be valid for the period for which the same was initially paid; and
- in case he fails to pass the online proficiency self-assessment test within one year from the date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.

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For Details:

<https://egazette.nic.in/WriteReadData/2022/236474.pdf>

6. The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 (MCA notification no. G.S.R. (E) dated 29th August, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 29, 2022 has notified “the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. According to the amendment the E Form DIR-3-KYC and Form DIR-3- KYC-WEB are substituted.

For Details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=slrNNMj6rSE43YrWxXorGw%253D%253D&type=open>

7. SEBI (Listing Obligation and Disclosure Requirements) (Sixth Amendment) Regulation, 2022 (SEBI Notification No. SEBI/LAD-NRO/GN/2022/103 dated 14 November 2022)

On November 14, 2022, the Securities & Exchange Board of India (SEBI) has notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 which brought changes in regulation 25(2A) pursuant to ease of resolution requirements for appointment or removal of Independent directors.

According to the amendment, proviso to Sub-regulation 2A of Regulation 25 is inserted stating that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made. Further, an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

This amendment rationalize the process of appointment of independent director even if the special resolution *per-se* fails.

For details:

https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2022_65048.html

8. SEBI (Listing Obligation and Disclosure Requirements) (Sixth Amendment) Regulation, 2022 (SEBI Notification No. SEBI/LAD-NRO/GN/2022/103 dated November 14, 2022)

On November 14, 2022, the Securities & Exchange Board of India (SEBI) has notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 which brought changes in regulation 25(2A) pursuant to ease of resolution requirements for appointment or removal of Independent directors. According to the amendment, proviso to Sub-regulation 2A of Regulation 25 is inserted stating that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made.

Further, an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution. This amendment rationalize the process of appointment of independent director even if the special resolution per-se fails.

For details:

https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2022_65048.html

9. SEBI Circular - Appointment of Director nominated by the Debenture Trustee on boards of issuers (SEBI Notification No. SEBI/HO/DDHS/POD1/P/CIR/2023/112 dated July 04, 2023)

SEBI vide this circular provided clarity on the requirements for appointment of directors by entities that have listed their debt securities. Under SEBI norms pertaining to listing of non-convertible securities, an entity registered under the Companies Act, 2013 has to ensure that a person nominated by the debenture trustee is appointed as a director. While this obligation exists for issuers that are companies under the Companies Act, 2013). Citing issues raised by the debenture trustees and the role of a nominee director, SEBI said that issuers coming under certain categories can submit an undertaking to the debenture trustees instead of nominating a director.

For details:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jul-2023/1688473896905.pdf#page=1&zoom=page-width,-16,842

Lesson 17 – Appointment and Remuneration of Key Managerial Personnel

1. The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2023 (MCA Notification No. G.S.R.41(E) dated January 21, 2023)

The Ministry of Corporate Affairs (MCA) has notified the Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2023 to further amend the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. The provisions have come into effect from 23.01.2023. Through amendment Form MR-1 (Return of appointment of managerial personnel) and Form MR-2 (Form of application to the Central Government for approval of appointment of managing director or whole-time director or manager) has been substituted.

For details:

<https://www.mca.gov.in/content/mca/global/en/home.html>

2. Case Law: Officer who is in Default

[In the matter of Shiv Kumar Jatia (Appellant) vs. State of NCT of Delhi (Respondent), The Supreme Court of India, dated 23/08/2019]

Shiv Kumar Jatia is the Managing Director of M/s. Asian Hotels which looks after Hyatt Regency Hotel. He had authorized Mr. PR. Subramanian to apply for lodging license of the hotel. There was a contravention the condition of the lodging license which led to a hotel guest enter into a semi lit under-construction terrace for smoking. The guest fell from the terrace of 6th floor to the 4th floor and got injured. Case was brought before the High Court which ordered for prosecution of the Managing director along with the other three accused by relying on the case of Sushil Ansal vs. State through CBI.

The Apex Court held that vicarious liability on the part of Managing Director and the Directors would arise provided any provision exists in that behalf in the statute. Further, the allegations made on the Managing Director could not establish any active role coupled with criminal intent having direct nexus with the accused.

Court observed that an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

Though there are allegations of negligence on the part of hotel and its officers who are incharge of day to day affairs of the hotel, so far as appellant Mr. Shiv Kumar Jatia is concerned, no allegation is made directly attributing negligence with the criminal intent attracting provisions under Sections 336, 338 read with Section 32 of IPC. There is no reason and justification to proceed against him only on ground that he was the Managing Director of M/s Asian Hotels (North) Limited, which runs Hotel Hyatt Regency. The mere fact that he was chairing the meetings of the company and taking decisions, by itself cannot directly link the allegation of negligence with the criminal intent.

The Court has held that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the Company, when the accused is a Company. The allegations made on the Managing Director was vague in nature and the criminal proceedings against Shiv Kumar Jatia as passed by the High Court, New Delhi were quashed.

Lesson 20 - Virtual Meetings

1) **The Companies (Meetings of Board and its Powers) Amendment Rules, 2021 (Notification No: G.S.R. 409(E), dated June 15, 2021)***

The MCA vide Notification dated June 15, 2021 has omitted Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 which was related to the matters not to be dealt with in a meeting through video conferencing or other audio-visual means.

Accordingly, with the said amendment, now the following previously restricted matters can be considered in a Board Meeting held through video conferencing or other audiovisual means, namely: -

- i. the approval of the annual financial statements;
- ii. the approval of the Board's report;
- iii. the approval of the prospectus;
- iv. the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under section 134 (1) of the Companies Act, 2013; and
- v. the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTkxMzU=&docCategory=NotificationsAndCirculars&type=download>

(Note: The above-mentioned amendment is also relevant for Lesson No. 9 and 22)*

Miscellaneous

1) **The MCA notified the commencement date for Section 4 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 2904(E), dated July 22, 2021)**

The MCA has appointed September 01, 2021 as the commencement date of Section 4 of the Companies (Amendment) Act, 2020 for implementation of amendments in the Rectification of Name of Company provisions under Section 16 of the Companies Act, 2013.

Brief Analysis:

- The time limit of compliance of direction given by the Central Government to change the name of company has been reduced from 6 months to 3 months.
- Further, the Central Government has been empowered to allot a new name to the company, in case of default in complying with its direction instead of imposing punishment for non-compliance for such default.

The company is however not prevented from subsequently changing its name.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=%252BrVndsNHmju%252FOHCLaLZgVA%253D%253D&type=open>

2) **The Companies (Incorporation) Fifth Amendment Rules, 2021, (Notification No: G.S.R. 503(E), dated July 22, 2021) (Effective from September 01, 2021)**

The Central Government has made the Companies (Incorporation) Fifth Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014, namely:-

In the Companies (Incorporation) Rules, 2014, after rule 33, the following rule shall be inserted, namely:-

Rule 33A-Allotment of a new name to the existing company under section 16(3) of the Companies Act, 2013

- (1) In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under section 16(1) of the Companies Act, 2013 within a period of three months from the date of issue of such direction, the letters “ORDNC” (which is an abbreviation of the words “Order of Regional Director Not Complied”), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No. INC-11C.

Provided that nothing contained in sub-rule (1) shall apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director unless the said e-form is subsequently rejected.

- (2) A company whose name has been changed under sub-rule (1) shall at once make necessary compliance with the provisions of section 12 of the Companies Act, 2013 and the statement, “Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)” shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved.

Provided, no such statement is required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Companies Act, 2013.

For details:

<https://www.egazette.nic.in/WriteReadData/2021/228419.pdf>

- 3) **The Companies (Specification of definitions details) Third Amendment Rules, 2021, (Notification No: G.S.R. 539(E), dated August 05, 2021)**

The Central Government has made the Companies (Specification of definitions details) Third Amendment Rules, 2021 to further amend the Companies (Specification of definitions details) Rules, 2014.

In Rule 2(1)(h) of the Companies (Specification of definitions details) Rules, 2014 under the definition of “Electronic Mode”, the following explanation shall be inserted, namely:-

“Explanation.- For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as ‘electronic mode’ for the purpose of clause (42) of section 2 of the Act.”

Brief Analysis:

Rule 2(1)(h) of the Companies (Specification of Definitions Details) Rules, 2014 defines the term 'electronic mode' in the context of a foreign company.

With the insertion of this Explanation, it is clarified that electronic-based offering of securities, subscription thereof, or listing of securities in the IFSC under SEZ Act, 2005 is not to be construed as ‘electronic mode’ for the purpose of Section 2(42) of the Companies Act, 2013 related to the definition of Foreign Companies.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzMzMjM=&docCategory=Notifications&type=open>

- 4) **The Companies (Registration of Foreign Companies) Amendment Rules, 2021 (Notification No. G.S.R. 538(E), dated August 05, 2021)**

The Central Government has made the Companies (Registration of Foreign Companies) Amendment Rules, 2021 to further amend the Companies (Registration of Foreign Companies) Rules, 2014.

In Rule 2(1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014 under the definition of “Electronic Mode”, the following explanation shall be inserted, namely:-

“Explanation.- For the purposes of this clause, electronic based offering of securities, subscription thereof or listing of securities in the International Financial Services Centres set up under section 18 of the Special Economic Zones Act, 2005 (28 of 2005) shall not be construed as ‘electronic mode’ for the purpose of clause (42) of section 2 of the Act.”

Brief Analysis:

Rule 2(1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014 defines the term 'electronic mode' in the context of a foreign company.

With the insertion of this Explanation, it is clarified that electronic-based offering of securities, subscription thereof, or listing of securities in the IFSC under SEZ Act, 2005 is not to be construed as ‘electronic mode’ for the purpose of Section 2(42) of the Companies Act, 2013 related to the definition of Foreign Companies.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzMzMjI=&docCategory=Notifications&type=open>

5) Notification under Section 393A of the Companies Act, 2013 (Notification No: S.O. 3156(E), dated August 05, 2021)

The MCA exempts the following class of companies from the provisions of Sections 387 to 392 (both inclusive) of the Companies Act, 2013, namely:

(a) Foreign companies;

(b) Companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

insofar as they relate to the offering for subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres set up under Section 18 of the Special Economic Zones Act, 2005 (28 of 2005).

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MzMzMjQ=&docCategory=Notifications&type=open>

6. The Nidhi (Amendment) Rules, 2022 (MCA Notification No. G.S.R. 301 (E).—Dated 19th April, 2022)

The Ministry of Corporate Affairs (MCA) vide its Notification dated April 19, 2022 has notified the Nidhi (Amendment) Rules, 2022 which shall come into force on the date of its publication in the Official Gazette. The said amendments inter-alia provide that:

- No company, which has not complied rule 3A pertaining to Declaration of Nidhis, shall raise any deposit from its members or provide any loan to its members under the provisions of these rules from the date of such non-compliance, or from the date of the commencement of the above said rules, or the date of rejection of the application in Form NDH-4, whichever is later. Further, if any deposit raised by a company after the date of non-compliance, the said deposit shall be deemed to have been raised in pursuance of Acceptance of Deposits by Companies (Chapter V). (Insertion: Fourth and Fifth Proviso to Rule 3A)

- Public company desirous to be declared as a Nidhi shall apply, in Form NDH-4, within a period of one hundred twenty days of its incorporation for declaration as Nidhi, if it fulfils the following conditions, namely:-

(I) it has not less than two hundred members; and

(II) it has Net Owned Funds of twenty lakh rupees or more etc. (Insertion: Rule 3B)

The company shall attach a declaration with regard to the fulfilment of fit and proper person by all of its directors and promoters with the Form NDH-4. To determine that any promoter or director is a fit and proper person, the following criteria should be looked upon:

a) Integrity, honesty, ethical behaviour, fairness, reputation and character

b) Not incurring any of the following disqualifications:

i. Any complaint or information under section 154 of CrPC has been filed or is pending against him

ii. Chargesheet filed against him in the matter of economic offences

iii. Restraining, prohibition or department order has been passed against him in any matter related to company law, securities law or financial market in force

iv. Conviction order passed against him involving moral turpitude

v. Declared involvement and not been discharged

vi. Unsound mind

vii. Wilful defaulter

viii. Fugitive economic offender

ix. Director of five or more companies

x. Such person is the director in five or more than five; or promoter in three or more than three Nidhi Companies.

- A Nidhi shall be a public company and shall have a minimum paid up equity share capital of ten lakh rupees and shall comply with this requirement within a period of eighteen months of commencement of amendment rules. [Substitution: Rule 4(1)]

- Rule 5 is about the minimum number of members, Net owned fund, etc., and in the amendment, it has been mentioned that it will not be applicable for the companies incorporated as Nidhi Company on or after the enforcement of Nidhi Company New Rules 2022. So, the requirement of filling of application in Form NDH 1 within 90 days from the incorporation of the company shall not be applicable to the companies incorporated on or after the enforcement of Nidhi (Amendment) Rules, 2022. [As per rule 5(5)]

- Under General Restrictions and Prohibitions- no Nidhi shall acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management. [Substitution: Rule 6(d)]
- A member shall not transfer more than fifty percent of his shareholding (as on the date of availing of loan or making of deposit) during the existence of such loan or deposit, as the case may be, provided that the member shall retain the minimum number of 10 equity shares equivalent to Rs. 100 at all times. [New sub- rule 8(4)]
- Every Nidhi shall maintain Net Owned Funds of not less than twenty lakh rupees or such higher amount as the Central Government may specify from time to time and shall comply with this requirement within a period of eighteen months of commencement of amendment rules. (Substitution: Rule 9)
- A Nidhi company may not close a branch unless the proposal to close the branch, along with a plan for paying existing deposits and recovering existing loans, has been approved by the Board of Directors in a meeting and has received the prior approval of the Regional Director. Within 30 days of receiving the application, the regional director must issue an approval order. After receiving approval from the Regional Director, the Nidhi Company must publish in the local newspaper (in Form NDH-5) at its place of business prior to 30 days of closure, as well as post a copy of the closure notice on the Nidhi Company's notice board for thirty days from the date of publication, and notify the Registrar within 30 days of closure.

Furthermore, any location that is not a registered office or branch where a Nidhi Company conducts business must be closed within six months after the enforcement of the Nidhi Company New Rules 2022 and must be reported to the Registrar in Form NDH-2. [Rule 10]

- The word silver shall be added next to the word gold where ever it is stated, so from now Nidhi Company will be able to grant loans to its members for silver jewellery. [Under Rule 12 and Rule 20]
- In the case of joint shareholders loan Nidhi Company will be able to it only to the member whose name appears first in the register of members. [Rule 15]
- A Nidhi company shall not declare dividends exceeding 25% in a financial year [Rule 18 by substituting old Rule 18].
- If a company does not comply with the requirements or fails to comply with any of the requirements on or after the date of enforcement of these Rules or if the central government has rejected the application, then it shall not raise the deposit from its members or provide any loan to its member under the provisions of these rules from the date of non-compliance or the date of enforcement of the Nidhi (Amendment) Rules, 2022 or the rejection of the application, whichever is later. And, also that the deposit raised by a company after the date of non-compliance or date of enforcement of the Nidhi (Amendment) Rules, 2022 or the date of rejection of the application, whichever is later, shall be deemed to have been raised in pursuance of Chapter V of the Companies Act and shall be subject to all the requirements of that chapter or any other provisions of the said Act. No fee shall be charged for filing an application under this rule if it is filed within 9 months from the enforcement of the new rules; however, earlier, it was 6 months. [Rule 23A]

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=L TZyclKM NK0LX6JwM%252BaPeA%253D%253D&type=open>

7. Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022 (Vide Notification F. No. IBBI/2022-23/GN/REG.081 dated 05th April, 2022)

In exercise of the powers conferred by section 196(1)(t) read with section 240 of the Insolvency and Bankruptcy Code, 2016, the Insolvency and Bankruptcy Board of India amended the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017.

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022 inter-alia provides that the liquidator shall endeavour to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within :

- (a) two hundred and seventy days from the liquidation commencement date where the creditors have approved the resolution under section 59(3)(c) or regulation 3(1)(c) and
- (b) ninety days from the liquidation commencement date in all other cases

Further, the liquidator shall submit the Final Report and the compliance certificate in Form-H along with the application under section 59(7) to the Adjudicating Authority.

Brief Analysis:

As per this amendment, the Liquidator is required to complete the liquidation process of the corporate person and submit the Final Report under regulation 38 within:

- a. 270 days from the liquidation commencement date where the creditors have approved the resolution under section 59(3)(c) or regulation 3(1)(c).
- b. 90 days from the liquidation commencement date in all other cases. Compliance certificate to be submitted in Form-H.

For details:

<https://www.ibbi.gov.in/uploads/legalframework/08722b75c35b6fbbd5a38299a2284e6a.pdf>

8. CBDT notification for PAN integration with LLP incorporation form FiLLip (Ministry of Finance notification no. 04/2022 dated 26th July, 2022)

The Central Board of Direct Taxes vide its notification dated July 26, 2022 has notified the procedure of PAN application and allotment through Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically (Form : FiLLiP) of the Ministry of Corporate Affairs.

In exercise of the powers delegated by the Central Board of Direct Taxes vide notification G.S.R dated 09.02.2017, the Director General of Income-tax (Systems) laid down applicable form, format and procedure for Permanent Account Number (PAN) application filing by LLPs.

Brief Analysis:

The Ministry of Finance has issued notification dated 26th July, 2022 stating that application for PAN for LLP will now be filed in Simplified Proforma for incorporating Limited Liability Partnerships (LLPs) electronically (Form : FiLLiP) form using DSC of applicant and after generation of LLPIN, MCA will forward the data in form 49A to Income tax authority.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=kvBTyn49INIMUOv%252B38VTDg%253D%253D&type=open>

9. The Companies (Incorporation) Third Amendment Rules, 2022(MCA notification G.S.R (E) dated 18th August, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 18, 2022 has notified “The Companies (Incorporation) Third Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. According to the amendment, rule 25B is inserted in the Companies (Incorporation) Rules, 2014, stating physical verification of registered office of the company by the Registrar in terms of section 12(9) of the Companies Act, 2013 in presence of two witnesses of the locality.

The Registrar shall carry the documents as filed on MCA 21 in support of address of the registered office of the company for the purposes of physical verification and take a photograph of the registered office. Further a report of physical verification of the registered office of the company is also required to be in the prescribed format.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=wIHQjtXEQJK%252F7i1M2jM5wQ%253D%253D&type=opendd>

10. The Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2022 (MCA notification no. G.S.R (E) dated 24th August, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated August 24, 2022 has notified “the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2022” which has come into force on the date of its publication in the Official Gazette. The aforesaid rules made amendment in Form No. STK 1, Form No. STK – 5 and Form No. STK-5A pertaining to opting the checkpoint: “the company(ies) is/are not carrying on any business or operations, as revealed after the physical verification carried out under Section 12(9) of the Companies Act, 2013”.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=z76om3NiBGiHmWy4e0HtcA%253D%253D&type=open>

11. The Companies (Authorised to Register) Amendment Rules, 2023 (MCA Notification No. G.S.R. (E) dated January 19, 2023)

The Ministry of Corporate Affairs has notified the Companies (Authorised to Register) Amendment Rules, 2023 to amend the Companies (Authorised to Register) Rules, 2014. The provisions have come into effect from 23.01.2023. According to the amendment the Form No. AOC-5 relating to Notice of Address at which books of account are to be maintained, has been substituted.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=XcGdPrIsMJTYfnc9%252BXA11w%253D%253D&type=open>

12. Ministry of Corporates Affairs amended the Rules (MCA Notification No. G.S.R. 46(E) dated January 23, 2023)

The Ministry of Corporate Affairs (MCA) vide its notifications dated January 20, 2023 has notified below mentioned amended rules:

- i) The Companies (Registration Offices and Fees) Amendment Rules, 2023; and
- ii) The Nidhi (Amendment) Rules, 2023;

The amended rules shall come into force with effect from January 23, 2023.

According to the amendments, Form GNL-2, GNL-3, GNL-4, NDH-1, NDH-2, NDH-3 and NDH-4 has been substituted pursuant to migration of set of forms from MCA V2 to MCA V3 portal.

Further, through notifying the Companies (Registration Offices and Fees) Amendment Rules, 2023, rule 8A has been inserted stating; e-forms wherever applicable shall be signed by Insolvency resolution professional or resolution professional or liquidator of companies under insolvency or liquidation, as the case may be, and filed with the Registrar along with the fee as mentioned in Table annexed these rules.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=zFrQ4gUbxyNedgbfFLKcdw%253D%253D&type=open>
<https://egazette.nic.in/WriteReadData/2023/242165.pdf>

13. The Companies (Miscellaneous) Amendment Rules, 2023 (MCA Notification No. G.S.R. 46(E) dated January 20, 2023)

The Ministry of Corporate Affairs (MCA) vide its notifications dated January 20, 2023 has notified the Companies (Miscellaneous) Amendment Rules, 2023, the amended rules has come into force with effect from January 23, 2023. According to the amendment, Forms No. MSC-1, MSC-3 and MSC-4 has been substituted pursuant to migration of set of forms from MCA V2 to MCA V3 portal.

Further rule 3 (Application for Obtaining Status of Dormant Company) is modified by stating that, if the company is having any outstanding unsecured loans then enclosure of concurrence from the lender in the form MSC-1 is not required. Also that, the requirement to enclose certificate in Form MSC-1, indicating that there is no management or ownership dispute persisting is also dispensed with. The Form MSC-1 is modified to include these requirements under the heading "declaration" in the form itself.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjUwNjU2NTQ1&docCategory=Notifications&type=open>

14. SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023

SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 on June 14, 2023. Vide this notification the following amendments have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

1. The new definition Mainstream media is added [Regulation 2(1)(ra)]: Mainstream media shall include print or electronic mode of the following:

Newspapers registered with the Registrar of Newspapers for India;

News channels permitted by Ministry of Information and Broadcasting under Government of India;

Content published by the publisher of news and current affairs content as defined under the

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; and

Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India.

2. Vacancy to be filled in the office of the Compliance Officer: Any vacancy in the office of the Compliance Officer shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy. However, the listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person. [Insertion: Regulation 6(1A)]

3. The following Regulation 17(1D) is added: Shareholder approval required for Appointment or Reappointment

- With effect from April 1, 2024, the continuation of a director serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment, as the case may be. However, the continuation of the director serving on the board of directors of a listed entity as on March 31, 2024, without the approval of the shareholders for the last five years or more shall be subject to the approval of shareholders in the first general meeting to be held after March 31, 2024. The requirement specified in this regulation shall not be applicable to the Whole-Time Director, Managing Director, Manager, Independent Director or a Director retiring as per the sub-section (6) of section 152 of the Companies Act, 2013, if the approval of the shareholders for the reappointment or continuation of the aforesaid directors or Manager is otherwise provided for by the provisions of these regulations or the Companies Act, 2013 and has been complied with.

4. The following Regulation 17(1E) is added: Vacancy to be filled in the office of a director: Any vacancy in the office of a director shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date such vacancy. However, if the listed entity becomes non-compliant, due to expiration of the term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated.

5. The following Regulation 26A is added: Vacancies to be filled in respect of certain Key Managerial Personnel

- Any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director or Manager shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.
- Any vacancy in the office of the Chief Financial Officer shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.
- The listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

6. Disclosure of Cybersecurity Breaches: Details of cyber security incidents or breaches or loss of data or documents shall be disclosed along with quarterly compliance report on corporate governance. [Insertion: Regulation 27(2)(ba)]

7. Disclosure of events or information:

- The omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:
 - o 2% of turnover, as per the last audited consolidated financial statements of the listed entity;

o 2% of net worth, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative;

o 5% percent of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity. [Regulation 30(4)(i)(c)]

- In case where the criteria specified is not applicable, an event or information may be treated as being material if in the opinion of the board of directors of the listed entity, the event or information is considered material. [Insertion: Regulation 30(4)(i)(d)]
- The listed entity shall first disclose to the stock exchange all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:
 - 30 minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;
 - 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;
 - 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity. However, disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines. Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay. [Regulation 30(6)]
- The top 100 listed entities (with effect from October 1, 2023) and thereafter the top 250 listed entities (with effect from April 1, 2024) shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than 24 hours from the reporting of the event or information. However, if the listed entity confirms the reported event or information, it shall also provide the current stage of such event or information. [Insertion: Provisos to Regulation 30(11)]
- In case an event or information is required to be disclosed by the listed entity in terms of the provisions of this regulation, pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority, the listed entity shall disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority. [Insertion: Regulation 30(13)].

8. Disclosure requirements for certain types of agreements 10 binding listed entities: All the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel and employees of a listed entity or of its holding, subsidiary and associate company, who are parties to the agreements specified in clause 5A of para A of part A of schedule III to these regulations, shall inform the listed entity about the agreement to which such a listed entity is not a party, within 2 working days of entering into such agreements or signing an agreement to enter into such agreements. [Insertion: Regulation 30A]

9. Special rights to shareholders: Any special right granted to the shareholders of a listed entity shall be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every five years starting from the date of grant of such special right. [Insertion: Regulation 31B]

10. Submission of Financial Results for newly listed entity: The listed entity shall, subsequent to the listing, submit its financial results for the quarter or the financial year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified in regulation 33(3)(a) i.e. 45 days from end of each quarter or in regulation 33(3)(d) i.e.60 days from the end of the financial year or

within 21 days from the date of its listing, whichever is later. [Insertion: Regulation 33(3)(j)]

11. Annual Report Disclosures: For the top 1000 thousand listed 11 entities, the annual report shall contain a Business Responsibility and Sustainability Report (BRSR) on the environmental, social and governance disclosures, in the format as may be specified by SEBI. The assurance of the BRSR Core shall be obtained, with effect from and in the manner as may be specified by SEBI. The listed entities shall also make disclosures and obtain assurance as per the BRSR Core for their value chain, with effect from and in the manner as may be specified by SEBI. The remaining listed entities, including the entities which have listed their specified securities on the SME Exchange, may voluntarily disclose the BRSR or may voluntarily obtain the assurance of the Business Responsibility and Sustainability Report Core, for themselves or for their value chain, as the case may be. [Regulation 34(2)(f)]

14. Disclosure of material events / information by listed entities under Regulations 30 and 30A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

(SEBI Circular No. 25CIRCULARSEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123 dated July 13, 2023)

SEBI has issued this circular consists of four annexures with respect to disclosure requirements under regulations 30 and 30A of the SEBI (LODR) Regulations, 2015 which are given below:

- i. Annexure I specifies the details that need to be provided while disclosing events given in Part A of Schedule III.
- ii. Annexure II specifies the timeline for disclosing events given in Part A of Schedule III.
- iii. Annexure III provides guidance on when an event / information can be said to have occurred.
- iv. Annexure IV provides guidance on the criteria for determination of materiality of events / information. This circular shall come into force from July 15, 2023.

For details:

https://www.sebi.gov.in/web/?file=https://www.sebi.gov.in/sebi_data/attachdocs/jul-2023/1689245602256.pdf#page=1&zoom=page-width,-16,842

15. Condonation of delay in filing of Form-3, Form-4 and be Form-11 under section 67 of Limited Liability Partnership Act, 2008 read with section 460 of the Companies Act, 2013

(MCA General Circular No. 08/2023 dated August 23, 2023)

The Ministry of Corporate Affairs (MCA) has issued general circular no. 8/2023 dated August 23, 2023 and granted onetime relaxation in additional fees to those LLPs who could not file the Form 3, Form 4 and Form 11 within due date and provided an opportunity to update their filings and details in Master-data for future compliances.

Salient features are mentioned as below:

- 1) Form 3 and Form 4 will be processed under STP mode, except for cases involving changes in business activities. Further, stakeholders are advised to file these forms sequentially.
- 2) These forms will provide facility to edit the pre-filled master data which is available as the existing master database of the LLP. However, the onus of filing the correct data would be on the stakeholders.
- 3) The filing of Form 3 and Form 4 without additional fees shall be applicable for the event dates 01.01.2021 onwards. For the events prior to the aforesaid period, these forms can be filed with two times and four times of normal fees as additional fee for small LLPs and other than small LLPs respectively.
- 4) The filing of Form 11 without additional fee shall be applicable for the financial year 2021-22 onwards.

5) These forms shall be available for filing from 01.09.2023 onwards till 30.11.2023.

6) The LLPs availing the scheme shall not be liable for any action for the delayed filing of aforesaid forms.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=Zt6foWsl%252BABAbU7Pid9NGg%253D%253D&type=open>

**16. Name reservation application process
(MCA update dated September 29, 2023)**

MCA vide its update dated September 29, 2023 informed the stakeholders that the processing of application forms for the purpose of name reservation and incorporation at the Central Reservation Centre (CRC) is faceless and randomised. The applications if sent for resubmissions are normally not processed by the same official who has processed the application at the first instance. The stakeholders requested to inform the Ministry in case of any malpractice or irregularity on the part of any official/officer at CRC or any professional with supporting evidences at CVO-MCA@GOV.IN for taking action in accordance with the extent CVC guidelines.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=oU9sC5%252BIH5Z5uPkEDZC3QA%253D%253D&type=open>

**17. The Companies (Incorporation) Third Amendment Rules, 2023
(MCA Notification No. G.S.R. 790(E) dated 29th October, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated October 20, 2023 has notified “The Companies (Incorporation) Third Amendment Rules, 2023” which has come into force with effect from October 21, 2023. According to the amendment, under rule 30(9) (Shifting of Registered Office from one State or Union Territory to another State), a proviso is inserted stating:

“Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.”

Brief Analysis:

According to the latest amendments in rule 30(9) of the Companies (Incorporation) Rules, 2014, the Ministry has come up with following two modifications:

1. The words under rule 30(9) “and may include such order as to costs as it thinks proper” shall be omitted;
2. Further the amendment inserted a new proviso to rule 30(9):
“Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.”

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=uqnggXxHARXXjysr4uSRjQ%253D%253D&type=open>

18. Ministry of Corporate Affairs-Update (October 23, 2023)

The stakeholders are informed that Ministry of Corporate Affairs has integrated with National Single Window System (NSWS) for the Incorporation of Companies and LLPs. Incorporation services can also be availed through NSWS portal.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=cr9F9%252F8IGDiypPxTWd6oQw%253D%253D&type=open>

19. The Limited Liability Partnership (Third Amendment) Rules, 2023 (MCA Notification No. G.S.R. 803(E)-October 27, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated October 27, 2023 has notified “the Limited Liability Partnership (Third Amendment) Rules, 2023” which has come into force on the date of its publication in the Official Gazette. According to the amendment Rule 22A and Rule 22B are inserted by stating matters pertaining to:

- Every limited liability partnership shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership;
- Declaration in respect of beneficial interest in any contribution.

Brief Analysis:

According to the Limited Liability Partnership (Third Amendment) Rules, 2023:

- i) Rule 22A-Register of Partners: Every limited liability partnership (LLP) shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership.

Existing LLPs shall comply within thirty days from the commencement of aforesaid amendment Rules. The register shall consist certain particulars of partners viz. name/address/PAN/date of becoming partner/cessation etc.

The entries in the register maintained under this rule shall be made within seven days pursuant to any change made in the contribution amount, or in name and details of the partners in the Limited Liability Partnership agreement, or in cases of cessation of partnership interest.

Rectifications made pursuant to orders by competent authorities must be recorded.

- ii) Rule 22B- Declaration in respect of beneficial interest in any contribution: A person whose name is entered in the register of partners of a Limited Liability Partnership but does not hold any beneficial interest fully or partly in contribution (hereinafter referred to as “the registered partner”), such person shall file with the Limited Liability Partnership, a declaration to that effect in Form 4B within a period of thirty days from the date on which his name is entered in the register of partners specifying the name and other particulars of the person who actually holds any beneficial interest in such contributions. Changes in beneficial interest should also be reported within 30 days.

Beneficial partners who have an interest in contributions not registered in their name must file a declaration in Form 4C within 30 days. Changes in beneficial interest should also be reported within 30 days.

In case of receipt of any declaration under Form 4B or Form 4C by the Limited Liability Partnership, it shall record such declaration in the register of partners and shall file, within a period of 30 days from the date of receipt of declaration by it, a return in Form 4D to the Registrar in respect of such declaration with fees.

Every Limited Liability Partnership shall specify a designated a partner who shall be responsible for furnishing of and extending co-operation for providing, information with respect to beneficial interest in contribution in Limited Liability Partnership to the Registrar or any other officer authorised by the Central Government and shall file information of such designated partner with the Registrar in Form 4.

Further, until a designated partner is specified, every designated partner shall be deemed to be responsible for furnishing of, and extending co-operation for providing, information with respect to beneficial interest in contribution under this sub-rule.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=VYVpE7YcJovnhBqcW9gtsw%253D%253D&type=open>

**20. Commencement of section 5 of the Companies Amendment Act 2020
(MCA Notification No. S.O. 4744(E) dated October 30th, 2023)**

In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020, the Central Government hereby appoints the 30th day of October, 2023 as the date on which the provisions of section 5 of the said Act shall come into force.

Section 5 of the Companies Amendment Act, 2020 states that in section 23 of the principal Act, after sub-section (2) and before the Explanation, the following sub-sections shall be inserted, namely:—

"(3) Such class of public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

(4) The Central Government may, by notification, exempt any class or classes of public companies referred to in sub-section (3) from any of the provisions of this Chapter, Chapter IV, section 89, section 90 or section 127 and a copy of every such notification shall, as soon as may be after it is issued, be laid before both Houses of Parliament."

Brief Analysis:

Overseas listings by listed entities are currently carried out through American Depository Receipts (ADRs) and Global Depository Receipts (GDRs). According to the notification now the government has allowed Indian companies to list on overseas exchanges, subject to certain conditions.

Certain classes of public companies to list their securities on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=fIA9%252BFLpJeScxnEXI0xncQ%253D%253D&type=open>

21. The Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (MCA Notification G.S.R dated November 09, 2023)

The Ministry of Corporate Affairs (MCA) vide its notification dated November 07, 2023 has notified “the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023” which has come into force on the date of its publication in the Official Gazette. The provisions of these rules shall specifically apply to all the LLPs. The aforesaid rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, directs to regulate and identify significant beneficial owners in Limited Liability Partnerships and such individual to make a declaration in Form No. LLP BEN-I.

Brief Analysis:

Following are the certain major rules mentioned:

1. The provisions of these rules shall specifically apply to all the LLPs.(Rule 2)
2. Aforesaid rules mentioned various definitions viz, control; majority stake; significant beneficial owner; significant influence; ultimate holding company etc.(Rule 3)
3. Duty of the reporting limited liability partnership to take necessary actions in identifying the significant beneficial owner and causing such individual to file Form No. LLP BEN-1.(Rule 4)
4. Upon receipt of declaration as mentioned above sub point, the reporting limited liability partnership shall file a return in Form No. LLP BEN-2 with the Registrar.(Rule 6)
5. The limited liability partnership shall maintain a register of significant beneficial owners in Form No. LLP BEN-3 and keep it open for inspection during the business hours for such reasonable time as mentioned in the rules.(Rule 7)
6. Rules specified Form No. LLP BEN-4 for notice seeking information about significant beneficial owners.(Rule 8)
7. Provisions related to the filing of application to the Tribunal under certain circumstances.(Rule 9)
Provisions related to non-applicability of aforesaid rules to the certain entities.(Rule 10)

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=pJZaasqhxL5W9F46Ukp5lw%253D%253D&type=open>

Note: Students appearing in June, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, ICSI & or other authority till 30th November, 2023.
