



THE INSTITUTE OF  
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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# SUPPLEMENT PROFESSIONAL PROGRAMME

*for*

*December, 2023 Examination*

**SECRETARIAL AUDIT, COMPLIANCE  
MANAGEMENT AND DUE DILIGENCE**

(Supplement covers amendments/developments from August 2021  
to May 2023)

**MODULE 2**

**PAPER 4**

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## **Lesson 2- Compliances**

### **1. SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 (SEBI notification no. No. SEBI/LAD-NRO/GN/2021/35 dated 3<sup>rd</sup> August, 2021)**

SEBI vide its notification dated August 03, 2021, amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on January 1, 2022.

#### **The amendments, *inter alia*, include the following:**

- The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. [Reg. 17(1C)]- New Insertion
- At least 2/3rd of the members of the audit committee shall be independent directors and all related party transactions shall be approved by only independent director on the audit Committee. [Reg. 18(1)(b)]
- The composition of Nomination and remuneration committee has been modified to include at least 50% independent directors instead of existing requirement of 2/3rd of independent directors. [Reg. 19(1)(c)]
- The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution. [Reg. 25(2A)]- New Insertion
- The requirement of undertaking Directors and Officers insurance has been extended to the top 1000 companies with effect from January 01, 2022. [Reg. 25(10)]
- No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent director. [Reg. 25(11)]-New Insertion.

*For more details visit:*

[https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021\\_51719.html](https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html)

### **2. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 (SEBI Notification No. SEBI/LAD-NRO/GN/2021/47 dated 7<sup>th</sup> September, 2021)**

The amendments, inter-alia, provides the “‘non-convertible debt securities’, ‘non-convertible redeemable preference shares’, ‘non-convertible securities’, ‘perpetual debt instrument’ and ‘perpetual non-cumulative preference share’ shall have the same meaning as defined under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021. Further, the regulation 15, and regulation 16 to regulation 27 w.r.t. the corporate governance provisions

shall apply to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed nonconvertible debt securities of Rs. 500 crore and above. However, in case an entity that has listed its nonconvertible debt securities triggers the specified threshold of Rs. 500 crore during the course of the year, it shall ensure compliance with these provisions within six months from the date of such trigger.

*[For more details visit:](#)*

*[https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021\\_52488.html](https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021_52488.html)*

### **3. Master Circular on (i) Scheme of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 (SEBI Master Circular SEBI/HO/CFD/DIL1/CIR/P/2021/000000665 dated 23<sup>rd</sup> November, 2021)**

SEBI, from time to time, has been issuing various circulars/directions which lay down the detailed requirements to be complied by listed entities while undertaking schemes of arrangements. In order to enable the users to have access to the applicable circulars at one place, Master Circular in respect of schemes of arrangement has been prepared. This Master Circular is a compilation of relevant and updated circulars issued by SEBI which deal with schemes of arrangement and which are operational as on date of this circular.

The circular contains matters in two parts. Part I deals with requirements before the Scheme of arrangement is submitted for sanction by the National Company Law Tribunal (NCLT):

- Requirements to be fulfilled by listed entity;
- Obligations of Stock Exchange(s);
- Processing of the Draft Scheme by SE.

Part II deals with Application for relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957:

- Requirements to be fulfilled by Listed Entity for Listing of Equity Shares;
- Application by a listed entity for Listing of warrants offered along with Non-Convertible Debentures (NCDs);
- Requirements to be fulfilled by Stock Exchange(s);
- Processing of the Scheme by SEBI, etc.

*[For more details visit:](#)*

*[https://www.sebi.gov.in/legal/master-circulars/nov-2021/master-circular-on-scheme-of-arrangement\\_54132.html](https://www.sebi.gov.in/legal/master-circulars/nov-2021/master-circular-on-scheme-of-arrangement_54132.html)*

### **5. SEBI has issued a circular to clarify the issue pertaining to the Schemes of Arrangement by Listed Entities w.r.t. timing of submission of NOC from the lending scheduled commercial banks / financial institutions / debenture trustee (Circular No.: SEBI/HO/CFD/SSEP/CIR/P/2022/003 dated January 03, 2022)**

In respect of the NOC as required in terms of Circular dated November 16, 2021 and November 18, 2021, it is now clarified that the NOC shall be submitted before the receipt of the No-objection letter from the Stock Exchange in terms of Regulation 37(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

The recognized stock exchanges are directed to bring the provisions of this circular to the notice of the listed companies and also to disseminate the same on their website.

### **Brief Analysis:**

SEBI has provided clarification on the timeline of submission of no objection certificate (NOC) from banks and financial institutions in respect of draft schemes pertaining to mergers and demergers filed by listed companies with the stock exchanges. As per regulations, listed entities desirous of undertaking a scheme of arrangement are required to submit certain documents to the stock exchanges.

Listed entities are required to submit the NOC from the lending scheduled commercial banks/ financial institutions/ debenture trustees (DTs). It is clarified by SEBI that NOC from commercial banks/ financial institutions/ DTs shall be submitted before the receipt of the no objection letter from the stock exchange.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/jan-2022/schemes-of-arrangement-by-listed-entities-clarification-w-r-t-timing-of-submission-of-noc-from-the-lending-scheduled-commercial-banks-financial-institutions-debenture-trustee\\_55166.html](https://www.sebi.gov.in/legal/circulars/jan-2022/schemes-of-arrangement-by-listed-entities-clarification-w-r-t-timing-of-submission-of-noc-from-the-lending-scheduled-commercial-banks-financial-institutions-debenture-trustee_55166.html)

### **6. Disclosure obligations of high value debt listed entities in relation to Related Party Transactions (Circular No.: SEBI/HO/DDHS/DDHS\_Div1/P/CIR/2022/000000006 dated January 07, 2022)**

- i. Vide notification dated September 07, 2021, Regulation 15(1A) of the SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015 ('LODR Regulations') was introduced stipulating that Regulations 15 to 27 of Listing Regulations shall be applicable to high value debt listed entities on a 'comply or explain' basis.
- ii. Subsequently, vide amendment dated November 09, 2021, Regulation 23 of the LODR Regulations on Related Party Transactions was amended, inter-alia, mandating listed entities that have listed specified securities to submit to the stock exchanges disclosure of Related Party Transactions (RPTs) in the format specified by the Board from time to time.
- iii. SEBI vide circular no. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021 has specified following disclosure obligations of listed entities in relation to Related Party Transactions with respect to specified securities:
  - a. Information to be reviewed by the Audit Committee for approval of RPTs;
  - b. Information to be provided to shareholders for consideration of RPTs and
  - c. Format for reporting of RPTs to the Stock Exchange
- iv. Since the provisions of Regulation 23 of the LODR Regulations would be applicable to high value debt listed companies also, it has been decided to make provisions of the above referred circular dated November 22, 2021 applicable to high value debt listed entities.
- v. This Circular shall come into force with immediate effect. Stock Exchanges were advised to bring the provisions of this circular to the notice of all listed entities that have issued specified securities and also disseminate on their websites.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/jan-2022/disclosure-obligations-of-high-value-debt-listed-entities-in-relation-to-related-party-transactions\\_55225.html](https://www.sebi.gov.in/legal/circulars/jan-2022/disclosure-obligations-of-high-value-debt-listed-entities-in-relation-to-related-party-transactions_55225.html)

## 7. The SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 (Notification No.: SEBI/LAD-NRO/GN/2022/63 January 14, 2022)

The SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which has come into force on the date of their publication in the Official Gazette. The amendments inter-alia provide that:

- The issuer shall place a copy of the certificate of a Practising Company Secretary before the general meeting of the shareholders considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of the SEBI (ICDR) Regulations, 2018.
- An issuer making an initial public offer shall ensure that the amount for general corporate purposes and such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 35% of the amount being raised by the issuer.
- Regulation (8A) is inserted prescribing the additional conditions for an offer for sale for issues where draft offer document is filed under Regulation 6(2) of the SEBI ICDR Regulations:
  - Existing shareholders with more than 20% of the pre-issue shareholding cannot offer more than 50% of their pre-issue shareholding in an initial public offer ('IPO').
  - Further, those holding less than 20% of pre-issue shareholding cannot offer more than 10% of the share capital of the issuer.
- Credit Rating Agency (CRAs) registered with SEBI, shall henceforth be permitted to act as Monitoring Agency instead of Scheduled Commercial Banks (SCBs) and Public Financial Institutions (PFI). Such a monitoring shall continue till 100% instead of 95% utilization of issue proceeds as present.
- The cap of the price band must be at least 105% of the floor price, for all issues opening on or after January 14, 2022.
- All issues opening on or from April 01, 2022, there must be lock-in for anchor investors for a period of 90 days from the date of allotment for 50% of the shares allocated to the anchor investors. For the remaining 50% it must continue to be 30 days from the date of allotment.
- Lock-in Provisions for Preferential Issue:

<b>For Promoters or Promoter Group:</b>	<b>For Persons other than Promoters or Promoter Group:</b>
The lock-in requirement for allotment of up to 20% of the post issue paid-up capital is reduced to 18 months.	The lock-in requirement for allotments are reduced to six months.
The lock-in requirement for allotment exceeding 20% of the post issue paid-up capital is reduced to six months.	

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/232654.pdf>

## **8. Empowering Investors through Investor Charters (PR No. 2/2022 dated January 17, 2022)**

To protect investors' interests, promote transparency in markets and enhance awareness, trust and confidence among the investors, SEBI, vide a Public Notice dated November 17, 2021, had published the "Investor Charter" for Securities Markets. Since then, various steps have been taken to implement the Charter. As for SEBI's own charter, efforts have been taken to enhance the effectiveness of investor grievance redressal mechanism. SEBI has been publishing the status of disposal of investor grievances received in SCORES (SEBI Complaints Redress System) on its website on a monthly basis. Details of investor grievances, which are pending for more than three months with different intermediaries, are also being published. In case SEBI receives a large number of repeated complaints on any issue, the root causes are analysed and if required, appropriate policy changes are made to address the issue.

SEBI is also examining the possibility of introducing alternate dispute resolution mechanism in various agreements (wherever possible) between the regulated entities and their clients. This is with a view to providing efficacious mechanism for resolving disputes between the investors and the regulated entities.

*For more details visit:*

[https://www.sebi.gov.in/media/press-releases/jan-2022/empowering-investors-through-investor-charters\\_55353.html](https://www.sebi.gov.in/media/press-releases/jan-2022/empowering-investors-through-investor-charters_55353.html)

## **9. The SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022 (Notification No. : SEBI/LAD-NRO/GN/2022/66 dated January 24, 2022)**

SEBI vide its notification dated January 24, 2022, has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette. The amendment inter alia provides that:

- The appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders. As per Regulation 17(1C).
- Issuance of duplicates or new certificates in cases of loss or old decrepit or worn out certificates in dematerialised form. This will improve ease, convenience and safety of transactions for investors. As per Regulation 39(2).
- The requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialised form with a depository. Further, transmission or transposition of securities held in physical or dematerialised form shall be effected only in dematerialised form. As per Proviso to 40(1).

*For more details visit:*

[https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2022\\_55526.html](https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2022_55526.html)



## **10. Change in control of the Asset Management Company involving scheme of arrangement under the Companies Act, 2013 (Circular No.: SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/10 dated January 31, 2022)**

To streamline the process of providing approval to the proposed change in control of an asset management company (“AMC”) involving scheme of arrangement which needs sanction of National Company Law Tribunal.

(“NCLT”) in terms of the provisions of the Companies Act, 2013, SEBI vide this circular has provided that the application seeking approval for the proposed change in control of the AMC under Regulation 22(e) of Mutual Fund Regulations shall be filed with SEBI prior to filing the application with the NCLT. Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI. The validity of such in-principle approval shall be 3 months from the date of issuance, within which the relevant application shall be made to NCLT. Within 15 days from the date of order of NCLT, applicant shall submit the application for the final approval along with copy of the NCLT Order approving the scheme, to SEBI for final approval. The provisions of this Circular shall be applicable to all the applications for change in control of AMC for which the schemes of arrangement are filed with NCLT on or after March 01, 2022.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/jan-2022/change-in-control-of-the-asset-management-company-involving-scheme-of-arrangement-under-companies-act-2013-55745.html>

## **11. Notification under section 67 of the LLP Act, 2008 (Notification dated G.S.R-€ dated February 11, 2022)**

The Central Government directed that, from the date of publication of this notification in the Official Gazette, the provisions of section 90, 164, 165, 167, 206(5), 207(3), 252 and section 439 of the Companies Act, 2013, shall apply to limited liability partnership, except where the context otherwise requires, with the modifications as specified.

### **Brief Analysis:**

The primary objective of applicability of these sections is to improve the compliance of the LLPs and to improve and regulate the LLPs.

- Provisions of section 90 (subsection 1 to 11) of the Companies Act, 2013 pertaining to register of significant beneficial owners shall be applicable on the LLPs. The intension of this section is to identify a natural person that is controlling and exercising the beneficial interests of the company/LLP.
- Provisions of section 164 (subsection 1 & 2) of the Companies Act, 2013 pertaining to disqualification for appointment of director shall be applicable to LLPs.
- Provisions of section 165 (except sub-section 2) of the Companies Act, 2013 pertaining to number of directorships shall be applicable on the LLPs.
- Provisions of section 167 of the Companies Act, 2013 pertaining to vacation of office of director shall be applicable on the LLPs.
- Provisions of section 206 (5) of the Companies Act, 2013 pertaining to Power to Call for Information, Inspect Books and Conduct Inquiries by central government by appointing inspector shall be applicable on the LLPs.

*For more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=s3NAd1DMJP%252Bb4D3KxSkX1Q%253D%253D&type=open>



## **12. Notification for delegation of powers under section 17 of the LLP Act 2008 to Regional Directors (MCA Notification No. S.O-(E) dated February 11, 2022)**

The Central Government, vide this notification, delegated to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Guwahati, the powers and functions vested in it under section 17 (change of name of limited liability partnership) of the Limited Liability Partnership Act, 2008, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said section, if in its opinion such a course of action is necessary in the public interest. This notification shall come into force with effect from 01st April, 2022.

*For more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mcs=vWLykzVPipoKm8Nr17uPCA%253D%253D&type=open>

## **13. Commencement notification for section 1 to 29 of the LLP (Amendment) Act, 2021 (MCA Notification No. S.O-(E) dated February 11, 2022)**

The Central Government, vide this notification, appointed the 01st day of April, 2022 as the date on which the provisions of sections 1 to 29 of the Limited Liability Partnership (Amendment) Act, 2021 shall come into force.

### **Brief Analysis:**

The LLP Amendment Act, 2021 is outcome of government's initiative 'ease of doing business', by extending a helping hand for the Start-up India community, as the amendments provide for decriminalizing certain offences, introducing the concept of small LLPs, appointment of adjudicating officers/ special courts, etc.

- Under section 2(t) new clause is inserted: small limited liability partnership” means a limited liability partnership—
  - (i) the contribution of which, does not exceed twenty-five lakh rupees or such higher amount, not exceeding five crore rupees, as may be prescribed; and
  - (ii) the turnover of which, as per the Statement of Accounts and Solvency for the immediately preceding financial year, does not exceed forty lakh rupees or such higher amount, not exceeding fifty crore rupees, as may be prescribed; or
  - (iii) which meets such other requirements as may be prescribed, and fulfils such terms and conditions as may be prescribed.
- The Amendment Act stipulates that the penalty payable for noncompliance of the LLP Act by a Small LLP or a Start-Up LLP or by its partner or designated partner shall be one-half of the penalty specified, subject to a maximum of rupees 1 lac for limited liability partnership and rupees fifty thousand for every partner or designated partner or any other person, as the case may be.
- According to the LLP Act, every LLP is required to have at least 2 designated partners, out of which at least 1 has to be a resident of India. The LLP Act previously defined the term resident of India as a person who has stayed in India for 182 days during the

immediately preceding 1 year. Pursuant to the Amendment Act, a person who has lived in India for not less than 120 days during the financial year is also entitled to become a designated partner of an LLP.

- The Regional Director are authorized to compound the offences that are punishable only with a fine.

*For more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=vkSqd8xttaHgc57aBt3FcQ%253D%253D&type=open>

#### **14. The Limited Liability Partnership (Amendment) Rules, 2022 (MCA Notification No. G.S.R. 109(E) dated February 11, 2022)**

Central Government notified the Limited Liability Partnership (Amendment) Rules, 2022, which will come into effect from April 01, 2022. The rules inter-alia contains provisions pertaining to following:

<b>S.No.</b>	<b>Particulars</b>	<b>Changed provisions</b>	<b>Remarks</b>
<u>1.</u>	Rule 5: Fees	In Sub-rule 2 omitted/ substituted: (i) the first and second provisos shall be omitted; (ii) in the third proviso, for the words "Provided also" the word "Provided" shall be substituted; Sub-rule Inserted: (3) The National Company Law Appellate Tribunal Rules, 2016 mutatis mutandis shall be applicable for filing an appeal under sub-sections (2) and (3) of section 72.	This amendment is made to remove the modes of payment from the provisions of the LLP which are used to make payments.
<u>2.</u>	Rule 18: Name of LLP	Substituted clause (xi): the proposed name is identical with or too nearly resembles the name of any other limited liability partnership or a company;	The proposed name of LLP which is identical and too nearly resembles with the name of a firm and company incorporated outside India and reserved by such firm are not recognized.
<u>3.</u>	Rule 19: application for change of name of LLP with similar name	Substituted sub-rule: (1) A limited liability partnership or a company or a proprietor of a registered trade mark under the Trade Marks Act, 1999 which already has a name or trade mark which is similar to or which too nearly resembles the name or new name of a limited liability partnership incorporated subsequently, may apply to the Regional Director in Form 23 to give a direction to that limited liability partnership incorporated	Opportunity for LLP/company/proprietor of registered trade mark which already has name and that is similar or nearly resembles to the name of new/subsequently incorporated LLP, to apply with RD for giving it direction to change name

		subsequently to change its name or new name, as the case may be: Provided that an application of the proprietor of the registered trade mark shall be maintainable within a period of three years from the date of incorporation or registration or change of name of limited liability partnership under the Act.	of new/subsequently incorporated LLP.
<u>4.</u>	New rule 19A: Allotment of new name to existing LLP	Inserted Rule 19A: (1) In case a LLP fails to change its name or new name in accordance with directions of Regional Director within a period of 3 months, then the year passing of such direction, the serial number and the existing LLPIN shall become the new name and the Registrar shall make an entry of such new name in the register of LLP and issue a fresh certificate of incorporation in form 16A. (2) The LLP whose name is changed u/s 17(3) shall in addition to compliance with section 21, mention "Order of Regional Director Not Complied" words in bracket below the name of LLP on its invoices, official correspondence, and publications.	The LLP fails to adhere to the directions issued by regional director pursuant to change in name of LLP, it shall be granted new name as serial number and the existing LLPIN by Registrar and issuance of new COI Form No. 16A. The LLP is also required to mention in statement "Order of Regional Director Not Complied" words in bracket below the name of LLP on its invoices, official correspondence, and publications.
<u>5.</u>	New Rule 37A : Adjudication of penalties	Inserted New rule 37A: Central Government may appoint adjudicating officers (AO) for adjudicating penalty under the provisions of LLP Act. Before adjudging penalty the AO shall give written notice (15 to 30 days) by mentioning nature of non-compliance and penalty details, to LLP/Partner/designated partner/any other person who has non-complied with the provisions to show cause why the action should not be initiated against it/him. Reply of notice shall be made in electronic mode within the specified time. Further 15 days can be granted by AO on satisfaction of the grounds of delay. Physical attendance may be solicited by AO by giving 10 days' notice. On the date of hearing and after giving reasonable opportunity of	Adjudication of penalties under LLP Act. AO to be appointed not below the rank of registrar.

		being heard, AO may pass written order Every order shall be duly signed and dated by AO along with reasons of requiring physical presence. The AO shall forward the order to LLP, partner/designated of LLP, RD and upload on website. AO has power to summon and enforce attendance; order for evidence or produce any evidence. If any person fails to reply/neglects/refuses to appear before AO, then AO may pass order to impose penalty. Penalty shall be paid on through MCA portal only. All sums realized by way of penalties under the Act shall be credited to the Consolidated Fund of India.	
<u>6.</u>	New rule 37B: Appeal against order of adjudicating officer	Inserted rule 37B: Appeal against the order of AO shall be filed before jurisdictional RD within 60 days from the date of receiving order to aggrieved party, in Form No 33 LLP-ADJ along with grounds of appeal and certified copy of order. Further 30 days can be granted by RD on satisfaction of the grounds of delay. An appeal in Form No 33 - LLP ADJ shall not seek reliefs therein against more than one order unless the reliefs prayed for are consequential. Every appeal filed under this rule shall be accompanied by a fee of one thousand rupees for Small LLPs and two thousand and five hundred rupees for other than Small LLPs	Appeal against order of AO to be filed with RD
<u>7.</u>	New Rule 37C: Registration of appeal	Inserted rule 37C: On receipt of appeal jurisdictional RD shall sign & endorse the appeal. On security of appeal, if the appeal is found in order, then appeal shall be registered by allotting serial number. If the RD found appeal defective then it shall give 14 days' time to applicant for making the defect good, and if the applicant fails to rectify the defect in specified time then RD may refuse the appeal and communicate to applicant within 7 days. Further 14 days can be granted	Registration of appeal by RD on satisfaction of grounds

		by RD for rectification of defects on satisfaction of the grounds of delay	
8.	New rule 37D: Disposal of appeal by Regional Director	Inserted rule 37D: On admission of appeal by RD, it shall serve a copy of appeal to AO along with notice seeking its reply on the ground of appeal, within 21 days. Further 21 days can be granted by RD to AO on showing sufficient cause for not being able to file his reply to the appeal within specified time. A copy of every reply, application or written representation filed by the AO before the RD shall be forthwith served on the appellant by the AO. RD shall notify the parties about date of hearing, which shall after 30 days of notification. On fixed date of hearing the RD may pass a written order. A certified copy of order shall be communicated to AO, appellant and central government.	Disposal of appeal by Regional Director

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/233375.pdf>

### **15. The Limited Liability Partnership (Second Amendment) Rules, 2022 (MCA Notification No. G.S. R. (E) dated March 04, 2022)**

The Ministry of Corporate Affairs (MCA) vide its Notification dated 04th March, 2022 has notified Limited Liability Partnership (Second Amendment) Rules, 2022 which shall come into force on the date of its publication in the Official Gazette. The amendments inter alia provides that-

- If an individual required to be appointed as designated partner does not have a DPIN or DIN, application for allotment of DPIN shall be made in Form FiLLiP. Provided further that the application for allotment of DPIN shall not be made by more than five individuals in Form FiLLiP. **[Substitution: Rule 11(1) Second proviso]**
- The Certificate of Incorporation of limited liability partnership shall be issued by the Registrar in Form 16 and shall mention Permanent Account Number and Tax Deduction Account Number issued by the Income Tax Department. **[Insertion: Rule 11(3)]**
- Statement of Account and Solvency shall be signed on behalf of the limited liability partnership by its designated partners. In cases where Corporate Insolvency Resolution Process has been initiated against an LLP then the Statement of Account and Solvency may be signed by interim resolution professional or resolution professional, or liquidator or limited liability partnership administrator. **[Substitution: Rule 24(6)]**

- Where the Registrar finds it necessary to call further information, he shall direct the person or LLP to furnish such information or to re-submit such application or e-Form or document in Form 32. **[Insertion: Rule 36(6)]**
- Vide this notification, various forms substituted such as :
  - RUN LLP-Reserve Unique Name-LLP
  - FiLLiP-Form for incorporation of LLP
  - Form 3-Information with regard to LLP agreement and changes, if any, made therein
  - Form 4-Notice for appointment, cessation, change in name/address/ designation of designated partner and consent to become partner
  - Form 5-Notice for change of Name
  - Form 8-Statement of account & solvency and charge filing
  - Form 9-Consent by designated partners
  - Form 11-Annual Return of LLP
  - Form 12-Form for intimating other address for service of documents
  - Form 15-Notice for change of place of registered office
  - Form 16-Certificate of Incorporation
  - Form 17-Application and statement for the conversion of a firm into LLP
  - Form 18-Application and statement for conversion of private company/unlisted public company into LLP
  - Form 22-Notice of intimation of order of court
  - Form 23-Application for direction to LLP to change its name
  - Form 24 -Application to ROC for striking off name
  - 25 -Application for reservation/ renewal of name of name of foreign LLP/Foreign company
  - Form 27 - Form for registration of particulars of FLLP
  - Form 31 - Application for compounding of offence
  - Form 32 - Form for filing addendum for rectification of defects or incompleteness.

*For more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=iorXjBHYBr94XltGw2NNBA%253D%253D&type=open>

## **16. Change in UPI limits - Revision to Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper (SEBI Circular No.: SEBI/HO/DDHS/P/CIR/2022/0028 dated March 08, 2022)**

SEBI vide its circular dated August 10, 2021, provided the procedures pertaining to issue and listing of Non - convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper. The said Circular, inter -alia, provides an option to investors to apply in public issues of debt securities with the facility to block funds through Unified Payments Interface (UPI) mechanism for application value upto Rs. 2 lakh.

In order to bring about uniformity in the requirements and for ease of investment for investors, it has been decided to increase the limit for investment through UPI mechanism to Rs. 5 lakh. The provisions of this circular shall be applicable to public issues of debt securities which open on or after May 1, 2022.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/mar-2022/change-in-upi-limits-revision-to-operational-circular-for-issue-and-listing-of-non-convertible-securities-securitised-debt-instruments-security-receipts-municipal-debt-securities-and-commercial-p-56665.html>

**17. The SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 (SEBI Notification No.: No. SEBI/ LAD-NRO/GN/2022/76 dated March 22, 2022)**

SEBI vide its notification dated March 22, 2022, has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette. SEBI vide this notification has omitted the regulation 17(1B) related to separation of role of Chairperson and MD/CEO. It is provided that this provision may not be retained as a mandatory requirement and instead be made applicable to the listed entities on a voluntary basis.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/234379.pdf>

**18. The Companies (Accounts) Second Amendment Rules, 2022 (MCA Notification No. : G.S.R (E) dated March 31, 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.

*For more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=3kjEo3H12bPQqpt2k180Tw%253D%253D&type=open>

**19. Revision of UPI limits in Public Issue of Equity Shares and convertibles (SEBI Circular No.: SEBI/HO/CFD/DIL2/CIR/P/2022/45 dated Aril 05, 2022)**

SEBI vide this circular has provided that all Individual Investors applying in Public Issues where the application amount is upto Rs. 5 Lakhs shall use Unified Payment Interface (UPI) and shall also provide their UPI ID in the bid-cum application form submitted with a syndicate member, stock broker, depository participant ('DP') and registrar to an issue and share transfer agent. The provisions of this circular shall come into force for Public Issues opening on or after May 01, 2022.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/apr-2022/revision-of-upi-limits-in-public-issue-of-equity-shares-and-convertibles\\_57589.html](https://www.sebi.gov.in/legal/circulars/apr-2022/revision-of-upi-limits-in-public-issue-of-equity-shares-and-convertibles_57589.html)

**20. The Companies (Management and Administration) Amendment Rules, 2022 (MCA Notification No. G.S.R. 279(E) dated April 06, 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 a company 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 a Company. 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 subsection (3) of Section 94 of the Companies Act.

*For more details visit:*

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

### **21. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 (MCA notification no.; G.S.R. 410(E) dated 1<sup>st</sup> 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:

- i) 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}
- ii) 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)}
- iii) 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 more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=1QPa%252Fckqk4ob6rHXFQrVew%253D%253D&type=open>

## **22. CBDT notification for PAN integration with LLP incorporation form FiLLip (Ministry of Finance notification 04/2022 dated 26<sup>th</sup> 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 more details visit:*

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

## **23. The Companies (Acceptance of Deposits) Amendment Rules, 2022 (MCA Notification no. G.S.R (E) dated August 24, 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 more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=99KwRbJskMXjVLv09KTgJg%253D%253D&type=open>

## **24. The Companies (Specification of Definition Details) Amendment Rules, 2022 (MCA Notification no. G.S.R 700(E) dated September 15, 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 Companies Act, 2013.

*For more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=tiMs9IFJ8xuPm%252B%252Foxc6fUw%253D%253D&type=open>

## **26. The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 (MCA Notification G.S.R(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. After 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 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, 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 more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mids=bQNP84llb3yud%252F3R3VZhuw%253D%253D&type=open>

## **Lesson 3- Documentation and Maintenance of Records**

### **1. Case law**

<b>14.07.2020</b>	Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal and Ors	Supreme Court of India
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The premise that Certificate under section 65-B(4) of the Evidence Act cannot be secured by persons who are not in possession of an electronic device is wholly incorrect. An application can always be made to a Judge for production of such a certificate.

**Facts:** These Civil Appeals were referred to a Bench of Judges of Supreme Court by a Division Bench, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 by two judgments. It was found by the court that a Division Bench judgment in Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 may need reconsideration by a Supreme Court Bench of a larger strength. In the case of Shafhi Mohammad (supra). it was observed by Supreme Court that it can be safely held that electronic evidence is admissible and provisions under Sections 65-A and 65-B of the Evidence Act are by way of a clarification and are procedural provisions. If the electronic evidence is authentic and relevant the same can certainly be admitted subject to the Court being satisfied about its authenticity and procedure for its admissibility may depend on fact situation such as whether the person producing such evidence is in a position to furnish certificate under Section 65-B(4).

**Decision:** The supreme court observed that the major premise of Shafhi Mohammad (supra) that the certificate under section 65- B(4) cannot be secured by persons who are not in possession of an electronic device is incorrect. An application can always be made to a Judge for production of such a certificate from the requisite person under Section 65B(4) in cases in which such person refuses to give it.

[For more details visit:](https://main.sci.gov.in/supremecourt/2017/39058/39058_2017_34_1501_22897_Judgement_14-Jul-2020.pdf)

[https://main.sci.gov.in/supremecourt/2017/39058/39058\\_2017\\_34\\_1501\\_22897\\_Judgement\\_14-Jul-2020.pdf](https://main.sci.gov.in/supremecourt/2017/39058/39058_2017_34_1501_22897_Judgement_14-Jul-2020.pdf)

### **2. Case Study-Consequences of non-maintenance of record (updated Register of Members)**

In the matter of M/s. SDU Holdings Private Limited, the Registrar of Companies, Bangalore, has passed an adjudication order by imposing of penalty, for violation of provisions of section 88 of the Companies Act, 2013. As per the provisions of the Companies Act, 2013, every company limited by shares shall from the date of its registration, maintain a register of its members in form no. MGT-1.

During the course of enquiry pursuant to section 206 of the Companies Act 2013, the inspection officer persuaded the statutory registers maintained by the company and noticed that the register Form No. MGT-1 maintained by the company is incomplete. Taking on account of default, the adjudication officer gave reasonable opportunity to being heard to the company and every officer in default by way of giving personal hearing notice.

Consequently, the Adjudicating Officer, after having considered the facts and circumstances of the case and also the submissions made by the company and its director during the personal hearing, decided to impose the penalty on the company and its directors for non-compliance of section 88 of the Companies Act, 2013.

## **Lesson 4- Search and Status Report**

### **1. SEBI Circular on Mutual Funds**

As per SEBI Mutual Funds Regulations, trustees and asset management companies (AMC) shall ensure that the assets and liabilities of each scheme are segregated and ring-fenced from other schemes of the mutual fund and bank accounts and securities accounts of each scheme are segregated and ring-fenced. However, based on the recommendations of Mutual Funds Advisory Committee (MFAC), it has been decided that Mutual Funds may use pool accounts, only for such transactions which are executed at mutual fund level owing to certain operational and regulatory requirements. However, such use of pool accounts is subject to certain conditions.

Further, SEBI has extended the date of implementation of its circular dated September 27, 2021 and October 27, 2021 on “Risk Management Framework (RMF) for Mutual Funds” and on “two-tiered structure for benchmarking of certain categories of Mutual Fund Schemes” respectively, to April 01, 2022.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/dec-2021/circular-on-mutual-funds\\_54542.html](https://www.sebi.gov.in/legal/circulars/dec-2021/circular-on-mutual-funds_54542.html)

### **2. Framework for conversion of Private Listed InvIT into Public InvIT (SEBI Circular No.: SEBI/HO/DDHS/DDHS\_Div3/P/CIR/2022/15 dated February 09, 2022)**

SEBI, vide this circular, has provided the manner in which a Private Listed InvIT may convert into a Public InvIT on making a public issue of units through a fresh issue and/or an offer for sale in terms of the SEBI (Infrastructure Investment Trusts) Regulations. Post issuance and listing of such units through public issue in accordance with this circular, the Private Listed InvIT shall stand transformed and shall be considered a Public InvIT and it shall be required to comply with all provisions of the InvIT Regulations prescribed for Public InvITs.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/feb-2022/framework-for-conversion-of-private-listed-inv-it-into-public-inv-it\\_55971.html](https://www.sebi.gov.in/legal/circulars/feb-2022/framework-for-conversion-of-private-listed-inv-it-into-public-inv-it_55971.html)

### **3. The Companies (Registration of Charges) Second Amendment Rules, 2022 (MCA Notification No. G.S.R. (E) dated August 29, 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 shall 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 more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mcs=406aHVQPvWnWMaUqWvIFeow%253D%253D&type=open>



## **Lesson 5- Know Your Customer (KYC)**

### **1. Rule 9 of the Prevention of Money laundering (Maintenance of Records) Rules, 2005 shall not apply to the Foreign Portfolio Investor (MoF Notification No.G.S.R. 5(E) dated January 04, 2022)**

In exercise of the powers conferred by sub-clause (i) of clause (h) of sub-rule (2) of rule 9A of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005, the Central Government in consultation with the regulatory authority, namely the Securities and Exchange Board of India, in the public interest and in the interest of the regulated entity, namely the Foreign Portfolio Investor, hereby directs that the provisions of sub-rule (1A) of rule 9 of the Prevention of Money-laundering (Maintenance of Records) Rules, 2005 shall not apply to the Foreign Portfolio Investor.

#### **Brief Analysis:**

Government has given exemption to FPIs from reporting of client's KYC records with Central KYC registry under money laundering norms. Rule 9 deals with verification of the records of the identity of clients in which sub rule (1A) which states the following, shall not be applicable to the foreign portfolio investor. As per Rule 9(1A), every reporting entity is required to file within 10 days after the commencement of an account-based relationship with a client, an electronic copy of the client's KYC records with the Central KYC Records Registry.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/232403.pdf>

### **2. The Aadhaar (Authentication and Offline Verification) (First Amendment) Regulations, 2022 (UIDAI Notification No.: No. K-11020/240/2021/Auth/UIDAI dated February 04, 2022)**

The Unique Identification Authority of India has notified the Aadhaar (Authentication and Offline Verification) (First Amendment) Regulations, 2022. Regulations 16B and 16C are newly inserted regulations which inter-alia contains provisions pertaining to manner of voluntary use of Aadhaar number viz; Acceptance of Aadhaar (in form of- physical/Aadhaar Letter/printed e-Aadhaar/ Aadhaar PVC card/m-Aadhaar) as proof of Identity; Offline Verification Seeking Entity shall verify the details with digitally signed Aadhaar Secure QR code; Aadhaar number in electronic form may be used by aadhaar holder for establishing his identity by way of offline verification and the Offline Verification Seeking Entity shall verify the digital signature; Yes/No or eKYC authentication facility for electronic Aadhaar to be provided by an authorized requesting entity.

Further, as per new regulation 16C, for acceptance for Aadhaar - Offline Verification Seeking Entity shall verify the digital signatures through Aadhaar secure QR Code and every requesting entity shall ensure informed consent of Aadhaar number holder beforehand of acceptance as proof of identity.

New definitions such as Aadhaar letter, Aadhaar Polyvinyl Chloride Card (PVC), e-Aadhaar, m-Aadhaar are introduced.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/233160.pdf>

### **3. The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022 (MCA Notification No. G.S.R (E) dated August 29, 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 more details visit:](#)*

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

## **Lesson 6- Signing and Certification**

### **1. Recognition to Company Secretary in Practice under the International Financial Services Centres Authority (Registration of Insurance Business) Regulations, 2021 & International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021**

The IFSCA has authorised the Company Secretaries to certify the net-worth certificate of IFSC insurance intermediary office (IIIO) under the International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 and also to certify that all the requirements of the International Financial Services Centres Authority Act, 2019 read with IFSCA (Registration of Insurance Business) Registration 2021 and notifications issued under section 2CA of the Act have been complied with by the applicant.

*For more details visit:*

[https://www.icsi.edu/media/webmodules/Recognition\\_PCS\\_under\\_IFSCA\\_Regulations\\_23102021.pdf](https://www.icsi.edu/media/webmodules/Recognition_PCS_under_IFSCA_Regulations_23102021.pdf)

### **2. Recognition to Company Secretary in Practice under the International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021**

The International Financial Services Centres Authority has notified the International Financial Services Centres Authority (Capital Market Intermediaries) Regulations, 2021 Vide Gazette Notification Dated October 18, 2021 wherein, the IFSCA has authorised the PCS to conduct annual audit of Capital Market Intermediaries and issue Net Worth Certificate to the applicant willing to register as an capital market intermediaries with the IFSCA.

*For more details visit:*

[https://www.icsi.edu/media/webmodules/New\\_Recognition\\_PCS\\_conduct\\_annual\\_audit\\_23102021.pdf](https://www.icsi.edu/media/webmodules/New_Recognition_PCS_conduct_annual_audit_23102021.pdf)

### **3. Recognition to Company Secretary in Practice to provide Certificate of Compliance to RTAs**

The Securities and Exchange Board of India has bestowed upon the profession of Company Secretaries a new recognition, by authorizing Company Secretary in Practice (PCS) to provide Certificate of Compliance to Registrars to an Issue and Share Transfer Agents (RTA) vide SEBI Circular dated November 03, 2021.

*For more details visit:*

[https://www.icsi.edu/media/webmodules/Recognition\\_PCS\\_SEBI\\_Circular\\_09112021.pdf](https://www.icsi.edu/media/webmodules/Recognition_PCS_SEBI_Circular_09112021.pdf)

#### **4. Publishing Investor Charter and disclosure of Investor Complaints by Investment Advisers/ Research Analysts on their websites/mobile applications**

In order to facilitate investor awareness about various activities which an investor deals with while availing the services provided by investment advisers/ research analysts, SEBI has developed an Investor Charter for Investment Advisers/ Research Analysts. All registered Investment Advisers/ Research Analysts are advised to bring to the notice of their clients the Investor Charter by prominently displaying on their websites and mobile applications. Additionally, in order to further enhance transparency in grievance redressal, the Investment Advisers/ Research Analyst shall disclose the details of investor complaints by 7th of the succeeding month in the revised format on a monthly basis on respective websites/mobile application.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/dec-2021/publishing-of-investor-charter-and-disclosure-of-investor-complaints-by-investment-advisers-on-their-websites-mobile-applications\\_54585.html](https://www.sebi.gov.in/legal/circulars/dec-2021/publishing-of-investor-charter-and-disclosure-of-investor-complaints-by-investment-advisers-on-their-websites-mobile-applications_54585.html)

[https://www.sebi.gov.in/legal/circulars/dec-2021/publishing-of-investor-charter-and-disclosure-of-investor-complaints-by-research-analysts-on-their-websites-mobile-applications\\_54584.html](https://www.sebi.gov.in/legal/circulars/dec-2021/publishing-of-investor-charter-and-disclosure-of-investor-complaints-by-research-analysts-on-their-websites-mobile-applications_54584.html)

#### **5. Consumer Protection (Direct Selling) Rules, 2021**

Ministry of Consumer Affairs, Food and Public Distribution published the Consumer Protection (Direct Selling) Rules, 2021 on December 28, 2021.

The rules inter-alia provides for Mandatory maintenance of records, Obligations of direct selling entity, Duties of direct selling entity and direct seller, Prohibition of Pyramid Scheme and money circulation scheme etc.

According to rule 5(g) of the said rules, the obligation of direct selling entity include that every direct selling entity shall get all information provided by it on its website duly certified by a Company Secretary.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2021/232214.pdf>

#### **6. The International Financial Services Centres Authority (Insurance Intermediary) (Amendment) Regulations, 2021 (IFSCA Notification No.: IFSCA/2021-22/GN/REG020 dated January 04, 2022)**

The International Financial Services Centres Authority made amendment to International Financial Services Centres Authority (Insurance Intermediary) Regulations, 2021 which inter-alia carrying provisions pertaining to: "Certificate" from CA/CS/CMA, etc.:

Provide a certificate from a practicing Chartered Accountant in India, a practicing Company Secretary in India, a practicing Cost Accountant in India or any other person with appropriate qualification, as specified by the Authority, confirming that all applicable regulatory requirements have been complied with by the Applicant.”

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/232425.pdf>

#### **7. International Financial Services Centers Authority (Registration of Insurance Business) (Amendment) Regulations, 2021 (IFSCA Notification No.: IFSCA/2021-22/GN/REG019 dated January 04, 2022)**

The International Financial Services Centers Authority made amendment to the International Financial Services Centers Authority (Registration of Insurance Business) Regulations, 2021 which inter-alia carrying provisions pertaining to: “Certificate” from CA/CS/CMA, etc.:

Provide a certificate from a practicing Chartered Accountant in India, a practicing Company Secretary in India, a practicing Cost Accountant in India or any other person with appropriate qualification, as specified by the Authority, certifying that all the requirements of the Act read with IFSCA (Registration of Insurance Business) Regulations, 2021 and notifications issued under section 2CA of the Act have been complied with by the Applicant.”

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/232424.pdf>

#### **8. SEBI Notification No. SEBI/LAD-NRO/GN/2022/63 dated January 14, 2022**

Practicing Company Secretaries have been authorized under the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 issued vide Gazette Notification dated 14th January, 2022, to issue a Certificate of Compliance to the issuer certifying that the proposed preferential issue is being made in accordance with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

*For more details visit:*

[https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2022\\_55351.html](https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2022_55351.html)

#### **9. IFSCA Circular No.: 29/IFSCA/DPM/TS/QJ/2021-2 dated January 19, 2022**

The International Financial Services Centres Authority (IFSCA) in its Circular 329/IFSCA/DPM/TS/QJ/2021-22/1 dated 19th January, 2022 pertaining to Qualified Jewellers importing gold through India International Bullion Exchange has authorized Practicing Company Secretaries to certify the average annual turnover in the last 3 financial years and net worth of the entity so as to be permitted to act as a “Qualified Jeweller”.

*For more details visit:*

<https://ifsc.gov.in/Viewer/Index/267>

## **10. Ministry of Corporate Affairs (MCA): Clarification**

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 more details visit:](#)*

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

**11. Case Law:** *In Re Securities and Exchange Board of India Vs. Shankar Civil Appeal No. 527 OF 2023*, Supreme Court of India dated 08.02.2023, in this matter the SAT came to conclusion that role of compliance officer, was limited to redressing grievances of investors and he was nowhere responsible for false or misleading open offer made by company. The Apex court held that, crucial point which had been missed by SAT was that compliance officer was also required to ensure compliance with Buyback Regulations as expressly stipulated by regulation 19(3) of SEBI (Buyback of Securities) Regulations, 1998, decision of SAT was to be set aside and proceeding were to be remitted back.

## **Lesson 7- Segment-wise Role of Company Secretaries**

### **1. SEBI launched “Saa᳚thi” – SEBI’s Mobile App on Investor Education (SEBI PR No. 3/2022 dated January 19, 2022)**

Chairman, SEBI launched “Saa᳚thi” – SEBI’s Mobile App on Investor Education at a function held in Mumbai. Launching the SEBI App, Chairman said, “This Mobile App is yet another initiative of SEBI with a view to empowering investors with knowledge about securities market. With the recent surge in individual investors entering the market, and more importantly a large proportion of trading being mobile phone based, this App will be helpful in easily accessing the relevant information.

The SEBI Mobile App aims to create awareness among the investors about the basic concepts of Securities Market, KYC Process, trading and settlement, mutual funds, recent market developments, investor grievances redressal mechanism, etc. The App is available in Hindi and English. The Android and iOS versions of the App can be downloaded from Play Store and App Store respectively.

*For more details visit:*

<https://www.sebi.gov.in/media/press-releases/jan-2022/sebi-chairman-launches-saa-thi-sebi-s-mobile-app-on-investor-education-55384.html>

### **2. Guidelines on Accounting with respect to Indian Accounting Standards (IND AS) (SEBI Circular No.: SEBI/HO/IMD-II/DOF8/P/CIR/2022/12 dated February 04, 2022)**

SEBI vide notification dated January 25, 2022 amended SEBI (Mutual Funds) Regulations, 1996, which, inter-alia, mandated that the AMCs shall prepare the Financial Statements and Accounts of the Mutual Fund Schemes in accordance with IND AS with effect from April 01, 2023. In this regard, SEBI has specified that the Mutual Fund Schemes shall prepare the opening balance sheet as on date of transition and the comparatives as per the requirements of IND AS. Mutual Fund schemes may not be mandatorily required to restate the previous years published perspective historical per unit statistics as per requirement of IND AS for the first two years from first time adoption of IND AS. The provisions of this Circular shall be effective from April 01, 2023.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/feb2022/circular-onguidelines-onaccounting-withrespect-to-indianaccounting-standardsind-as-55919.html>

### **3. Audit Committee of Asset Management Companies (AMCs) (SEBI Circular No.: SEBI/HO/IMD/IMD-I DOF2/P/CIR/2022/17 February 09, 2022)**

Taking into account the recommendation of Mutual Fund Advisory Committee (MFAC) and the feedback received from the industry, SEBI has prescribed that the AMCs of mutual funds shall be required to constitute an Audit Committee. The role, responsibility, membership and other features of the Audit Committee of AMC are detailed in this circular. Currently, the requirement for an Audit Committee is at the level of trustees of Mutual Funds.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/feb-2022/circular-on-audit-committee-of-asset-management-companies-amcs-55987.html>



#### **4. Separation of role of Chairperson and MD/CEO (SEBI PR No. 5/2022 dated February 15, 2022)**

Considering constraints posed by the prevailing pandemic situation and with a view to enabling the companies to plan for a smoother transition, as a way forward, SEBI Board, in its meeting decided that the provision for separation of role of Chairperson and MD/CEO may not be retained as a mandatory requirement and instead be made applicable to the listed entities on a “voluntary basis”. Earlier, the top 500 listed companies by market capitalisation had to mandatorily separate the role of the Chairperson and MD/CEO from April 01, 2022, following the two years extension given by the SEBI. The SEBI Board, in its meeting of March 2018, had considered and approved the proposal relating to separation of the role of Chairperson and MD/CEO of listed companies.

*For more details visit:*

[https://www.sebi.gov.in/media/press-releases/feb-2022/sebi-board-meeting\\_56076.html](https://www.sebi.gov.in/media/press-releases/feb-2022/sebi-board-meeting_56076.html)

#### **5. Amendment in the notification pertaining to application for Fast Track Corporate Insolvency Resolution Process (MCA notification no. S.O. 4142(E) dated 30<sup>th</sup> 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 19<sup>th</sup> February, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 19<sup>th</sup> 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 more details visit:*

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

**6. New recognitions to Company Secretary under the SEBI (Buy-Back of Securities) Amendment Regulations, 2023 (SEBI Notification No. SEBI/LAD-NRO/GN/2023/120 dated February 07, 2023)**

SEBI has issued the SEBI (Buy-Back of Securities) Regulations, 2018 vide gazette notification dated September 11, 2018. One more recognition has been added to the cap of Company Secretary by the SEBI by exclusively recognizing the Secretarial Auditor under regulation 11(i), 11(iii) and regulation 21 (iii) for extinguishment of physical certificates of securities so brought back. Further, in regulation 5, clause ix has been inserted wherein all the findings to the Board shall be made only in electronic mode after being digitally signed by the Company Secretary or the person authorised by the Board of Directors.

*[For more details visit:](https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-buy-back-of-securities-amendment-regulations-2023_68110.html)*

*[https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-buy-back-of-securities-amendment-regulations-2023\\_68110.html](https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-buy-back-of-securities-amendment-regulations-2023_68110.html)*

## **Lesson 9- Secretarial Audit**

### **1. Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018**

SEBI issued a Circular bearing reference number SEBI/HO/CFD/DIL2/CIR/P/2019/94 dated August 19, 2019, specifying the fines to be imposed by the Stock Exchanges for non-compliance with certain provisions of SEBI (ICDR) Regulations, 2018. In partial modification of August 19, 2019 circular, para 9A is inserted which provides that the “Stock Exchanges may deviate from the provisions of the circular, wherever the interest of the investors are not adversely affected, if found necessary, only after recording reasons in writing”.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/nov-2021/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018\\_54130.html](https://www.sebi.gov.in/legal/circulars/nov-2021/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018_54130.html)

### **2. SEBI Circular-Disclosure obligations of listed entities in relation to Related Party Transactions w.e.f April 01, 2022.**

Capital markets regulator SEBI came out with disclosure requirements to be placed by listed entities before the audit committee and shareholders for consideration of related party transactions (RPTs). A listed entity will have to justify as to why the RPT is in its interest, besides, a copy of the valuation or other external party report will have to be submitted to the audit committee as well as shareholders for approval.

*For more details visit:*

[https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions\\_54113.html](https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html)

### **3. The SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022 (SEBI Notification No. : No. SEBI/LAD-NRO/GN/2022/64 dated January 14, 2022)**

SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2019.

The new regulation 43B has been inserted through this amendment which deals with exemption from strict enforcement of the regulations in other cases as follows:

The Board may suo motu or on an application made by a foreign portfolio investor, for reasons recorded in writing, grant relaxation from the strict enforcement of any of the provisions of these regulations, subject to such conditions as the Board deems fit to impose in the interests of investors and the securities market and for the development of the securities market, if the Board is satisfied that:

- (a) the non-compliance is caused due to factors beyond the control of the entity; or
- (b) the requirement is procedural or technical in nature.

The above mentioned application shall be accompanied by a non-refundable fee of US \$ 1,000 payable by way of NEFT/ RTGS/ IMPS or any other mode allowed by the Reserve Bank of India in the designated bank account of the Board.

*For more details visit:*

[https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2022\\_55352.html](https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2022_55352.html)

#### **4. 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 March 30, 2022)**

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 1, 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 1, 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 1, 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 unfavorable to the listed entity, compared to the terms and conditions, had similar transaction been entered into between two unrelated parties.

*For more details visit:*

[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)

#### **5. Clarification on applicability of Regulation 23(4) read with Regulation 23(3)(e) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions (SEBI Circular No.: SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated April 08, 2022)**

In order to facilitate listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material related party transactions (RPTs), it has been specified that the shareholders' approval of omnibus RPTs approved in an AGM shall be valid upto the date of the next AGM for a period not exceeding fifteen months. In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs, the validity of such omnibus approvals shall not exceed one year.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/apr2022/clarification-onapplicability-ofregulation-23-4-readwith-regulation-23-3-eof-the-sebi-listingobligations-anddisclosurerequirementsregulations-2015-inrelation-to-relatedparty-transactio-57807.html>

## **6. Case Law: Non-Reporting of related party transaction led Secretarial Auditor to pay penalty**

In the matter of Sun Pharmaceutical Industries Ltd, Adjudication Order passed by RoC Gujarat, Dadra & Nagar Haveli dated 28.04.2023

### **Facts of the case:**

On receipt of whistle blower complaint in respect of Related Party Transaction, money diversion from Sun Pharmaceutical Ltd to Aditya Medisales Ltd and other group companies, the Inquiry of M/s Sun Pharmaceutical Industries Ltd under section 206(4) of the Companies Act, 2013 was ordered by Ministry of Corporate Affairs for FYs 2014 to 2018. During the inquiry it was observed by the inquiry officer that Secretarial Auditor of the company has not reported "Aditya Medisales Ltd.' as related party.

*"As per section 204 of the Companies Act, 2013 the Secretarial Auditor plays a crucial role in laws for effective compliances. The object of Secretarial Audit is evaluation and form an opinion and to report to the shareholders as to whether, the company has complied with the applicable laws comprising various statutes, rules, regulations, guidelines, followed by board processes also to report on existence of compliance management system."*

The Practicing Company Secretary has to examine the transactions during the period of audit to identify whether any fraud element is present in the transaction. Also that, the ICSI has issued Guidance Note for Secretarial Audit. As per the Guidance Note the Secretarial Auditor is need to adhere the checklist to review the related party transaction.

In this matter, the instead of complying his duty as per the Guidance Note in respect of related party transaction u/s 188, the Secretarial Auditor has merely relied on the statutory Auditors' report, which led to non-compliance on his part pertaining to non-reporting of related party transaction.

### **Decision:**

After considering the facts and submissions, the adjudicating officer had reasonable cause to believe that the Secretarial Auditor of the company has failed to discharge their duty as per provisions of section 143(14) read with section 188 and 204 of the Companies Act, 2013 read with ICSI Guidance Note on Secretarial Audit issued by ICSI and imposed a penalty on Secretarial Auditor.

## **Lesson 11- Concepts and Principles of Other Audits**

### **1. SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2021 (August 5, 2021)**

SEBI vide its notification dated August 05, 2021, amends the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

The amendments has been made in regulation 7D which provides that the Board may at its sole discretion, declare an Informant eligible for Reward provided that the amount of Reward shall be ten percent of the monetary sanctions and shall not exceed Rupees 10 crores (earlier Rs. 1 crores) or such higher amount as the Board may specify from time to time.

Further, a new sub-regulation 7D (1A) has been inserted which provides that if the total reward payable is less than or equal to Rupees One Crore, the Board may grant the said reward upon the issuance of the final order by the Board.

Provided that in case the total reward payable is more than Rupees One Crore, the Board may grant an interim reward not exceeding Rupees One Crore upon the issuance of the final order by the Board and the remaining reward amount shall be paid only upon collection or recovery of the monetary sanctions amounting to at least twice the balance reward amount payable.

*For more details visit:*

[https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-prohibition-of-insider-trading-second-amendment-regulations-2021\\_51932.html](https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-prohibition-of-insider-trading-second-amendment-regulations-2021_51932.html)

### **2. National Stock Exchange launches NSE Prime**

NSE launched a new corporate governance initiative – ‘NSE Prime’, that NSE-listed companies can adopt voluntarily. NSE Prime is a framework that prescribes higher standards of corporate governance for listed Companies than those required by regulations. Additional disclosure requirements have also been prescribed to provide for a higher quality of public information and greater transparency. Listed companies that voluntarily choose to be part of NSE Prime will need to comply with pre-defined norms on an ongoing basis, which will be monitored by NSE.

*For more details visit:*

<https://economictimes.indiatimes.com/markets/stocks/news/national-stock-exchange-launches-nse-prime/articleshow/88416821.cms>

### **3. Clarification on spending of CSR funds for "Har Ghar Tiranga" campaign (MCA General Circular No. 08/2022 dated 26<sup>th</sup> 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 fulfillment 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 more details visit:*

<https://www.mca.gov.in/bin/dms/getdocument?mds=dXH1ziMu%252FmN%252BBSRLH N9evw%253D%253D&type=open>

#### **4. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022 (MCA notification no. G.S.R 715(E) dated 20<sup>th</sup> 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 more details visit:](#)*

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

## **Lesson 19- Due Diligence**

### **1. Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021**

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992, SEBI amended the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 inter-alia provides that in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation.

The acquirer shall have declared his intention to so delist the target company at the time of making such public announcement of an open offer as well as at the time of making the detailed public statement.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2021/231637.pdf>

### **2. The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 (SEBI Notification No. SEBI/LAD-NRO/GN/2021/60 dated December 06, 2022)**

In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992, SEBI amended the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 inter-alia provides that in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation.

The acquirer shall have declared his intention to so delist the target company at the time of making such public announcement of an open offer as well as at the time of making the detailed public statement.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2021/231637.pdf>

### **3. Disclosures in the abridged prospectus and front cover page of the offer document (SEBI Circular No.: SEBI/HO/CFD/SSEP/CIR/P/2022/14 dated February 04, 2022)**

In order to further simplify, provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged prospectus, the format for disclosures in the abridged prospectus has been revised and is placed at Annexure A of this Circular. This Circular shall be applicable for all issues opening after the date of this Circular. While the disclosures in the abridged prospectus shall be as per Annexure A of this Circular instead of Annexure I of Part E of Schedule VI of SEBI (ICDR) Regulations, the disclosure on front outside cover page shall be as per Annexure B of this Circular.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/feb-2022/disclosures-in-the-abridged-prospectus-and-front-cover-page-of-the-offer-document-55920.html>

### **4. Automation of disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011-System Driven Disclosures - Ease of doing business(SEBI Circular No.: SEBI/HO/CFD/DCR-3/P/CIR/2022/27 dated March 07, 2022)**

In order to streamline the capture and dissemination of the information related to “encumbrances” and thus bring in more transparency, it has been decided that all types of encumbrances as defined under Regulation 28 (3) of Takeover Regulations shall necessarily be recorded in the depository system. With effect from June 30, 2022, the depositories shall also devise an appropriate mechanism to record all types of outstanding encumbrances in the depository system. For the purpose of dissemination of this information, the stock exchanges shall also devise an appropriate mechanism for dissemination of disclosures under System Driven Disclosures in a simple readable pdf format. Reconciliation of data shall be conducted by listed companies, stock exchanges and depositories at least once in a quarter or immediately whenever any discrepancy is noticed. The provisions of this circular shall come into effect from July 01, 2022.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/mar-2022/automation-of-disclosure-requirements-under-sebi-substantial-acquisition-of-shares-and-takeovers-regulations-2011-system-driven-disclosures-ease-of-doing-business-56655.html>

### **5. Foreign Contribution (Regulation) Amendment Rules, 2022 (Ministry of Home Affairs notification no. G.S.R 506(E) dated 1<sup>st</sup> July, 2022)**

The Ministry of Home Affairs (MHA) vide its notification dated 01st July, 2022 has notified “the Foreign Contribution (Regulation) Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette.

**Brief Analysis:**

The Ministry of Home Affairs has published the Foreign Contribution (Regulation) Amendment Rules, 2022 to further amend the Foreign Contribution (Regulation) Rules, 2011 which shall have come into force on the date of their publication in the Official Gazette i.e. 01-07-2022. Through this amendment, Rule 6 deals with an intimation of receiving foreign funds from relatives, which is amended to provide that the time period to notify the government regarding the overseas transaction has been extended from 30 days to three months. Accordingly, any person receiving a foreign contribution in excess of 10 lakhs or equivalent thereto in a financial year from any of his relatives shall inform the Central government (details of funds) within three months from the receipt of such contribution. The Foreign Contribution (Regulation) Act, consolidated the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the interest of the nation and for matters connected therewith or incidental thereto.

*For more details visit:*

[https://fcraonline.nic.in/home/PDF\\_Doc/FC\\_04072022.pdf](https://fcraonline.nic.in/home/PDF_Doc/FC_04072022.pdf)

## **Lesson 20- Due Diligence – II – Non Compliances, Penalties and Adjudications**

### **1. SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021**

SEBI vide its notification dated November 09, 2021, amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force with effect from April 1, 2022 unless otherwise specified in the respective provision of the regulation. The amendment, *inter-alia*, has been carried out in the definition of Related Party and Related Party transactions and provides that any person or any entity, directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, holding 20 per cent or more equity shares in the listed entity during the immediate preceding financial year and 10% or more with effect from April 1, 2023, shall be deemed to be a related party.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2021/230992.pdf>

### **2. SEBI (Settlement Proceedings) (Amendment) Regulations, 2022 (SEBI Notification No. NoSEBI/LAD-NRO/GN/2022/62 dated January 14, 2022)**

SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Settlement Proceedings) Regulations, 2018 which has come into force on the date of their publication in the Official Gazette. The SEBI (Settlement Proceedings) Regulations, 2018 provides that the settlement terms may include a settlement amount and/or nonmonetary terms. Vide this amendment, SEBI has prescribed that the non-monetary terms may also include “restraining from accessing the securities market and/or prohibiting from buying, selling or otherwise dealing in securities, directly or indirectly and associating with the securities market in any manner for a specific period”.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/232643.pdf>

### **3. Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2022 (MoF Notification No. S.O. 1802(E) dated April 12, 2022)**

The Central Government amended the Foreign Exchange Management (Non debt Instruments) Rules, 2019. Rule 8 of the Foreign Exchange Management (Non-debt Instruments) (Amendment) Rules, 2022 inter alia provides that an Indian company may issue “employees’ stock option”, “sweat equity shares”, and “Share Based Employee Benefits” to its employees or directors or employees or directors of its holding company or joint venture or wholly owned overseas subsidiary or subsidiaries who are resident outside India.

Provided that –

- (a) the scheme has been drawn either in terms of regulations issued under the Securities and Exchange Board of India Act, 1992 or the Companies (Share Capital and Debentures) Rules, 2014 or as per other applicable law, as the case may be;
- (b) the “employee’s stock option” or “sweat equity shares” or “Share Based Employee Benefits” so issued under the applicable rules or regulations are in compliance with the sectoral cap applicable to the said company;
- (c) the issue of “employee’s stock option” or “sweat equity shares” or “Share Based Employee Benefits” in a company where foreign investment is under the approval route shall require prior government approval;
- (d) issue of “employee’s stock option” or “sweat equity shares” or “Share Based Employee Benefits” to a citizen of Bangladesh or Pakistan shall require prior government approval. It may be noted that an individual who is a person resident outside India exercising an option which was issued when he or she was a person resident in India shall hold the shares so acquired on exercising the option on a non-repatriation basis.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/235070.pdf>

## **Miscellaneous**

### **1. SEBI Notification SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022 (SEBI notification F. No. SEBI/LAD-NRO/GN/2022/90 dated July 25, 2022)**

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification SEBI has prescribed the framework for Social Stock Exchange and inserted a separate Chapter X-A under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Social Stock Exchange means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not for Profit Organizations in accordance with provisions of these regulations. The provisions of the above mentioned Chapter shall apply to –

- a Not for Profit Organization seeking to only get registered with a Social Stock Exchange;
- a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and
- a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

#### **Brief Analysis:**

SEBI vide notification dated 25th July, 2022 has prescribed Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Third Amendment) Regulations, 2022 by inserting chapter X-A on Social Stock Exchange which will be applicable to: a) a Not for Profit Organization seeking to only get registered with a Social Stock Exchange; b) a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and c) a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

The chapter also states about the eligibility conditions for being identified as a Social Enterprise, requirements relating to registration for a not for profit organization, means of raising funds by social enterprises. The chapter also includes the concept of “Zero Coupon Zero Principal Instruments” their issuance, eligibility and public issue of Zero Coupon Zero Principal Instruments by Not for profit organization.

*For more details visit:*

<https://egazette.nic.in/WriteReadData/2022/237561.pdf>



## **2. Securities and Exchange Board Of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 (SEBI Notification F. No. SEBI/LAD-NRO/GN/2022/88 dated 25<sup>th</sup> July, 2022)**

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 through which it has notified a new chapter IX-A which deals with obligations of social enterprises. The provisions of this Chapter shall apply to Profit Social Enterprise whose designated securities are listed on the applicable segment of the Stock Exchange(s) and Not for Profit Organization that is registered on the Social Stock Exchange(s). A Social Enterprise whose designated securities are listed on the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, shall frame a policy for determination of materiality, duly approved by its board or management, as the case may be, which shall be disclosed on the Social Stock Exchange(s) or the Stock Exchange(s). The board and management of the Social Enterprise shall authorize one or more of its Key Managerial Personnel for the purpose of determining the materiality of an event or information and for the purpose of making disclosures to the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, under this regulation and the contact details of such personnel shall also be disclosed to the Social Stock Exchange(s) or the Stock Exchange(s). Further, a Social Enterprise, which is either registered with or has raised funds through a Social Stock Exchange or a Stock Exchange, as the case may be, shall be required to submit an annual impact report to the Social Stock Exchange or the Stock Exchange in the format specified by the Board from time to time. The annual impact report shall be audited by a Social Audit Firm employing Social Auditor.

### **Brief Analysis:**

SEBI vide notification dated 25th July, 2022 has prescribed Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 by inserting chapter IX-A stating the below obligations of social enterprises:

- i. Disclosures to be made by a 'For profit Social Enterprise' and by 'Not for profit organization';
- ii. Intimations and disclosures by Social Enterprise of events or information to Social Stock Exchange(s) or Stock Exchange(s);
- iii. Disclosures by a Social Enterprise in respect of social impact;
- iv. Submission of statement of utilization of funds by a listed Not for Profit Organization to the Social Stock Exchange(s) etc.

*For more details visit:*

[https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2022\\_61169.html](https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2022_61169.html)

### **3. NSE Circular on use of digital signature certificate for announcements submitted by listed companies (NSE Circular Ref No: NSE/CML/2022/39 dated August 02, 2022)**

Considering the advantages of using digital signature certifications for authentication of documents / filings, Stock Exchanges, in consultation with each other and SEBI, have decided to make it mandatory to file announcements under various SEBI Regulations using digital signature certification to the Stock Exchange except for Outcome of Board meeting which includes only financial result, any disclosure in which documents issued by entities other than listed company are included (For e.g., Auditors certificate, NCLT / other court's order, Credit Rating, etc.), Newspaper advertisement and any other disclosure as specified by Stock Exchanges from time to time. The circular shall be effective from September 01, 2022.

*For more details visit:*

<https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges-47219.html>

### **5. The Companies (Incorporation) Third Amendment Rules, 2022 (MCA notification G.S.R (E) dated 18<sup>th</sup> 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 more details visit:*

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTcyODE0NDc2&docCategory=Notifications&type=open>

### **6. Ministry of Corporate Affairs Important Update (dated 26<sup>th</sup> December, 2022)**

The Ministry of Corporate Affairs (MCA) by issuing important update on December 26, 2022, has informed that, it is launching second set of Company Forms covering 56 forms in two different lots on MCA 21 V3 portal. 10 out of 56 forms will be launched on 09th January 2023 at 12:00 AM and the remaining 46 forms on 23rd January 2022. Following forms will be rolled-out on 09th January 2023: SPICe+ PART A, SPICe+ PART B, RUN, AGILE PROS, INC-33, INC-34, INC-13, INC-31, INC-9 and URC-1. Click the mentioned link to view list of 46 forms which will be rolled-out on 23rd January 2023.

*For more details visit:*

<https://www.mca.gov.in/content/dam/mca/configurations/new-forms-20221226.pdf>

## 7. Ministry of Corporate Affairs Important Update

The Ministry of Corporate Affairs (MCA) vide its notifications dated January 19 and 21, 2023 has notified below mentioned amended rules:

- i) The Companies (Management and Administration) Amendment Rules 2023;
- ii) The Companies (Share Capital and Debentures) Amendment Rules, 2023;
- iii) The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2023;
- iv) The Companies (Incorporation) Amendment Rules 2023;
- v) The Companies (Prospectus and allotment of securities) Amendment Rules, 2023;
- vi) The Companies (Authorised to Register) Amendment Rules, 2023; and
- vii) The Companies (Accounts) Amendment Rules, 2023. The amended rules shall come into force with effect from January 23, 2023.

According to the amendments Form No. MGT-3, Form No. SH-7, Form No. SH-8, Form No. 9, Form No. MR-1, Form No. MR-2, Form No. 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, RD-1, Form PAS-2, Form PAS-3, PAS-6, URC-1 and Form No. AOC-5 has been substituted. Various other changes in rules/sub-rules are also made pursuant to migration of set of forms from MCA V2 to MCA V3 portal.

### Brief Analysis:

1. 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 MGT14 relating to Filing of Resolutions and agreements to the Registrar, has been substituted.

*For more details visit:*

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

2. 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.

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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=p7DFz8PggzipaCKcHi8DEg%253D%253D&type=open>

3. 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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=KOPgOjylxvDtUW18%252BOESSA%253D%253D&type=open>

4. 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, INC20, INC-20A, INC-22, INC- 23, INC-24, INC-27, INC-28, INC-31, SPICE+ (INC32), INC-33, INC-34, INC-35 (AGILEPRO-S) and RD-1 are substituted.

(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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=ePWdYPBEJzswvfrz%252Fkb6og%253D%253D&type=open>

5. 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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=a4r89hvUpe4unaFIE9fhBw%253D%253D&type=open>

6. 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 sub-rule 3 (2) provides the manner in which a company is required to attach and provide documents and information to the Registrar along with Form No. URC 1. In the same context, in sub-rules (a), (b), (c) and (d), wherever "the written consent or No Objection Certificate from all the secured creditors of the applicant" is mentioned, "No Objection Certificate from secured creditor along-with charge holder, if applicable" has been substituted. Further, Form URC-1 relating to Application by a company for registration under section 366 has been substituted.

[For more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=XkFRyiRleiGKtDK0myJS9w%253D%253D&type=open>

7. The Ministry of Corporate Affairs has notified the Companies (Accounts) Amendment Rules, 2023 to amend the Companies (Accounts) \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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=URBkg00QEvExHY9sWICZbQ%253D%253D&type=open>

### **8. Ministry of Corporates Affairs amended the Rules (MCA notification G.S.R (E) dated January 23, 2023 and notification G.S.R. 35 (E) dated January 21, 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;

These 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, NDH2, 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; eforms 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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=zFrQ4gUbxyNedgbfFLKcdw%253D%253D&type=open>

<https://egazette.gov.in/WriteReadData/2023/242165.pdf>

### **9. The Companies (Miscellaneous) Amendment Rules, 2023 (MCA notification G.S.R 46 (E) dated January 22, 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 more details visit:](#)

<https://www.mca.gov.in/bin/dms/getdocument?mds=3oMsDCPMBjXN4d0IQcj%252BDw%253D%253D&type=open>



## **10. 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 carters to make the process of removal of names more streamlined and efficient, saving time and effort for companies.

*For more details visit:*

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

## **11. 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 more details visit:](#)*

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

## **12. The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 (MCA Notification G.S.R (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 more details visit:](#)*

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

## **13. Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 (MCA Notification G.S.R (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 more details visit:](#)*

<https://www.mca.gov.in/bin/dms/getdocument?mds=kV7N%252BydDlO%252BwXcp%252BAuuahw%253D%253D&type=open>

### **14. The Companies (Accounts) Second Amendment Rules, 2023 (MCA notification G.S.R (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.

*[For more details visit:](#)*

<https://www.mca.gov.in/bin/dms/getdocument?mds=b3Vzll%252BE2cQrr28306Z23g%253D%253D&type=open>

*Note: Students appearing in December, 2023 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, ICSI & or other authority till May 31, 2023.*

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