



**THE INSTITUTE OF
Company Secretaries of India**
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT EXECUTIVE PROGRAMME (OLD SYLLABUS)

SETTING UP OF BUSINESS ENTITIES & CLOSURE

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

MODULE 1

PAPER 3

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Students appearing in Examination shall note the following:

Students appearing in Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government.

The students are advised to acquaint themselves with the Monthly and Regulatory updates published by the Institute.

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PART A
LESSON 2
TYPES OF COMPANIES

1) The Companies (Incorporation) Amendment Rules, 2022

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

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

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

Impact:

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

For details:

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

2) The Companies (Incorporation) Second Amendment Rules, 2022

The Ministry of Corporate Affairs (MCA) vide its Notification dated May 20, 2022 has notified the Companies (Incorporation) Second Amendment Rules, 2022 which shall come into force with effect from June 01, 2022. As per the amendment, Form No. INC-9 (Declaration by Subscribers and First Directors) has been substituted. The substituted Form *inter-alia* consist declaration in respect of compliance with Government approval under FEMA by inserting checkboxes;

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

Further, the Ministry has inserted new declaration in Form No. INC 32 (SPICE+), in part B, in

declaration, the following shall be inserted at the end, namely:

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

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

Impact:

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

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=QJAZ8U7iIBs%252FRWVx91HwmO%253D%253D&type=open>

3) The Nidhi (Amendment) Rules, 2022

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

The said amendments inter-alia provide that:

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

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

- (I) it has not less than two hundred members; and
- (II) it has Net Owned Funds of twenty lakh rupees or more etc. **(Insertion: Rule 3B)**

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

- a) Integrity, honesty, ethical behaviour, fairness, reputation and character
- b) Not incurring any of the following disqualifications:
 - i. Any complaint or information under section 154 of CrPC has been filed or is pending against him

- ii. Charge sheet filed against him in the matter of economic offences
- iii. Restraining, prohibition or department order has been passed against him in any matter related to company law, securities law or financial market in force
- iv. Conviction order passed against him involving moral turpitude
- v. Declared involvement and not been discharged
- vi. Unsound mind
- vii. Wilful defaulter
- viii. Fugitive economic offender
- ix. Director of five or more companies
- x. Such person is the director in five or more than five; or promoter in three or more than three Nidhi Companies.

- A Nidhi shall be a public company and shall have a minimum paid up equity share capital of Rs. 10 lakh (earlier Rs. 5 lakh) and shall comply with this requirement within a period of eighteen months of commencement of amendment rules. [**Substitution: Rule 4(1)**]
- Rule 5 specify about the minimum number of members, Net owned fund, etc. Vide this amendment, it has been provided that the provision of this Rule 5 will not be applicable for the companies incorporated as Nidhi Company on or after the enforcement of Nidhi (Amendment) Rules 2022. So, the requirement of filling of application in Form NDH 1 within 90 days from the incorporation of the company shall not be applicable to the companies incorporated on or after the enforcement of Nidhi (Amendment) Rules, 2022. [**Insertion: Rule 5(5)**]
- Under General Restrictions and Prohibitions- no Nidhi shall acquire or purchase securities of any other company or control the composition of the Board of Directors of any other company in any manner whatsoever or enter into any arrangement for the change of its management. [**Substitution: Rule 6(d)**]
- A member shall not transfer more than fifty percent of his shareholding (as on the date of availing of loan or making of deposit) during the existence of such loan or deposit, as the case may be, provided that the member shall retain the minimum number of 10 equity shares equivalent to Rs. 100 at all times. [**Insertion: Rule 8(4)**]
- Every Nidhi shall maintain Net Owned Funds of not less than twenty lakh rupees (earlier ten lakh rupees) or such higher amount as the Central Government may specify from time to time and shall comply with this requirement within a period of eighteen months of commencement of amendment rules. (**Substitution: Rule 9**)
- A Nidhi company may not close a branch unless the proposal to close the branch, along with a plan for paying existing deposits and recovering existing loans, has been approved by the Board of Directors in a meeting and has received the prior approval of the Regional Director. Within 30 days of receiving the application, the regional director must issue an approval order. After receiving approval from the Regional Director, the Nidhi Company must publish in the local newspaper (**in Form NDH-5**) at its place of business prior to 30 days of closure, as well as post a copy of the closure notice on the Nidhi Company's notice board for thirty days from the date of publication, and notify the Registrar within 30 days of closure.
Furthermore, any location that is not a registered office or branch where a Nidhi Company conducts business must be closed within six months after the enforcement of the Nidhi

Company New Rules 2022 and must be reported to the Registrar in **Form NDH-2. [Rule 10]**

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

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=LTZyclKMNK0LX6JwM%252BaPeA%253D%253D&type=open>

4) The Companies (Incorporation) Third Amendment Rules, 2022

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

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

For details:

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

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

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

Brief Analysis:

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.

For details:

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

**6) Nidhi (Amendment) Rules, 2023
(MCA Notification No. G.S.R. 35(E) dated January 20, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notifications dated January 20, 2023 has notified the Nidhi (Amendment) Rules, 2023. The amended rules shall come into force with effect from January 23, 2023.

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

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

LESSON 3
PART II - ALTERATION OF CHARTER DOCUMENT

1) Companies (Incorporation) Fifth Amendment Rules, 2021

Ministry of Corporate Affairs vide Notification dated 22nd July, 2021 amended the Companies (Incorporation) Rules, 2014 and incorporated a new Rule 33A. Rule 33A deals with allotment of a new name to the existing company under section 16(3) of the Act. Rule 33A(1) states that In case a company fails to change its name or new name, as the case may be, in accordance with the direction issued under sub-section (1) of section 16 of the Act within a period of three months from the date of issue of such direction, the letters “ORDNC” (which is an abbreviation of the words “Order of Regional Director Not Complied”), the year of passing of the direction, the serial number and the existing Corporate Identity Number (CIN) of the company shall become the new name of the company without any further act or deed by the company, and the Registrar shall accordingly make entry of the new name in the register of companies and issue a fresh certificate of incorporation in Form No.INC-11C: Provided that nothing contained in sub-rule (1) shall apply in case e-form INC-24 filed by the company is pending for disposal at the expiry of three months from the date of issue of direction by Regional Director, unless the said e-form is subsequently rejected.

A company whose name has been changed under sub-rule (1) above shall at once make necessary compliance with the provisions of section 12 of the Act and the statement, “Order of Regional Director Not Complied (under section 16 of the Companies Act, 2013)” shall be mentioned in brackets below the name of company, wherever its name is printed, affixed or engraved: Provided that no such statement shall be required to be mentioned in case the company subsequently changes its name in accordance with the provisions of section 13 of the Act.

2) Rectification of Name of Company

Section 16(1) of the Companies Act, 2013 (as amended in Companies (Amendment) Act, 2020) provides that if, through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which,—

(a) in the opinion of the Central Government, is identical with or too nearly resembles the name by which a company in existence had been previously registered, whether under this Act or any previous company law, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose;

(b) on an application by a registered proprietor of a trade mark that the name is identical with or too nearly resembles to a registered trade mark of such proprietor under the Trade Marks Act, 1999, made to the Central Government within three years of incorporation or registration or change of name of the company, whether under this Act or any previous company law, in the opinion of the Central Government, is identical with or too nearly resembles to an existing trade mark, it may direct the company to change its name and the company shall change its name or new name, as the case may be, within a period of three months from the issue of such direction, after adopting an ordinary resolution for the purpose.

Where a company changes its name or obtains a new name under sub-section (1), it shall within a period of fifteen days from the date of such change, give notice of the change to the Registrar along with the order of the Central Government, who shall carry out necessary changes in the certificate of incorporation and the memorandum.

If a company makes default in complying with any direction given under sub-section (1), the company shall be punishable with fine of one thousand rupees for every day during which the default continues and every officer who is in default shall be punishable with fine which shall not be less than five thousand rupees but which may extend to one lakh rupees. Provided that nothing in this sub-section shall prevent a company from subsequently changing its name in accordance with the provisions of section 13.

3) Exemptions under Chapter XXII- Companies Incorporated Outside India

Section 393A empowers the Central Government may, by notification, exempt any class of-

(a) foreign companies;

(b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India, as may be specified in the notification, from any of the provisions of this Chapter and a copy of every such notification shall, as soon as may be after it is made, be laid before both Houses of Parliament.

Further, Ministry Of Corporate Affairs vide Notification dated 5th August, 2021 in exercise of the powers conferred by section 393A of the Companies Act, 2013, the Central Government hereby exempts, from the provisions of sections 387 to 392 (both inclusive), the following:-

(a) foreign companies;

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

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

LESSON 4 LEGAL STATUS OF REGISTERED COMPANY

1) **The Companies (Specification of Definition Details) Amendment Rules, 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”.

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

For details:

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

LESSON 5 FORMATION OF LLP

1) **CBDT notification for PAN integration with LLP incorporation form FiLLiP**

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

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

Brief Analysis:

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

For details:

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

LESSON 7 FORMATION AND REGISTRATION OF NGO'S

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

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

Vide this notification, Rule 20(5) is modified to introduce additional matter of consideration by the Registrar in case of issuing License under section 8 for Existing Companies, namely: -

The Registrar shall after considering 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, and after considering objections, if any received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

For details:

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

LESSON 12 CONVERSION OF BUSINESS ENTITIES

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

The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Amendment Rules, 2023 to further amend the Companies (Incorporation) Rules, 2014. The provisions have come into effect from 23.01.2023. Vide this notification, the following amendments have been made:

1. 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.

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.

2. 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. altered e-MOA and e-AOA, Copy of NOC of every creditor with the application of conversion and affidavit of directors confirming that all the members of the company have given their consent for conversion.

Further rule 7(5) is modified stating, on being satisfied that the requirements stated herein have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

3. 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 eArticle of Association within fifteen days from the date of receipt of the order from the Regional Director.

For details:

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

PART B

LESSON 13

VARIOUS INITIAL REGISTRATIONS AND LICENSES

1) **Micro, Small and Medium Enterprises**

Revision of MSME Definition

In line with Government of India's top focus on energizing MSMEs in the country, Government of India approved the upward revision of MSME definition on 1st June 2020 under the Aatmanirbhar Bharat Package. The Government revised the MSME classification by inserting composite criteria of both investment and annual turnover. An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely:--

- (i) **a micro enterprise**, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- (ii) **a small enterprise**, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
- (iii) **a medium enterprise**, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

Udyam Registration

Udyam is an online and simplified procedure of filing of registration which enables MSMEs to obtain registration without any documentation and fees. It is a globally benchmarked process and a revolutionary step towards Ease of Doing Business. Ministry of MSME has also commenced API integration of Udyam Registration portal with GeM so that MSEs can participate in Government procurement easily.

- (1) Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal, based on self-declaration with no requirement to upload documents, papers, certificates or proof.
- (2) On registration, an enterprise (referred to as “Udyam” in the Udyam Registration portal) will be assigned a permanent identity number to be known as “Udyam Registration Number”.
- (3) An e-certificate, namely, “Udyam Registration Certificate” shall be issued on completion of the registration process.

Registration Process

- (1) The form for registration shall be as provided in the Udyam Registration portal.
- (2) There will be no fee for filing Udyam Registration.
- (3) Aadhaar number shall be required for Udyam Registration.
- (4) The Aadhaar number shall be of the proprietor in the case of a proprietorship firm, of the managing partner in the case of a partnership firm and of a karta in the case of a Hindu Undivided Family (HUF).
- (5) In case of a Company or a Limited Liability Partnership or a Cooperative Society or a Society or a Trust, the organisation or its authorised signatory shall provide its GSTIN and PAN along with its Aadhaar number.
- (6) In case an enterprise is duly registered as an Udyam with PAN, any deficiency of information for previous years when it did not have PAN shall be filled up on self-declaration basis.
- (7) No enterprise shall file more than one Udyam Registration: Provided that any number of

activities including manufacturing or service or both may be specified or added in one Udyam Registration.

(8) Whoever intentionally misrepresents or attempts to suppress the self-declared facts and figures appearing in the Udyam Registration or updation process shall be liable to such penalty as specified under section 27 of the Act.

LESSON 16
INTELLECTUAL PROPERTY LAWS (PROVISIONS APPLICABLE FOR SETTING UP OF BUSINESS)

1) Patents (Amendment) Rules, 2021

To encourage greater participation of the educational institutions, who play a pivotal role in country's innovation, official fees payable by them in respect of various acts under the Patents Rules, 2003, have been reduced by way of the Patents (Amendment) Rules, 2021, which came into effect on 21st September, 2021.

According to the amendment Rules "educational institution" means a university established or incorporated by or under Central Act, a Provincial Act, or a State Act, and includes any other educational institution as recognised by an authority designated by the Central Government or the State Government or the Union territories in this regard.

In the case of a small entity, or start up, or educational institution, every document for which a fee has been specified shall be accompanied by Form-28.

In case an application processed by a natural person, start up, small entity or educational institution is fully or partly transferred to a person other than a natural person, start up, small entity or educational institution, the difference, if any, in the scale of fees between the fees charged from the natural person, start up, small entity or educational institution and the fees chargeable from the person other than a natural person, start up, small entity or educational institution, shall be paid by the new applicant along with the request for transfer.

In a yet another significant push towards Mission Aatmanirbhar Bharat, benefits related to 80 Percent reduced fee for patent filing & prosecution have been extended to Educational institutions as well. Centre has notified the amendments to the Patents Rules in this regard.

PART C

LESSON 19 DORMANT COMPANY

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

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

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

For details:

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

LESSON 20
STRIKE OFF AND RESTORATION OF NAME OF THE COMPANY AND LLP

1) The Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2022

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

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=z76om3NiBGIHmWy4e0HtcA%253D%253D&type=open>

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

The Ministry of Corporate Affairs (MCA) vide its notification dated March 17, 2023 and in exercise of the powers conferred by section 396(1) of the Companies Act, 2013, has established 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).

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

For details:

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

3) The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2023 (MCA Notification No. 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.

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 (C-PACE) established under section 396(1) shall be the Registrar of Companies for the purpose of exercising functional jurisdiction of processing and disposal of applications made in Form no. STK-2 and all matters related thereto under section 248 having territorial jurisdiction all over India. (Inserted sub-rule 3A to rule 4)
4. Further, Form No. STK-2 (Application by company to RoC for removing its name from register of companies), STK-6 (Public Notice) and STK-7 (Notice for striking off and dissolution) are substituted.

For details:

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

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

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

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

Brief Analysis:

Ministry of Corporate Affairs has notified the Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2023 dated May 10, 2023. Amendment introduces three provisos to Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. These three provisos impose requirements on companies seeking to file removal of its name applications, including the submission of overdue financial

statements and annual returns before the filing the application, and limitations on filing the application for removal of name once the Registrar has initiated action or issued a notice under section 248(5).

For details:

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

LESSON 21

CORPORATE INSOLVENCY RESOLUTION PROCESS, LIQUIDATION AND WINDING UP: AN OVERVIEW

1) **Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021**

According to the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2021 the liquidator has been empowered with greater autonomy during liquidation process, comparable to the resolution professional during CIRP. The participation of stakeholders is not much elaborated in the Code. The liquidation regulations provide for a consultation committee known as stakeholders' consultation committee (SCC), which has representation from secured financial creditors, unsecured financial creditors, workmen and employees, government, other operational creditors, and shareholder/partners to advise the liquidator on matters relating to sale. Though the advice of this committee is not binding on the liquidator, consultation process on important issues, addresses the issue related to information asymmetry and therefore ensures an effective participation of stakeholders. The amendment expands the scope of consultation to cover all aspects related to sale of assets and appointment of professionals. The amendment regulations also provide for manner of selection of representatives of stakeholders in SCC.

The participation of large number of buyers in the process is key to better realization of value for the stakeholders. Keeping this in view the amendment regulations provide that Liquidator shall not require payment of any non-refundable deposit or fee for participation in an auction. It also provides that the earnest money deposit shall not exceed ten percent of the reserve price in an auction. Also, with a view to improve visibility for the liquidation assets, the Board has made available an electronic platform at www.ibbi.gov.in for hosting public notices of auctions of liquidation assets of ongoing liquidation processes.

Further, to enhance the transparency and accountability, the amendment regulations provide for the Liquidator to intimate the reasons for rejection of the highest bid to the highest bidder and report the same in the next progress report.

For Details : <https://ibbi.gov.in/uploads/press/7d2e741e1de66880b3b9fbbed3c94410.pdf>

2) **Pre-Packaged Insolvency Resolution Process (PPIRP)**

Micro, small, and medium enterprises (MSMEs) are critical for India's economy. They contribute significantly to gross domestic product and provide employment to a sizeable population. The COVID- 19 pandemic has impacted their business operations and exposed many of them to financial stress. Resolution of their stress requires different treatment, due to the unique nature of their businesses and simpler corporate structures. Therefore, it was considered expedient to provide an efficient alternative insolvency resolution process under the Code for corporate MSMEs, that ensures quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses, and which preserves jobs.

PPIRP is available for resolution of stress of corporate MSMEs. It is available as an alternate option, should the stakeholders like to use it. PPIRP has the features, which make a CIRP sacrosanct, and has the rigour and discipline of the Corporate Insolvency Resolution Process (CIRP). It is informal up to a point and formal thereafter. It blends debtor-in-possession with creditor in control. It is neither a fully private nor a fully public process - it allows the company, if eligible under section 29A, to submit the Base Resolution Plan (BRP) which is exposed to challenge for value maximisation. It safeguards the rights of stakeholders as much as in CIRP and has adequate checks and balances to prevent any potential misuse. It entails a limited role of the courts and IPs. Unlike CIRP, it does not yield liquidation if there is no resolution plan. Though PPIRP and CIRP are alternate options, some stakeholders may prefer one over the other in certain circumstances.

PPIRP is introduced in IBC, 2016 by way of CHAPTER III-A consisting of section 54A to 54 P. This is a new opportunity for MSME's to come out of Covid Pandemic and resolve their insolvency as "One time settlement with creditors" with the approval of Adjudicating Authority while corporate debtor (CD) is run by existing promoters.

The provisions governing PPIRP are available in:

- Insolvency and Bankruptcy Code, 2016, as amended by the Insolvency and Bankruptcy (Amendment) Ordinance, 2021(Chapter III-A contains Section 54A to 54 P);
- Insolvency and Bankruptcy (Pre-packaged Insolvency Resolution Process) Rules, 2021; and
- Insolvency and Bankruptcy Board of India (Pre Packaged Insolvency Resolution Process) Regulations, 2021.

Eligibility for PPIRP

When a corporate debtor classified as a micro, small or medium enterprise under subsection (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, commits minimum default of Rs 10 lakhs, it can opt for PPIRP. The Central Government can increase minimum default limit to Rs 1 crore.

Which MSME cannot opt for PPIRP?

- (a) MSME which has completed PPIRP or completed CIRP, as the case may be, during the period of three years preceding the initiation date;
- (b) MSME which is undergoing a CIRP;
- (c) MSME which is undergoing a liquidation u/s 33.
- (d) MSME not eligible to submit a resolution plan under section 29A.

Proposal of name of Resolution Professional

The financial creditors of the corporate debtor, not being its related parties, representing such number and such manner as may be specified, have proposed the name of the insolvency professional to be appointed as resolution professional for conducting the PPIRP of the corporate debtor.

Approval of the name of Resolution Professional

The financial creditors of the corporate debtor, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, have approved the

name of RP proposed.

Declaration by the majority of the directors or partners of the corporate debtor

The majority of the partners or directors of the CD shall make a declaration stating:

- (i) an application for initiating PPIRP shall be filed within a definite time period not exceeding ninety days.
- (ii) PPIRP is not being initiated to defraud any person; and
- (iii) the name of the insolvency professional proposed and approved to be appointed as resolution professional by unrelated Financial Creditors.

Special Resolution by CD

The resolution approving the filing of application for initiating PPIRP shall be passed by a special resolution, or at least three-fourth of the total number of partners, as the case may be, of the corporate debtor.

Approval of the Financial Creditors

The corporate debtor shall obtain an approval from its financial creditors, not being its related parties, representing not less than sixty-six per cent. in value of the financial debt due to such creditors, for the filing of an application for initiating PPIRP. Prior to seeking approval from financial creditors, the corporate debtor shall provide such financial creditors with —

- (a) the declaration as referred above
- (b) the special resolution or resolution by majority of partners;
- (c) a base resolution plan which conforms to the requirements referred to in section 54K and
- (d) such other information and documents as may be specified.

Application to initiate pre-packaged insolvency resolution process

Alongwith filing an application with the Adjudicating Authority for initiating PPIRP, the corporate debtor shall furnish the following:

- (a) the declaration, special resolution or resolution, as the case may be, and the approval of financial creditors for initiating PPIRP
- (b) the name and written consent of the insolvency professional proposed to be appointed as resolution professional and his report about eligibility of CD for initiating PPIRP and base resolution plan
- (c) a declaration regarding the existence of any transactions of the corporate debtor that may be within the scope of provisions in respect of avoidance of transactions under Chapter III or fraudulent or wrongful trading under Chapter VI.
- (d) information relating to books of account of the corporate debtor and such other documents relating to such period as may be specified.

Order by the Adjudicating Authority

The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order,—

- (a) admit the application, if it is complete; or
- (b) reject the application, if it is incomplete:

The Adjudicating Authority shall, before rejecting an application, give notice to the applicant to rectify the defect in the application within seven days from the date of receipt of such notice from the Adjudicating Authority.

Commencement of PPIRP

PPIRP shall commence from the date of admission of the application by the Adjudicating Authority.

Time-limit for completion of PPIRP

- PPIRP shall be completed within 120 (one hundred and twenty) days from the prepackaged insolvency commencement date (PPICD).
- RP shall submit approved resolution plan within 90 days of PPICD.
- If CoC doesn't approve resolution plan within 90 days, RP shall submit an application for termination of PPIRP.

Declaration of moratorium and public announcement during PPIRP

The Adjudicating Authority shall, on the PPICD, along with the order of admission:

- (a) declare a moratorium applying section 14(1) & 14 (3) mutatis mutandis
- (b) appoint RP named in the application
- (c) cause a Public Announcement of the initiation of PPIRP to be made by resolution professional , immediately after his appointment

Moratorium shall continue till PPIRP ends.

List of claims and preliminary information memorandum

The corporate debtor shall, within two days of the PPICD, submit to the resolution professional the following information, namely:— (a) a list of claims, along with details of the respective creditors, their security interests and guarantees, if any; and (b) a preliminary information memorandum containing information relevant for formulating a resolution plan

Management of affairs of corporate debtor

During the PPIRP period, the management of the affairs of the corporate debtor shall continue to vest in the Board of Directors or the partners, as the case may be, of the corporate debtor who shall make every endeavour to protect and preserve the value of the property of the corporate debtor, and manage its operations as a going concern.

Committee of Creditors

The resolution professional shall, within seven days of the PPICD, constitute a committee of creditors, based on the list of claims confirmed and update it regularly. The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors following the provisions of section 21 except sec 21(1).

Vesting management of corporate debtor with resolution professional

- At any time during PPIRP, CoC can decide by a vote of not less than sixty-six per cent. of the voting shares, resolves to vest the management of the corporate debtor with the resolution professional.
- The resolution professional shall make an application for this purpose to the Adjudicating Authority (AA).
- AA shall pass an order vesting the management of the corporate debtor with the resolution professional if it is of opinion that :
 - (a) the affairs of the corporate debtor have been conducted in a fraudulent manner; or
 - (b) there has been gross mismanagement of the affairs of the corporate debtor, From the date of order, the remaining provisions of CIRP will apply to PPIRP.

Consideration and approval of resolution plan

- The corporate debtor shall submit the base resolution plan to the resolution professional within two days of the PPICD, and the resolution professional shall present it to the CoC.
- The CoC may provide the corporate debtor an opportunity to revise the base resolution plan prior to its approval or invitation of prospective resolution applicants.
- The CoC may approve the base resolution plan for submission to the Adjudicating Authority if it does not impair any claims owed by the corporate debtor to the operational creditors.
- RP shall invite prospective resolution applicants to submit a resolution plan or plans, to compete with the base resolution plan if the CoC does not approve the base resolution plan or the base resolution plan impairs any claims owed by the corporate debtor to the operational creditors.
- The resolution applicants submitting resolution plans pursuant to invitation, shall fulfil such criteria as may be laid down by the resolution professional with the approval of the committee of creditors.
- The resolution professional shall provide to the resolution applicants the information memorandum and evaluation criterion.
- The resolution professional shall present to the committee of creditors, for its evaluation, resolution plans meeting requirement of sec 30(2).
- The CoC shall evaluate the plans so presented and select a resolution plan from amongst them.
- If the plan so selected is “significantly better” than the base resolution plan, such resolution plan may be selected for approval.
- Where the resolution plan selected is not considered for approval or is not significantly better than base resolution plan, it shall compete with the base resolution plan and one of them shall be selected for approval.
- If the plan finally selected is approved by CoC with 66% voting, RP shall submit the same to AA and if CoC doesn’t approve the same, then the resolution professional shall file an application to AA for termination of the PPIRP.

Approval of resolution plan

- AA shall approve the resolution plan within 30 days of its receipt if it is satisfied that the resolution plan as approved by the CoC meets the requirements of section 30 (2) and the resolution plan has provisions for its effective implementation.
- Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the above requirements, it may, within thirty days of the receipt of such resolution plan, by an order, reject the resolution plan and pass an order for termination of PPIRP.
- If AA has passed order for vesting of management of CD to RP and the resolution plan approved by the CoC does not result in the change in the management or control of the corporate debtor, the Adjudicating Authority shall pass an order —
 - (a) rejecting such resolution plan;
 - (b) terminating the PPIRP and passing a liquidation order in respect of the corporate debtor; and
 - (c) declaring that the PPIRP costs, if any, shall be included as part of the liquidation costs for the purposes of liquidation of the corporate debtor.

Termination of pre-packaged insolvency resolution process

The Adjudicating Authority shall, within thirty days of the date of application made by RP, by an order, terminate the PPIRP

- (i) If CoC does not approve any resolution plan in 90 days
- (ii) CoC neither approves selected resolution plan nor base resolution plan,
- (iii) CoC decides to terminate PPIRP by a vote of sixty-six per cent of the voting shares

If AA has passed an order for vesting of management in RP and PPIRP is required to be terminated in above circumstances, then AA shall pass an order of liquidation of corporate debtor.

Initiation of corporate insolvency resolution process

The CoC may resolve to initiate a corporate insolvency resolution process in respect of the corporate debtor, by a vote of sixty-six per cent. of the voting shares. The CoC can pass such resolution at any time after the PPICD but before the approving the resolution plan. The Adjudicating Authority shall, within thirty days of the date of such intimation, pass an order to:

- (a) terminate the PPIRP and initiate corporate insolvency resolution process.
- (b) appoint the resolution professional as the interim resolution professional

The order so passed by the AA shall be deemed to be an order of admission of an application under section 7 and shall have the same effect and CIRP shall commence from the date of such order.

3) **Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2022**

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

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

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

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

Impact:

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

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

Compliance certificate to be submitted in Form-H.

For details:

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