

EXECUTIVE PROGRAMME

UPDATES RELEVANT FOR DECEMBER, 2020 EXAMINATION

COMPANY LAW MODULE 1- PAPER 2

(New Syllabus)

Disclaimer: This document has been prepared purely for academic purposes only and it does not necessarily reflect the views of ICSI. Any person wishing to act on the basis of this document should do so only after cross checking with the original source.

INDEX

S. No	Lesson	Page
1	Lesson-1 Introduction to Company Law	5
2	Lesson-2 Share & Share Capital	6-7
3	Lesson-4 Debt Capital & Deposits	8
4	Lesson-7 Corporate Social Responsibility	9
5	Lesson-8 Accounts, Audit and Auditors	10
6	Lesson-10 An overview of Inter-Corporate Loans, Investments, Guarantees and Security, Related Party Transactions	11
7	Lesson-12 An Overview of Corporate Re-organisation	12-13
8	Lesson-13 An introduction to MCA-21 & Filing in XBRL	14-18
9	Lesson-16 Directors	19-21
10	Lesson-17- Appointment and Remuneration of Key Managerial Personnel	22
11	Other important updates	23-25

Companies Bill, 2020 :

The Companies (Amendment) Bill, 2020 was introduced in Lok Sabha on March 17, 2020. Students are advised to go through the provision for the understanding of the proposed amendment in the Act. The key highlights of the Bill is as under:

- **Producer companies:** Under the 2013 Act, certain provisions from the Companies Act, 1956 continue to apply to producer companies. These include provisions on their membership, conduct of meetings, and maintenance of accounts. Producer companies include companies which are engaged in the production, marketing and sale of agricultural produce, and sale of produce from cottage industries. The Bill removes these provisions and adds a new chapter in the Act with similar provisions on producer companies.
- **Changes to offences:** The Bill makes three changes. First, it removes the penalty for certain offences. For example, it removes the penalties which apply for any change in the rights of a class of shareholders made in violation of the Act. Note that where a specific penalty is not mentioned, the Act prescribes a penalty of up to Rs 10,000 which may extend to Rs 1,000 per day for a continuing default. Second, it removes imprisonment in certain offences. For example, it removes the imprisonment of three years applicable to a company for buying back its shares without complying with the Act. Third, it reduces the amount of fine payable in certain offences. For example, it reduces the maximum fine for failure to file annual return with the Registrar of Companies from five lakh rupees to two lakh rupees.
- Under the Act, one person companies (i.e., companies with only one member) or small companies (i.e., with lower paid-up share capital and turnover thresholds) are only liable to pay up to 50% of the penalty for certain offences (such as failing to file annual return). The Bill: (i) extends this provision to all producer companies and start-up companies, (ii) extends this provision to apply to violation of any provision of the Act, and (iii) limits the maximum penalty to two lakh rupees for the company and one lakh rupees for a defaulting officer.
- **Direct listing in foreign jurisdictions:** The Bill empowers the central government to allow certain classes of public companies to list classes of securities (as may be prescribed) in foreign jurisdictions.
- **Exclusion from listed companies:** The Bill empowers the central government, in consultation with the Securities and Exchange Board of India, to exclude companies issuing specified classes of securities from the definition of a "listed company".
- **Remuneration to non-executive directors:** The Act makes special provisions for payment of remuneration to executive directors of a company (including managing director and other whole-time directors) if the company has inadequate or no profits in a year. For example, if a company has an effective capital of up to five crore rupees, the annual remuneration to its executive directors cannot exceed 60 lakh rupees. The Bill extends this provision to non-executive directors, including independent directors.
- **Beneficial shareholding:** Under the Act, if a person holds beneficial interest of at least 10% shares in a company or exercises significant influence or control over the company, he is required to make a declaration of his interest to the company. The company is required to note the declaration in a separate register. The Bill empowers the central government to exempt any class of persons from complying with these requirements if considered necessary in public interest.
- **Exemptions from filing resolutions:** The Act requires companies to file certain resolutions with the Registrar of Companies. These include resolutions of the Board of Directors of the company to borrow money, or grant loans. However, banking companies are exempt from

filing resolutions passed to grant loans, or to provide guarantees or security for a loan. This exemption has been extended to registered non-banking financial companies and housing finance companies.

- **Corporate Social Responsibility (CSR):** Under the Act, companies with net worth, turnover or profits above a specified amount are required to constitute CSR Committees and spend 2% of their average net profits in the last three financial years, towards its CSR policy. The Bill exempts companies with a CSR liability of up to Rs 50 lakh a year from setting up CSR Committees. Further, companies which spend any amount in excess of their CSR obligation in a financial year can set off the excess amount towards their CSR obligations in subsequent financial years.
- **Periodic financial results for unlisted companies:** The Bill empowers the central government to require classes of unlisted companies (as may be prescribed) to prepare and file periodical financial results, and to complete the audit or review of such results.
- **Benches of NCLAT:** The Bill seeks to establish benches of the National Company Law Appellate Tribunal. These shall ordinarily sit in New Delhi or such other place as may be notified.

. the copy of the bill is available at the following link:

http://www.mca.gov.in/Ministry/pdf/Amendment_18032020.pdf

Lesson 1-Introduction to Company Law

MCA has Further Amended the Exemptions notification no: G.S.R. 463(E), dated 5th June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02nd March, 2020.

(i) With this amendment the following new explanation is inserted in the definition of Government Company as per Section 2(45) of the Companies Act, 2013:

Explanation- For the purposes of this clause, the "paid up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued.

Impact

With this insertion more clarity has been given to the definition of Government Company which has issued the Shares with the differential voting rights.

(ii) The Serial Number 1 and entries relating thereto of notification number G.S.R.463 (E), dated 5th June, 2015, has been renumbered as Serial Number 1A.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf

Lesson 2-Share and Share Capital

1) Notification No: G.S.R.111 (E)-The Companies (Issue of Global Depository Receipts) Amendment Rules, 2020, dated 13th February, 2020.

Impact:

(i) In Rule 2 of the Companies (Issue of Global Depository Receipts) Rules, 2014, for the words ‘Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993’ at both the places where they occur has been substituted with ‘Depository Receipts Scheme, 2014’.

(ii) In Rule 2(1), after clause (a), the following clause shall be inserted, namely:- (aa) overseas depository” or “overseas depository bank” shall mean ‘foreign depository’ as defined in the Scheme.

Rule 5(1) is substituted to provide more clarity, which is as under: The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent in the concerned jurisdiction and may be listed or traded on the listing or trading platform in the concerned jurisdiction.

Further a proviso is also inserted in Rule 7 which states that the proceeds of the issue of depository receipts maybe remitted in an International Financial Services Centre Banking Unit (IBU) and utilized in accordance with the instructions issued by the RBI from time to time.

In Rule 5 (3) and Rule 9 (1), the word “abroad” shall be omitted

For more details click on: http://www.mca.gov.in/Ministry/pdf/notices_13022020.pdf

2) Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020

(i) In Rule 8, in sub-rule (4), in the second proviso of the Companies (Share Capital and Debentures) Rules, 2014, MCA has substituted the old definition of startup company which was issued by the Department of Industrial Policy and Promotion (DIPP) vide Notification No. G.S.R. 180(E) dated 17th February, 2016 with the new definition as issued by the Department for Promotion of Industry and Internal Trade (DPIIT) vide Notification No. G.S.R. 127(E) dated 19th February, 2019.

(ii) In Rule 8(4) in the second proviso of the Companies (Share Capital and Debentures) Rules, 2014 for the words:

"five years"

The following shall be substituted

"ten years"

Post Amendment Second proviso to Rule 8(4) of the Companies (Share Capital and Debentures) Rules, 2014 shall be read as under:

A startup company as defined in notification number **G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade, Ministry of Commerce and Industry**, Government of India, may issue sweat equity shares not exceeding 50% of its paid-up capital upto **10 (ten) years** from the date of its incorporation or registration.

(Earlier the time period was upto 5 (five) years from the date of incorporation or registration.)

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

Lesson 4: Debt Capital and Deposits

MCA Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020

(iii) In Rule 18 (7), in clause (b), for sub-clause (v) of the Companies (Share Capital and Debentures) Rules, 2014, the following shall be substituted namely:

"(v) In case a company is covered in item (A) of sub-clause (iii) of clause (b) or item (B) of sub-clause (iv) of clause (b), it shall on or before the 30th day of April in each year, in respect of debentures issued by such a company, invest or deposit, as the case may be, a sum which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year in any one or more methods of investments or deposits as provided in sub-clause (vi)

Provided that the amount remaining invested or deposited, as the case may be, shall not any time fall below fifteen percent. of the amount of the debentures maturing during the year ending on 31st day of March of that year."

Impact

The requirement of investment or deposit, of a sum by a company which shall not be less than fifteen percent., of the amount of its debentures maturing during the year, ending on the 31st day of March of the next year on or before the 30th day of April in each year, in respect of debentures issued by such a company, is not applicable on privately placed debentures by the Listed NBFCs and for Housing Finance Companies and other listed companies.

For more details, please click on http://www.mca.gov.in/Ministry/pdf/Rule_08062020.pdf

Lesson - 7 Corporate Social Responsibility

1) General Circular No.10/2020, Clarification on spending of CSR funds for COVID-19 dated 23rd March, 2020

Ministry of Corporate Affairs has clarified, that spending of CSR funds for COVID-19 is eligible CSR activity.

Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management. Further, as per General Circular No. 21/2014 dated 18th June, 2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Covid_23032020.pdf

2) MCA vide Notification No: G.S.R. 313(E), dated 26th May, 2020 has made following Amendment in item no (viii) in the Schedule VII of the Companies Act,2013,

In Schedule VII, item (viii), after the words “Prime Minister’s National Relief Fund”, the words “or Prime Minister’s Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)” shall be inserted.

This notification shall be deemed to have come into force on 28th March, 2020.

Impact

The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, With this amendment any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013 w.e.f. 28.03.2020.

For more details click on: www.mca.gov.in/Ministry/pdf/Notice_27052020.pdf

3) Notification No:G.S.R. 399(E) Amendment in Schedule VII of the Companies Act, 2013, dated 23rd June,2020

MCA vide notification dated 23rd, June 2020 made further amendment in Schedule VII in item no. (vi) *included the measures for the benefit of Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows*, in the Corporate Social Responsibility activities under schedule VII of the Companies Act, 2013.

For more details click on:

http://www.mca.gov.in/Ministry/pdf/NotificationCompAct_10072020.pdf

Lesson-8- Accounts, Audit and Auditors

1) MCA vide Notification no: G.S.R.13(E)-The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020,dated 03rd January,2020 has amended Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules 2014

With this insertion in Rule 9(1) of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, now every company having outstanding loans or borrowings from banks or public financial institutions of one hundred crore rupees or more is also required to annex the Secretarial Audit report with its Boards Report.

MCA has also clarified that for the purpose of this rule paid up share capital, turnover, or outstanding loans or borrowings as the case may be, existing on the last date of latest audited financial statement shall be taken into account.

For more details click on: http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

2)The Companies (Auditor's Report) Order, 2020 dated 25th February 2020

MCA vide notification dated 25th February, 2020 has notified the Companies (Auditor's Report) Order, 2020. Vide this notification, the CARO Report, 2020 would have been applicable from the financial year 2019-20.

But due to outbreak of COVID-19, in order to ease the burden on companies & their auditors for the financial year 2019-20, the Government has decided that the Companies (Auditor's Report) Order, 2020 shall be made applicable from financial year 2020-21, instead of being applicable from the financial year 2019-20 as notified earlier.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Orders_25022020.pdf

http://www.mca.gov.in/Ministry/pdf/Notification_25032020.pdf

3) Extension of the last date of filing of Form NFRA-2

MCA in continuation of the Ministry's General Circular No. 07/2020 dated 5th March, 2020 and General Circular No. 19/2020 dated 30th April, 2020 has extended the time limit for filing of Form NFRA-2, for the reporting period Financial Year 2018-19' to **270 days from the date of deployment of this form** on the website of National Financial Reporting Authority (NFRA) vide General Circular No. 26/2020, dated 6th July, 2020

For more details click on:

http://www.mca.gov.in/Ministry/pdf/Circular_06032020.pdf

http://www.mca.gov.in/Ministry/pdf/Circular19_30042020.pdf

http://www.mca.gov.in/Ministry/pdf/GeneralCircularNo.26_06072020.pdf

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

MCA has Further Amended the Exemptions notification no: G.S.R. 463(E), dated 5th June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02nd March, 2020.

For serial number 26 relating to Chapter XII, first and second proviso to Section 188 (1) and the entries relating thereto of exemption notification number G.S.R.463(E), dated 5th June, 2015, the following entries has been substituted as under:

First and Second proviso to Section 188 (1) shall not apply to –

- (a) A Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof;
- (b) A Government company, other than a listed company, in respect of contracts or arrangements other than those referred to in clause (a), in case such company obtains approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

Impact

Before this amendment the contracts or arrangements with any other Government Company is only exempted, with this amendment the exemption is also extended to the contracts or arrangements with the Central Government or any State Government or any combination thereof.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf

Lesson 12-An Overview of Corporate Re-organisation

1) Notification no: G.S.R. 46(E) The Companies (Winding Up) Rules 2020, dated 24th January, 2020 (effective from 1st day of April, 2020).

MCA vide its notification dated 24th day of January 2020 published Companies (Winding-Up) Rules, 2020 laying down procedures for winding up by the Tribunal under Chapter XX of the Companies Act, 2013 which will be effective from 1st day of April 2020.

The Companies (Winding Up) Rules 2020 provides rules for Winding up by Tribunal, Winding up by Tribunal (other than summary winding up) Debts and Claims against Company. The Winding up rules has also provided the Summary Procedure for Liquidation of Companies, Filing and Audit of Company Liquidator's Account etc.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules_28012020.pdf

2) MCA vide Notification No: G.S.R. 79(E)-The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2020, dated 03rd February,2020 has amended the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

MCA vide notification dated 3rd February, 2020, has introduced the Companies (Compromises, Arrangements, and Amalgamation) Amendment Rule, 2020 for further amending the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 wherein the norms for filing the application for arrangement is specified :

As per the amended rules new sub-rule (5) has been inserted after sub-rule (4) in Rule 3, accordingly, a member of a company making an application for the arrangement pertaining to the takeover offer in terms of Section 230 (11) must fulfill two conditions namely:

- such member along with any other member shall hold not less than three-fourths of the shares in the company, and
- such application has been filed for the purpose of acquiring any part of the remaining shares of the company.

Further, the amendment also provides for the norms pertaining to the contents of the application.

An application of arrangement for takeover offer shall contain:-

The report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after taking into account the following factors:—

(i) the highest price paid by any person or group of persons for acquisition of shares during last twelve months;

(ii) the fair price of shares of the company to be determined by the registered valuer after taking into account valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-à-vis the industry average, and such other parameters as are customary for valuation of shares of such companies

The application filed by a member must contain the details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total

consideration of the takeover offer is deposited.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules1_04022020.pdf

3) Commencement Notification of Section 230 (11) & (12) of the Companies Act, 2013, 3rd February, 2020

In exercise of the powers conferred by sub-section (3) of section 1 of the Companies Act, 2013 (18 of 2013), the Central Government hereby appoints the 03rd February, 2020 as the date on which the provisions of sub-sections (11) and (12) of section 230 of the Companies Act, 2013 shall come into force.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Notification_04022020.pdf

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

1) Notification No:G.S.R.60(E)-The Companies (Accounts) Amendment Rules, 2020, dated 30th January,2020

In the Companies (Accounts) Rules, 2014 in rule 12, after sub-rule (1), the following sub-rule shall be inserted, namely:- —

(1A) Every Non-Banking Financial Company (NBFC) that is required to comply with Indian Accounting Standards (Ind AS) shall file the financial statements with Registrar together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statement, if any, with Form AOC-4 CFS NBFC (Ind AS).

For more details click on :http://www.mca.gov.in/Ministry/pdf/Rules_31012020.pdf

2) Notification no: G.S.R. 81(E) NIDHI (Amendment) Rules 2020, dated 3rd February, 2020 (effective from 10th February, 2020).

New Forms were notified in place of existing NDH-1, NDH-2 & NDH-3.

- (i) FORM NO. NDH-I: Return of Statutory Compliances
- (ii) FORM NO. NDH-2: Application for extension of time
- (iii) FORM NO. NDH-3: Return of Nidhi Company for the half year ended

For more details click on:http://www.mca.gov.in/Ministry/pdf/Rules2_04022020.pdf

3) Notification No:G.S.R.114(E)-NIDHI (Second Amendment) Rules, 2020, dated 14th February, 2020.

In the Nidhi Rules, 2014, in rule 23A, for the words “six months” the words “nine months” shall be substituted.

Impact

*As per the amended rule 23A- every company referred to in clause (b) of Rule 2 of Nidhi Rules and every Nidhi incorporated under the Act, before the commencement of Nidhi (Amendment) Rules, 2019 i.e.15.08.2019, shall also get itself declared as Nidhi in accordance with rule 3A of Nidhi Rules,2014 within a period of one year from the date of its incorporation or within a period of **nine months** from the date of commencement of Nidhi (Amendment) Rules, 2019 i.e. 15.08.2019, whichever is later.*

(The period was initially 6 months from commencement of Nidhi (Amendment) Rules, 2019 which is hereby extended for another 3 months.)

For more details click on: http://www.mca.gov.in/Ministry/pdf/rule_14022020.pdf

4) Corrigendum pertaining to Nidhi (Second Amendment) Rules, 2020, dated 2nd March, 2020.

The Ministry of Corporate Affairs vide its notification no: G.S.R.-150(E), dated 2nd March, 2020 has issued a corrigendum pertaining to Nidhi (Second Amendment) Rules, 2020, notification dated 14th February, 2020.

As per the corrigendum

At page 2, in line 9, for "rule 23A" read "rule 23A and first proviso to rule 23B".

Hence, in the Nidhi Rules, 2014, in rule 23A and first proviso to rule 23B for the words "six months" the words "nine months" shall be substituted.

Post Amendment

*As per the amended rule, in the first proviso to rule 23B, no fees shall be charged under this rule for filing Form NDH-4, in case it is filed within **nine month** of the commencement of Nidhi (Amendment) Rules, 2019 i.e. 15.08.2019.*

(The period was initially 6 months from commencement of Nidhi (Amendment) Rules, 2019 which is hereby extended for another 3 months.)

For more details click on: http://www.mca.gov.in/Ministry/pdf/rule_02032020.pdf

5) Sensitization of Nidhi Companies towards compliance of provisions of Section 406 of Companies Act, 2013 and Nidhi Rules, 2014 as amended vide Nidhi (Amendment) Rules, 2019 w.e.f 15.08.2019 and general public to invest in genuine and compliant Nidhis only.

In order to make regulatory regime for Nidhi Companies more effective and also to accomplish the objectives of transparency & investor friendliness in corporate environment of the country, the Central Government has recently amended the provisions related to NIDHI under the Companies Act, 2013 and the Rules (effective from 15.08.2019).

Under Nidhi Rules, 2014, Nidhi is a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and saving amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit.

The amended provisions of the Companies Act (Section 406) and Nidhi rules (as amended w.e.f. 15.08.2019) require that the Nidhi companies have to apply to the Central government for updation of their status/ declaration as Nidhi Company in Form NDH-4.

The time-frame for applying to Central Government in form NDH-4 is as under:-

(I) Companies incorporated as Nidhi before Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within a period of one year from the date of its incorporation or within 9 months of the

Nidhi Amendment Rules i.e. 15.08.2019 whichever is later.

(II) Companies incorporated as Nidhi on or after Nidhi Amendment Rules, 2019 i.e. 15.08.2019 have to apply within 60 days of expiry of one year from the date of incorporation or extended period (as granted by concerned Regional Director).

1) In case a company does not comply with the above requirements, it shall not be allowed to file Form No. SH-7 (Notice to Registrar for any alteration of share capital) and Form PAS-3 (Return of Allotment).

2) Such companies are required to ensure strict adherence to provision of Companies Act, 1956/2013 and Nidhi Rules, 2014 as amended. In case of contravention of the provisions of these Rules, the company and every officer of the company who is in default shall initially be punishable with fine which may extend to five thousand rupees and further fine in case of continuous violations.

3) Investors are advised to verify the status of Nidhi company from the notification issued by Central Government in official gazette before making any investment or deposit.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Nidhi_19032020.pdf

6) Notification Number G.S.R. 127(E)-The Companies (Registration Offices and Fees) Amendment Rules, 2020, dated: 18th February, 2020.

As per the Amendment Rules, Form No- GNL-2 [Pursuant to rule 12(2) of the Companies (Registration Offices and Fees) Rules, 2014] i.e. Form for submission of documents with the Registrar shall be substituted. New Form notified in place of existing GNL-2

For more details click on :http://www.mca.gov.in/Ministry/pdf/rule_19022020.pdf

7) Notification Number G.S.R. 128(E)-The Companies (Incorporation) Amendment Rules, 2020 (Effective from 23rd February, 2020)

In the Companies (Incorporation) Rules, 2014, for rule 9,

The following rule shall be substituted, namely:-

Rule 9 of the Companies (Incorporation) Rules, 2014 -Reservation of name or change of name

An application for reservation of name shall be made through the web service available at www.mca.gov.in by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32) and for change of existing name by using web service RUN (Reserve Unique Name) along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re-submission of such web form within fifteen days for rectification of the defects, if any, with effect from the 23rd February, 2020.

In rules 10, 12, sub-rule (1) of rule 19, sub-rules (1), (2), (3), (4), (7) and (9) of rule 38 of the Companies (Incorporation) Rules, 2014, for the words, “Form No INC-32 (SPICE), wherever they occur, the following words “SPICE+ (Simplified Proforma for Incorporating Company Electronically Plus: INC -32)” shall be substituted with effect from the 23rd February, 2020.

In Rule 38 of the Companies (Incorporation) Rules, 2014

In the marginal heading, for the word, “**Electronically (SPICE)**”, the words, “**Electronically Plus (SPICE +)**” shall be substituted with effect from the 23rd February, 2020.

In rule 38A of the Companies (Incorporation) Rules, 2014 –

(i) In the marginal heading for the words, '**and Employees' Provident Fund Organisation (EPFO) Registration** the following words, “**Employees' Provident Fund Organisation (EPFO) Registration and Profession Tax Registration and Opening of Bank Account**” shall be substituted.

(ii) for the letters “AGILE”, the letters “AGILE - PRO”, shall be substituted;

(iii) after clause (c), *the following clauses shall be inserted, namely: -*

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

(d) Opening of Bank Account with effect from 23rd February, 2020.”

Impact

As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has introduced a new Web Form 'SPICE+' w.e.f. 23rd February, 2020 replacing the existing SPICE form. SPICE+ is an integrated Web form offering multiple services viz.name reservation, incorporation, DIN allotment (Maximum 3 DIN), mandatory issue of PAN, TAN, EPFO registration, ESIC registration, Profession Tax registration (Maharashtra) and Mandatory opening of Bank Account for the Company. It also facilitates allotment of GSTIN wherever so applied for by the Stakeholders. After introduction of SPICE+ web form RUN is applicable only for the change of name of the existing companies.

For more details click on : http://www.mca.gov.in/Ministry/pdf/rule_22022020.pdf

8) New companies incorporated through SPICE+ and thereby have obtained EPFO/ESI numbers will have to file statutory returns only when they cross thresholds prescribed under the relevant Acts.

For more details click on : <http://www.mca.gov.in/MinistryV2/homepage.html>

9) Notification No: G.S.R. 170(E)-The Companies (Registration Offices and Fees) Second Amendment Rules, 2020, dated 12th March, 2020.

In the Companies (Registration Offices and Fees) Rules, 2014, in the Annexure, in Form No. GNL-2.

(i) in serial number 3, after item number "Form 159 of the Companies (Court) Rules, 1959"

the following item shall be inserted, namely.-

"Filing under Insolvency and Bankruptcy Code, 2016".

(ii) after the first verification column, the following shall be inserted, namely.-

"Particulars of the person signing and submitting the form"

Name

Capacity

For more details click on :http://www.mca.gov.in/Ministry/pdf/rule1_13032020.pdf

10) Notification Number G.S.R.-169(E) - The Companies (Incorporation) Second Amendment Rules, 2020, dated 12th March, 2020.

In the Companies (Incorporation) Rules, 2014, in the Annexure, in Form No. INC-28, in serial number 5, in clause (a) after sub-clause (ii), the following sub-clause shall be inserted, namely-

"(iii) Section of Insolvency and Bankruptcy Code, 2016 under which order passed"

For more details click on :http://www.mca.gov.in/Ministry/pdf/rule_13032020.pdf

Lesson-16 Directors

1) General Circular No. 1/2020-Clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors, Non-Promoters and Non-KMP Non-Executive Directors, dated 02nd March, 2020.

This circular clearly shows the ministry's resolve and intent to give protection to independent directors and other non-executive directors from prosecution for both civil and criminal offenses, unless there is strong evidence against them being party to any fraud committed by the company.

Section 149(12) of the Companies Act, 2013 is a non-obstante clause which provides that an independent director and a non-executive director not being promoter or key managerial personnel shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.

In view of this expressed provision of Section 149(12) of the Companies Act, 2013, Independent Directors and Non-Executive Directors (not being promoter or KMP) should not be arrayed in any criminal or civil proceedings under the Act, unless the above mentioned criterion is met.

MCA has clarified that at the time of serving notices to the company during inquiry, inspection, investigation or adjudication proceedings etc, necessary documents may be sought so as to ascertain the involvement of concerned officers of the Companies and due care must be taken to ensure that unnecessarily any civil or criminal proceedings is not initiated against the Independent directors or Non-Executive Directors unless sufficient evidence exists against them.

The records available in the office of the Registrar, including e-forms DIR-11 or DIR-12, along with the copies of Annual Returns or financial statements should also be examined, so as to ascertain whether a particular director or the KMP was serving in the company as on the date of default.

In case of any doubt, with regard to the liability of any person, for any proceedings required to be initiated by the Registrar, guidance may be sought from the Ministry of Corporate Affairs through the office of Director General of Corporate Affairs. Consequently any such proceedings must be initiated after due sanction from the Ministry. Further, with respect to cases where prosecution may have been already filed but does not meet the above mentioned criteria, then such cases may be submitted to the ministry for necessary examination and further direction.

The Ministry of Corporate Affairs has directed all Registrars of Companies to immediately and scrupulously follow the above Standard Operating Procedure with respect to all ongoing cases.

For more details click on : http://www.mca.gov.in/Ministry/pdf/Circular_03032020.pdf

2) MCA vide notification no: G.S.R.145(E) notified the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February, 2020

(i) In Rule 6 (1), in clause (a) of the Companies (Appointment and Qualification of Directors) Rules, 2014, MCA has extended the date of registration of details of Independent Directors in

Independent Director Databank by 2 months from initial “**three months**” to “**five months**” from the commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 .

*However, MCA has further extended the date of registration vide **the Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020** dated 29th April, 2020 by another 2 months from **five to seven months**.*

*Furthermore, MCA vide **the Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2020**, dated 23rd June, 2020 has further extended the period of registration of details of Independent Directors in Independent Director Databank under Rule 6(1)(a) **from seven to ten months**.*

After all the amendments, revised rule 6(1) clause (a) of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall be read as under:

Compliances required by a person eligible and willing to be appointed as an independent director.

(1) Every individual –

(a) who has been appointed as an independent director in a company, on the date of commencement of the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019, shall within a period of **ten months** from such commencement; or

(b) who intends to get appointed as an independent director in a company after such commencement, shall before such appointment,

apply online to the institute for inclusion of his name in the data bank for a period of one year or five years or for his life-time, and from time to time take steps as specified in Rule 6(2) of the Companies (Appointment and Qualification of Directors) Rules, 2014, till he continues to hold the office of an independent director in any company.

For more details click on :

http://www.mca.gov.in/Ministry/pdf/rule_28022020.pdf

http://www.mca.gov.in/Ministry/pdf/Rules_29042020.pdf

http://www.mca.gov.in/Ministry/pdf/Rule2_25062020.pdf

(ii) MCA has exempted the experienced Key Managerial Personnel and Directors from online proficiency self-assessment test for the appointment of Independent Directors.

MCA has amended the first proviso to Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014, vide the Companies (Appointment and Qualification of Directors) Amendment Rules, 2020, dated 28th February, 2020 as follows:

An individual shall not be required to pass the online proficiency self-assessment test, when he has served as director or KMP, for a total period of not less than 10 years as on the date of inclusion of his name in the databank in one or more following companies:

- (a) Listed public company; or
- (b) Unlisted public company having a paid-up share capital of rupees ten crore or more; or
- (c) Body corporate listed on a recognized stock exchange.

(iii) Second proviso to Rule 6(4) of The Companies (Appointment and Qualification of Directors) Rules, 2014 for the word ‘companies’ the words “companies or bodies corporate” shall be substituted.

Post Amendment, Second proviso to Rule 6(4) of The Companies (Appointment and Qualification of Directors) Rules, 2014, shall be read as under:

Provided further that for the purpose of calculation of the period of ten years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more **companies or bodies corporate** at the same time shall be counted only once.

For more details click on: http://www.mca.gov.in/Ministry/pdf/rule_28022020.pdf

Lesson-17- Appointment and Remuneration of Key Managerial Personnel

MCA vide notification no:G.S.R.13(E)-The Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules 2020, dated 03rd January, 2020 has amended Rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 as follows:-

“Rule 8A. Every private company which has a paid up share capital of ten crore rupees or more shall have a whole-time Company Secretary.”

Impact:

With this amendment in rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, MCA has clarified that every private company which has paid-up capital of 10 crore rupees or more need to appoint whole time Company Secretary.

For more details click on: http://www.mca.gov.in/Ministry/pdf/AmdtRules_06012020.pdf

Other Important updates

1) Notification No: G.S.R. 59(E)-Application of Provisions of Companies Act, 2013 to a Limited Liability Partnership, dated 30th January, 2020

After this notification the provisions of section 460 of the Companies Act, 2013 relating to Condonation of delay in certain cases were also be applicable to a limited liability partnership from the date of publication of this notification i.e. 30th January, 2020.

For more details click on:

http://www.mca.gov.in/Ministry/pdf/NotificationLLP_31012020.pdf

2) Notification no:G.S.R.80(E)- The National Company Law Tribunal (Amendment) Rules, 2020, dated 3rd February, 2020.

1)A new rule 80A has been inserted after Rule 80 of the National Company Law Tribunal Rules, 2016

Rule 80A. Application under section 230. – An application under Section 230 (12) may be made in Form NCLT-1 and shall be accompanied with such documents as are mentioned in Annexure B.”

2)In the National Company Law Tribunal Rules, 2016, under the SCHEDULE OF FEES, after S.No.22 and the entries relating thereto, the following shall be inserted, namely:-

22A	Section 230(12)	Application in cases of takeover offer of companies which are not listed.	Rs. 5,000”
-----	-----------------	---	------------

3)In the National Company Law Tribunal Rules, 2016, in Annexure-A, under the heading Form No. NCLT.1, after the figure '80', the figure and letter “80A” shall be inserted.

4)In the National Company Law Tribunal Rules, 2016,, in Annexure-B i.e. (List of Documents to be Attached with A Petition or Application) after S.No.12 and the entries relating thereto, the following S.No. shall be inserted, namely:-

12A	Sec 230(12)	Application in cases of takeover offer of companies which are not listed.	1.Affidavit verifying the petition 2.Memorandum of appearance with copy of the Board's Resolution or the executed vakalatnama, as the case may be. 3. Documents in support of the grievance against the takeover.
-----	-------------	---	---

			4.Any other relevant document.”
--	--	--	---------------------------------

A new rule has been inserted as rule 80A in the NCLT Rules enabling an aggrieved party to make an application to the NCLT in the event of any grievances with respect to the takeover offer of companies other than listed companies in Form NCLT- 1 with a fees of 5000 rupees and shall be accompanied with an Affidavit verifying the petition, Memorandum of appearance with copy of the Board’s Resolution or the executed vakalatnama, as the case may be, Documents in support of the grievance against the takeover and any other relevant document.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rules3_04022020.pdf

3) The Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020, dated 29th June, 2020

MCA vide Notification dated 29th June, 2020, introduced the Companies (Removal of Names of Companies from the Register of Companies) Amendment Rules, 2020 to further amend the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016.

In Rule 4(3), in clause (i) of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

the following proviso shall be inserted, namely:-

1) "Provided that in case of a –

(a) Government company in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments; or

(b) subsidiary of a Government company, referred to in clause (a), in which the entire paid up share capital is held by that Government company,

a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company;".

2) In the said rules, in Form STK 2, in the list of attachments, in serial number 4, at the end, the words "or by an authorised representative of administrative Ministry /Department in Form No. STK - 3A" shall be inserted.

3) In the said rules, after Form STK-3, the Form STK-3A shall be inserted.

Impact:

MCA has notified that while filing Form STK-2 i.e. application for removal of the name from the register of Companies, in case of a company wholly owned by the government or wholly owned

subsidiary of that government company, a duly notarised indemnity bond in Form STK-3A shall be given by an authorized representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company.

For more details click on: http://www.mca.gov.in/Ministry/pdf/Rule3_30062020.pdf

Note: Students appearing in December, 2020 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications order etc. issued by MCA, SEBI, RBI & Central Government on or before six months prior to the date of the examination.