



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)

For

June, 2023 Examination

COMPANY LAW

MODULE 1

PAPER 2

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Lesson 1 – Introduction to Company Law

1. Extension of Period of the Company Law Committee

(MCA Order F.No.2/1/2018-CL-V dated 05th September, 2022)

In line with the Government's objective of promoting Ease of Living in the country by providing Ease of Doing Business to law abiding corporates, fostering improved corporate compliance for stakeholders at large and also to address the emerging issues having impact on the working of corporates in the country, the Company Law Committee was constituted vide MCA order dated 13.07.2018 for examining and making recommendations to the Government on various provisions and issues pertaining to implementation of the Companies Act, 2013 and the Limited Liability Partnership Act, 2008.

Thereafter, the tenure of the company law committee was time to time extended by the Government, this time also vide MCA order dated September 05, 2022 the tenure has been further extended for one year i.e. upto 16.09.2023.

Brief Analysis:

The government has extended the tenure of the Company Law Committee, which was constituted in 2019, by one year. The committee has the mandate for examining and making recommendations to the government on various issues related to implementation of the Companies Act and Limited Liability Partnership Act. Last year also, the Ministry had extended the panel's tenure till September 16, 2022 which has been further extended for another one year.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mcs=rhzCSk7hQy%252Ff3XOJ3BwBCw%253D%253D&type=open>

2. The Companies (Specification of Definition Details) Amendment Rules, 2022

(MCA Notification No. G.S.R 700(E) dated 15th September, 2022)

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

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

Brief Analysis:

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

exceeding Rs. 2 crore” to “not exceeding Rs. 4 crore” and turnover from “not exceeding Rs. 20 crore” to “not exceeding Rs. 40 crore”.

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

For details:

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

Lesson 4 – Debt Capital and Deposits

The Companies (Acceptance of Deposits) Amendment Rules, 2022

(MCA notification no. G.S.R (E) dated 24th August, 2022)

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

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

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

For details:

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

Lesson 5 – Charges

The Companies (Registration of Charges) Second Amendment Rules, 2022 (MCA notification no. G.S.R (E) dated 29th August, 2022)

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

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

For details:

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

Lesson 7 – Corporate Social Responsibility

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

'Har Ghar Tiranga', a campaign under the aegis of Azadi Ka Amrit Mahotsav, is aimed to invoke the feeling of patriotism in the hearts of the people and to promote awareness about the Indian National Flag. In this regard, it is clarified that spending of CSR funds for the activities related to this campaign, such as mass scale production and supply of the National Flag, outreach and amplification efforts and other related activities, are eligible CSR activities under item no. (ii) of Schedule VII of the Companies Act, 2013 pertaining to promotion of education relating to culture. The companies may undertake the aforesaid activities, subject to fulfilment of the Companies (CSR Policy) Rules, 2014 and related circulars/ clarifications issued by the Ministry thereof, from time to time.

Brief Analysis:

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

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=dXH1ziMu%252FmN%252BB SRLHN9evw%253D%253D&type=open>

2. The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2022

MCA notification no. G.S.R 715(E) dated 20th September, 2022)

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

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

Further, a Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed two percent of the

total CSR expenditure for that financial year or fifty lakh rupees, whichever is higher; and the format for the annual report on CSR activities to be included in the board's report for financial year commencing on or after the 1st day of April, 2020 has been substituted.

Brief Analysis:

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

(a) Companies are required to establish a CSR committee to monitor the execution of their CSR commitments and in particular any funds in their "Unspent Corporate Social Responsibility Account".

(b) The Amendment provide that the cost of social impact assessments, which can be considered as CSR spending, cannot be greater than 2% of all CSR expenditures for the applicable financial year or Rupees 50 lakh, whichever is higher.

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

For details:

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

Lesson 8 – Accounts, Audit and Auditors

1. The NFRA Amendment Rules, 2022

MCA Notification no. G.S.R (E) dated 17th June, 2022)

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

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

For details:

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

2. Ministry of Corporate Affairs (MCA): Clarification

(MCA Clarification dated 26th September, 2022)

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

Brief Analysis:

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

For details:

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

Lesson 9 – Transparency and Disclosures

SEBI (Listing Obligation and Disclosure Requirements) (Sixth Amendment) Regulation, 2022

(SEBI notification no. No. SEBI/LAD-NRO/GN/2022/103 dated 14th November, 2022)

The Securities & Exchange Board of India (SEBI) has notified Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 on November 14, 2022)

According to the amendment in regulation 32, listed entities are mandated to submit a quarterly statement of deviation(s) or variation(s) to stock exchanges indicating if they have deviated or varied in using the proceeds from issue of the object stated for the issue, till the complete use of fund from proceed.

Earlier to the amendment this statement had to be submitted for public, rights and preferential issues. With the amendment, SEBI had broadened the scope of disclosure and submission of such statement even in funds raised from Qualified Institutional Placements.

For details:

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

Lesson 12 – An overview of Corporate Reorganisation

1. Amendment in the notification pertaining to application for Fast Track Corporate Insolvency Resolution Process

(MCA notification no. S.O. 4142(E) dated 30th August, 2022)

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

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

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

Brief Analysis:

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

For details:

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

2. The Companies (Registered Valuers and Valuation) Amendment Rules, 2022

(MCA notification no. G.S.R (E) dated 21st November, 2022)

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

- a) Rule 3(2)(c) is modified by clarifying that a partnership firm or company shall not be registered as a registered valuer unless all the partners or directors are eligible to be under Rule 3(1) to be registered as registered valuers.

Further, a new clause (f) to Rule 3(2) is inserted specifying that, such partner or director shall not be a member of more than one registered valuers organisation at one point in time and the partnership entity or company already registered as valuers to comply with the provisions within six months of date of commencement of Amended Rules 2022.

(b) Rule 7A has been inserted, which mandates that a registered valuer must inform the authority (i.e. IBBI-powers delegated under section 458 of the Companies, Act, 2013) as to any change in the personal details or modification in the composition of directors or partners or any such change in the partnership deed or Memorandum of Association which may affect the registration of registered valuer.

(c) Rule 14A has been inserted, which specifies that the registered valuers organisation must intimate the authority (IBBI) as to any change in the composition of its governing board, appellate panel or committee after payment of requisite fee.

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

For details:

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

Lesson 13 – An Introduction to MCA 21 And filing in XBRL

1. Ministry of Corporate Affairs- Important Update

(MCA important updated dated 22nd August, 2022)

Stakeholders please note that 9 Company forms (DIR3-KYC Web, DIR3-KYC e-form, CHG-1, CHG-4, CHG-6, CHG-8, CHG-9, DPT-3, DPT-4) are available in V3 portal for filing purposes.

Brief Analysis:

The MCA has migrated LLP filings to an upgraded Version 3 of the MCA- 21 Portal, and as the first phase, the go-live of the revised and enhanced LLP forms has commenced from 8th March, 2022. In the second phase, the Ministry of Corporate Affairs on 31st Aug 2022 at 12:00 AM has launched first set of Nine (9) Company Forms on MCA21 V3 portal. Following forms will be rolled-out in this phase: DIR3-KYC Web, DIR3-KYC E-form, DPT-3, DPT-4, CHG-1, CHG-4, CHG-6, CHG-8 & CHG-9.

For details:

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

Lesson 16 – Directors

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

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

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

Brief Analysis:

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

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

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

For details:

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

2. The Companies (Appointment and Qualification of Directors) Second Amendment, Rules, 2022

(MCA notification no. G.S.R. 439(E) dated 10th June, 2022)

The Ministry of Corporate Affairs (MCA) vide its notification dated June 10, 2022 has notified “The Companies (Appointment and Qualification of Directors) Second Amendment, Rules,

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

- his name shall be shown in a separate restored category for a period of one year from the date of restoration within which, he shall be required to pass the online proficiency self-assessment test and thereafter his name shall be included in the databank, only, if he passes the said online proficiency self-assessment test and in such case, the fees paid by him at the time of initial registration shall continue to be valid for the period for which the same was initially paid; and
- in case he fails to pass the online proficiency self-assessment test within one year from then date of restoration, his name shall be removed from the data bank and he shall be required to apply afresh under sub-rule (1) for inclusion of his name in the databank.

For Details:

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

3. The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022

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

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

For Details:

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

4. SEBI (Listing Obligation and Disclosure Requirements) (Sixth Amendment) Regulation, 2022

(SEBI Notification No. SEBI/LAD-NRO/GN/2022/103 dated 14 November 2022)

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

According to the amendment, proviso to Sub-regulation 2A of Regulation 25 is inserted stating that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution

exceed the votes cast against the resolution, then the appointment of such an independent director shall be deemed to have been made.

Further, an independent director appointed under the first proviso shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

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

For details:

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

Miscellaneous

1. CBDT notification for PAN integration with LLP incorporation form FiLLip

(Ministry of Finance notification no. 04/2022 dated 26th July, 2022)

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

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

Brief Analysis:

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

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=kvBTyn491NIMUOv%252B38VTDg%253D%253D&type=open>

2. The Companies (Incorporation) Third Amendment Rules, 2022

(MCA notification G.S.R (E) dated 18th August, 2022)

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

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

For details:

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

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

(MCA notification no. G.S.R (E) dated 24th August, 2022)

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

For details:

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

Note: Students appearing in June, 2023 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, ICSI & or other authority till 30th November, 2022.
