



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 (NEW SYLLABUS)**

*for*

*December, 2020 Examination*

**SUBJECT NAME:  
Setting up of Business Entities  
and Closure**

**MODULE 1**

**PAPER 3**

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## Lesson 2-Types of Companies

- 1) **Notification no: G.S.R. 81(E) NIDHI (Amendment) Rules 2020, dated 3<sup>rd</sup> February, 2020 (effective from 10<sup>th</sup> February, 2020).**

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

- a. FORM NO. NDH-I: Return of Statutory Compliances
- b. FORM NO. NDH-2: Application for extension of time
- c. 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](http://www.mca.gov.in/Ministry/pdf/Rules2_04022020.pdf)*

- 2) **Notification No: G.S.R.114(E)-NIDHI (Second Amendment) Rules, 2020, dated 14<sup>th</sup> 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](http://www.mca.gov.in/Ministry/pdf/rule_14022020.pdf)*

- 3) **Corrigendum pertaining to Nidhi (Second Amendment) Rules, 2020, dated 2<sup>nd</sup> March, 2020.**

The Ministry of Corporate Affairs vide its notification no: G.S.R.-150(E), dated 2<sup>nd</sup> March, 2020 has issued a corrigendum pertaining to Nidhi (Second Amendment) Rules, 2020, notification dated 14<sup>th</sup> 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 months** 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](http://www.mca.gov.in/Ministry/pdf/rule_02032020.pdf)

**4) Notification Number G.S.R. 128(E)-The Companies (Incorporation) Amendment Rules, 2020, dated 18<sup>th</sup> February, 2020 (Effective from 23<sup>rd</sup> 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](http://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 23<sup>rd</sup> February, 2020.

**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 23<sup>rd</sup> 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 23<sup>rd</sup> February, 2020.

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

a. 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.

b. for the letters “AGILE”, the letters “AGILE - PRO”, shall be substituted;

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

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

(d) Opening of Bank Account with effect from 23<sup>rd</sup> 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. 23<sup>rd</sup> 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](http://www.mca.gov.in/Ministry/pdf/rule_22022020.pdf)***

- 5) 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>***

## Lesson-4 Legal Status of Registered Company

**1) MCA has further amended the Exemptions notification no: G.S.R. 463(E), dated 5<sup>th</sup> June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02<sup>nd</sup> 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 5<sup>th</sup> June, 2015, has been renumbered as Serial Number 1A.

**For more details click on: [http://www.mca.gov.in/Ministry/pdf/Notification\\_02032020.pdf](http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf)**

**2) MCA has further amended the Exemptions notification no: G.S.R. 463(E), dated 5<sup>th</sup> June, 2015 related to Government Companies vide notification no: G.S.R. 151(E), dated 02<sup>nd</sup> 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 5<sup>th</sup> 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 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](http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf)**

## **Lesson 8-Financial Services Organisation & its Registration Process**

**Sensitization of Nidhi Companies towards compliance of provisions of Section 406 of the 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](http://www.mca.gov.in/Ministry/pdf/Nidhi_19032020.pdf)**

## **Lesson 9-Startups & its Registration**

### **Notification No: G.S.R. 372(E)-The Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5<sup>th</sup> 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 17<sup>th</sup> 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 19<sup>th</sup> 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 19<sup>th</sup> 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](http://www.mca.gov.in/Ministry/pdf/Rule_08062020.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 30<sup>th</sup> 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. 30<sup>th</sup> January, 2020.

*For more details click on: [http://www.mca.gov.in/Ministry/pdf/NotificationLLP\\_31012020.pdf](http://www.mca.gov.in/Ministry/pdf/NotificationLLP_31012020.pdf)*

### **2) Notification No: G.S.R.60 (E)-The Companies (Accounts) Amendment Rules, 2020, dated 30<sup>th</sup> 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](http://www.mca.gov.in/Ministry/pdf/Rules_31012020.pdf)*



## Lesson 13

### Various Initial Registrations and Licenses

#### NEW DEFINITION OF MSMEs

In exercise of the powers conferred by section 7(1) read with section 7(9) of the 'Micro, Small and Medium Enterprises Development Act, 2006 the Central Government vide its Notification S.O. 1702(E) dated 1st June, 2020 notified the following criteria for classification of micro, small and medium enterprises, 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;
- (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.

***For more details click on:***

**[https://msme.gov.in/sites/default/files/MSME\\_gazette\\_of\\_india\\_0.pdf](https://msme.gov.in/sites/default/files/MSME_gazette_of_india_0.pdf)**

## **Lesson 21**

### **Corporate Insolvency Resolution Process, Liquidation and Winding Up: An Overview**

#### **Notification under section 4 of the Insolvency and Bankruptcy Code, 2016**

In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016, the Central Government hereby specifies *one crore rupees as the minimum amount of default* for the purposes of the said section.

*For more details click on:*

<https://ibbi.gov.in/uploads/legalframework/48bf32150f5d6b30477b74f652964edc.pdf>

#### **Extent of the Insolvency and Bankruptcy Code, 2016 to whole of India**

According to the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, the Insolvency and Bankruptcy Code, 2016 applicable to whole of India.

*For more details click on:*

<https://ibbi.gov.in/uploads/legalframework/a6a99b56c0e71108ceabff90aef5af8e.pdf>

#### **The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020**

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 amended the Insolvency and Bankruptcy Code 2016.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 inserted a new section 10A and new sub-section (3) in Section 66.

*Section 10A read as under:*

Section 10A. Suspension of initiation of corporate insolvency resolution process: Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation.—For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.

*Section 66(3) read as under:*

Section 66(3): Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.

***For more details click on:***

***<https://ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.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.***