



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT EXECUTIVE PROGRAMME (NEW SYLLABUS)

for

June, 2021 Examination

**Setting up of Business Entities
and Closure**

MODULE 1

PAPER 3

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Part-A

Lesson 2-Types of Companies

1) SPICe+ applications approved for the State of Karnataka w.e.f. October 08, 2020 shall mandatorily provide Profession Tax Registration also.

As part of Government of India's Ease of Doing Business (EODB) initiatives, the MCA has integrated with Profession Tax [PT] – Karnataka.

SPICe+ applications approved for the State of Karnataka w.e.f. October 08, 2020 shall mandatorily provide Profession Tax Registration also.

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

http://www.mca.gov.in/Ministry/pdf/SpicePlusFAQS_20112020.pdf

2) Notification No. G.S.R. 795(E). The Companies (Incorporation) Third Amendment Rules, 2020, dated December 24, 2020

In the Companies (Incorporation) Rules, 2014, after rule 9, the following rule shall be inserted with effect from January 26, 2021, namely:-

“9A. Extension of reservation of name in certain cases –

Upon payment of fees provided below through the web service available at www.mca.gov.in, the Registrar of Companies shall extend the period of a name reserved under rule 9 by using web service SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32), upto:

(a) forty days from the date of approval under rule 9, on payment of fees of ₹ 1000 made before the expiry of twenty days from the date of approval under rule 9;

(b) sixty days from the date of approval under rule 9 on payment of fees of ₹ 2000 made before the expiry of forty days referred to in clause (a) above;

(c) sixty days from the date of approval under rule 9 on payment of fees of ₹ 3000 made before the expiry of twenty days from the date of approval under rule 9.

Further, the Registrar shall have the power to cancel the reserved name in accordance with Section 4(5) of the Companies Act. 2013.

For details: http://www.mca.gov.in/Ministry/pdf/ThirdAmdtRules_06012021.pdf

3) Section 54 of the Companies (Amendment) Act, 2020 amends Section 392 of the Companies Act, 2013 w.r.t. Punishment for Contravention of Chapter XXII of the Companies Act, 2013 related to Companies incorporated outside India-Decriminalization of offence

Section 392

Old Penal Provision

Without prejudice to the provisions of section 391 of the Companies Act, 2013, if a foreign company contravenes the provisions of Chapter XXII of the Companies Act, 2013, the foreign company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 3 Lakhs and in the case of a continuing offence, with an additional fine which may extend to ₹ 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs, or with both.

New Penal Provision

Without prejudice to the provisions of section 391 of the Companies Act, 2013, if a foreign company contravenes the provisions of Chapter XXII of the Companies Act, 2013, the foreign company shall be punishable with fine which shall not be less than ₹ 1 Lakh but which may extend to ₹ 3 Lakhs and in the case of a continuing offence, with an additional fine which may extend to ₹ 50,000 for every day after the first during which the contravention continues and every officer of the foreign company who is in default shall be punishable with fine which shall not be less than ₹ 25,000 but which may extend to ₹ 5 Lakhs.

Details of Change:

The penal provision under Section 392 of the Companies Act, 2013, related to non-compliance of Chapter XXII of the Companies Act, 2013 w.r.t. Companies incorporated outside India, is relaxed by deleting the punishment by way of imprisonment.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 7- Formation and Registration of NGO's

Section 3 of the Companies (Amendment) Act, 2020 amends Section 8(11) of the Companies Act, 2013 w.r.t. Formation of companies with charitable objects, etc.,- Decriminalization of offence

Old Penal Provision

If a company makes any default in complying with any of the requirements laid down in Section 8 of the Companies Act, 2013, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ₹ 10 lakhs but which may extend to ₹1 crore and the directors and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than ₹ 25000 but which may extend to ₹ 25 lakhs or with both.

New Penal Provision

If a company makes any default in complying with any of the requirements laid down in section 8 of the Companies Act, 2013, the company shall, without prejudice to any other action under the provisions of this section, be punishable with fine which shall not be less than ₹ 10 lakhs but which may extend to ₹1 crore and the directors and every officer of the company who is in default shall be punishable with fine which shall not be less than ₹ 25000 but which may extend to ₹ 25 lakhs.

Details of change:

The penal provision under Section 8 of the Companies Act, 2013, related to default in complying with the provisions of formation of companies with charitable objects, etc., w.r.t. Director and every officer has been relaxed by deleting the punishment by way of imprisonment.

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf

Lesson 9- Startups and its Registration

The Companies (Acceptance of Deposits) Amendment Rules, 2020, dated September 07, 2020

i) The MCA has notified the Companies (Acceptance of Deposits) Amendment Rules, 2020 to further amend the Companies (Acceptance of Deposits) Rules, 2014, amending Rule 2 (1) (c) (xvii), i.e. definition of deposit.

Amended Rule 2(1)(c)(xvii) of the Companies (Acceptance of Deposits) Rules, 2014 provided that an amount of ₹ 25 lakhs or more received by a Start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding 10 years (earlier 5 years) from the date of issue) in a single tranche, from a person won't be considered as deposit.

Explanation-I of the above rule, provides that “start-up company” means a private company incorporated under the Companies Act, 2013 or Companies Act, 1956 and recognised as such in accordance with notification number G.S.R. 127 (E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal Trade.

ii) The Companies (Acceptance of Deposits) Amendment Rules, 2020 further amended Rule 3, sub-rule (3), second proviso, clause (i) of the Companies (Acceptance of Deposits) Rules, 2014, w.r.t. Terms and Conditions of Acceptance of Deposits from members by a Start-up Company.

Amended Rule 3(3), second proviso, in clause (i) of the Companies (Acceptance of Deposits) Rules, 2014, provides that the maximum limit in respect of deposits to be accepted from members is not applicable to a private company which is a Start-up for 10 years (earlier 5 years) from date of its incorporation.

Now, a private company which is a Start-up would be able to accept deposits from its members without any limit for 10 years from the date of its incorporation.

For more details: http://www.mca.gov.in/Ministry/pdf/Rule_08092020.pdf

Part-C

Lesson 21-Corporate Insolvency Resolution Process, Liquidation and Winding Up: An Overview

1. Central Government Extended Suspension of Insolvency Proceedings by another 3 Months

In exercise of the powers conferred by section 10A of the Insolvency and Bankruptcy Code, 2016, the Central Government vide its Notification S.O. 4638(E) dated December 22, 2020, further period of three months from the 25th December, 2020, for the purposes of the said section.

Impact: *Suspension of Insolvency Proceedings extended up to March 25, 2021.*

For Details: <https://www.ibbi.gov.in/uploads/legalframework/df55d4f612f270d6c637ee4b3c8131c8.pdf>

2. The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020

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

Impact: *In the light of the extraordinary economic situation caused by COVID-19 pandemic, a need was felt to temporarily suspend initiation of corporate insolvency resolution process under the Code, initially for a period of six months or such further period, not exceeding one year from 25th March, 2020, to provide relief to companies affected by COVID-19 to recover from the financial stress without facing immediate threat of being pushed to insolvency proceedings. The benefit of the suspension will be available to all those defaults of the corporate debtor that occur from 25th March, 2020 and till the end of the period of suspension.*

For Details: <https://www.ibbi.gov.in/uploads/legalframework/c1d0cde66b213275d9cf357b59bab77b.pdf>