



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 PROFESSIONAL PROGRAMME

*for*

*June, 2023 Examination*

**SECRETARIAL AUDIT, COMPLIANCE  
MANAGEMENT AND DUE DILIGENCE**

**MODULE 2**

**PAPER 4**

*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**

| <b>S.No.</b> | <b>Lesson No. and Name</b>                          | <b>Pages</b> |
|--------------|---|--------------|
| <b>1</b>     | Chapter 2: Compliances                              | 2-4          |
| <b>2</b>     | Chapter 4: Search and Status Report                 | 5-5          |
| <b>3</b>     | Chapter 5: Know Your Customer (KYC)                 | 6-6          |
| <b>4</b>     | Chapter 6: Signing and Certification                | 7-7          |
| <b>5</b>     | Chapter 7: Segment-wise Role of Company Secretaries | 8-8          |
| <b>6</b>     | Lesson 11- Concepts and Principles of Other Audits  | 9-10         |
| <b>7</b>     | Chapter 19: Due Diligence                           | 11-11        |
| <b>8</b>     | Miscellaneous                                       | 12-14        |

## **Lesson 2- Compliances**

### **1. The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022** (MCA notification no.; G.S.R. 410(E) dated 1<sup>st</sup> 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=1QPa%252Fckqk4ob6rHXFQrVew%253D%253D&type=open>

### **2. CBDT notification for PAN integration with LLP incorporation form FiLLip** (Ministry of Finance notification 04/2022 dated 26<sup>th</sup> 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=kvBTyn49lNIMUOv%252B38VTDg%253D%253D&type=open>

**3. The Companies (Acceptance of Deposits) Amendment Rules, 2022**

(MCA Notification no. G.S.R (E) dated August 24, 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?mds=99KwRbJSkMXjVLv09KTgJg%253D%253D&type=open>

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

(MCA Notification no. G.S.R 700(E) dated September 15, 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 Companies Act, 2013.

**For details:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=tiMs9IFJ8xuPm%252B%252Foxc6fUw%253D%253D&type=open>

## **Lesson 4- Search and Status Report**

### **The Companies (Registration of Charges) Second Amendment Rules, 2022** (MCA Notification No. G.S.R. (E) dated August 29, 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 shall 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?mds=4o6aHVQPvNWmaUqWvlfEow%253D%253D&type=open>

## **Lesson 5- Know Your Customer (KYC)**

**The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2022** (MCA Notification No. G.S.R (E) dated August 29, 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>

## **Lesson 6- Signing and Certification**

### **Ministry of Corporate Affairs (MCA): Clarification**

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 7- Segment-wise Role of Company Secretaries**

### **Amendment in the notification pertaining to application for Fast Track Corporate Insolvency Resolution Process**

(MCA notification no. S.O. 4142(E) dated 30<sup>th</sup> 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>

## **Lesson 11- Concepts and Principles of Other Audits**

### **1. Clarification on spending of CSR funds for "Har Ghar Tiranga" campaign**

(MCA General Circular No. 08/2022 dated 26<sup>th</sup> 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 fulfillment 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 Tiranga 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%252BBSRLHN9evw%253D%253D&type=open>

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

(MCA notification no. G.S.R 715(E) dated 20<sup>th</sup> 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 19- Due Diligence –I**

### **Foreign Contribution (Regulation) Amendment Rules, 2022**

(Ministry of Home Affairs notification no. G.S.R 506(E) dated 1<sup>st</sup> July, 2022)

The Ministry of Home Affairs (MHA) vide its notification dated 01st July, 2022 has notified “the Foreign Contribution (Regulation) Amendment Rules, 2022” which shall come into force on the date of its publication in the Official Gazette.

#### **Brief Analysis:**

The Ministry of Home Affairs has published the Foreign Contribution (Regulation) Amendment Rules, 2022 to further amend the Foreign Contribution (Regulation) Rules, 2011 which shall come into force on the date of their publication in the Official Gazette i.e. 01-07-2022. Through this amendment, Rule 6 deals with an intimation of receiving foreign funds from relatives, which is amended to provide that the time period to notify the government regarding the overseas transaction has been extended from 30 days to three months. Accordingly, any person receiving a foreign contribution in excess of 10 lakhs or equivalent thereto in a financial year from any of his relatives shall inform the Central government (details of funds) within three months from the receipt of such contribution. The Foreign Contribution (Regulation) Act, consolidated the law to regulate the acceptance and utilization of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilization of foreign contribution or foreign hospitality for any activities detrimental to the interest of the nation and for matters connected therewith or incidental thereto.

#### **For details:**

[https://fcraonline.nic.in/home/PDF\\_Doc/FC\\_04072022.pdf](https://fcraonline.nic.in/home/PDF_Doc/FC_04072022.pdf)

## Miscellaneous

### **1. SEBI Notification SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022**

(SEBI notification F. No. SEBI/LAD-NRO/GN/2022/90 dated July 25, 2022)

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification SEBI has prescribed the framework for Social Stock Exchange and inserted a separate Chapter X-A under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Social Stock Exchange means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the securities issued by Not for Profit Organizations in accordance with provisions of these regulations. The provisions of the above mentioned Chapter shall apply to –

- a Not for Profit Organization seeking to only get registered with a Social Stock Exchange;
- a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and
- a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

#### **Brief Analysis:**

SEBI vide notification dated 25th July, 2022 has prescribed Securities And Exchange Board Of India (Issue Of Capital And Disclosure Requirements) (Third Amendment) Regulations, 2022 by inserting chapter X-A on Social Stock Exchange which will be applicable to: a) a Not for Profit Organization seeking to only get registered with a Social Stock Exchange; b) a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and c) a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

The chapter also states about the eligibility conditions for being identified as a Social Enterprise, requirements relating to registration for a not for profit organization, means of raising funds by social enterprises. The chapter also includes the concept of “Zero Coupon Zero Principal Instruments” their issuance, eligibility and public issue of Zero Coupon Zero Principal Instruments by Not for profit organization.

#### **For details:**

<https://egazette.nic.in/WriteReadData/2022/237561.pdf>

### **2. Securities and Exchange Board Of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022**

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 through which it has notified a new chapter IX-A which deals with obligations of social enterprises. The provisions of this

Chapter shall apply to Profit Social Enterprise whose designated securities are listed on the applicable segment of the Stock Exchange(s) and Not for Profit Organization that is registered on the Social Stock Exchange(s). A Social Enterprise whose designated securities are listed on the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, shall frame a policy for determination of materiality, duly approved by its board or management, as the case may be, which shall be disclosed on the Social Stock Exchange(s) or the Stock Exchange(s). The board and management of the Social Enterprise shall authorize one or more of its Key Managerial Personnel for the purpose of determining the materiality of an event or information and for the purpose of making disclosures to the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, under this regulation and the contact details of such personnel shall also be disclosed to the Social Stock Exchange(s) or the Stock Exchange(s). Further, a Social Enterprise, which is either registered with or has raised funds through a Social Stock Exchange or a Stock Exchange, as the case may be, shall be required to submit an annual impact report to the Social Stock Exchange or the Stock Exchange in the format specified by the Board from time to time. The annual impact report shall be audited by a Social Audit Firm employing Social Auditor.

### **Brief Analysis:**

SEBI vide notification dated 25th July, 2022 has prescribed Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 by inserting chapter IX-A stating the below obligations of social enterprises:

- i. Disclosures to be made by a 'For profit Social Enterprise' and by 'Not for profit organization';
- ii. Intimations and disclosures by Social Enterprise of events or information to Social Stock Exchange(s) or Stock Exchange(s);
- iii. Disclosures by a Social Enterprise in respect of social impact;
- iv. Submission of statement of utilization of funds by a listed Not for Profit Organization to the Social Stock Exchange(s) etc.

### **For details:**

[https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2022\\_61169.html](https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2022_61169.html)

### **3. NSE Circular on use of digital signature certificate for announcements submitted by listed companies**

(NSE Circular Ref No: NSE/CML/2022/39 dated August 02, 2022)

Considering the advantages of using digital signature certifications for authentication of documents / filings, Stock Exchanges, in consultation with each other and SEBI, have decided to make it mandatory to file announcements under various SEBI Regulations using digital signature certification to the Stock Exchange except for Outcome of Board meeting which includes only financial result, any disclosure in which documents issued by entities other than listed company are included (For e.g., Auditors certificate, NCLT / other court's order, Credit Rating, etc.), Newspaper advertisement and any other disclosure as specified by Stock Exchanges from time to time. The circular shall be effective from September 01, 2022.

For details:

[https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges\\_47219.html](https://www.sebi.gov.in/legal/circulars/jul-2020/use-of-digital-signature-certifications-for-authentication-certification-of-filings-submissions-made-to-stock-exchanges_47219.html)

## **5. The Companies (Incorporation) Third Amendment Rules, 2022**

(MCA notification G.S.R (E) dated 18<sup>th</sup> 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/ebook/dms/getdocument?doc=MTcyODE0NDc2&docCategory=Notifications&type=open>

## **6. Update on MCA21 Version – 3 (dated 24<sup>th</sup> August, 2022)**

MCA21 version-3.0 is a technology driven forward-looking project, envisioned to strengthen enforcement, promote Ease of Doing Business and enhance user experience. MCA21 version-3.0 rollout has been planned in phases to ensure minimum disruption in regulatory filings. 09 company forms (CHG-1, CHG-4, CHG-6, CHG-8, CHG-9, DIR-3 KYC, DIR-3 KYC WEB, DPT-3 and DPT-4) are scheduled to go-live on 01.09.2022 (00:00 hrs). Remaining company forms and other modules like e-Adjudication, Compliance Management System are scheduled to be fully deployed within this Calendar Year.

### **For details:**

<https://pib.gov.in/PressReleasePage.aspx?PRID=1854102>

*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 November 30, 2022.*

\*\*\*\*\*