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भारतीय कम्पनी सचिव संस्थान

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Company Law

MODULE 1

PAPER 1

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Lesson 2-Types of Companies

1) The Companies (Specification of Definitions Details) Amendment Rules, 2021 (Notification No: G.S.R. 92(E), Dated February 01, 2021) (Effective from April 01, 2021)

The MCA has notified the Companies (Specification of Definitions Details) Amendment Rules, 2021 to further amend the Companies (Specification of Definitions Details) Rules, 2014.

In rule 2(1) after clause (s), the following clause has been inserted, namely:-

“(t) For the purposes of sub-clause (i) and sub-clause (ii) of clause (85) of section 2 of the Act, paid up capital and turnover of the small company shall not exceed rupees two crores and rupees twenty crores respectively.”

Details of Changes

The MCA for the Ease of doing Business has revised the definition of Small companies by increasing their threshold limits for paid up capital from “not exceeding Rs. 50 Lakhs” to “not exceeding Rs. 2 Crore” and turnover from “not exceeding Rs. 2 Crore” to “not exceeding Rs. 20 Crore”.

Now the Revised Definition under Section 2(85) read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014 with effect from 1 April 2021 is given hereunder:

"small company" means a company, other than a public company,—

(i) paid-up share capital of which does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and

(ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 20 crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees:

Provided that nothing in this clause shall apply to—

(A) a holding company or a subsidiary company;

(B) a company registered under section 8; or

(C) a company or body corporate governed by any special Act;

For details: http://www.mca.gov.in/Ministry/pdf/SpecificationAmndtRules_02022021.pdf

2) Section 2 of the Companies (Amendment) Act, 2020 amends Section 2(52) of the Companies Act, 2013 w.r.t. “Definition of Listed Company”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

A proviso has been inserted in the Definition of Listed Company, namely:

"Provided that such class of companies, which have listed or intend to list such class of securities, as may be prescribed in consultation with the Securities and Exchange Board, shall not be considered as listed companies."

Details of Changes:

The Central Government has been empowered to exclude certain companies, based on listing of certain securities on recognized stock exchanges, as provided by rules, in consultation with SEBI from the definition of listed companies.

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

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notifications&type=open>

3) The Companies (Specification of definitions details) Second Amendment Rules, 2021 (Notification No: G.S.R. 123 (E), Dated February 19, 2021) (Effective from April 01, 2021)

The MCA has notified the Companies (Specification of definitions details) Second Amendment Rules, 2021 to further amend the Companies (Specification of definitions details) Rules, 2014.

In the Companies (Specification of definitions details) Rules, 2014, after rule 2, the following rule has been inserted, namely:-

Rule 2A- Companies not to be considered as listed companies- For the purposes of the proviso to clause (52) of section 2 of the Companies Act, 2013, the following classes of companies shall not be considered as listed companies, namely:-

a) Public companies which have not listed their equity shares on a recognized stock exchange but have listed their –

- (i) non-convertible debt securities issued on private placement basis in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008; or
- (ii) non-convertible redeemable preference shares issued on private placement basis in terms of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013; or
- (iii) both categories of (i) and (ii) above.

b) Private companies which have listed their non-convertible debt securities on private placement basis on a recognized stock exchange in terms of SEBI (Issue and Listing of Debt Securities) Regulations, 2008;

c) Public companies which have not listed their equity shares on a recognized stock exchange but whose equity shares are listed on a stock exchange in a jurisdiction as specified in Section 23(3) of the Companies Act, 2013.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0OTE=&docCategory=Notifications&type=open>

Lesson 5- Contracts and Conversion

1) The Companies (Incorporation) Amendment Rules, 2021 (Notification No: G.S.R. 44 (E), Dated January 25, 2021)

The MCA has notified the Companies (Incorporation) Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014, namely:

In Rule 41 of the Companies (Incorporation) Rules, 2014 pertaining to “Application under section 14 for conversion of public company into private company.”

- (a) For sub-rule (6),
 - (i) in clause (c), for the words, brackets and figure "sub-rule (6)" the words, brackets and letter "clause (b)" has been substituted;
 - (ii) clause (d) has been omitted;

Omitted Content

Where no order for approval or re-submission or rejection has been explicitly made by the Regional Director within the stipulated period of thirty days, it shall be deemed that the application stands approved and an approval order shall be automatically issued to the applicant.

- (iii) the existing sub-rules (9), (10), (11) is renumbered as sub-rules (7), (8) and (9) respectively;

(b) for sub-rule (7) as so renumbered, the following sub-rule has been substituted, namely:-

"(7) (i) Where an objection has been received or Regional Director on examining the application has specific objection under the provisions of the Companies Act, 2013 the same shall be recorded in writing and the Regional Director shall hold a hearing or hearings within a period of thirty days as required and direct the company to file an affidavit to record the consensus reached at the hearing, upon executing which, the Regional Director shall pass an order either approving or rejecting the application along with the reasons within thirty days from the date of hearing.

(ii) In case where no consensus is received as referred in clause (i), the Regional Director may approve the conversion, if he is satisfied having regard to all the circumstances of the case, that the conversion would not be against the interests of the company or is not being made with a view to contravene or to avoid complying with the provisions of the Companies Act, 2013 with reasons to be recorded in writing:

Provided that the conversion shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Companies Act, 2013.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MDc=&docCategory=Notifications&type=open>

2) The Companies (Incorporation) Second Amendment Rules, 2021 (Notification No: G.S.R. 91(E), Dated February 01, 2021) (Amendment Effective from April 01, 2021)

The MCA has notified the Companies (Incorporation) Second Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014.

I. In rule 3 (1) of the Companies (Incorporation) Rules, 2014:

(i) for the words, "and resident in India" the words "whether resident in India or otherwise" has been substituted;

(ii) in *Explanation 1*, for the words "one hundred and eighty two days" the words "one hundred and twenty days" has been substituted;

(c) Rule 3 (7) of the Companies (Incorporation) Rules, 2014 has been omitted.

Omitted Content

No such company can convert voluntarily into any kind of company unless two years is expired from the date of incorporation of One Person Company, except threshold limit (paid up share capital) is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

II. For Rule 6 of the Companies (Incorporation) Rules, 2014, the following rule has been substituted, namely:-

"6. Conversion of One Person Company into a Public company or a Private company:

(1) The One Person Company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Companies Act, 2013 to give effect to the conversion and to make necessary changes incidental thereto.

(2) A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Companies Act, 2013 after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Companies Act, 2013 for such class of company and by making due compliance of section 18 of the Companies Act, 2013 for conversion.

(3) The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Companies Act, 2013, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:-

(a) Altered MOA and AOA;

(b) copy of resolution;

(c) the list of proposed members and its directors along with consent;

(d) list of creditors; and

(e) the latest audited balance sheet and profit and loss account.

(4) On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

III. In Rule 7 (1) of the Companies (Incorporation) Rules, 2014, the words" having paid up share capital of fifty lakhs rupees or less and average annual turnover during the relevant period is two crore rupees or less" has been omitted.

(b) In Rule 7 (4) of the Companies (Incorporation) Rules, 2014, in clause (i), the words ",the paid-up share capital company is fifty lakhs rupees or less or average annual turnover is less than two crores rupees, as the case may be" has been omitted.

IV. In the Annexure, (a) the e-Form No.INC-5 has been omitted.

Details of Changes

The MCA vide this notification has notified the Amendments as announced in the Union Budget 2021-22, for OPCs. Amendment has been introduced w.r.t. Allowing non-resident Indians to incorporate OPCs in India, Reducing the residency limit for an Indian citizen to set up an OPC from 182 days to 120 days, Thresholds limit of Paid-up share capital exceeding Rs. 50 lakhs and turnover exceeding Rs. 2 crores for compulsory conversion of OPC into Public/Private Company has been removed, etc.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0OTY=&docCategory=Notifications&type=open>

Lesson 6: Concept of Capital and Financing of Companies

- 1) **Section 11 of the Companies (Amendment) Act, 2020 amends Section 62 of the Companies Act, 2013 w.r.t. "Further issue of share capital"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

In section 62 (1) (a) (i) of the Companies Act, 2013 after the words "less than fifteen days", the words "or such lesser number of days as may be prescribed" has been inserted.

Details of Changes:

The Central Government has been empowered to prescribe days lesser than 15, for deeming decline of offer of rights issue. This will reduce the timelines for applying for rights issues.

*For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notifications&type=open>*

- 2) **The Companies (Share Capital and Debentures) Amendment Rules, 2021 (Notification No: G.S.R. 113(E) dated February 11, 2021) (Amendment Effective from April 01, 2021)**

The MCA has notified the Companies (Share Capital and Debentures) Amendment Rules, 2021 to further amend the Companies (Share Capital and Debentures) Rules, 2014.

In the Companies (Share Capital and Debentures) Rules 2014, after rule 12, the following rule has been inserted, namely:-

"12A. Period for notice under sub-clause (i) of clause (a) of sub-section (1) of Section 62

For the purposes of sub-clause (i) of clause (a) of sub-section (1) of section 62, the time period within which the offer shall be made for acceptance shall be not less than seven days from the date of offer."

Details of Changes

This amendment seeks to insert a new Rule 12A in the Companies (Share Capital and Debentures) Rules, 2014 pertaining to period for notice of issue of share capital under sub-clause (i) of clause (a) of section 62(1) of the Companies Act, 2013.

This Amendment prescribes the minimum time period for which the offer related to further issue of shares to existing shareholders for acceptance to be kept open, which shall not be less than seven days from the date of offer.

For details: http://www.mca.gov.in/Ministry/pdf/AmendmentRules_12022021.pdf

Lesson 12: Membership in a Company

Clause (c) of Section 18 of the Companies (Amendment) Act, 2020 amends Section 89 of the Companies Act, 2013 w.r.t. “Declaration in Respect of Beneficial Interest in any Share”- Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)

In Section 89 of the Companies Act, 2013, a new sub-section 11 has been inserted which enables the Central Government to exempt any class or classes of persons from complying with any of the requirements of this section pertaining to Declaration in Respect of Beneficial Interest in any Share, except Section 89(10), if it is considered necessary to grant such exemption in the public interest and any such exemption may be granted either unconditionally or subject to such conditions as may be specified in the notification.

***For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>***

Lesson 17: Appointment and Remuneration of Key Managerial Personnel

1) The MCA has notified amendments in Schedule V of the Companies Act, 2013 (Notification No: S.O. 1256(E), Dated March 18, 2021)

The MCA notified the following amendment in Part II of Schedule V of the Companies Act, 2013 w.r.t. Remuneration of Managerial Personnels.

In Schedule V of the Companies Act, 2013, in PART II, under the heading “REMUNERATION”.–

- (a) in Section I, in the first para, after the words “managerial person or persons”, the words “or other director or directors” has been inserted;

Amended Section I is “Remuneration payable by companies having profits: Subject to the provisions of section 197, a company having profits in a financial year may pay remuneration to a managerial person or persons or other director or directors not exceeding the limits specified in such section.”

(b) in Section II –

- (i) after the words “managerial person”, wherever occurred, the words “or other director” has been inserted;
- (ii) for Table (A), the following has been substituted, namely –

Where the effective capital (in rupees) is	Limit of yearly remuneration payable shall not exceed (in Rupees) in case of a managerial person	Limit of yearly remuneration payable shall not exceed (in rupees) in case of other director
Negative or less than 5 crores.	60 lakhs	12 Lakhs
5 crores and above but less than 100 crores.	84 lakhs	17 Lakhs
100 crores and above but less than 250 crores.	120 lakhs	24 Lakhs
250 crores and above	120 lakhs plus 0.01% of the effective capital in excess of Rs.250 crores.	24 Lakhs plus 0.01% of the effective capital in excess of Rs.250 crores.

In Section III, –

(i) after the words “managerial person”, wherever occurred, except in clause (i) of the proviso, the words “or other director” has been inserted;

(ii) after the words “managerial persons”, wherever occurred, the words “or other directors” has been inserted;

(iii) following explanation has been inserted at the end, namely: -

“Explanation. - For the purposes of Section I, Section II and Section III, the term “or other director” means a non-executive director or an independent director.”

Details of Changes

With this Amendment the MCA has amended Schedule V of the Companies Act, 2013 pertaining to Remuneration by inserting the provisions w.r.t. the maximum limit of remuneration payable by companies to other directors (non-executive director or an independent director). Earlier the limit was only for managerial person.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1Nw==&docCategory=Notifications&type=open>

2) The MCA notified the commencement date of Sections 32 & 40 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 1255(E), Dated March 18, 2021)

The MCA has appointed March 18, 2021 as the commencement date of Section 32 & 40 of the Companies (Amendment) Act, 2020 for implementation of changes brought by:

(i) Section 32 of the Companies (Amendment) Act, 2020 has amended Section 149(9) of the Companies Act, 2013 wherein, a proviso has been added, namely:

“that if a company has no profits or its profits are inadequate, an independent director may receive remuneration, exclusive of any fees payable under sub-section (5) of section 197, in accordance with the provisions of Schedule V.”

(ii) Section 40 of the Companies (Amendment) Act, 2020 has amended Section 197(3) of the Companies Act, 2013 wherein Non-Executive Director and Independent Director has been brought within the scope of remuneration payable following Schedule V of the Companies Act, 2013 in the event of absence or inadequate profits

“Notwithstanding anything contained in sub-sections (1) and (2), but subject to the provisions of Schedule V, if, in any financial year, a company has no profits or its profits are inadequate, the company shall not pay to its directors, including any managing or whole-time director or manager [or any other non-executive director, including an independent director], by way of remuneration any sum exclusive of any fees payable to directors under sub-section (5) hereunder except in accordance with the provisions of Schedule V.”

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjczMA==&docCategory=Notifications&type=open>

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

Lesson 18- General Meetings

- 1) **Clause (ii) of Section 22 of the Companies (Amendment) Act, 2020 amends Section 117 of the Companies Act, 2013 w.r.t. “Resolutions and Agreements to be Filed”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

In sub-section (3), in clause (g), for the second proviso of Section 117 of the Companies Act, 2013, the following proviso has been substituted, namely:

"Provided further that nothing contained in this clause shall apply in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of loans under clause (f) of sub - section (3) of section 179 in the ordinary course of its business by, —

- (a) a banking company;
- (b) any class of non -banking financial company registered under Chapter IIIB of the Reserve Bank of India Act, 1934, as may be prescribed in consultation with the Reserve Bank of India;
- (c) any class of housing finance company registered under the National Housing Bank Act, 1987, as may be prescribed in consultation with the National Housing Bank; "

Details of Changes

The Central Government has been empowered to exempt any class of NBFCs and any class of Housing Finance Companies from filing of resolutions passed to grant loans or give guarantees or to provide security in respect of loans in the ordinary course of their business.

Earlier, only Banking Companies were exempted.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notification&type=open>

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

- 2) **The Companies (Management and Administration) Amendment Rules, 2021 (Notification No. G.S.R. 159(E), Dated March 05, 2021)**

The MCA has notified the Companies (Management and Administration) Amendment Rules, 2021 to further amend the Companies (Management and Administration) Rules, 2014.

- (i) **In the Companies (Management and Administration) Rules, 2014, in Rule 20, after proviso in sub-rule (2), the following explanations shall be numbered namely:**

Explanation-I. - For the purpose of this sub-rule, “Nidhi” means a company which has been incorporated as a Nidhi with the object of cultivating the habit of thrift and savings amongst its members, receiving deposits from and lending to, its members only, for their mutual benefit, and which complies with such rules as are made by the Central Government for regulation of such class of companies.

Explanation-II. - For the purposes of this rule, the expression-

- (i) “agency” means the National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to condition that the National Securities Depository Limited, the Central Depository Services (India) Limited or such other entity has obtained a certificate from the Standardisation Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications

and Information Technology, Government of India including with regard to compliance with parameters under Explanation (vi);

- (ii) “cut-off date” means a date not earlier than seven days before the date of general meeting for determining the eligibility to vote by electronic means or in the general meeting;
- (iii) “cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction;
- (iv) “electronic voting system” means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security;
- (v) “remote e-voting” means the facility of casting votes by a member using an electronic voting system from a place other than venue of general meeting
- (vi) “secured system” means computer hardware, software, and procedure that-
 - (a) are reasonably secure from unauthorised access and misuse;
 - (b) provide a reasonable level of reliability and correct operation;
 - (c) are reasonably suited to performing the intended functions; and
 - (d) adhere to generally accepted security procedures;
- (vii) “voting by electronic means” includes “remote e-voting” and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting.

Details of Changes

The Amendment provides for certain explanations related to agency, cut-off date, cyber security, electronic voting system etc., are also reinstated in E-voting Rules.

For Details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0ODk=&docCategory=Notifications&type=open>

Lesson 21- Accounts and Audit

- 1) **Section 25 of the Companies (Amendment) Act, 2020 inserts Section 129A of the Companies Act, 2013 w.r.t. “Periodical financial results.”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

The Central Government may, require such class or classes of unlisted companies, as may be prescribed,—

- (a) to prepare the financial results of the company on such periodical basis and in such form as may be prescribed;
- (b) to obtain approval of the Board of Directors and complete audit or limited review of such periodical financial results in such manner as may be prescribed; and
- (c) file a copy with the Registrar within a period of thirty days of completion of the relevant period with such fees as may be prescribed.

Details of Changes

A new section 129A has been inserted to empower the Central Government to provide by rules such class or classes of unlisted companies to prepare periodical financial results of the company, audit or limited review thereof and their filing with Registrar of Companies within 30 days of completion of the relevant period as specified in the rules.

*For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>*

- 2) **Amendments to Schedule III of the Companies Act, 2013, (Notification No: G.S.R. 207(E), Dated March 24, 2021 (Amendment Effective from April 01, 2021)**

The Central Government has made further amendments in Schedule III of the Companies Act, 2013 with effect from 01st day of April, 2021, to incorporate various additional disclosure requirements while preparing the financial statements of an entity which are covered under the three divisions of Schedule III of the Companies Act, 2013.

As per the amendment some of the Additional disclosures which are also required to be made, including:

- Disclosure of Shareholding of Promoters
- Trade Payables ageing schedule
- Reconciliation of the gross and net carrying amounts of each class of assets
- Trade Receivables ageing schedule
- Detailed disclosure regarding title deeds of Immovable Property not held in name of the Company.
- Disclosure regarding revaluation & Capital-Work-in Progress (CWIP).
- Intangible assets under development.
- Loans or Advances granted to promoters, directors, KMPs and the related parties
- Details of Benami Property held
- Reconciliation and reasons of material discrepancies, in quarterly statements submitted to bank and books of accounts
- Disclosure where a company is a declared wilful defaulter by any bank or financial Institution
- Relationship with Struck off Companies
- Pending registration of charges or satisfaction with Registrar of Companies
- Compliance with number of layers of companies
- Disclosure of 11 Ratios
- Compliance with approved Scheme(s) of Arrangements

- Utilisation of Borrowed funds and share premium
- Undisclosed Income
- Disclosure regarding Corporate Social Responsibility
- Details of Crypto Currency or Virtual Currency

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NzY1Ng==&docCategory=Notifications&type=open>

3) The Companies (Accounts) Amendment Rules, 2021, (Notification No: G.S.R. 205(E), Dated March 24, 2021)

The MCA notified the Companies (Accounts) Amendment Rules, 2021 to further amend the Companies (Accounts) Rules, 2014, namely:-

(i) In Rule 3 (1) of the Companies (Accounts) Rules, 2014, the following proviso has been inserted, namely:-

"Provided that for the financial year commencing on or after the 1st day of April, 2021, every company which uses accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled."

However, the MCA vide the Companies (Accounts) Second Amendment Rules, 2021, (Notification No: G.S.R. 247(E), Dated April 01, 2021) has postponed the mandatory applicability for maintaining the Books of Accounts by every Company in an accounting software which has a feature of recording audit trail (edit log) facility by one year.

It is now applicable from April 01, 2022 instead of April 01, 2021 notified earlier.

(ii) In Rule 8(5) after clause (x) of the Companies (Accounts) Rules, 2014, the two new clauses have been inserted in the Board Report namely:

“(xi) the details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year.

(xii) the details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the Banks or Financial Institutions along with the reasons thereof.”

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0ODc=&docCategory=Notifications&type=open>

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjE3ODI=&docCategory=Notifications&type=open>

4) The Companies (Audit and Auditors) Amendment Rules, 2021 (Notification No: G.S.R. 206 (E), Dated March 24, 2021 (Amendment effective from April 01, 2021)

The MCA has notified the Companies (Audit and Auditors) Amendment Rules, 2021, to further amend the Companies (Audit and Auditors) Rules, 2014, namely:—

In Rule 11 of the Companies (Audit and Auditors) Rules, 2014, the Clause (d) is omitted.

Omitted Content

Whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in Specified Bank Notes during the period from 8th November, 2016 to 30th December, 2016 and if so, whether these are in accordance with the books of accounts maintained by the company.

(ii) After Clause (d) following clauses has been inserted namely:

(e) (i) Whether the management has represented that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;

(ii) Whether the management has represented, that, to the best of it's knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and

(iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement.

(f) Whether the dividend declared or paid during the year by the company is in compliance with section 123 of the Companies Act, 2013.

(g) Whether the company, has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility and the same has been operated throughout the year for all transactions recorded in the software and the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

However, MCA through the Companies (Audit and Auditors) Second Amendment Rules, 2021, dated April 01, 2021 has further amended Rule 11 clause (g) of the Companies (Audit and Auditors) Rules, 2014, pertaining to "Other Matters to be included in Auditors' report", where it has postponed the reporting by the Auditor in his Audit report whether the company is maintaining its Books of Accounts in an Accounting Software which has a feature of recording audit trail (edit log) facility or not.

This reporting is now applicable from April 01, 2022 instead of April 01, 2021 notified earlier.

Details of Changes

With this Amendment MCA has deleted the requirement of reporting by the Auditor in his Audit Report regarding requisite disclosures w.r.t. holdings as well as dealings in Specified Bank Notes in the financial statements of the company. Further, it has broadened the scope of reporting by the Auditors by adding more reporting requirements in the Audit Report.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0ODY=&docCategory=Notifications&type=open>

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0ODU=&docCategory=Notifications&type=open>

5) Clarification on spending of CSR funds for Awareness and public outreach on COVID-19 Vaccination programme – reg. (General Circular No. 01/ 2021, Dated January 13, 2021)

In continuation to MCA General Circular No. 10/2020 dated March 23, 2020 wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, it is further clarified that spending of CSR funds for carrying out awareness campaigns/programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no. (i), (ii) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care and sanitization, promoting education, and, disaster management respectively.

The companies may undertake the aforesaid activities subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR, issued by the MCA from time to time.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0NzM=&docCategory=Circulars&type=open>

6) Amendments under the Companies (Amendment) Act, 2019 and the Companies (Amendment) Act, 2020

The amendments related to CSR under the Companies (Amendment) Act, 2019 came into force w.e.f. 22nd January, 2021 as under:

(a) Amendments to Provisions on CSR Spending

Section 135(5) of the Companies Act, 2013 has been amended vide the Companies (Amendment) Act, 2019—

*Amended Section 135(5) provides that the Board of every company referred to in Section 135 (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years **or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years**, in pursuance of its Corporate Social Responsibility Policy.*

Provided that the company shall give preference to the local area and areas around it where it operates, for spending the amount earmarked for Corporate Social Responsibility activities:

*Provided further that if the company fails to spend such amount, the Board shall, in its report made under clause (o) of sub-section (3) of section 134, is required to specify the reasons for not spending the amount **and, unless the unspent amount relates to any ongoing project referred to in section 135(6), transfer such unspent amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.***

After Section 135 (5), the following sub-section (6), (7) & (8) is inserted, namely:—

Section 135(6)

Any amount remaining unspent under Section 135(5), pursuant to any ongoing project, fulfilling such conditions as may be prescribed, undertaken by a company in pursuance of its Corporate Social Responsibility Policy, shall be transferred by the company within a period of thirty days from the end of the financial year to a special account to be opened by the company in that behalf for that financial year in any scheduled bank to be called the Unspent Corporate Social Responsibility Account, and such amount shall be spent by the company in pursuance of its obligation towards the Corporate Social Responsibility Policy within a period of three financial years from the date of such transfer, failing

which, the company shall transfer the same to a Fund specified in Schedule VII, within a period of thirty days from the date of completion of the third financial year.

(b) The Companies (Amendment) Act, 2019 introduced Penalty for Non-Compliance of Section 135(5) & (6)

Section 135 (7)

If a company contravenes the provisions of sub-section (5) or sub-section (6) of Section 135, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to twenty-five lakh rupees and every officer of such company who is in default shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

(Note: It may be noted that the above section 135(7) is again amended by subsequent amendment by the Companies (Amendment) Act, 2020 which decriminalised the above w.e.f. same day i.e. 22nd January, 2021)

The amended Section 135(7) is as under:

If a company is in default in complying with the provisions of sub -section (5) or sub -section (6) of the Companies Act, 2013, the company shall be liable to a penalty of twice the amount required to be transferred by the company to the Fund specified in Schedule VII or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.1 crore, whichever is less, and every officer of the company who is in default shall be liable to a penalty of one -tenth of the amount required to be transferred by the company to such Fund specified in Schedule VII, or the Unspent Corporate Social Responsibility Account, as the case may be, or Rs.2 Lakhs, whichever is less.

Section 135(8)

The Central Government is empowered to give such general or special directions to a company or class of companies as it considers necessary to ensure compliance of provisions of section 135 and such company or class of companies shall comply with such directions.

The amendments related to CSR under the Companies (Amendment) Act, 2020 came into force w.e.f. 22nd January, 2021 as under:

(c) Set off of excess spending on CSR

In Section 135(5), after the second proviso, the following proviso has been inserted, namely: —

"Provided also that if the company spends an amount in excess of the requirements provided under this sub -section, such company may set off such excess amount against the requirement to spend under this sub -section for such number of succeeding financial years and in such manner, as may be prescribed.";

Details of Changes

This Amendment inserted a new provision that in case of the companies, which spends an amount in excess of the requirement of 2%, will be allowed to set off such excess amount out of their obligation to spend for such number of succeeding financial years as prescribed in the CSR Rules.

(d) A new sub -section 9 has been inserted in Section 135 of the Companies Act, 2013, namely:

Where the amount to be spent by a company under Section 135(5) of the Companies Act, 2013 does not exceed Rs. 50 Lakh, the requirement for constitution of the Corporate Social Responsibility Committee shall not be applicable and the functions of such Committee provided under this section shall, in such cases, be discharged by the Board of Directors of such company.

For details: https://www.mca.gov.in/Ministry/pdf/AMENDMENTACT_01082019.pdf

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc0OA==&docCategory=Notifications&type=open>
https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

7) The Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 (Notification No. G.S.R. 40 (E), Dated January 22, 2021)

The MCA has notified the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 to further amend the Companies (Corporate Social Responsibility Policy) Rules, 2014.

I) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, for rule 2, the following rule has been substituted, namely: -

Rule 2: Definitions

(a) "Act" means the Companies Act, 2013 (18 of 2013);

(b) "Administrative overheads" means the expenses incurred by the company for 'general management and administration' of Corporate Social Responsibility functions in the company but shall not include the expenses directly incurred for the designing, implementation, monitoring, and evaluation of a particular Corporate Social Responsibility project or programme;

(c) "Annexure" means the Annexure appended to these rules;

(d) "Corporate Social Responsibility (CSR)" means the activities undertaken by a Company in pursuance of its statutory obligation laid down in section 135 of the Companies Act, 2013 in accordance with the provisions contained in these rules, but shall not include the following, namely:-

(i) Activities undertaken in pursuance of normal course of business of the company.

Provided that any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020- 21, 2021-22, 2022-23 subject to the conditions that-

(a) such research and development activities shall be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the Act;

(b) details of such activity shall be disclosed separately in the Annual report on CSR included in the Board's Report;

(ii) any activity undertaken by the company outside India except for training of Indian sports personnel representing any State or Union territory at national level or India at international level;

(iii) contribution of any amount directly or indirectly to any political party under section 182 of the Act;

(iv) activities benefitting employees of the company as defined in clause (k) of section 2 of the Code on Wages, 2019 (29 of 2019);

(v) activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services;

(vi) activities carried out for fulfilment of any other statutory obligations under any law in force in India;

(e) **"CSR Committee"** means the Corporate Social Responsibility Committee of the Board referred to in section 135 of the Act;

(f) **"CSR Policy"** means a statement containing the approach and direction given by the board of a company, taking into account the recommendations of its CSR Committee, and includes guiding principles for selection, implementation and monitoring of activities as well as formulation of the annual action plan;

(g) **"International Organisation"** means an organisation notified by the Central Government as an international organisation under section 3 of the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), to which the provisions of the Schedule to the said Act apply;

(h) **"Net profit"** means the net profit of a company as per its financial statement prepared in accordance with the applicable provisions of the Act, but shall not include the following, namely: -

(i) any profit arising from any overseas branch or branches of the company, whether operated as a separate company or otherwise; and

(ii) any dividend received from other companies in India, which are covered under and complying with the provisions of section 135 of the Act:

Provided that in case of a foreign company covered under these rules, net profit means the net profit of such company as per profit and loss account prepared in terms of clause (a) of sub-section (1) of section 381, read with section 198 of the Act;

(i) **"Ongoing Project"** means a multi-year project undertaken by a Company in fulfilment of its CSR obligation having timelines not exceeding three years excluding the financial year in which it was commenced, and shall include such project that was initially not approved as a multi-year project but whose duration has been extended beyond one year by the board based on reasonable justification;

(j) **"Public Authority"** means 'Public Authority' as defined in clause (h) of section 2 of the Right to Information Act, 2005 (22 of 2005);

(k) **"Section"** means a section of the Act.

II) In the Companies (Corporate Social Responsibility Policy) Rules, 2014, in rule 3, in sub-rule (2), in clause (b), for the words, brackets and figure "sub-section (2) to (5)", the words, brackets and figure "sub-section (2) to (6)" shall be substituted.

After Amendment

Every company which ceases to be a company covered under section 135(1) of the Companies Act, 2013 for three consecutive financial years shall not be required to –

(a) constitute a CSR Committee; and

(b) comply with the provisions contained in sub-section (2) to (6) of Section 135 of the Companies Act, 2013, till such time it meets the criteria specified in sub-section (1) of section 135 of the Companies Act, 2013.

III) In Rule 4 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule shall be substituted, namely:-

CSR Implementation. –

(1) The Board shall ensure that the CSR activities are undertaken by the company itself or through –
(a) a company established under section 8 of the Companies Act, 2013 or a registered public trust or a registered society, registered under section 12A and 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company, or

(b) a company established under section 8 of the Companies Act, 2013 or a registered trust or a registered society, established by the Central Government or State Government; or

(c) any entity established under an Act of Parliament or a State legislature; or

(d) a company established under section 8 of the Companies Act, 2013 or a registered public trust or a registered society, registered under section 12A and 80G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.

(2) (a) Every entity, covered under sub-rule (1), who intends to undertake any CSR activity, shall register itself with the Central Government by filing the **Form CSR-1** electronically with the Registrar, with effect from the **01st day of April 2021**:

Provided that the provisions of this sub-rule shall not affect the CSR projects or programmes approved prior to the **01st day of April 2021**.

(b) Form CSR-1 shall be signed and submitted electronically by the entity and shall be verified digitally by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

(c) On the submission of the Form CSR-1 on the portal, a unique CSR Registration Number shall be generated by the system automatically.

(3) A company may engage international organisations for designing, monitoring and evaluation of the CSR projects or programmes as per its CSR policy as well as for capacity building of their own personnel for CSR.

(4) A company may also collaborate with other companies for undertaking projects or programmes or CSR activities in such a manner that the CSR committees of respective companies are in a position to report separately on such projects or programmes in accordance with these rules.

(5) The Board of a company shall satisfy itself that the funds so disbursed have been utilised for the purposes and in the manner as approved by it and the Chief Financial Officer or the person responsible for financial management shall certify to the effect.

(6) In case of ongoing project, the Board of a Company shall monitor the implementation of the project with reference to the approved timelines and year-wise allocation and shall be competent to make modifications, if any, for smooth implementation of the project within the overall permissible time period.

IV) In Rule 5(2) of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following sub-rule is substituted, namely:-

CSR Committee:

The CSR Committee shall formulate and recommend to the Board, an annual action plan in pursuance of its CSR policy, which shall include the following, namely:-

(a) the list of CSR projects or programmes that are approved to be undertaken in areas or subjects specified in Schedule VII of the Act;

(b) the manner of execution of such projects or programmes as specified in sub-rule (1) of rule 4;

- (c) the modalities of utilisation of funds and implementation schedules for the projects or programmes;
- (d) monitoring and reporting mechanism for the projects or programmes; and
- (e) details of need and impact assessment, if any, for the projects undertaken by the company:

Provided that Board may alter such plan at any time during the financial year, as per the recommendation of its CSR Committee, based on the reasonable justification to that effect.

V) Rule 6 of the Companies (Corporate Social Responsibility Policy) Rules, 2014 pertaining to CSR Policy is omitted.

VI) In Rule 7 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule is substituted, namely:-

CSR Expenditure.

(1) The board shall ensure that the administrative overheads shall not exceed five percent of total CSR expenditure of the company for the financial year.

(2) Any surplus arising out of the CSR activities shall not form part of the business profit of a company and shall be ploughed back into the same project or shall be transferred to the Unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company or transfer such surplus amount to a Fund specified in Schedule VII, within a period of six months of the expiry of the financial year.

(3) Where a company spends an amount in excess of requirement provided under sub-section (5) of section 135, such excess amount may be set off against the requirement to spend under sub-section (5) of section 135 up to immediate succeeding three financial years subject to the conditions that –

- (i) the excess amount available for set off shall not include the surplus arising out of the CSR activities, if any, in pursuance of sub-rule (2) of this rule.
- (ii) the Board of the company shall pass a resolution to that effect.

(4) The CSR amount may be spent by a company for creation or acquisition of a capital asset, which shall be held by –

- (a) a company established under section 8 of the Companies Act, 2013 or a Registered Public Trust or Registered Society, having charitable objects and CSR Registration Number under sub-rule (2) of rule 4; or
- (b) beneficiaries of the said CSR project, in the form of self-help groups, collectives, entities; or
- (c) a public authority:

Provided that any capital asset created by a company prior to the commencement of the Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021, shall within a period of one hundred and eighty days from such commencement comply with the requirement of this rule, which may be extended by a further period of not more than ninety days with the approval of the Board based on reasonable justification.

(VII) In Rule 8 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule is substituted, namely:-

CSR Reporting

(1) The Board's Report of a company covered under these rules pertaining to any financial year shall include an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(2) In case of a foreign company, the balance sheet filed under clause (b) of sub-section (1) of section 381 of the Act, shall contain an annual report on CSR containing particulars specified in Annexure I or Annexure II, as applicable.

(3) (a) Every company having average CSR obligation of ten crore rupees or more in pursuance of subsection (5) of section 135 of the Act, in the three immediately preceding financial years, shall undertake impact assessment, through an independent agency, of their CSR projects having outlays of one crore rupees or more, and which have been completed not less than one year before undertaking the impact study.

(b) The impact assessment reports shall be placed before the Board and shall be annexed to the annual report on CSR.

(c) A Company undertaking impact assessment may book the expenditure towards Corporate Social Responsibility for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or fifty lakh rupees, whichever is less.

(VIII) In Rule 9 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, the following rule is substituted, namely:-

Rule 9 - Display of CSR activities on its website

The Board of Directors of the Company shall mandatorily disclose the composition of the CSR Committee, and CSR Policy and Projects approved by the Board on their website, if any, for public access.

(IX) Rule 10 - Transfer of unspent CSR amount.

Until a fund is specified in Schedule VII for the purposes of sub-section (5) and (6) of section 135 of the Act, the unspent CSR amount, if any, shall be transferred by the company to any fund included in schedule VII of the Act.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM1MTc=&docCategory=Notifications&type=open>

8) Clarification on spending of CSR funds for setting up makeshift hospitals and temporary COVID Care facilities-reg. (General Circular No. 05/2021, Dated April 22, 2021)

In continuation to General Circular No. 10/2020 dated March 23, 2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, the MCA has further clarified that spending of CSR funds for 'setting up makeshift hospitals and temporary COVID Care facilities' is an eligible CSR activity under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

The companies may undertake the aforesaid activities in consultation with State Governments subject to fulfilment of Companies (CSR Policy) Rules, 2014 and the circulars related to CSR issued by MCA from time to time.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0Njk=&docCategory=Circulars&type=open>

9) Clarification on spending of CSR funds for ‘creating health infrastructure for COVID care’, ‘establishment of medical oxygen generation and storage plants’ etc. - reg. (General Circular No. : 09/ 2021, Dated May 05, 2021)

In continuation to General Circular No. 10/2020 dated March 23, 2020, wherein it was clarified that spending of CSR funds for COVID-19 is an eligible CSR activity, the MCA has further clarified that spending of CSR funds for ‘creating health infrastructure for COVID care’, ‘establishment of medical oxygen generation and storage plants’, ‘manufacturing and supply of Oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19’ or similar such activities are eligible CSR activities under item nos. (i) and (xii) of Schedule VII of the Companies Act, 2013 relating to promotion of health care, including preventive health care, and, disaster management respectively.

Reference is also drawn to item no. (ix) of Schedule VII of the Companies Act, 2013 which permits contribution to specified research and development projects as well as contribution to public funded universities and certain Organisations engaged in conducting research in science, technology, engineering, and medicine as eligible CSR activities.

The companies including Government companies may undertake the activities or projects or programmes using CSR funds, directly by themselves or in collaboration as shared responsibility with other companies, subject to fulfillment of the Companies (CSR Policy) Rules, 2014 and the guidelines issued by the MCA from time to time.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0NTA=&docCategory=Circulars&type=open>

Lesson 22- Divisible Profits and Dividends

1) The MCA notified commencement date for Section 23 of the Companies (Amendment) Act, 2020 (Notification dated September 28, 2020) (Amendment Effective from March 24, 2021)

The MCA has appointed March 24, 2021 as the commencement date for Section 23 of the Companies (Amendment) Act, 2020 which seeks to amend Section 124(7) of the Companies Act, 2013 by imposing Penalty on Company and every officer of the Company instead of earlier notified fine for non-compliance of Section 124 of the Companies Act, 2013 w.r.t. Unpaid Dividend Account.

Old Penal Provision

If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

New Penal Provision

If a company fails to comply with any of the requirements of Section 124, such company shall be liable to a penalty of one lakh rupees and in case of continuing failure, with a further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of ten lakh rupees and every officer of the company who is in default shall be liable to a penalty of twenty-five thousand rupees and in case of continuing failure, with a further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of two lakh rupees.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjY1OA==&docCategory=Notifications&type=open>

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

Lesson 24 Registers, Forms and Returns

1) The MCA has notified the commencement date of clause (i) of Section 23 of the Companies (Amendment) Act, 2017 (Notification No. S.O. 1066 (E), Dated March 05, 2021)

The MCA has notified March 05, 2021 as the commencement date of provision of clause (i) of Section 23 of the Companies (Amendment) Act, 2017 which seeks to amend Section 92 of the Companies Act, 2013 pertaining to Annual Return.

The amendment has inserted a proviso in Section 92(1) of the Companies Act, 2013 pertaining to the empowerment of the Central Government to prescribe abridged form of annual return for One Person Company, small company and such other class or classes of companies as may be prescribed.

Further, amendments related to omission of particulars to be mentioned in the Annual Return w.r.t. the Indebtedness of the companies and certain details regarding Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them has also been enforced.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjczMg==&docCategory=Notifications&type=open>
https://www.mca.gov.in/Ministry/pdf/CAAct2017_05012018.pdf

2) The Companies (Management and Administration) Amendment Rules, 2021 (Notification No. G.S.R. 159(E), Dated March 05, 2021)

The MCA has notified the Companies (Management and Administration) Amendment Rules, 2021 to further amend the Companies (Management and Administration) Rules, 2014.

(ii) In the Companies (Management and Administration) Rules, 2014, in Rule 11 (1), the following sub-rule shall be substituted, namely:-

“(1) Every company shall file its annual return in Form No.MGT-7 except One Person Company (OPC) and Small Company. One Person Company and Small Company shall file annual return from the financial year 2020-2021 onwards in Form No.MGT-7A”;

(iii) In the Companies (Management and Administration) Rules, 2014, in Rule 12, the following sub-rule shall be substituted, namely:-

“Filing of Annual Return with Registrar- A copy of the annual return shall be filed with the Registrar with such fees as may be specified for this purpose.”

Details of Changes

The Amendment provides that One Person Company and Small Company shall file their Annual Return under the provisions of Section 92 of the Companies Act, 2013 in Form MGT- 7A from the financial year 2020-21 onwards and every other company shall continue to file their Annual Return in Form MGT-7. Further MCA has done away with annexing extract of Annual Return in the Board's Report.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0ODk=&docCategory=Notifications&type=open>

Lesson 27-Merger, De-Merger, Amalgamation, Compromise and Arrangements-Overview

1) The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 (Notification G.S.R. 93(E), Dated February 01, 2021)

The MCA has notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2021 to further amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, in rule 25, after sub-rule (1) the following sub-rule has been inserted, namely:-

“(1A) A scheme of merger or amalgamation under section 233 of the Companies Act, 2013 may be entered into between any of the following class of companies, namely:-

- (i) two or more start-up companies; or
- (ii) one or more start-up company with one or more small company.

Explanation.- For the purposes of this sub-rule, “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 February 19, 2019 issued by the Department for Promotion of Industry and Internal Trade.”

Details of Changes:

The Notification has amended Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, allowing scheme of merger or amalgamation under section 233 of the Companies Act, 2013 (fast track mergers through relatively simpler procedure) between any of the following class of companies, namely:-

- (i) two or more start-up companies; or*
- (ii) one or more start-up company with one or more small company.*

For details: http://www.mca.gov.in/Ministry/pdf/AmalgamationsAmndtRules_02022021.pdf

2) The MCA notified the commencement date for Section 45 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 1303 (E), Dated March 24, 2021)

The MCA has appointed March 24, 2021 as the commencement date for Section 45 of the Companies (Amendment) Act, 2020 which has amended Section 247(3) of the Companies Act, 2013 by imposing penalty on valuer instead of earlier notified fine for contravention of the provisions of section 247 or the rules made thereunder.

Old Penal Provision

If a valuer contravenes the provisions of this section or the rules made thereunder, the valuer shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

New Penal Provision

“If a valuer contravenes the provisions of section 247 or the rules made thereunder, the valuer shall be *[liable to a penalty of fifty thousand rupees]*.”

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjY1OA==&docCategory=Notifications&type=open>

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

Lesson 28 Producer Companies

1) The MCA notified the commencement date for Section 52 and Section 66 of the Companies (Amendment) Act, 2020 (Notification No: S.O. 644(E), Dated February 11, 2021)

The MCA has appointed **February 11, 2021** as the commencement date of section 52 of the Companies (Amendment) Act, 2020 which is related to the insertion of new Chapter XXIA in the Companies Act, 2013 pertaining to Producer Companies.

Section 66 of the Companies (Amendment) Act, 2020 has amended Section 465 of the Companies Act, 2013 related to Repealing of certain enactments and savings respectively.

After introduction of new chapter XXIA on 'producer companies', the first proviso to section 465 (1) of the Companies Act, 2013 has been omitted which provides for the provisions of Part IXA of the erstwhile Companies Act, 1956, which was applicable to a producer company in a manner as if the Companies Act, 1956 has not been repealed until a special Act is enacted for Producer Companies.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NjczOO==&docCategory=Notifications&type=open>

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

2) The Producer Companies Rules, 2021, (Notification G.S.R. 112(E), Dated February 11, 2021)

The MCA has notified the Producer Companies Rules, 2021, on February 11, 2021 namely:-

Applicability - These rules shall apply to a Producer Company as referred in clause (I) of section 378A of the Companies Act, 2013.

Definitions- (1) In these rules, unless the context otherwise requires,-

(a) "Act" means the Companies Act, 2013;

(b) "section" means the section of the Act;

(c) "co-operative society" means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.

Words and expressions used in these rules but not defined and defined in the Companies Act, 2013 or in the Companies (Specification of Definitions Details) Rules, 2014, shall have the same meanings respectively assigned to them in the Companies Act, 2013 or in the said rules.

Change of place of registered office from one State to another. - The rules 27, 30 and 31 of the Companies (Incorporation) Rules, 2014, including the forms stated therein shall be applied for the purpose of change of place of registered office of a Producer Company from one State to another.

Investment of general reserves.- A Producer Company shall make investments from and out of its general reserves in anyone or in combination of the following, namely:--

(a) in approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or co-operative societies or scheduled bank; or

- (b) in a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- (c) with any other scheduled bank; or
- (d) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (02 of 1882); or
- (e) in the shares or securities of any other inter-State co-operative society or any co-operative society; or
- (f) in the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Companies Act, 2013.

Details of Changes

The MCA has notified the Producer Companies Rules, 2021. The new rules define the term ‘cooperative society’ for the purpose of this rule. It also specifies the rules applicable for the purpose of change of place of registered office of a Producer Company from one State to another and Investment of general reserves by a Producer Company.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0OTO=&docCategory=Notifications&type=open>

Lesson 34- An Introduction to E-Governance and XBRL

- 1) New 'Extend' functionality has been introduced as part of SPICE+ Part A in line with Rule 9A 'Extension of reservation of name in certain cases' of the Companies (Incorporation) Third Amendment Rules, 2020 with effect from January 26, 2021.

For details: <http://www.mca.gov.in/>

- 2) **The Companies (Incorporation) Third Amendment Rules, 2021 (Notification No. G.S.R. 158(E), March 05, 2021)**

The MCA has notified the Companies (Incorporation) Third Amendment Rules, 2021 to further amend the Companies (Incorporation) Rules, 2014, namely:—

In the Companies (Incorporation) Rules, 2014,- in the Annexure, in Form INC-35 AGILE-PRO, part of SPICE+, in serial number 12, at the end of Table (A), the following shall be inserted, namely.—

Do you wish to perform Aadhar authentication for GSTIN registration.

☐ Yes ☐ No

Details of Changes

With this Amendment the MCA has revised Form (INC-35) AGILE PRO to include the option to perform Aadhar authentication for GSTIN registration at the time of incorporation of Companies.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MTM0OTA=&docCategory=Notifications&type=open>

- 3) **Establishment of Central Scrutiny Centre (CSC) (Notification No: S.O.1257 (E), Dated March 18, 2021)**

The Central Government has established a Central Scrutiny Centre (CSC) for carrying out scrutiny of Straight Through Processes (STP) e-forms filed by the companies under the Companies Act, 2013 and the rules made thereunder which has come into force from March 23, 2021.

- The CSC shall function under the administrative control of the e-governance Cell of the Ministry of Corporate Affairs.
- It shall carry out scrutiny of the aforesaid forms and forward findings thereon, wherever required, to the concerned jurisdictional Registrar of Companies for further necessary action under the provisions of the Companies Act, 2013 and the rules made thereunder.
- It is located at the Indian Institute of Corporate Affairs (IICA), Plot No. 6, 7, 8, Sector 5, IMT Manesar, District Gurgaon (Haryana), Pin Code- 122050.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjU5NDc=&docCategory=Notifications&type=open>

Miscellaneous

- 1) **Section 53 of the Companies (Amendment) Act, 2020 omitted the proviso of Section 379(1) of the Companies Act, 2013 w.r.t. “Application of Act to Foreign Companies”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

Omitted Provision

Provided that the Central Government may, by Order published in the Official Gazette, exempt any class of foreign companies, specified in the Order, from any of the provisions of sections 380 to 386 and sections 392 and 393 and a copy of every such Order shall, as soon as may be after it is made, be laid before both Houses of Parliament.

Details of Changes

The proviso to Section 379(1), which has empowered the Central Government to exempt any class of foreign companies from any of the provisions of sections 380 to 386, 392 and 393 by Order published in Official Gazette has been omitted since a new provision has been inserted in Section 393A to provide the Central Government with power related to granting exemption to foreign companies.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notificati&type=open>

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

- 2) **Section 55 of the Companies (Amendment) Act, 2020 has inserted a new Section 393A of the Companies Act, 2013 w.r.t. “Exemptions under this Chapter pertaining to Companies Incorporated Outside India-Chapter XXII”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

Section 393A- The Central Government may, by notification, exempt any class of—

- (a) foreign companies;
- (b) companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India,

as may be specified in the notification, from any of the provisions of this Chapter and a copy of every such notification shall, as soon as may be after it is made, be laid before both Houses of Parliament.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MO==&docCategory=Notificati&type=open>

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

- 3) **Section 58 of the Companies (Amendment) Act, 2020 has amended Section 410 of the Companies Act, 2013 w.r.t. "Constitution of Appellate Tribunal"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

(i) in the opening portion, the words "not exceeding eleven" is omitted;

Details of Changes:

The restriction on the appointment of the number of judicial and technical members in the Appellate Tribunal by the Central Government has been removed.

(ii) in clause (b), for the word, figures and letter "section 53N", the word, figures and letter "section 53A" is substituted.

Details of Changes:

The NCLAT constituted under Section 410 of the Companies Act, 2013 is empowered to hear appeals against any direction, decision or order referred to in Section 53A of the Competition Act, 2002 in accordance with the provisions of that Act.

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

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

- 4) **Section 59 of the Companies (Amendment) Act, 2020 has inserted a new Section 418A of the Companies Act, 2013 w.r.t. "Benches of Appellate Tribunal"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

Section 418A- (1) The powers of the Appellate Tribunal may be exercised by the Benches thereof to be constituted by the Chairperson:

Provided that a Bench of the Appellate Tribunal shall have at least one Judicial Member and one Technical Member.

(2) The Benches of the Appellate Tribunal shall ordinarily sit at New Delhi or such other places as the Central Government may, in consultation with the Chairperson, notify:

Provided that the Central Government may, by notification, after consultation with the Chairperson, establish such number of Benches of the Appellate Tribunal, as it may consider necessary, to hear appeals against any direction, decision or order referred to in section 53A of the Competition Act, 2002 and under section 61 of the Insolvency and Bankruptcy Code, 2016.

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

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

- 5) **Section 60 of the Companies (Amendment) Act, 2020 has amended Section 435 of the Companies Act, 2013 w.r.t. "Establishment of Special Courts"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

In section 435 (1) of the Companies Act, 2013 for the words "offences under this Act, by notification", the words and figures "offences under this Act, except under section 452, by notification" has been substituted.

Details of Changes:

With this amendment, the offence under section 452 of the Companies Act, 2013 i.e. punishment for wrongful withholding of property, is excluded from the applicability of section 435 i.e. the Special Court.

*For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>*

- 6) **Section 62 of the Companies (Amendment) Act, 2020 has amended Section 446B of the Companies Act, 2013 w.r.t. “Lesser penalties for certain companies”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

Old Penal Provision

446B. Notwithstanding anything contained in this Act, if a One Person Company or a small company fails to comply with the provisions of sub-section (5) of section 92, sub-section (2) of section 117 or sub-section (3) of section 137, such company and officer in default of such company shall be liable to a penalty which shall not be more than one half of the penalty specified in such sections.

New Penal Provision

Notwithstanding anything contained in the Companies Act, 2013, if penalty is payable for non-compliance of any of the provisions of the Act by a One Person Company, small company, start-up company or Producer Company, or by any of its officer in default, or any other person in respect of such company, then such company, its officer in default or any other person, as the case may be, shall be liable to a penalty which shall not be more than one-half of the penalty specified in such provisions subject to a maximum of two lakh rupees in case of a company and one lakh rupees in case of an officer who is in default or any other person, as the case may be.

Explanation.—For the purposes of this section:

- (a) "Producer Company" means a company as defined in clause (l) of section 378A;
- (b) "start-up company" means a private company incorporated under this Act or under the Companies Act, 1956 and recognised as start-up in accordance with the notification issued by the Central Government in the Department for Promotion of Industry and Internal Trade.

*For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>*

- 7) **Section 64 of the Companies (Amendment) Act, 2020 has amended Section 452 of the Companies Act, 2013 w.r.t. “Punishment for Wrongful Withholding of Property”-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

In Section 452(2) of the Companies Act, 2013, the following proviso has been inserted, namely:—

"Provided that the imprisonment of such officer or employee, as the case may be, shall not be ordered for wrongful possession or withholding of a dwelling unit, if the court is satisfied that the company has not paid to that officer or employee, as the case may be, any amount relating to—

(a) provident fund, pension fund, gratuity fund or any other fund for the welfare of its officers or employees, maintained by the company;

(b) compensation or liability for compensation under the Workmen's Compensation Act, 1923 in respect of death or disablement."

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

- 8) **Section 65 of the Companies (Amendment) Act, 2020 has amended Section 454 of the Companies Act, 2013 w.r.t. "Adjudication of Penalties"-Notification dated September 28, 2020 (Amendment Effective from January 22, 2021)**

In Section 454(3) of the Companies Act, 2013, the following proviso has been inserted, namely:—

"Provided that in case the default relates to non-compliance of sub-section (4) of section 92 or sub-section (1) or sub-section (2) of section 137 and such default has been rectified either prior to, or within thirty days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded."

For details: https://www.mca.gov.in/Ministry/pdf/AmendmentAct_29092020.pdf
<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=Njc1MQ==&docCategory=Notifications&type=open>

Note: Students appearing in December, 2021 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications order etc. issued by MCA, SEBI, RBI & Central Government upto 31st May, 2021.