

Supplement for

Executive Programme (Old Syllabus)

COMPANY LAW

This supplement is for Executive programme (Old Syllabus). The students are advised to read their Study Material along with these updates. These academic updates are to facilitate the students to acquaint themselves with the amendments in various laws and regulatory prescriptions upto June, 2019, applicable for December, 2019 Examination. The students are advised to read all the relevant regulatory amendments made applicable upto June, 2019 along with the study material. In the event of any doubt, students may write to the Institute for clarifications at academics@icsi.edu

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AMENDMENT RULES/CIRCULARS/NOTIFICATIONS/ORDERS IN A NUTSHELL

(From December, 2018 to June, 2019)

Lesson 2: Share Capital	
The Companies (Amendment) Ordinance, 2019 dated 12.01.2019	<p>In section 53, for sub-section (3),</p> <p>(3) Where a company contravenes the provisions of this section, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees, or with both.</p> <p>the following sub-section shall be substituted, namely:—</p> <p>“(3) Where any company fails to comply with the provisions of this section, such company and every officer who is in default shall be liable to a penalty which may extend to an amount equal to the amount raised through the issue of shares at a discount or five lakh rupees, whichever is less, and the company shall also be liable to refund all monies received with interest at the rate of twelve per cent. per annum from the date of issue of such shares to the persons to whom such shares have been issued.”</p>
The Companies (share capital and Debentures) second Amendment Rules, 2018 Dated 07.05.2018	<p>The expression ‘Employee’ means-</p> <p>(a) A permanent employee of the company who has been working in India or outside India for at least last one year</p> <p>The word "for at least last one year" is deleted and it should be read as</p> <p>(a) A permanent employee of the company who has been working in India or outside India</p>

The Companies (Prospectus and Allotment of Securities) Amendment Rules, 2019 dated 22.01.2019	This rule shall not apply to an unlisted public company which is:- (a) a Nidhi; (b) a Government company or (c) a wholly owned subsidiary.
Lesson 3: Members and Shareholders	
The Companies (Amendment) Ordinance, 2019 dated 12.01.2019	If any person fails to make a declaration as required under sub-section (1) of section 90, he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.
The Companies (Amendment) Ordinance, 2019 dated 12.01.2019	In section 447 of the principal Act, in the second proviso, for the words “twenty lakh rupees”, the words “fifty lakh rupees” shall be substituted.

<p>The Companies (Significant Beneficial Owners) Amendment Rules, 2019 dated 08.02.2019 and The Companies (Significant Beneficial Owners) second Amendment Rules, 2019 dated 01.07.2019</p>	<p>Declaration of significant beneficial ownership under section 90</p> <p>(1) On the date of commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, every individual who is a significant beneficial owner in a reporting company, shall file a declaration in Form No. BEN-1 to the reporting company within ninety days from such commencement.</p> <p>(2) Every individual, who subsequently becomes a significant beneficial owner or where his significant beneficial ownership undergoes any change shall file a declaration in Form No. BEN-1 to the reporting company, within thirty days of acquiring such significant beneficial ownership or any change therein.</p> <p>Explanation.- Where an individual becomes a significant beneficial owner, or where his significant beneficial ownership undergoes any change, within ninety days of the commencement of the Companies (Significant Beneficial Owners) Amendment Rules, 2019, it shall be deemed that such individual became the significant beneficial owner or any change therein happened on the date of expiry of ninety days from the date of commencement of said rules, and the period of thirty days for filing will be reckoned accordingly.</p> <p>Register of significant beneficial owners</p> <p>(1) The company shall maintain a register of significant beneficial owners in Form No. BEN-3.</p> <p>(2) The register shall be open for inspection during business hours, at such reasonable time of not less than two hours, on every working day as the board may decide, by any member of the company on payment of such fee as may be specified by the company but not exceeding fifty rupees for each inspection.</p> <p>Return of significant beneficial owners in shares</p> <p>Upon receipt of declaration under rule 3, the reporting company shall file a return in Form No. BEN-2 with the Registrar in respect of such declaration, within a period of thirty days from the date of receipt of such declaration by it, along with the fees as prescribed in Companies (Registration offices and fees) Rules, 2014.</p>
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Application to the Tribunal

The reporting company shall apply to the Tribunal,

(i) where any person fails to give the information required by the notice in Form No. BEN-4, within the time specified therein; or

(ii) where the information given is not satisfactory,

in accordance with sub-section (7) of section 90, for order directing that the shares in question be subject to restrictions, including

(a) restrictions on the transfer of interest attached to the shares in question;

(b) suspension of the right to receive dividend or any other distribution in relation to the shares in question;

(c) suspension of voting rights in relation to the shares in question;

(d) any other restriction on all or any of the rights attached with the shares in question

Rule 2A. Duty of the reporting company.

(1) Every reporting company shall take necessary steps to find out if there is any individual who is a significant beneficial owner, as defined in clause (h) of rule 2, in relation to that reporting company, and if so, identify him and cause such individual to make a declaration in Form No. BEN-1.

(2) Without prejudice to the generality of the steps stated in sub-rule (1), every reporting company shall in all cases where its member (other than an individual), holds not less than ten per cent of its;-

(a) shares, or

(b) voting rights, or

(c) right to receive or participate in the dividend or any other distribution payable in a financial year,

	<p>give notice to such member, seeking information in accordance with subsection (5) of section 90, in Form No. BEN-4.</p>
<p>Lesson 4: Debt Capital</p>	
<p>The Companies (Acceptance of Deposits) Amendment Rules,2019 dated 22.01.2019</p>	<p>“Real Estate Investment Trusts” is inserted after the word “infrastructure investment trust” in (xviii)</p>
<p>Lesson 5: Charges</p>	
<p>The Companies (Registration of Charges) Amendment Rules,2019 dated 30.04.2019</p>	<p>in rule 12, 12 Condonation of Delay and Rectification of Register of Charges.</p>

(1) Where the instrument creating or modifying a charge is not filed within a period of three hundred days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within a period of three hundred days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.

(2) The application for condonation of delay and for such other matters covered in sub-clause (a),(b) and (c) of clause (i) of sub-section (1) of section 87 of the Act shall be filed with the Central Government in Form No.CHG-8along with the fee.

(3) The order passed by the Central Government under sub-section (1) of section 87 of the Act shall be required to be filed with the Registrar in Form No.INC.28 along with the fee as per the conditions stipulated in the said order.

4 Condonation of Delay by Registrar.

(1) The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of thirty days of the date of creation of the charge, allow the registration of the same after thirty days but within a period of three hundred days of the date of such creation of charge or modification of charge on payment of additional fee.

(2) The application for delay shall be made in Form No.CHG-1 and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company.

the following rules shall be substituted, namely:

"12. Rectification in register of charges on account of omission or misstatement of particulars in charge previously recorded and extension of time in filing of satisfaction of charge.-

The Central Government may on an application filed in Form No. CHG-8 in accordance with section 87-

	<p>(a) direct rectification of the omission or misstatement of any particulars, in any filing, previously recorded with the Registrar with respect to any charge or modification thereof, or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,</p> <p>(b) direct extension of time for satisfaction of charge, if such filing is not made within a period of three hundred days from the date of such payment or satisfaction."</p>
<p>The Companies (Amendment) Ordinance,2019 dated 12.01.2019</p>	<p>Substituted by the Companies (Amendment) Ordinance,2018 dated 02.11.2018</p> <p>In section 77 of the principal Act, in sub-section (1), for the first and second provisos,</p> <p>Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed:</p> <p>Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time in accordance with section 87:</p> <p>the following provisos shall be substituted, namely:-</p> <p>"Provided that the Registrar may, on an application by the company, allow such registration to be made</p> <p>(a) in case of charges created before the commencement of the Companies (Amendment) Ordinance, 2018, within a period of three hundred days of such creation; or</p> <p>(b) in case of charges created on or after the commencement of the Companies (Amendment) Ordinance, 2018, within a period of sixty days of such creation, on payment of such additional fees as may be prescribed:</p> <p>Provided further that if the registration is not made within the period specified</p> <p>(a) in clause (a) to the first proviso, the registration of the charge shall be made within six months from the date of commencement of the Companies (Amendment) Ordinance, 2018, on payment of such additional fees as may be prescribed and different fees may be prescribed for</p>

	<p>different classes of companies;</p> <p>(b) in clause (b) to the first proviso, the Registrar may, on an application, allow such registration to be made within a further period of sixty days after payment of such <i>advalorem</i> fees as may be prescribed."</p> <p>4.Substituted by the Companies (Amendment) Ordinance,2019 dated 12.01.2019 [Companies (Amendment) Ordinance 2018 is repealed on 12th January 2019]</p> <p>in clause (1),for the first and second provisos, for the numbers,"2018",the number "2019"shall be substituted.</p>
<p>The Companies (Amendment) Ordinance,2019 dated 12.01.2019</p>	<p>If any person wilfully furnishes any false or incorrect information or knowingly suppresses any material information, required to be registered in accordance with the provisions of section 77, he shall be liable for action under section 447.</p>
<p>The Companies (Amendment) Ordinance,2019 dated 12.01.2019</p>	<p>In section 87,</p> <p>87. The Central Government on being satisfied that —</p> <p>(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or</p> <p>(b) the omission or misstatement of any particulars with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,</p> <p>was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as the Central Government deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified</p>

	<p>the following shall be substituted namely:</p> <p>“87. The Central Government on being satisfied that —</p> <p>(a) the omission to give intimation to the Registrar of the payment or satisfaction of a charge, within the time required under this Chapter; or</p> <p>(b) the omission or misstatement of any particulars in any filing previously made to the Registrar with respect to any such charge or modification thereof or with respect to any memorandum of satisfaction or other entry made in pursuance of section 82 or section 83,</p> <p>was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company, it may, on the application of the company or any person interested and on such terms and conditions as it deems just and expedient, direct that the time for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or misstatement shall be rectified”</p>
<p>Lesson 7: Corporate Social Responsibility</p>	
<p>Amendment of Schedule VII by notification dated 30.05.2019</p>	<p>(xii) disaster management, including relief, rehabilitation and reconstruction activities.</p> <p>The above is included in the list of CSR activities</p>
<p>Lesson 8: Accounts, Audit and Auditors</p>	

<p>The Companies (Amendment) Ordinance,2019 dated 12.01.2019</p>	<p>Substituted by the Companies (Amendment) Ordinance,2018 dated 02.11.2018</p> <p>In section 137, in sub-section (3),for the words “punishable with fine”, the words “liable to a penalty” shall be substituted</p> <p>Substituted by the Companies (Amendment) Ordinance,2018 dated 02.11.2018</p> <p>In section 137, in sub-section (3),for the words</p> <p>punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees or with both</p> <p>the following words shall be substituted, namely:-</p> <p>shall be liable to a penalty of one lakh rupees and in case of continuing failure, with further penalty of one hundred rupees for each day after the first during which such failure continues, subject to a maximum of five lakh rupees</p> <p>8.Substituted by the Companies (Amendment) Ordinance,2019 dated 12.01.2019 [Companies (Amendment) Ordinance 2018 is repealed on 12th January 2019]</p>
<p>The Companies (Amendment) Ordinance,2019 dated 12.01.2019</p>	<p>Substituted by the Companies (Amendment) Ordinance,2018 dated 02.11.2018</p> <p>In section 140,for sub-section (3)</p> <p>If the auditor does not comply with sub-section (2), he or it shall be punishable with fine which shall not be less than fifty thousand rupees or the remuneration of the auditor, whichever is less, but which may extend to five lakh rupees.</p> <p>the following sub-section shall be substituted, namely:—</p> <p>If the auditor does not comply with the provisions of sub-section (2), he or it shall be liable to a penalty of fifty thousand rupees or an amount equal to the remuneration of the auditor, whichever is less, and in case of continuing failure, with further penalty of five hundred rupees for each day after the first during which such failure continues, subject to a maximum of five</p>

	<p>lakh rupees.</p> <p>5.Substituted by the Companies (Amendment) Ordinance,2019 dated 12.01.2019 [Companies (Amendment) Ordinance 2018 is repealed on 12th January 2019]</p>
Rule 40 of The Companies (Incorporation) Rules, 2014	Please refer Rule 40 of The Companies (Incorporation) Rules, 2014 dated 18.12.2018
Lesson 9: Transparency and Disclosures	
The Companies (Amendment) Ordinance,2019 dated 12.01.2019	<p>1.Substituted by the Companies (Amendment) Ordinance,2018 dated 02.11.2018</p> <p>In section 92,for sub-section (5),</p> <p>(5) If a company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.</p> <p>The following sub-section shall be substituted, namely:-</p> <p>“(5) If any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.”</p> <p>12.Substituted by the Companies (Amendment) Ordinance,2019 dated 12.01.2019</p>

	<p align="center">[Companies (Amendment) Ordinance 2018 is repealed on 12th January 2019]</p>
<p>Rule 25A of the Companies (Incorporation) Rules, 2014</p>	<p>25A. Active Company Tagging Identities and Verification (ACTIVE)</p> <p>(1) Every company incorporated on or before the 31st December, 2017 shall file the particulars of the company and its registered office, in e-Form ACTIVE (Active Company Tagging Identities and Verification) on or before 15.06.2019</p> <p>Provided that any company which has not filed its due financial statements under section 137 or due annual returns under section 92 or both with the Registrar shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register:</p> <p>Provided further that companies which have been struck off or are under process of striking off or under liquidation or amalgamated or dissolved, as recorded in the register, shall not be required to file e-Form ACTIVE:</p> <p>Provided also that in case a company does not intimate the said particulars, the Company shall be marked as “ACTIVE-non-compliant” on or after 16th June, 2019 and shall be liable for action under sub-section (9) of section 12 of the Act:</p> <p>Provided also that no request for recording the following event based information or changes shall be accepted by the Registrar from such companies marked as “ACTIVE-non-compliant”, unless “ e-Form ACTIVE” is filed -</p> <ul style="list-style-type: none"> (i) SH-07 (Change in Authorized Capital); (ii) PAS-03 (Change in Paid-up Capital); (iii) DIR-12 (Changes in Director except cessation); (iv) INC-22 (Change in Registered Office);

	<p>(v) INC-28 (Amalgamation,de-merger)</p> <p>(2) Where a company files “e-Form ACTIVE”, on or after 16th June, 2019, the company shall be marked as “ACTIVE Compliant”, on payment of fee of ten thousand rupees.</p>
<p>Rule 16A of the Companies (Acceptance of Deposits) Rules,2014</p>	<p>16A. Disclosures in the financial statement.-</p> <p>(1) Every company, other than a private company, shall disclose in its financial statement, by way of notes, about the money received from the director.</p> <p>(2) Every private company shall disclose in its financial statement, by way of notes, about the money received from the directors, or relatives of directors.</p> <p>(3)Every company other than Government company shall file a onetime return of outstanding receipt of money or loan by a company but not considered as deposits, in terms of clause (c) of sub-rule 1 of rule 2 from the 01st April, 2014 to 31st March 2019, as specified in Form DPT-3 within ninety days from 31st March, 2019 along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014</p>
<p>Lesson 13: An Introduction to MCA 21 and filing in XBRL</p>	
<p>Rule 38A of The Companies (Incorporation) Rules,2014</p>	<p>38A. Application for registration of Goods and Service Tax Identification Number (GSTIN), Employee State Insurance Corporation (ESIC) registration and Employees' Provident Fund Organisation (EPFO) registration</p> <p>The application for incorporation of a company under rule 38 shall be accompanied by e-form AGILE (INC-35) containing an application for registration of the following numbers, namely:-</p> <p>(a) GSTIN with effect from 31st March, 2019</p>

	(b) EPFO with effect from 8th April, 2019 (c) ESIC with effect from 15th April, 2019
	My MCA portal does not accept big attachments and the users are advised to keep the attachment size to minimum.
	New Forms DIR-3, INC-22A, BEN-2 and INC-20A should be referred
Form No.MR-2	Form of application to the Central Government for approval of appointment or reappointment of managing director or whole time director or manager.
Lesson 16: Directors	
The Companies (Amendment) Ordinance,2019 dated 12.01.2019	Following is inserted in Section 164(1) (i) he has not complied with the provisions of sub-section (1) of section 165.
The Companies (Incorporation) Fourth Amendment Rules,2018 dated 18.12.2018	Rule 23A of the Companies (Incorporation) Rules,2014 Declaration at the time of commencement of business. The declaration under section 10A by a director shall be in Form No, INC-20A and shall be filed as provided in the Companies (Registration Offices and Fees) Rules, 2014 and the contents of the said form shall be verified by a company Secretary or a chartered Accountant or a cost Accountant. in practice:

	<p>Provided that in the case of a company pursuing objects requiring registration or approval from any sectoral regulators such as the Reserve Bank of India, Securities and Exchange Board of India, etc., the registration or approval, as the case may be from such regulator shall also be obtained and attached with the declaration.</p>
<p>Rule 12A of the Companies (Appointment and Qualification of Directors) Rules,2014</p>	<p>12A Directors KYC</p> <p>Every individual who has been allotted a Director Identification Number (DIN) as on 31st March of a financial year as per these rules shall, submit e-form DIR-3-KYC to the Central Government on or before 30th June of immediate next financial year.</p> <p>Provided that every individual who has already been allotted a Director Identification Number (DIN) as at 31st March, 2018, shall submit e-form DIR-3 KYC on or before 5th October,2018.</p>
<p>The Companies (Appointment and Qualification of Directors) Second Amendment Rules,2019 dated 16.05.2019</p>	<p>Rule12B. Directors of company required to file e-form ACTIVE.-</p> <p>(1) Where a company governed by Rule 25A of the Companies (Incorporation) Rules, 2014, fails to file the e-form ACTIVE within the period specified therein, the Director Identification Number (DIN) allotted to its existing directors, shall be marked as “Director of ACTIVE non-compliant company”.</p> <p>(2) Where the DIN of a director has been marked as “Director of ACTIVE non-compliant company”, such director shall take all necessary steps to ensure that all companies governed by rule 25A of the Companies (Incorporation) Rules, 2014, where such director has been so appointed, file e-form ACTIVE.</p> <p>(3) After all the companies referred to in sub-rule (2) file the e-form ACTIVE, the DIN of such director shall be marked as “Director of ACTIVE compliant company”</p>