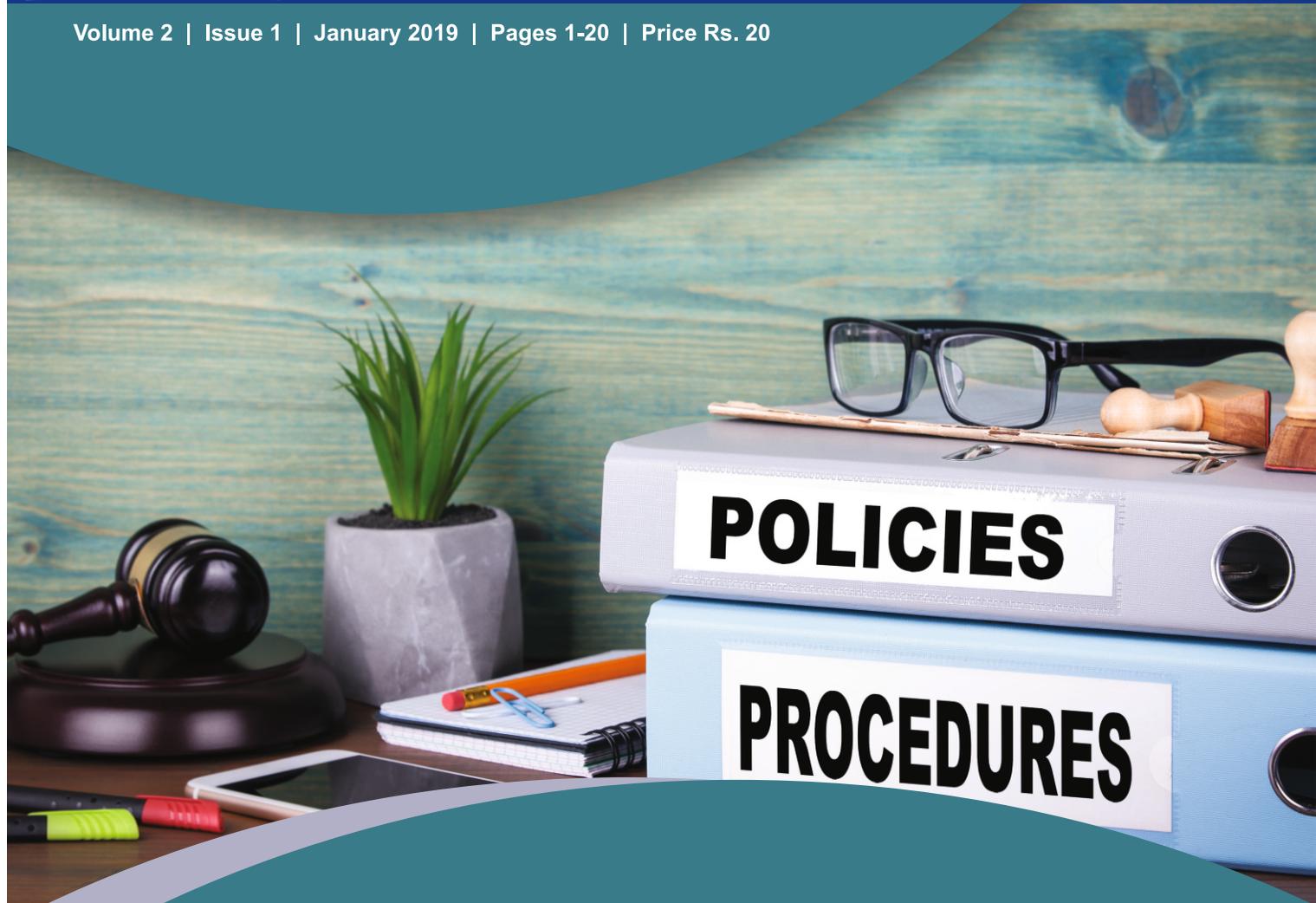




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Readers are invited to contribute article/s for the Journal. The article should be on a topic of current relevance on Corporate Law, Tax Law, or on any other matter or issue relating to Economic or Commercial Laws. The article should be original and of around 7-8 pages in word file (approx. 2500 words). Send your articles at email id : articles@vidhimaan.com along with your student registration number. The shortlisted articles shall be published in the Journal.

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MESSAGE FROM THE PRESIDENT

The Beginning is the most important part of the Work – Plato

Dear Students,

The New Year stands before us like a chapter in a book, waiting to be written. We can help write that story by setting our goals and determining ourselves to achieve them in true letter and spirit. At the outset, I wish you all a happy, prosperous and successful year ahead.

Friends, in my previous communications as a President for the Golden Jubilee Year of the Institute, I was engrossed in motivating you all for a bright future along with apprising the initiatives the Institute is taking persistently for building your capacities as the top notch professionals of the cotemporary era. But in this communication, being my first communication for year 2019, I would share few mantra to succeed as an Individual as well as a dedicated professional.

As such, there is no golden rule of success, the only fact that take you to mark success in your goals is your hard work, dedication and focused perspective towards life. Indeed, for achieving the inclusive success, setting up the goals is not the only requisite, rather one should be determined in realizing those goals with their hard work, timely efforts and application of professional expertise.

There might be endless aphorisms or mantras to motivate you towards a successful and enduring career, I would not repeat them; rather I would guide you towards 10 principles which can make you to do wonders in your life and career. To start with I would suggest-

Have a right perspective about money. Money should be the consequence of our work, but not its objective.

Dream big; start small; get it right. You must strive to become the best that you can in all that you do.

Failure may be fatal but it is never final. Never forget that no one can access success except through the doors of failure.

Develop a passion for action. Procrastination will destroy your destination.

A life without strategy is a tragedy. Strategy defines our essence of existence and it separates the best from the rest.

Adhere Honesty in business. Always remember that competition should be a motivation for innovation and not duplication.

A single moment of greed can lead to a lifetime of need. The world has enough for each man's needs but nothing for any man's greed, so never be greedy with the worldly things, rather be greedy to acquire the maximum perfection and expertise in your professional service to the nation.

Being a lone-ranger is a great danger. Keep in flock with the society. Try to return the best in you to the society for the empowerment of all.

Work smart. Be responsive with an "ever-ready" approach.

Don't forget What drives you? Always do what drives you the most, never get directed by others will on you.

Friends, these above principles are just not the words of my message to you, rather it consolidates my experience and know-how for 25 years in this profession and I am sure it would hearten our nascent professionals to lead the profession with excellence and profuse dedication in the services of the nation.

Last but not the least, let us begin our year with the New Year's resolution, '*We will be there for one another as fellow members of humanity, in the finest sense of the word.*'

With Best Wishes

CS Makarand Lele
President, ICSI



Change in Financial Year – Process Simplified

The Companies Act, 2013 requires a company to adopt uniform financial year ending i.e. March 31st. However, companies though connected with a company, yet incorporated outside India, are allowed to follow a different financial year, if they have taken prior approval from the concerned Authority. The power to grant said approval has now been vested with the Central Government. In this perspective, this article deals with the provisions and process related to change in the Financial Year.

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Financial Year

The term 'Financial Year' is defined under clause (41) of section 2 of the Companies Act, 2013. That clause mandates that every company shall follow a uniform accounting year commencing from 1st April every year and ending on 31st March next year. Only a company wanting to follow a different financial year for consolidation of its accounts outside India is allowed to do so by seeking appropriate approval. The clause was brought into force with effect from 1st April, 2014 and since then, the same has been amended two times. The clause, as in force, now reads as follows :

‘(41) “financial year”, in relation to any company or body corporate, means the period ending on the 31st day of March every year, and where it has been incorporated on or after the 1st day of January of a year, the period ending on the 31st day of March of the following year, in respect whereof financial statement of the company or body corporate is made up:

Provided that where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is

required to follow a different financial year for consolidation of its accounts outside India, the Central Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year:

Provided further that any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Ordinance, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement:

Provided also that a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.’

The Companies Act, 2013

Initially, only that company or body corporate, which was a holding company or a subsidiary of a company incorporated outside India was allowed to have any period (other than ending 31st March) as its financial year, whether or not that period is

a year, if the same was allowed by the National Company Law Tribunal (NCLT).

The Companies (Amendment) Act, 2017

The scope of clause (41) of section 2 was widened by the amendment and with effect from 9th February, 2018, a company or body corporate, which is associate company of a company incorporated outside India is also permitted to apply to the NCLT for permission to have a different financial year.

Committee Report

On 27th August, 2018, Ministry of Corporate Affairs received the 'Report of the Committee to Review Offences under the Companies Act, 2013' prepared by an expert committee set up under the Chairmanship of Mr. Injeti Srinivas. Among others, with a view to de-clog the NCLT, this Committee also suggested suitable amendments to the Companies Act, 2013. Regarding section 2(41), the Committee recommended that NCLT need not be burdened with the applications for change of financial year. These applications may be disposed at the level of Regional Director itself.

The Companies (Amendment) Ordinance, 2018

The Report resulted in the promulgation of the Companies (Amendment) Ordinance, 2018 which has been brought into force with effect from 2nd November, 2018. With regard to the financial year, the Ordinance empowered the Central Government to allow the eligible companies to have a different financial year. As a result the NCLT is relieved from the burden of approving the applications for approval of different financial year. Of course, applications pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2018, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement. In exercise of the powers conferred upon it, the Central Government has

delegated to the Regional Directors, the powers and functions vested in it with regard to clause (41) of section 2.

Companies (Incorporation) Rules, 2014

Rule 40 has been added via Companies (Incorporation) (Fourth Amendment) Rules, 2018 and the said Rule deals with making of application to the Regional Director and approval thereof. The procedure required to be followed for the same is discussed here.

Filing the Application – Rule 40(1)

The application for change in financial year needs to be filed in e-Form RD-1 along with the applicable fee accompanied by the following documents:

- ◆ Grounds and Reasons for the Application
- ◆ Copy of the Minutes of the Board Meeting at which the resolution authorising such change was passed, giving details of the number of votes cast in favour and or against the resolution
- ◆ Power of Attorney or Memorandum of Appearance, as the case may be
- ◆ Details of any previous application made within last five years for change in financial year and outcome thereof along with copy of order

Examination of application-Rule 40(2)

The application would be examined by the Regional Director and if it is found that some additional information is required or the application is defective or incomplete, an e-mail would be sent to the company to do the needful. The company would be required to furnish the information or rectify the application in e-Form RD-GNL-5 within a period of fifteen days. If required, the Regional Director may give one more opportunity to re-submit e-Form RD-GNL-5.

Rejection of application – Rule 40(3)(a)

In case where further information called for has not been provided or the defects or incompleteness has not been rectified to the satisfaction of the Regional Director, the Regional Director shall reject the application with reasons within thirty days from the date of filing application or within thirty days from the date of last re-submission made as the case may be.

Approval of application – Rule 40(3)(b)

In case where the application is found to be in order, Regional Director shall allow and convey the order within thirty days from the date of application or within thirty days from the date of last re-submission, as the case may be.

Deemed approval of application -Rule 40(3)(c)

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

Filing of the Order -Rule 40(4)

Once the order is passed by the Regional Director, the company needs to file the same with the Registrar in Form INC-28 within thirty days from the date of receipt of the order along with fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

Conclusion

The NCLT has been heavily loaded with the matters relating to not only the Companies Act but also the Insolvency and Bankruptcy Code. Therefore amendment authorising the Central Government to grant the approvals under clause (41) of section 2 is a welcome one. With insertion of the deeming approval provisions in the rules, the whole process can be followed by the corporate sector as a fast-track one by submitting the application that is complete in all respect.



KNOWLEDGE UPDATE

COMPANY LAW

Relaxation of Additional Fees and Extension of Last Date of Filing of CRA-4 (Cost Audit Report in XBRL Format)

Keeping in view the requests received from various stakeholders seeking extension of time for filing Cost Audit Report for the financial year ended 31st March, 2018 on account of various factors, Central Government, *vide* Circular No. 11/2018 dated 10th December, 2018, has decided to relax the additional fees payable by companies on CRA-4 (Cost Audit Report in XBRL format) upto 31st December, 2018, wherever additional fee is applicable.

Extension of the Last Date of Filing of Form NFRA-1

Central Government, *vide* Circular No. 12/2018 dated 13th December, 2018, has extended the time limit for filing Form NFRA-1. It will now be 30 days from the date of deployment of this form on the website of Ministry/ National Financial Reporting Authority (NFRA) for all corporate bodies governed by the said rule (excluding companies as defined under sub-section (20) of section 2 of the Companies Act, 2013, which are not required to file this Form).

Companies (Cost Records and Audit) (Amendment) Rules, 2018

Central Government, *vide* notification No. GSR 1157(E) dated 3rd December, 2018, has amended the Companies (Cost Records and Audit) Rules, 2014.

Companies (Registration of Charges) Second Amendment Rules. 2018

Central Government, *vide* notification dated 18th December, 2018, has amended the Companies (Registration of Charges) Rules, 2014 by substituting the Form CHG-4.



Shifting of Registered Office in India – A Snapshot of Legal Requirements

In this article, the author deliberates discussed the procedure of shifting of registered office as per provisions of Companies Act, 2013.

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Introduction

A registered office is the official address of a company to which all official letters and reminders are sent by any person, government or non-government or regulatory body. In terms of section 7 of the Companies Act, 2013 (“the Act”), all registered companies are legally required to have a registered office address in India from the date of commencement of business or within thirty days from the date of incorporation whichever is earlier.

Every change in the registered office within or outside the state shall be communicated to the registrar.

Modes of Shifting of Registered Office

I. Shifting of registered office within the local limit of city, town or village to another place within the limit of same city, town or village

Steps

- Call for Board meeting.
 - Issue notice of Board meeting under section 173(3)
 - Call Meeting by giving not less than 7 days’ notice in writing.
 - Prepare agenda of Board meeting.
 - Prepare attendance sheet of Board meeting.

- Filling of e-Form with ROC
 - INC-22 shall be filed with ROC within 30 days of passing of BR.
- There shall be attached to e-Form, any of the following documents:
 - the registered document of the title of the premises of the registered office in the name of the company; or
 - the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

II. Shifting of the registered office to a place outside the local limits of the existing place but in the same State under the jurisdiction of the same Registrar of Companies

Steps:

- Call for Board Meeting for holding meeting of members.
- Call for Members meeting for passing special resolution.
- Filling of e-Form with ROC:
 - MGT-14 shall be filed with ROC within 30 days of passing of special resolution.
 - INC-22 shall be filed with ROC within 30 days of passing of resolution.
- There shall be attached to e-form, any of the following documents namely:-

For e-Form INC-22

- the registered document of the title of the premises of the registered office in the name of the company; or
- the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
- the authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
- the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.

For MGT-14

- Copy of resolution passed at the meeting of board/ members/ shareholders.

III. Shifting of the registered office from the Jurisdiction of one Registrar to the Jurisdiction of another Registrar within the same State

Steps:

- Call for Board Meeting for holding meeting of members.

- Call for Members meeting for passing special resolution seeking members' approval for shifting of registered office.
- Draw up the application and file form INC. 23, supported by following documents namely:
 - Copy of minutes of meeting in which special resolution has been passed.
 - Copy of Memorandum of Association
 - Notice convening the general meeting along with explanatory statement.
 - Extract of special resolution passed by members approving the change of registered office.
 - Copies of advertisement published.
 - Copies of notice sent to creditors, debenture holder, depositor along with dispatch proof.
 - Particulars of objections received (if any);
 - Any attachment to support the details of prosecution filed against the company and its officers in default, (if any).
 - Filing copy of the application to ROC in form GNL 1.
 - Once the order is passed by the RD, approving shifting of the registered office, file form INC 22 with both the ROCs, supported by the following documents:
 - the registered document of the title of the premises of the registered office in the name of the company; or
 - the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - the authorization from the owner or authorized occupant

of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and

- the proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
- Copy of order passed by RD.

Filing of e-Form with ROC

- MGT-14 shall be filed with ROC within 30 days of passing of special resolution.
- GNL-1 for filing copy of application to ROC. It should be filed simultaneously with form INC-23.
- INC-23 for seeking approval of Regional Director. It should be at least 1 month after serving notice to creditors and publication of newspaper advertisement.
- INC-22 for shifting of registered office to be filed within 30 days of order passed by RD.
- INC-28 for filing of order copy passed by RD with ROC within 30 days.

IV. Shifting of the registered office from one State to another State in India

Steps:

- Call for Board meeting for holding meeting of members.
- Call for Members meeting for passing special resolution seeking members' approval for shifting of registered office.
- Draw up the application and file form INC 23, supported by following annexures:
 - a copy of the Memorandum and Articles of Association;
 - a copy of the notice convening the

general meeting along with relevant Explanatory Statement;

- a copy of the special resolution sanctioning the alteration by the members of the company;
- a copy of the minutes of the general meeting at which the resolution authorizing such alteration was passed, giving details of the number of votes cast in favor or against the resolution;
- an affidavit verifying the application;
- the list of creditors and debenture holders entitled to object to the application;
- an affidavit verifying the list of creditors;
- the document relating to payment of application fee;
- a copy of board resolution or Power of Attorney or the executed Vakalatnama, as the case may be.
- a list of creditors and debenture holders, drawn up to the latest practicable date preceding the date of filing of application by not more than one month, setting forth the names and address of every creditor and debenture holder of the company

- Nature and respective amounts due to them in respect of debts, claims or liabilities;
- An affidavit, signed by the company secretary, if any and not less than two directors of the company, one of whom shall be a managing director, where there is one, to the effect that they have made a full enquiry into the affairs of the company and, having done so, have formed an opinion that the list of creditors is correct, and that the estimated value as given in the list of the debts or claims payable on a contingency or not ascertained are proper estimates of the values of such debts and claims and that

there are no other debts of or claims against the company to their knowledge.

- An affidavit from the directors of the company that no employee shall be retrenched as a consequence of shifting of the registered office from one state to another state.
- File a copy of application to the Chief Secretary of the concerned State Government or the Union territory for giving notice of the proposed shifting of registered office.
- File a copy of the application along with all annexures to ROC in form GNL 1.
- File form INC 23 to Regional Director supported by the application and all annexure as stated above and a copy of the acknowledgment of service of a copy of the application with complete annexures to the Registrar (challan of form GNL 1) and Chief Secretary of the State Government or Union territory where the registered office is situated at the time of filing the application.
- At least 14 days before the date of hearing given by Regional Director:
 - Advertise the application in the Form No.INC.26 in a vernacular newspaper in the principal vernacular language in the district in which the registered office of the company is situated, and at least once in English language in an English newspaper circulating in that district;
 - Serve, by registered post with acknowledgement due, individual notice(s), on each debenture-holder and creditor of the company; and
 - Serve, by registered post with acknowledgement due, a notice together with the copy of the application to the Registrar and to the Securities and Exchange Board of India, in the case of listed companies and to the regulatory body, if the company is regulated under any special Act or law for the time being in force.
- Once the order is passed by the RD, approving shifting of the registered office, file form INC 22 with both the ROCs, supported by the following documents:
 - Registered document of the title of the premises of the registered office in the name of the company; or the notarized copy of lease or rent agreement in the name of the company along with a copy of rent paid receipt not older than one month;
 - Authorization from the owner or authorized occupant of the premises along with proof of ownership or occupancy authorization, to use the premises by the company as its registered office; and
 - Proof of evidence of any utility service like telephone, gas, electricity, etc. depicting the address of the premises in the name of the owner or document, as the case may be, which is not older than two months.
 - Copy of order passed by RD.
 - File copy of RD order with ROC in form INC 28.
 - Time limit within which following e-forms have to be filed
 - **MGT-14** within 30 days of passing of special resolution.
 - **GNL-1** simultaneously with filing of **Form INC 23**.
 - **INC-23** at least 1 month after serving notice to creditors and publication of newspaper advertisement.
 - **INC-22** within 30 days of order passed by RD
 - **INC-28** within 30 days of order passed by RD.





Changes in Incorporation Procedure of the Limited Liability Partnership Under the Limited Liability Partnership Act, 2008 – An Overview

In this article, the author discusses the procedure for incorporation of limited liability partnership along with the changes recently provided for its incorporation.

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Introduction

Limited Liability Partnership ('LLP') is one of the business form that gives the benefit of limited liability of a company and the flexibility of partnership. As per section 2(1)(n) of the Limited Liability Partnership Act, 2008 ('the Act'), "*limited liability partnership*" means a partnership formed and registered under this Act. It is a separate legal entity and Body Corporate which is separate from its partners. It can continue its existence irrespective of changes in partners, having perpetual succession. As per section 2(1)(o) of the Act, "*limited liability partnership agreement*" means any written agreement between the partners of the limited partnership or the limited liability partnership and its partners which determines the mutual rights and duties of the partners and their rights and duties in relation to that limited liability partnership. It is organised and operated on the basis of an agreement and it provides flexibility without cumbersome legal and procedural requirement. Mutual rights and duties of and partners within LLP are governed by the agreement between partners or partners and LLP. LLP contains element of corporate structure and a Partnership firm structure. It is called a hybrid between a company and a partnership. LLP is formed by the designated partners and run as per the object specified under Object Clause of the LLP agreement.

LLP is formed by the designated partners. As per section 2(1)(j) of the Act, "designated partners" means any partner designated as such pursuant to section 7. As per provisions to section 7 of the Act, LLP shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. Hence, for Incorporation only individual become designated partner of the LLP and at least one is resident in India. As per section 2(1)(q) of the Act, "partner" in relation to LLP, means any person who become the partner in the LLP and in accordance with the LLP agreement. As per Section 6(1) of the Act, every LLP shall have two partners, hence, LLP having only two designated partners, such designated partners shall be deemed as partners as per term of section 2(1)(j) of the Act.

Steps for Incorporation

- ◆ Decide the persons who will become the designated partners and subscribe their names to an incorporation document
- ◆ Collect the documents of the connected persons Like Pan, Aadhar, address proof, phone number, e-mail ID, occupation, nationality, educational qualification, place of birth, passport size photos, etc.
- ◆ Decide the form of contribution, that is, cash or kind and ratio of contribution between the

partners. It is to be noted that 'nil' contribution is not allowed.

- ◆ State in which the registered office of the proposed LLP will be situated
- ◆ Draft the Object Clause of LLP agreement
- ◆ DSC of one designated partner
- ◆ Decide the names of the LLP for name reservation
- ◆ If DIN is not available, apply for DIN
- ◆ Apply for name through RUN system
- ◆ Apply for incorporation through form FiLLiP
- ◆ Draft LLP agreement
- ◆ Information regarding LLP agreement to Registrar in Form-3
- ◆ It is to be noted that designated partners must have DIN

For Incorporation of the LLP, first step is to apply for the name of the LLP and start the procedure for incorporation and preparation of the documents of the same.

DETAILED PROCEDURE FOR INCORPORATION OF LLP

- **Draft Object Clause of the proposed LLP**
- **Reservation of name of the LLP** - Designated partners of the LLP apply for name of the proposed LLP through new system of RUN through the web-service, RUN-LLP(reserve unique name), available at www.mca.gov.in after checking the availability of name through trade mark search (on <http://ipindiaonline.gov.in/tmrpublicsearch/frmmain.aspx>) and comply with the provisions of Emblems and Names (Prevention of Improper Use) Act, 1950 as amended from time to time. If any approval required from the Authority like IRDA, RBI, etc., then apply after receiving approval of the same. If the name is emblem with other companies' name, then the approval of the said person

is required. At the time of Reservation of the name of LLP through this system main object clause may be defined. This application may either be approved or rejected, as the case may be, by the Registrar after allowing a re-submission of such application within 15 days for rectification of defects. This application is the process by Central Registration Centre (CRC) under non-STP Mode. The applicant can apply for incorporation of the LLP by filing LLP Integrated Incorporation form (FiLLiP), before expiry of the validity of approved name i.e. 3 months from the date of approval. The name (only one name allowed) can also be applied with the Integrated Incorporation Form (FiLLiP).

- **Prepare the subscribes sheet of the proposed LLP** – After getting name approval of the proposed LLP, designated partners, prepare the subscribers' sheet containing the information, i.e., name, address, occupation, designation and signature by one of the witness in the prescribed format and also give consent to act as a partner/designated partner/nominee pursuant to section 7(4) or 25(3)(c) of the Act. Illustrated format of subscriber's sheet is as follows :

We, the several partners whose names are subscribed below, are desirous of being formed into a LLP for carrying on a lawful business with a view to earn profit and have entered or agreed to enter into a LLP agreement in writing.

We respectively agree to contribute money or other property or other benefit or to perform services for the LLP in accordance with LLP agreement, the particulars of which are stated against our respective names.

We hereby give our consent to become a partner/designated partner/nominee and designated partner of the LLP pursuant to section 7(4)/ 25 (3) (c) of the Act.

(Attach details in respect of names of partners / nominees / witnesses and their signatures in the below format as subscriber’s sheet attachment)

Name & address, occupation of each partner	Designation (designated partner / partner)	Signature of designated partner / partner/ nominee of body corporate	Name, address and profession (along with professional membership number) of witness	Signature of witness

- Prepare form FiLLiP for incorporation of LLP** - MCA has introduced new form FiLLiP for incorporation of LLP, which deals with the single application for reservation of name (only one name is allowed), incorporation of a new LLP and/or application for allotment of maximum 2 DIN/DPIN. All the supporting documents are attached to this form and filed with MCA, i.e., Subscriber sheet, documents of all partners, proof of registered office, other documents as per requirement and file this form with MCA portal. Once the eForm is processed and found complete, an LLP is registered and LLPIN and Certification of Incorporation is allocated. Also DINs/DPINs are issued to the proposed designated partners/ nominee of body corporate who do not have a valid DIN/DPIN.
- Scrutiny of documents and forms by the Registrar**- On receipt of the documents, the office of the Registrar of Companies ('Registrar') in the state in which the registered office of the proposed LLP is situated will scrutinise them and if they are found complete in all respects, the Registrar will register the LLP and Allocate an LLPN. If the Registrar finds any defect or deficiency in any of the documents or forms, the Registrar will send an electronic communication pointing out the defects

and after the deficiencies are removed, the Registrar will register the company.

- Information with regard to LLP agreement**
After certification of Incorporation of LLP is received from the Registrar, the next steps is prepare the LLP agreement and file this agreement in Form-3 to the Registrar within 30 days of Incorporation.

Filing Fees

- For Reservation of Name through Reserve Unique Name (RUN)* – LLP service

Nominal Fees	Rs. 200/-
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- For FiLLiP form

Contribution value in Rs.	Fee Payable in Rs.
Up to 1,00,000	500
More than 1,00,000 up to 5,00,000	2,000
More than 5,00,000 up to 10,00,000	4,000
More than 10,00,000	5,000

- For Information with Regard to LLP Agreement

Nominal Fees	Rs. 50
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Conclusion

The procedure related to incorporation is simplified against earlier procedure stated. Now a days Registrars issue certificate of incorporation within one week if all the documents are correctly attached with FiLLiP form. This is the one of the steps towards the new era of ease of doing business in India through digitalisation.



* Refer Limited Liability Partnership (Second Amendment) Rules, 2018.

Interpersonal Relationships : A Balancing Capsulization

As technological dependence takes over 21st Century; people have been struggling more with interpersonal relationships. However, the secret to a successful interpersonal relationship was emphasised by Mark Twain in his times. He said, "It is wiser to find out than to suppose." In this article, the author delves into the concept of interpersonal relationships.

Contributed by *Brahmakumaris*

Om Shanti Retreat Centre Gurugram

Interpersonal Space

In today's world we do assume a lot of things instead of finding out the real issue and we tend to blame it either on the other person or lack of time. This is exactly where problems start intruding the interpersonal space, be it in the professional front or the personal front. In the words of Peter F. Drucker, "the most important thing in communication

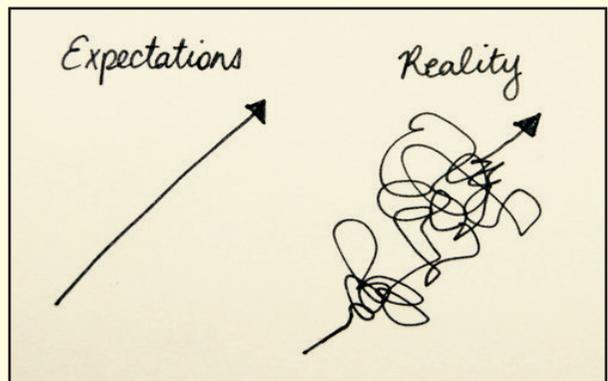


is hearing what isn't said." And if we analyse carefully, this holds true as ninety percent of our communication is happening at the subconscious level. We are thinking about someone (good or bad), rehearsing in our minds what to say to a person, getting angry with someone and not being able to vent it out; so communication is always taking place at levels. We are sending out vibrations to each other without verbal communication; and it

can be good or bad. However, we are consciously not aware that these unsaid signals do reach the other person and starts to shape our interpersonal relationships. Has it ever happened that you were overtly good with someone but did not receive a positive feedback from the same person? The response lies in the silent communication that you had in your mind; in the covert form. It is true that a person might not be aware about your internal communications; but vibrations and intentions do travel faster than words.

Pattern of expectation

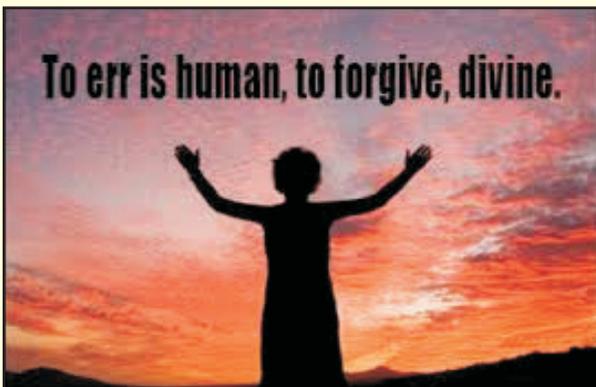
Secondly, we also set benchmarks for people and have a pattern of expectation from other people but they may be completely different and not perfectly fit the frame in our minds. In such cases, we are either struggling to make the other person



understand our point of view or dominate over to get things our way. In the process we create tension in the interpersonal space where both the people are trying to prove their points. The truth is nobody is wrong but to create harmony in interpersonal relationship it is wise to accept the other person they way he or she is. The truth is nobody will fit the perfect- expected- frame that we have created in our minds. It is an illusion. It is just realistic to accept others the way they are; with their strengths and weaknesses. Also, expect less from people as expectation creates the burden not only on the other person but also on the self. Expectations when not fulfilled leads to pain and agony. It is just fair that we do save ourselves and others of this burden. This is a process and can only happen gradually when we actively begin to work on the self. And if we are able to do this, life will actually turn out to be more beautiful.

Forgive and forget

Thirdly, it is important to forgive and forget. If we have been taken for a ride, we cannot go back and change things. Can we? So it is crucial that we are able to forgive and forget because we have to



move on. This might take time; but the more we nurture negative incidents in our minds, the more we are punishing ourselves reminding ourselves of the harm and the pain. Equally important is for us to forgive ourselves if we have done wrong to someone. It is about being kind to ourselves to be at peace, be happy in life. It is a choice that we can make to improve the quality of our lives.

Barriers and prejudice

Fourthly, barriers and prejudices occur in us are because we don't know ourselves/ our true identity and we are conceited. We are very adept at treating people differentially. Our requirements or expectations from others are not same. They can't do anything that we feel dissatisfied. So, when others do something wrong or they don't practice in accordance with our intentions, we will have opinions about them and hold biases against them. Just like the problems arising in coordinating with others, we always focus our attention on others, thinking they are wrong and imposing the responsibility on them. This brings others hurt and pains and makes others resent us. Then how can we establish a normal relationship with others? If we want to reverse this kind of state, we should reflect upon ourselves first; understand our own identity and engage our frequency in a higher dimension to be able to have good feelings and good wishes for others. Every individual will act according to his or her own nature and internalizations. This does not determine his permanent character. Situations are separate from the individual. So we should not blame or harbor ill feelings for someone based on a particular and even repeated situations. Rather we must try to emphasize; but if we disagree on some pertinent issue, we should only try to send good vibrations to the other soul or the other individual. Harboring unsaid and unconditional good feelings about someone will yield the best result. It is a matter of time that we will truly see that the individual responses and behaviour towards you will change. It is bound to change because silence speaks louder than words and genuine feelings will always touch the core of the other person; even if it is unsaid.

Appreciating qualities

Recognising qualities of others and appreciating them for that will take our interpersonal relationships a long way. In our times, it has become easier to achieve appraisals than

to achieve appreciation. If we appreciate people for what they are or their qualities; the interpersonal space will automatically become warm and comforting but the key to



remember here is genuineness or authenticity. As discussed, we cannot be good at face value and get away with negative thoughts; so if we appreciate someone it has to come from within for a better interpersonal relationship. It is fundamental to be able to have compassion for others and treat them fairly. Grasping on others' shortcomings and not letting them go will only highlight the negatives in us. No matter what problems arise, do not always think that it is because of someone else's fault but not yours. Examine more your own problems and focus on a solution based approach. Try to see more of the merits in others and then you will always remain positive from within.

Strengths and shortcomings

It is true that we possess our respective strengths and shortcomings. However, it is the will of the Universe and the Almighty that we can help and support each other. We all learn from each other's strengths to offset our weakness and live together peacefully. Only in this way can we glorify our humanism! The universe or the nature or the Almighty are so honorable and great and they never show off themselves. They silently do the work of being world benefactors all the time, bestowing upon us the truth and life. With regard to so much corruption, environmental degradation and rebelliousness in us, the

universe doesn't detest us but saves us with great tolerance, excusing our weaknesses and forgiving our rebelliousness. Then why can we not have tolerance and patience towards others; maybe just a few others?

Professional front

Finally, in the professional front, it is important to have positive vibrations for others. It is nice to lend a helping hand to others and also take a lead to genuinely address issues that can affect interpersonal communications. In the personal front interpersonal relationships require nourishment, room to grow, and maintenance in order to thrive. The vitality of a relationship is largely dependent upon effective care. When a relationship is ignored or given improper care, it is not surprising to find that it suffers as a result.

Listening and not rehearsing

Personally, whether it is your boss giving instructions or your partner sharing the deepest feelings, they are going to expect that you are listening -- really listening, not rehearsing what you are going to say when it is your turn to speak. The problem is, most of the time we are not listening to understand, we are listening to reply. By sincerely listening, you show the other person that you truly care about their feelings. This can be inculcated through spirituality and meditation practices. Spirituality works on your soul; is concerned with your intellect; of the ascendancy of your spirit; leading to refinement of your thoughts, feelings and behavior. It is a state of being kind, being benevolent yet powerful from within. It is an individual journey towards refinement and once we are on board; our interpersonal relationships will change for the better.



KNOWLEDGE UPDATE

COMPANY LAW

Companies (Incorporation) Fourth Amendment Rules, 2018

Central Government, *vide* Notification dated 18th December, 2018, has amended the Companies (Incorporation) Rules, 2014 by inserting rules 23A, 40 and 41. Rule 23A states that director shall give declaration in Form INC-20A at the time of commencement of business and the contents of forms shall be verified by a company secretary or a chartered accountant or a cost accountant in practice. Further, rule 40 states that application under clause (41) of section 2 of the companies Act, 2013 for change in financial year shall be made in e-form RD-1 with concerned Regional Directors. Rule 42 states that application under section 14 of that Act for conversion of public company into private company shall be made in e-form RD-1 with concerned Regional Directors.

Delegation of Powers to Regional Directors

Central Government, *vide* Notification dated 18th December, 2018, has delegated the powers and functions vested in it under the first proviso to clause (41) of section 2 and second proviso to sub-section (1) of section 14 of the Companies Act, 2013 to the Regional Directors at Mumbai, Kolkata, Chennai, New Delhi, Ahmedabad, Hyderabad and Shillong, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers, if in its opinion such a course of action is necessary in the public interest.

COMPETITION LAW

Central Government Appoints Ms. Sangeeta Verma, (Retd.) (IES:1981) As Member in the Competition Commission of India

Pursuant to the approval of the Appointments

Committee of the Cabinet (ACC), the Central Government, *vide* Notification No.Comp-05/9/2018-Comp-MCA dated the 11th December, 2018, has appointed Ms Sangeeta Verma, (Retd.)(IES:1981) as Member in the Competition Commission of India(CCI) for a period of 5 years from the date of assumption of charge of the post, or until further orders, whichever is earlier.

Competition Commission of India (General) (Amendment) Regulations, 2018

Central Government, *vide* notification No. L-3(2)/RegIn-Gen. (Amdt.)/2018/CCI dated 6th December, 2018, has amended the Competition Commission of India (General) Regulations, 2009 by inserting regulation 46A.

SEBI LAW

Securities and Exchange Board of India (Mutual Funds) (Fourth Amendment) Regulations, 2018

SEBI, *vide* Notification No. SEBI/LAD-NRO/GN/2018/51 dated 13th December, 2018, has amended the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996.

Clarification on Clubbing of Investment Limits of Foreign Portfolio Investors ("FPIS")

SEBI, *vide* Circular dated 13th December, 2018, has issued clarification, in reference to its circulars No CIR/IMD/FPIC/CIR/P/2018/64 dated April 10, 2018 on Know Your Client (KYC) requirements for Foreign Portfolio Investors (FPIs) and No SEBI/HO/IMD/FPIC/CIR/P/2018/66 dated April 10, 2018, on clubbing of investment limits of foreign Government/ foreign Government related entities.

Disclosure of Significant Beneficial Ownership in the Shareholding Pattern

SEBI, *vide* Circular No. SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149 dated 7th December, 2018, has specified that All listed entities shall disclose details pertaining to significant beneficial owners in the format prescribed.

Report of the Expert Committee for Listing of Equity Shares of Companies Incorporated in India on Foreign Stock Exchanges and of Companies Incorporated Outside India on Indian Stock Exchanges

SEBI, *vide* Circular dated 4th December, 2018, has issued report of the expert committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges.

Designation of Courts as Special Courts

SEBI, *vide* Notification No. SO 6033(E) dated 4th December, 2018, the Central Government, after obtaining the concurrence of the respective Chief Justices of the High Courts having jurisdiction over the courts, has designated Special Courts to exercise in respect of States of Chhattisgarh and Union Territories of Dadra and Nagar Haveli.

Securities and Exchange Board of India (Mutual Funds) (Third Amendment) Regulations, 2018

SEBI, *vide* Notification No. SEBI/LAD-NRO/GN/2018/50 dated 6th December, 2018, has amended the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 by inserting proviso after sub-regulation (3) in regulation 7B.

Deadline for Transfer of Securities only in Demat Form Extended from 5th December, 2018 To 1st April, 2019

SEBI, *vide* Press Release dated 3rd December, 2018, has extended the deadline for transfer of securities only in demat form to 1st April, 2019.

CASE LAW

Arbitration and Conciliation Act, 1996

The court situated within the territorial jurisdiction of the seat of arbitration alone will have jurisdiction to entertain application for setting aside arbitral award.

The seat of arbitration decides the territorial jurisdiction of the courts which will have exclusive jurisdiction to entertain application regulating arbitral proceeding arising out of the agreement between the parties. Applications filed under section 34 to set aside arbitral award are applications which are within section 42. Therefore, the court situated within the territorial jurisdiction of the arbitration alone will have jurisdiction to entertain an application under section 34- *SASIDHARAN V. SUNDARAM FINANCE LTD. HIGH COURT OF KERALA, Arb. A No. 23 of 2018 dated 4th July, 2018*

Erstwhile Companies Act, 1956

Winding up and insolvency being not arbitrable disputes, arbitrator cannot give any relief to a party.

The disputes relating to insolvency and winding up orders are not arbitrable disputes, and where any proceedings are filed for winding up on account of inability to pay debts, the same could not be the subject matter of any application under section 45 of the Arbitration and Conciliation Act, 1996, and the arbitrator was not capable of granting relief to a party under sections 433 and 434- *HSH NORDBANK AG V. GOODWILL HOSPITAL & RESEARCH CENTRE LTD. HIGH COURT OF DELHI, CP No. 508/2014 dated 9th July, 2018*

Companies Act, 2013

Where an open and shut case of fraudulent transfer of shares of the appellant to another person stood made out, the NCLT was right in directing rectification of register and not relegating the victim of fraud to any further proceeding.

Where shares belonging to the appellant have been transferred to another person as a result of fraud and without following the proper procedure of transfer of shares while issuing duplicate shares, the NCLT rightly held that appellant has not to be relegated to any further proceedings but the company has to be directed to rectify the register of members as

prayed for by the appellant. The NCLAT has not been right to set aside the order of the NCLT in not relegating appellant to any further proceedings as it was an open and shut case of fraud in which the appellant had been a victim- *ADESH KAUR V. EICHER MOTORS LTD. SUPREME COURT OF INDIA, CA Nos. 19426-19427 OF 2017 dated 3rd July, 2018*

Insolvency and Bankruptcy Code, 2016

Common promoters/directors of resolution applicant cannot be debarred from submitting resolution plan for a corporate debtor on the ground mentioned in clauses (a) to (i) of section 29A.

There is no bar on common promoters/directors to present resolution plan for the company undergoing corporate insolvency resolution process. Though the related party is barred from participating in the committee of creditors meeting and cannot vote, but they are not debarred from submitting a resolution plan – *J R AGRO INDUSTRIES (P.) LTD. V. SWADISHT OILS (P.) LTD. NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD BENCH CA No.59 of 2018 in CP No.(IB)13/ALD/ 2017 dated 24th July 2018*

Income tax Department cannot claim a priority in respect of clearance of tax dues of the company in liquidation, as provided under section 178(2)/(3) of the Income-tax Act, 1961

In the light of the statutory schemes obtaining under the Code and the Income-tax Act, 1961 respectively, it is clear that the Income-tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Act. In the event an assessee company goes into liquidation under the Code, the Income tax Department can no longer claim a priority in respect of clearance of tax dues of the company, as provided under section

178(2)/(3) of the Income-tax Act. The Income-tax Department, not being a secured creditor, must necessarily take recourse to distribution of the liquidation assets as per section 53- *LEO EDIBLES & FATS LTD. V. TAX RECOVERY OFFICER, HIGH COURT OF HYDERABAD Writ Petition No. 8560 of 2018 dated 26th July, 2018*

Failure to refund service tax cannot be termed as an operational debt

The undertaking given by the corporate debtor pursuant to the undertaking memorandum for refund of service tax does not fall within the definition of 'operational debt' in terms of clause (21) of section 5 petitioner being not an operational creditor and failure to refund service tax not being an operational debt, it cannot maintain petition under section 9- *CYIENT LTD. V. TECHWAVE INFOTECH (P.) LTD. NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH CP (IB) No.107/9/HDB of 2018 dated 23rd July 2018*

Mere fact that company paid interest at 12 per cent per annum during certain period, the 'debt' cannot come within the meaning of 'financial debt' to treat the respondents as financial creditors.

Where it is found that one respondent who signed and filed the application under section 7 was not eligible to file the application not being a financial creditor, the Appellate Tribunal held that the petition, at the instance of two other respondents were also not maintainable – *SANJAY KEWALRAMANI V. SUNIL PARMANAND KEWALRAMANI NATIONAL COMPANY LAW APPELLATE TRIBUNAL Company Appeal (AT) (Insolvency) No. 57 of 2018 dated 12th July 2018.*



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 THE INSTITUTE OF Company Secretaries of India भारतीय कम्पनी सचिव संस्थान IN PURSUIT OF PROFESSIONAL EXCELLENCE <small>REPUTATION THROUGH INTEGRITY AND QUALITY OF PERFORMANCE</small>				
COMPANY SECRETARIES EXAMINATIONS, JUNE, 2019				
TIME-TABLE				
EXAMINATION TIMING : 9:00 A.M. TO 12:00 Noon				
Date and Day	Executive Programme (Old Syllabus)	Executive Programme (New Syllabus)	Professional Programme (Old Syllabus)	Professional Programme (New Syllabus)
1.06.2019 Saturday	Cost and Management Accounting (Module-I)* OMR Based	Jurisprudence, Interpretation and General Laws (Module-I)	Advanced Company Law and Practice (Module - I)	Governance, Risk Management, Compliances and Ethics (Module - I)
2.06.2019 Sunday	Tax Laws and Practice (Module-I)* OMR Based	Company Law (Module-I)	Secretarial Audit, Compliance Management and Due Diligence (Module - I)	Advanced Tax Laws (Module - I)
3.06.2019 Monday	Industrial, Labour and General Laws (Module-II)* OMR Based	Setting up of Business Entities and Closure (Module-I)	Corporate Restructuring, Valuation and Insolvency (Module - I)	Drafting, Pleadings and Appearances (Module - I)
4.06.2019 Tuesday	Company Law (Module-I)	Tax Laws (Module-I)	Information Technology and Systems Audit (Module - II)	Secretarial Audit, Compliance Management and Due Diligence (Module - II)
5.06.2019 Wednesday	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION	NO EXAMINATION
6.06.2019 Thursday	Economic and Commercial Laws (Module-I)	Corporate and Management Accounting (Module-II)	Financial, Treasury and Forex Management (Module - II)	Corporate Restructuring, Insolvency, Liquidation and Winding - up (Module - II)
7.06.2019 Friday	Company Accounts and Auditing Practices (Module-II)	Securities Laws and Capital Markets (Module-II)	Ethics, Governance and Sustainability (Module - II)	Resolution of Corporate Disputes, Non-Compliances and Remedies (Module - II)
8.06.2019 Saturday	Capital Markets and Securities Laws (Module-II)	Economic, Business and Commercial Laws (Module-II)	Advanced Tax Laws and Practice (Module - III)	Corporate Funding and Listing in Stock Exchanges (Module - III)
9.06.2019 Sunday	NO EXAMINATION	Financial and Strategic Management (Module-II)	Drafting, Appearances and Pleadings (Module - III)	Multidisciplinary Case Studies (Module - III)
10.06.2019 Monday	NO EXAMINATION	NO EXAMINATION	Elective 1 out of below 5 subjects (Module - III)	
			(i) Banking Law and Practice	(i) Banking - Law and Practice
			(ii) Capital, Commodity and Money Market	(ii) Insurance - Law and Practice
			(iii) Insurance Law and Practice	(iii) Intellectual Property Rights - Laws and Practices
			(iv) Intellectual Property Rights - Law and Practice	(iv) Forensic Audit
			(v) International Business-Laws and Practices	(v) Direct Tax Laws and Practice
				(vi) Labour Laws and Practice
				(vii) Valuations and Business Modelling
	(viii) Insolvency - Law and Practice			

*(Examination in three papers, i.e., (i) Cost and Management Accounting; (ii) Tax Laws and Practice; and (iii) Industrial, Labour and General Laws be held in OMR Mode on 1st, 2nd and 3rd June, 2019 respectively)

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