



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

# **SUPPLEMENT EXECUTIVE PROGRAMME**

## **(OLD SYLLABUS)**

*For*

*December, 2024 Examination*

## **SETTING UP OF BUSINESS ENTITIES & CLOSURE**

### **MODULE 1**

### **PAPER 3**

***Students appearing in Examination shall note the following:***

*Students appearing in December, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 31 May, 2024.*

*The students are advised to acquaint themselves with the monthly and Regulatory updates published by the Institute.*

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## **PART I: SETTING UP OF BUSINESS**

### **Lesson 2 - Type of Companies**

#### **1. The Companies (Incorporation) Amendment Rules 2023 (MCA Notification No. G.S.R. 42(E) dated January 19, 2023) \***

The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Amendment Rules, 2023 to further amend the Companies (Incorporation) Rules, 2014. The provisions have come into effect from 23.01.2023. According to the amendment Forms INC-3 (One Person Company – Nominee Consent Form), INC-14 (Declaration), INC-15 (Declaration) and RD-GNL- 5 (filing addendum for rectification of defects or incompleteness) has been omitted. Further, Forms RUN, INC-4, INC-6, INC-9, INC-12, INC-13, INC-18, INC-20, INC-20A, INC-22, INC-23, INC- 24, INC-27, INC-28, INC-31, SPICE+ (INC-32), INC-33, INC-34, INC-35 (AGILE-PRO-S) and RD-1 are substituted.

#### **Brief Analysis:**

1. The amendment in rule 4(2) provides that the name of the nominee of the owner of an OPC shall be mentioned in the memorandum of One Person Company (OPC) and such nomination details along with the consent of such nominee shall be filled in Form No. INC-32 (SPICE+) as a declaration and the said Form along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 shall be filed with the Registrar at the time of incorporation of the company along with its e-memorandum and e-articles.
2. Vide this notification, Rule 20(5) is modified to introduce additional matter of consideration by the Registrar in case of issuing License under section 8 for Existing Companies, namely: -

The Registrar shall after considering two years financial statements immediately preceding the date of application or when the company has functioned only for one financial year, for such year including Board's reports and audit reports, relating to the existing companies, and after considering objections, if any received by it within thirty days from the date of publication of notice, and after consulting any authority, regulatory body, Department or Ministry of Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

***(\* Note: Section 8 companies amendments as covered under the Companies (Incorporation) Amendment Rules 2023 is also relevant for Lesson No. 12 - Identifying Laws applicable to various Industries and their Initial Compliances.)***

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQ2MzM0MjQ1&docCategory=Notifications&type=open>

## **2. Nidhi (Amendment) Rules, 2023 (MCA Notification No. G.S.R. 35(E) dated January 20, 2023) \***

The Ministry of Corporate Affairs (MCA) vide its notifications dated January 20, 2023 has notified the Nidhi (Amendment) Rules, 2023. The amended rules shall come into force with effect from January 23, 2023.

According to the amendments, Form NDH-1, NDH-2, NDH-3 and NDH-4 has been substituted pursuant to migration of set of forms from MCA V2 to MCA V3 portal.

***(\* Note: The Nidhi (Amendment) Rules, 2023 is also relevant for Lesson No. 8 - Financial Services Organisation.)***

For details: <https://egazette.gov.in/WriteReadData/2023/242165.pdf>

## **3. The Companies (Incorporation) Third Amendment Rules, 2023 (MCA Notification No. G.S.R. 790(E) dated 20th October, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated October 20, 2023 has notified “the Companies (Incorporation) Third Amendment Rules, 2023” which has come into force with effect from October 21, 2023. According to the amendment, under rule 30(9) (Shifting of Registered Office from one State or Union Territory to another State), the Ministry has come up with following two modifications:

1. The words under rule 30(9) “and may include such order as to costs as it thinks proper” shall be omitted;
2. Further the amendment inserted a new proviso to rule 30(9):

“Provided further that where the management of the company has been taken over by new management under a resolution plan approved under section 31 of the Insolvency Bankruptcy Code, 2016 and no appeal against the resolution plan is pending in any Court or Tribunal and no inquiry, inspection, investigation is pending or initiated after the approval of the said resolution plan, the shifting of the registered office may be allowed.”

**For details:**

<https://www.mca.gov.in/bin/dms/getdocument?mcs=uqnggXxHARXXjysr4uSRjQ%253D%253D&type=open>

## **Lesson 5- Formation of LLP**

### **1.The Limited Liability Partnership (Amendment) Rules, 2023 (Ministry of Corporate Affairs notification no. G.S.R. 411(E) dated June 02, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated June 02, 2023 has notified “The Limited Liability Partnership (Amendment) Rules, 2023” which shall come into force with effect from date of publication in the official gazette. The amendment revised the format of LLP Form No. 3, which pertains to “Information concerning Limited Liability Partnership Agreement and changes, if any.”

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=iiQZzbSNrcRVS%252F9wRBqOew%253D%253D&type=open>

### **2. The Limited Liability Partnership (Second Amendment) Rules, 2023 (MCA Notification No. G.S.R. 644(E)- September 01, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification G.S.R (E) dated September 01, 2023, has notified “the Limited Liability Partnership (Second Amendment) Rules, 2023” which has come into force on the date of its publication in the Official Gazette. According to the amendment the LLP Form No. 3 (Information with regard to Limited Liability Agreement and changes, if any, made therein) and LLP Form No. 4 (Notice of appointment, cessation, change in name/address/designation of designated partner or partner and consent to become a partner/designated partner) are substituted.

For details:

<https://www.mca.gov.in/bin/dms/getdocument?mds=ywlii5hvZvLABylQ7KmtNA%253D%%20253D&type=open>

### **3. The Limited Liability Partnership (Third Amendment) Rules, 2023 (MCA Notification No. G.S.R. 803(E)-October 27, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated October 27, 2023 has notified “the Limited Liability Partnership (Third Amendment) Rules, 2023” which has come into force on the date of its publication in the Official Gazette. According to the amendment Rule 22A and Rule 22B are inserted by stating matters pertaining to:

- o Every limited liability partnership shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership;
- o Declaration in respect of beneficial interest in any contribution.

#### **Brief Analysis:**

According to the Limited Liability Partnership (Third Amendment) Rules, 2023:

**i) Rule 22A-Register of Partners:** Every limited liability partnership (LLP) shall, from the date of its incorporation, maintain a register of its partners in Form 4A which shall be kept at the registered office of the limited liability partnership.

Existing LLPs shall comply within thirty days from the commencement of aforesaid amendment Rules. The register shall consist certain particulars of partners viz. name/address/PAN/date of becoming partner/cessation etc.

The entries in the register maintained under this rule shall be made within seven days pursuant to any change made in the contribution amount, or in name and details of the partners in the Limited Liability Partnership agreement, or in cases of cessation of partnership interest.

Rectifications made pursuant to orders by competent authorities must be recorded.

**ii) Rule 22B- Declaration in respect of beneficial interest in any contribution:** A person whose name is entered in the register of partners of a Limited Liability Partnership but does not hold any beneficial interest fully or partly in contribution (hereinafter referred to as “the registered partner”), such person shall file with the Limited Liability Partnership, a declaration to that effect in Form 4B within a period of thirty days from the date on which his name is entered in the register of partners specifying the name and other particulars of the person who actually holds any beneficial interest in such contributions. Changes in beneficial interest should also be reported within 30 days.

Beneficial partners who have an interest in contributions not registered in their name must file a declaration in Form 4C within 30 days. Changes in beneficial interest should also be reported within 30 days.

In case of receipt of any declaration under Form 4B or Form 4C by the Limited Liability Partnership, it shall record such declaration in the register of partners and shall file, within a period of 30 days from the date of receipt of declaration by it, a return in Form 4D to the Registrar in respect of such declaration with fees.

Every Limited Liability Partnership shall specify a designated a partner who shall be responsible for furnishing of and extending co-operation for providing, information with respect to beneficial interest in contribution in Limited Liability Partnership to the Registrar or any other officer authorised by the Central Government and shall file information of such designated partner with the Registrar in Form 4.

Further, until a designated partner is specified, every designated partner shall be deemed to be responsible for furnishing of, and extending co-operation for providing, information with respect to beneficial interest in contribution under this sub-rule.

**For details:**

<https://www.mca.gov.in/bin/dms/getdocument?mids=VYVpE7YcjovnhBqcW9gtsw%253D%253D&type=open>

**4. The Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023 (Ministry of Corporate Affairs notification no. G.S.R. 832(E) dated November 09, 2023)**

The Ministry of Corporate Affairs (MCA) vide its notification dated November 07, 2023 has notified “the Limited Liability Partnership (Significant Beneficial Owners) Rules, 2023” which has come into force on the date of its publication in the Official Gazette. The provisions of these rules shall specifically apply to all the LLPs. The aforesaid rules, conferred under section 79 of the Limited Liability Partnership Act, 2008, directs to regulate and identify significant beneficial owners in Limited Liability Partnerships and such individual to make a declaration in Form No. LLP BEN-I.

## **Brief Analysis:**

Following are the certain major rules mentioned:

1. The provisions of these rules shall specifically apply to all the LLPs. (Rule 2)
2. Aforesaid rules mentioned various definitions viz, control; majority stake; significant beneficial owner; significant influence; ultimate holding company etc. (Rule 3)
3. Duty of the reporting limited liability partnership to take necessary actions in identifying the significant beneficial owner and causing such individual to file Form No. LLP BEN-1. (Rule 4)
4. Upon receipt of declaration as mentioned above sub point, the reporting limited liability partnership shall file a return in Form No. LLP BEN-2 with the Registrar. (Rule 6)
5. The limited liability partnership shall maintain a register of significant beneficial owners in Form No. LLP BEN-3 and keep it open for inspection during the business hours for such reasonable time as mentioned in the rules. (Rule 7)
6. Rules specified Form No. LLP BEN-4 for notice seeking information about significant beneficial owners. (Rule 8)
7. Provisions related to the filing of application to the Tribunal under certain circumstances. (Rule 9)
8. Provisions related to non-applicability of aforesaid rules to the certain entities. (Rule 10)

## **For details:**

<https://www.mca.gov.in/bin/dms/getdocument?mds=pjZaasqhxL5W9F46Ukp5lw%253D%253D&type=open>

## **5. Relaxation of additional fees and extension of last date of filing of LLP BEN-2 and LLP Form No. 4D under the Limited Liability Partnership Act, 2008. (7<sup>th</sup> May,2024)**

The Ministry of corporate Affairs has notified Limited Liability partnership (significant Beneficial owners) Rules, 2023 vide G.S.R. No. 832 (E ) dated 09.11.2023 and has prescribed E-form LLP BEN-2 to file Return to the Registrar in respect of declaration under section 90 of the Companies Act, 2013.

Similarly, the Ministry of corporate Affairs has notified Limited Liability Partnership (Third Amendment) Rules, 2023 vide G.S.R. No. 803(E) dated, 27.10.2023 and prescribed E-form LLP Form no. 4D to file Return to the Registrar in respect of declaration of beneficial interest in contribution received by the LLP.

Keeping in view of transition of MCA-21 from version-2 to version-3 and to promote compliance on part of reporting Limited Liability Partnerships, and in continuation of General circulars No. 01/2024 dated 07.02.2024, it has been decided by the competent authority that LLPs may file Form LLP BEN-2 and LLP Form No. 4D, without payment of any further additional fees, up to 01.07.2024

<https://www.mca.gov.in/bin/dms/getdocument?mds=URMz2bS8F8Djdq9d7o0gpw%253D%253D&type=open>



## **LESSON 12- Conversion of Business Entities**

### **1) The Companies (Incorporation) Amendment Rules 2023 (MCA Notification No. G.S.R. 42(E) dated January 19, 2023)**

The Ministry of Corporate Affairs (MCA) has notified the Companies (Incorporation) Amendment Rules, 2023 to further amend the Companies (Incorporation) Rules, 2014. The provisions have come into effect from 23.01.2023. Vide this notification, the following amendments have been made:

1. Rule 6(3)[Conversion of One Person Company into a Public company or a Private company] is amended to reduce the number of attachments which were required be enclosed in e-Form INC-6 by stating that, 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 Act, along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 with altered e-MOA and e-AOA.

Further rule 6(4) is modified stating, on being satisfied that the requirements have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

2. Rule 7 (Conversion of private company into One Person Company) sub-rule 4 is modified to include an additional enclosure in Form no. INC-6 i.e. altered e-MOA and e-AOA, Copy of NOC of every creditor with the application of conversion and affidavit of directors confirming that all the members of the company have given their consent for conversion.

Further rule 7(5) is modified stating, on being satisfied that the requirements stated herein have been complied with, the Registrar after examining the latest audited financial statement shall approve the form and issue certificate.

3. Rule 33 (Alteration of Articles) is modified to state that, subject to the provisions of sub-rule (1), for effecting the conversion of a public company into a private company, Service Request Number (SRN) of Form No. RD- 1, pertaining to order of the Regional Director approving the alteration, shall be mentioned in Form No. INC-27 to be filed with Registrar along with fee together with the altered e-Memorandum of Association and eArticle of Association within fifteen days from the date of receipt of the order from the Regional Director.

For details:

<https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=MjQ2MzM0MjQ1&docCategory=Notifications&type=open>

## **Part B: Registration; Licenses & Compliances**

### **Lesson 13 - Various Initial Registrations and Licenses**

#### **1. Aadhaar Authentication of Enterprises**

According to Rule 5 of the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 the Ministry of Micro, Small and Medium Enterprises, having been authorised by the Central Government, hereby notifies that Aadhaar authentication of enterprises shall be performed, on voluntary basis, using Yes/No authentication facility, during the process of registration of owners of informal micro enterprises on its digital platform, to facilitate access for availing of priority sector lending.

#### **2. Provision applicable for Udyam Assist Certificate issued through Udyam Assist Platform (UAP):**

With reference to the launch and implementation of Formalization Project of the Ministry of MSME and SIDBI for bringing the Informal Micro Enterprises (IMEs) into the formal ambit, it is to be noted that the certificate issued on the Udyam Assist Platform (UAP) would be treated at par with Udyam Registration Certificate for IMEs for availing of the benefits of Priority Sector Lending (PSL).

#### **3. Case Laws**

In the case of *M/s India Glycols Limited and Another vs. Micro and Small Enterprises Facilitation Respondents Council, Medchal - Malkajgiri and Others*, Civil Appeal No 7491 of 2023 (Arising out of SLP (C) No 9899 of 2023), the Apex Court in its order dated November 6, 2023 inter alia observed that in terms of Section 19, an application for setting aside an award of the Facilitation Council cannot be entertained by any court unless the appellant has deposited seventy-five per cent of the amount in terms of the award. In view of the provisions of Section 18(4), where the Facilitation Council proceeds to arbitrate upon a dispute, the provisions of the Act of 1996 are to apply to the dispute as if it is in pursuance of an arbitration agreement under sub-section (1) of Section 7 of that Act. Hence, the remedy which is provided under Section 34 of the Act of 1996 would govern an award of the Facilitation Council. However, there is a super added condition which is imposed by Section 19 of MSME Act 2006 to the effect that an application for setting aside an award can be entertained only upon the appellant depositing with the Council seventy-five per cent of the amount in terms of the award. Section 19 has been introduced as a measure of security for enterprises for whom a special provision is made in the MSME Act by Parliament. In view of the provisions of Section 18(4), the appellant had a remedy under Section 34 of the Act of 1996 to challenge the award which it failed to pursue.

In the judgment of Supreme Court in *Gujarat State Civil Supplies Corporation Limited vs Mahakali Foods Private Limited (Unit 2) and Another* (2023) 6 SCC 401, a two-Judge Bench of the Court has observed, in the course of drawing its conclusions, that: *"The proceedings before the Facilitation Council/institute/centre acting as an arbitrator/Arbitral Tribunal*

*under Section 18(3) of the MSMED Act 2006 would be governed by the Arbitration Act, 1996.”*

#### **4. Micro, Small and Medium Enterprises Development (MSMED) Act, 2006**

In terms of Gazette Notification S.O. 2119 (E) dated June 26, 2020, an enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria viz.,

- i. a micro enterprise, where the investment in plant and machinery or equipment does not exceed ₹1 crore and turnover does not exceed ₹5 crore;
  - ii. a small enterprise, where the investment in plant and machinery or equipment does not exceed ₹10 crore and turnover does not exceed ₹50 crore; and
  - iii. a medium enterprise, where the investment in plant and machinery or equipment does not exceed ₹50 crore and turnover does not exceed ₹250 crore.
- All the above enterprises are required to register online on the Udyam Registration portal and obtain 'Udyam Registration Certificate'. For Priority Sector Lending(PSL) purposes banks shall be guided by the classification recorded in the Udyam Registration Certificate (URC).
  - Retail and Wholesale trade are included as MSMEs for the limited purpose of priority sector lending and are allowed to be registered on Udyam Registration Portal
  - The certificate issued on Udyam Assist Portal (UAP) to Informal Micro Enterprises (IMEs) shall be treated at par with Udyam Registration Certificate for the purpose of availing Priority Sector Lending benefits. IMEs with an Udyam Assist Certificate shall be treated as micro enterprises for the purpose of PSL classification.