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MCA UPDATES FROM MARCH 01, 2020 to MARCH 23, 2020**RULES****1. Companies (Registration Offices and Fees) Second Amendment Rules 2020
(March 13, 2020)**

The MCA has notified the Companies (Registration Offices and Fees) Second Amendment Rules, 2020 and the Companies (Incorporation) Second Amendment Rules, 2020 which shall come into force on the date of their publication in the official Gazette i.e 12-03-2020. The necessary amendments are carried in the respective rules to allow Insolvency professionals who are acting as IRP / RP / Liquidator to file various forms with ROC. IN Form GNL – 2, a new column is added as Filing under Insolvency and Bankruptcy Code, 2016 and in Form INC – 28, a new column is added to provide Section of Insolvency and Bankruptcy Code, 2016 under which order is passed.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/rule1_13032020.pdf

**2. Companies (Incorporation) Second Amendment Rules 2020
(March 13, 2020)**

The MCA has notified the Companies (Registration Offices and Fees) Second Amendment Rules, 2020 and the Companies (Incorporation) Second Amendment Rules, 2020 which shall come into force on the date of their publication in the official Gazette i.e 12-03-2020. The necessary amendments are carried in the respective rules to allow Insolvency professionals who are acting as IRP / RP / Liquidator to file various forms with ROC. IN Form GNL – 2, a new column is added as Filing under Insolvency and Bankruptcy Code, 2016 and in Form INC – 28, a new column is added to provide Section of Insolvency and Bankruptcy Code, 2016 under which order is passed.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/rule_13032020.pdf

3. Companies (Meetings of Board and its Powers) Amendment Rules 2020 **(March 19, 2020)**

MCA has notified the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 which shall come into force on the date of their publication in the Official Gazette i.e 19-03-2020. Considering the need to take precautionary steps to overcome the outbreak of the coronavirus (Covid-19), the MCA has relaxed the requirement of holding Board meetings with the physical presence of directors under section 173(2) r/w Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 for approval of the annual financial statements, the Board's report, etc. Such meetings may till 30th June, 2020 be held through video conferencing or other audio visual means by duly ensuring compliance of Rule 3 of the said rules.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Rules_19032020.pdf

NOTIFICATIONS

1. Exemptions to Government Companies under section 462 of the CA 2013, **(March 02, 2020)**

MCA has notified further exemptions to Government Companies under Section 462 of the Companies Act 2013 by making further amendments in the original exemption notification of the MCA dated the 5th June, 2015. Amendment is carried out to bring more clarity to the provisions particularly in the definition of Government Company by adding an Explanation stating the "paid-up share capital" shall be construed as "total voting power", where shares with differential voting rights have been issued. Further, the provisions of Section 188(1) shall not apply to a Government company in respect of contracts or arrangements entered into by it with any other Government company, or with Central Government or any State Government or any combination thereof. However, a Government company, other than a listed company, in respect of contracts or arrangements other than those referred has to obtain approval of the Ministry or Department of the Central Government which is administratively in charge of the company, or, as the case may be, the State Government before entering into such contract or arrangement.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Notification_02032020.pdf

2. Corrigendum Notification **(March 02, 2020)**

In the notification of the Government of India, in the Ministry of Corporate Affairs, number G.S.R. 114(E), dated the 14th February, 2020, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (i), dated the 14th February, 2020, at page 2, in line 9, for “rule 23A” read “rule 23A and first proviso to rule 23B”.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/rule_02032020.pdf

3. Exemption notification dated 11.3.2020 under Section 45 of the Banking Regulation Act, 1949 from the application of the provisions of Section 5 and 6 of the Competition Act, 2002 in public interest for a period of five years from the date of publication. **(March 11, 2020)**

The MCA vide its notification has exempted Banking Companies from the application of the provisions of Sections 5 and 6 of the Competition Act, 2002, in public interest for a period of five years from the date of publication of this notification. The Section 5 of the Competition Act states that the acquisition of one or more enterprises by one or more persons or merger or amalgamation of enterprises shall be a combination of such enterprises and persons or enterprises. Therefore through this notification the Banking companies are exempted from entering into a combination which causes or is likely to cause an appreciable adverse effect on competition within the relevant market in India and such a combination shall be void under section 6 of the Competition Act 2002.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/BankingNotification_11032020.pdf

CIRCULARS

1. General Circular 05/2020

(March 03, 2020)

The Ministry of Corporate Affairs has issued a clarification on prosecutions initiated against Independent Directors, non-promoters and non-KMP. MCA has clarified that prosecution proceedings will not be initiated against independent and non-executive directors without strong evidence of their complicity in frauds committed by the companies. Against the backdrop of instances of independent and non-executive directors coming under the scanner for alleged corporate misdoings, the ministry has sent out a circular to its Regional Directors, Registrars of Companies and official liquidators with respect to a prosecution proceeding. Any such proceedings must be initiated after receiving due sanction from the ministry. With respect to cases where prosecution may have been already filed and does not meet the criteria mentioned in the circular, then such cases "may be referred to the ministry for necessary examination and further direction. The circular clearly articulates the ministry's resolve and intent to give protection to independent directors and other non-executive directors from prosecution for both civil and criminal offenses, unless there is strong evidence of them being party to any fraud committed by the company.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Circular_03032020.pdf

2. General Circular 06/2020

(March 04, 2020)

MCA has notified the LLP Settlement Scheme, 2020 to give a one-time relaxation in additional fees and prosecution to defaulting LLPs thereby promoting ease of doing business. MCA has notified LLP Settlement Scheme, 2020 which shall come into force on 16th March 2020. The salient features of this scheme include the Reduction of additional fees from Rs. 100 per day to Rs. 10 per day subject to a maximum of Rs. 5000 per document. The scheme shall be applicable to Form 3 LLP, Form 4 LLP, Form 8 LLP, Form 11 LLP which is due for filing till 31st October 2019. Further, this scheme is not applicable for LLPs which have made an application in Form 24 LLP for strike-off. The last date to make good the default is 13th June 2020. The defaulting LLPs, which have filed their pending documents till 13th June 2020 and made good the default, shall not be subjected to prosecution by Registrar for such defaults.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/GeneralCircular06_04032020.pdf

3. General Circular 07/2020

(March 06, 2020)

MCA has notified the extension of the last date of filing of Form NFRA-2. The Ministry of Corporate Affairs after a due examination has considered the extension of the last date of filing of Form NFRA-2, which is required to be filed under Rule 5 of the National Financial Reporting Authority Rules, 2018. MCA has decided to extend the time limit for filing Form NFRA-2 will be 150 days (earlier 90 days) from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Circular_06032020.pdf

4. General Circular 08/2020

(March 06, 2020)

MCA has released the clarification on the Filing of forms in the Registry (MCA-21) by the Insolvency Professional (Interim Resolution Professional (IRP) or Resolution Professional (RP) or Liquidator) appointed under Insolvency Bankruptcy Code, 2016. It is clarified that the IRP/RP/Liquidator while affixing his DSC, has to choose his designation as "CEO" in the declaration box and choose "Others" from the Dropdown Menu provided in the Form. Further, the Master Data for change in the status of the company from "Active"/ "Inactive" to CIRP/ Liquidation or CIRP/Liquidation to "Active" shall be effected only on the basis of Formal Change Request Form submitted by IBBI to e-governance Cell, MCA(HQ). It is also clarified that all filings of eforms including AOC-4 and MGT-7 shall be filed through e-form GNL-2 by way of attachments till the company is under CIRP and against the date of the event and Board Resolution in INC-28 and GNL-2, date of order of NCLT/NCLAT/Court may be mentioned. Further, all forms shall be filed with payment of one time normal fee-only, till such time the company remains under CIRP. Separate GNL-2 forms shall be filed for each such document, by the IRP/RP.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Circular8_06032020.pdf

5. General Circular 09/2020

(March 12, 2020)

MCA has provided further Relaxation of additional fees and extension of the last date for filing of forms MGT-7 (Annual Return) and AOC-4 (Financial Statement) under the Companies Act, 2013 for the companies having registered office in UT of J & K and UT of Ladakh. On the basis of the requests received from various stakeholders stating that due to disturbances in internet services and the normal work was affected in the UT of J & K and UT of Ladakh and sought an extension of time for filing of financial statements for the financial year ended 31.03.2019. Therefore, it has been decided to further extend the due date for filing of e-forms AOC-4, AOC-4 (CFS) AOC4 XBRL and e-form MGT-7 up to 30.06.2020, for companies having jurisdiction in the UT of J&K and UT of Ladakh without levy of an additional fee.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/Circular_12032020.pdf

General

1. **MCA has clarified on the website of the Ministry that the New companies incorporated through SPICe+ and thereby have obtained EPFO/ESI numbers will have to file statutory returns only when they cross thresholds prescribed under the relevant Acts.** As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs would be shortly notifying & deploying a new Web Form christened 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form. SPICe+ would offer 10 services by 3 Central Govt Ministries & Departments. (Ministry of Corporate Affairs, Ministry of Labour & Department of Revenue in the Ministry of Finance) and One State Government (Maharashtra), thereby saving as many procedures, time and cost for Starting a Business in India and would be applicable to all new company incorporations. The SPICe+ would have two parts viz. Part A-for Name reservation for new companies and Part B offering a bouquet of services like Incorporation, DIN allotment; Mandatory issue of PAN; Mandatory issue of TAN; Mandatory issue of EPFO registration; Mandatory issue of ESIC registration; Mandatory issue of Profession Tax registration (Maharashtra); Mandatory Opening of Bank Account for the Company and Allotment of GSTIN (if so applied for). The clarification will certainly ease the stakeholders that all the compliance and filing of statutory returns would be applicable only when they cross thresholds prescribed under the relevant Acts.
2. **The Union Cabinet, chaired by the Prime Minister, Shri Narendra Modi has approved the Companies (Second Amendment) Bill, 2019 to amend the Companies Act, 2013.** The Bill would remove criminality under the Act in case of defaults which can be determined objectively and which, otherwise, lack the element of fraud or do not involve larger public interest. The bill will now be tabled in the Indian

Parliament. It needs to be passed by both the houses and receive Presidential assent to become a law. The key features of the Companies (Second Amendment) Bill, 2019 proposes to enable listing of Indian firms on foreign stock exchanges. The listing of Indian companies in foreign stock exchanges is expected to increase the competitiveness of Indian companies in terms of access to capital, broader investor base, and better valuations. The framework for enabling such listing under the foreign exchange and securities laws would be finalised by the Ministry of Finance in consultation with Ministry of Corporate Affairs, Reserve Bank of India and the Securities and Exchange Board of India. Over 72 amendments are proposed in the Companies Act, 2013, which are aimed at declogging of the criminal justice system in India. The new bill has also proposed re-categorization of 23 offenses.

3. **The Ministry of Corporate Affairs has sought increased involvement of the board of directors of companies in the monitoring of corporate social responsibility projects through proposed amendments in the CSR Rules.** The proposed changes aim to bring existing rules in line with amendments made last year in the Companies Act, 2013, which among others, mandate transfer of unspent amount relating to the ongoing projects of a company within 30 days from the end of a financial year to a designated bank account. This transformed the existing comply-or-explain approach under the Companies Act to a mandatory requirement. The Board must monitor and ensure that ongoing CSR projects are implemented within permissible timelines. The proposed time limit for ongoing projects under CSR rules is three years after which any unspent amount must be transferred to a dedicated account. The surplus generated out of CSR activity or project can be ploughed back into the same project. Alternatively, such surplus can be transferred to an account designated to hold unspent CSR amounts. Further, the Companies can utilise CSR funds for the creation or acquisition of new assets. However, the proposed rules mandate that such assets can only be held by a “not-for-profit company”. Companies making CSR spends cannot own such assets. Existing assets created by companies using CSR funds must meet this requirement within 270 days. Activities involving the usage of CSR funds only for the benefit of its employees or their relatives aren’t considered a CSR activity under existing rules. The MCA has now proposed a relaxation in this requirement, according to which: CSR amounts spent by a company in activities benefiting its employees would be deemed to be a CSR activity if certain conditions are met. Such beneficiaries mustn’t be more than twenty-five percent of the company’s headcount. The ministry has set a deadline of March 28 for public comments on the proposed rules.
4. **The NCLAT in view of advisory issued by the Central Government considering the Seriousness of pandemic Novel Coronavirus (COVID-19), has directed that all NCLT Benches may take up only such matters which require urgent hearings on request made by the concerned parties and the rest of the matters, from 16.3.2020 to 27.3.2020, shall be adjourned for any future date.** Further, the counsels are also advised to restrict the presence to the extent required and it is further suggested not to use Air conditioners as low temperature is conducive for aggravating the problem. Furthermore, to take adjournment, parties or counsel presence is not required, it would be managed by the Registry on their own.

5. [**The Central Government has notified the constitution of a Chennai bench of the National Company Law Appellate Tribunal**](#). As per the Centre's notification, the NCLAT, Chennai will hear appeals from the National Company Law Tribunals (NCLTs) having jurisdiction over Karnataka, Tamil Nadu, Kerala, Andhra Pradesh, Telangana, Lakshadweep and Puducherry. The NCLAT at New Delhi shall be referred to as the Principal Bench and will hear appeals other than those in the jurisdiction of the Chennai Bench. It was further notified that this will come into effect from March 18, 2020.
6. [**MCA has displayed a message on its website w.r.t Board meetings under the Companies Act, 2013**](#). MCA has published that considering the need to take precautionary steps to overcome the outbreak of the coronavirus (Covid-19), the Government has in-principle decided to relax the requirement of holding Board meetings with physical presence of directors under section 173 (2) r/w rule 4 of the Companies (Meetings of the Board and its Powers) Rules, 2014 for approval of the annual financial statements, Board's report, etc. Such meetings may till 30th June, 2020 be held through video conferencing or other audio visual means by duly ensuring compliance of rule 3 of the said rules. The necessary changes in the rules in this regard are expected to be notified soon.
7. Via [**PIB Press Release dated March 16, 2020**](#) Apart from a half-yearly return to MCA and TReDS registration by the Companies, there are two other initiatives taken by the Ministry of MSME i.e. Micro and Small Enterprises Facilitation Councils (MSEFCs) have been set up to resolve the delay payment cases and MSME SAMADHAAN portal has been launched to facilitate online registration of references related to delayed payments.
8. [**Companies Affirmation of Readiness towards COVID-19**](#) Form is a simple web form with minimum fields and which can be filed from anywhere. There is no requirement of DSC and does not involve payment of any fee. Companies/LLPs are advised to use the service w.e.f 23rd March 2020 onwards at the earliest convenience

ACTS

1. The Insolvency and Bankruptcy Code (Amendment) Act, 2020 **(March 13, 2020)**

IBC (Amendment) Ordinance, 2019 has been repealed in its place, IBC (Amendment), 2020 has come into effect, which involves following: -

1. Minimum threshold limits for certain classes of Financial creditors for initiating CIRP (Corporate Insolvency Resolution Process)
2. Provide immunity against the prosecution of the Corporate Debtor
3. Fill the critical gaps in the corporate insolvency framework
4. Prevent action against the property of such Corporate Debtor and the successful resolution applicant subject to fulfilment of certain conditions

For More Information: -

<https://ibbi.gov.in/uploads/legalframework/d36301a7973451881e00492419012542.pdf>

2. Extent of the Insolvency and Bankruptcy Code, 2016 to whole of India **(March 18, 2020)**

In exercise of the powers conferred by section 96 of the Jammu and Kashmir Reorganization Act, 2019 (34 of 2019), and of all other powers enabling it in that behalf, the Central Government hereby makes the following Order in respect of the Union territory of Jammu and Kashmir. This Order may be called the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020. It shall come into force with immediate effect. The General Clauses Act, 1897 applies for the interpretation of this Order as it applies for interpretation of laws in force in the territory of India. With immediate effect, the Acts mentioned in the Schedule to this Order shall, until repealed or amended by a competent Legislature or other competent authority, have effect, subject to the adaptations and modifications directed by the Schedule to this Order, or if it is so directed, shall stand repealed.

For More Information: -

<https://ibbi.gov.in/uploads/legalframework/a6a99b56c0e71108ceabff90aef5af8e.pdf>

CIRCULARS

1. Feature for modification of CIRP Forms submitted by an IP in compliance of regulation 40B of the CIRP Regulations, 2016 **(March 17, 2020)**

IBBI has notified the Feature for modification of CIRP Forms (including IP-1 Form) submitted by an Insolvency Professional (IP) in compliance of regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Sub-regulation (3) of regulation 40B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 mandates that an insolvency professional shall ensure that the Forms and its enclosures filed under this regulation are accurate and complete. Sub-regulation (4), however, enables modification (correction or up-dation) of a Form already filed, on payment of a fee. The Board has enabled a feature on the platform for modification of an already submitted Form. An IP may modify a Form already submitted by him by submitting a modified Form on the platform on payment of the applicable fee. However, such modification till 31st March, 2020 shall not attract any fee. IPs are advised to exercise due care and diligence while submitting a Form to avoid modification. They are also advised to submit the Forms in time. Modification of Forms or failure to file a Form in time does not reflect well on an IP and may invite action for non-compliance with sub-regulation (3).

For More Information: -

<https://ibbi.gov.in/uploads/legalframework/156d6c05fbef9e140bf622aea9a1c94e.pdf>

2. Educational Course and Continuing Education under the Companies **(Registered Valuers and Valuation) Rules, 2017** **(March 20, 2020)**

Clause (a) of sub-rule (2) of rule 12 of the Companies (Registered Values and Valuation) Rules, 2017 requires that a Registered Valuer Organisation (RVO) shall conduct educational courses in valuation, in accordance with the syllabus determined by the Authority for its valuer members. In pursuance of this, the Insolvency and Bankruptcy Board of India (IBBI), being the Authority, has determined the syllabus and has been reviewing it from time to time. In its last review notified on 14th January, 2019, effective for Examinations from 1st April, 2019, it has been specified that the educational courses shall be delivered by an RVO in not less than 50 hours in classroom mode

For More Information: -

<https://ibbi.gov.in/uploads/legalframework/924139794bdd47c5eeb827d3e01ec0b6.pdf>

3. Pre-registration Educational Course under the IBBI (Insolvency Professional) Regulations, 2016
(March 20, 2020)

The regulation 5 of the IBBI (Insolvency Professional) Regulations, 2016 (IP Regulations) provides that an individual is eligible for registration as an insolvency professional (IP), if he has, among other requirements, completed a pre-registration educational course, as may be required by the Board, from an insolvency professional agency (IPA) after his enrolment as a professional member. In pursuance of this, the Board specified the details of the preregistration educational course vide a Circular No. IPA/011/2018 dated 23 rd April, 2018 that the pre-registration educational course shall be delivered by IPAs in not less than 50 hours either in class room sessions or in MOOCS environment and the participants must have opportunity to do the tasks themselves in a near-real environment with practical examples.

For More Information: -

<https://ibbi.gov.in/uploads/legalframework/fcfb78c7a64c682ec5656dc9e281b35f.pdf>

Committee

1. Insolvency and Bankruptcy Law Committee, February 2020
(March 05, 2020)

MCA has made recommendations to the Government on issues arising from the implementation of the Insolvency and Bankruptcy Code, 2016 as well as on the recommendations received from various stakeholders.

For More Information: -

http://www.mca.gov.in/Ministry/pdf/ICLReport_05032020.pdf

Hope the information will assist you in your Professional endeavours. In case of any query / information, please do not hesitate to write back to us at E: pcschinki@gmail.com and M: +91 9050320565.

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Best Regards '

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