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भारतीय कम्पनी सचिव संस्थान

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SUPPLEMENT PROFESSIONAL PROGRAMME (New Syllabus 2022)

for

June, 2024 Examination

DRAFTING, PLEADINGS

&

APPEARANCES

GROUP 1

PAPER 2

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Lesson 5: Drafting of Commercial Contracts

FAQs on LLP Agreement

1. How the mutual rights and duties of partners inter-se and those of partners and LLPs would be governed?

The mutual rights and duties of partners inter se and those of the LLP and its partners shall be governed by the agreement between partners or between the LLP and the partners. This Agreement would be known as “LLP Agreement”.

2. Whether LLP Agreement would be mandatory for all LLPs?

As per provisions of the LLP Act, in the absence of agreement as to any matter, the mutual rights and liabilities shall be as provided for under Schedule I to the Act. Therefore, in case any LLP proposes to exclude provisions/requirements of Schedule I to the Act, it would have to enter into an LLP Agreement, specifically excluding applicability of any or all paragraphs of Schedule I.

Schedule I of the LLP Act, 2008 is provided hereunder:

The First Schedule

[See section 23(4)]

Provisions Regarding Matters Relating To Mutual Rights And Duties Of Partners And Limited Liability Partnership And Its Partners Applicable In The Absence Of Any Agreement On Such Matters

1. The mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in this Schedule.
2. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
3. The limited liability partnership shall indemnify each partner in respect of payments made and personal liabilities incurred by him
 - (a) in the ordinary and proper conduct of the business of the limited liability partnership;
or
 - (b) in or about anything necessarily done for the preservation of the business or property of the limited liability partnership.

4. Every partner shall indemnify the limited liability partnership for any loss caused to it by his fraud in the conduct of the business of the limited liability partnership.
5. Every partner may take part in the management of the limited liability partnership.
6. No partner shall be entitled to remuneration for acting in the business or management of the limited liability partnership.
7. No person may be introduced as a partner without the consent of all the existing partners.
8. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
9. Every limited liability partnership shall ensure that decisions taken by it are recorded in the minutes within thirty days of taking such decisions and are kept and maintained at the registered office of the limited liability partnership.
10. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
11. If a partner, without the consent of the limited liability partnership, carries on any business of the same nature as and competing with the limited liability partnership, he must account for and pay over to the limited liability partnership all profits made by him in that business.
12. Every partner shall account to the limited liability partnership for any benefit derived by him without the consent of the limited liability partnership from any transaction concerning the limited liability partnership, or from any use by him of the property, name or any business connection of the limited liability partnership.
13. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.
14. All disputes between the partners arising out of the limited liability partnership agreement which cannot be resolved in terms of such agreement shall be referred for arbitration as per the provisions of the Arbitration and Conciliation Act, 1996.

Lesson 12: Applications, Petitions and Appeals under Companies Act, 2013

Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 (May 15, 2023)

In the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016, for sub-rules (5) and (6) of rule 25, the following sub-rules shall be substituted, namely:-

“(5) Where no objection or suggestion is received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233, from the Registrar of Companies and Official Liquidator by the Central Government and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may, within a period of fifteen days after the expiry of said thirty days, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

Provided that if the Central Government does not issue the confirmation order within a period of sixty days of the receipt of the scheme under sub-section (2) of section 233, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.

(6) Where objections or suggestions are received within a period of thirty days of receipt of copy of scheme under sub-section (2) of section 233 from the Registrar of Companies or Official Liquidator or both by the Central Government and –

(a) such objections or suggestions of Registrar of Companies or Official Liquidator, are not sustainable and the Central Government is of the opinion that the scheme is in the public interest or in the interest of creditors, it may within a period of thirty days after expiry of thirty days referred to above, issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

(b) the Central Government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest or in the interest of creditors, it may within sixty days of the receipt of the scheme file an application before the Tribunal in Form No. CAA.13 stating the objections or opinion and requesting that Tribunal may consider the scheme under section 232 of the Act:

Provided that if the Central Government does not issue a confirmation order under clause (a) or does not file any application under clause (b) within a period of sixty days of the receipt of the scheme under subsection (2) of section 233 of the Act, it shall be deemed that it has no objection to the scheme and a confirmation order shall be issued accordingly.”.

Earlier provisions

(5) Where no objection or suggestion is received to the scheme from the Registrar of companies and official Liquidator or where the objection or suggestion of registrar and official liquidator is deemed to be not sustainable and the central government shall issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12.

(6) Where objections or suggestions are received from the registrar of companies or official liquidator and the central government is of the opinion, whether on the basis of such objections or otherwise, that the scheme is not in the public interest of creditors , it may file an application before the tribunal in Form No.CAA.13 within sixty days of the receipt of the scheme stating its objections or opinion and requesting that tribunal may consider the scheme under section 232 of the act.

Details of Change

The amended rules have included the provisions relating to deemed no objection to the scheme from Central Government under section 233 of the Companies Act, 2023. Further, the timelines, for the objections, suggestion from Registrar of Companies and Official Liquidator and confirmation from Central Government, have also been prescribed.

Lesson 13: Adjudications and Appeals under SEBI Laws

Securities and Exchange Board of India (Settlement Proceedings) (Second Amendment) Regulations, 2023(August 9, 2023)

In the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018, in regulation 23, after sub-regulation 2, following sub-regulation shall be inserted-

(2A) In case of specified proceedings which may be initiated or are proposed to be initiated, the Panel of Whole Time Members shall dispose of such proceedings on the basis of the approved settlement terms.

They shall be deemed to have come into force from January 17, 2023.

Analysis of Amendment

Sub-regulation 23(2A) has been inserted to specifically empower the Whole Time Members to *dispose of specified proceedings*.

As per regulation 2(1)(f), "specified proceedings" means the proceedings that may be initiated by the Securities and Exchange Board of India or have been initiated and are pending before the Board or any other forum, for the violation of securities laws, under Section 11, Section 11B, Section 11D, sub-Section (3) of Section 12 or Section 15-I of the Act or Section 12A or Section 23-I of the Securities Contracts (Regulation) Act, 1956 or Section 19 or Section 19H of the Depositories Act, 1996, as the case may be.

Note: Students appearing in June, 2024 Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government upto 30th November, 2023.