

RELAXATION UNDER COMPANIES ACT 2013 DUE TO COVID-19

We all are aware of the threat posed by COVID-19 pandemic to the global economy at large. It has brought economic disruptions, intrusions in business operations and other hurdles. Owing to this situation our government is taking all necessary steps to help the economy in all possible ways. Complete lockdown situation across the country made it further difficult for the companies in complying with various provisions of the Companies Act 2013 ("Act"). Therefore, it was essential to prescribe relaxations in corporate compliance requirements and accordingly, the Ministry of Corporate Affairs ("MCA") have implemented various measures stated below for reducing compliance burden on companies and other risks associated with COVID-19: -

❖ Relaxation of the requirement of holding Board meetings with physical presence of directors for approval of the restricted matters:

MCA vide its notification dated 19th March 2020 has introduced the [Companies \(Meetings of Board and its Powers\) Amendment Rules, 2020](#), and taken a preventive step to overcome the outbreak of COVID-19, the MCA has decided to relax the requirement of holding board meetings with physical presence of directors for approval of the restricted matters such as approval of the annual financial statements, approval of the board's report, approval of the prospectus, the audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board and approval of matters relating to amalgamation, merger, demerger, acquisition and takeover.

Therefore, the companies may now hold such meetings through video conferencing or other audio-visual means by duly ensuring compliance of the Companies (Meetings of Board and its Powers) Rules, 2014. These rules will be applicable from the date of introduction of these amendment rules i.e. 19th March 2020 till 30th June 2020.

❖ [MCA vide General Circular no. 11/2020 dated 24th March 2020 provided the following compliance relaxations:](#)

1. No additional fees will be charged for late filing of any documents, returns, statements, etc. required under the Act from 1st April 2020 to 30th September 2020;
2. Temporary relaxation in the time gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters i.e. till 30th September 2020, instead of 120 days as required under section 173 of the Act;
3. Companies (Auditor's Report) Order, 2020 shall be applicable from financial year 2020-2021 instead of 2019-20. This will significantly ease the burden on companies & their auditors for the financial year 2019-20.;
4. Independent Directors are required to hold at least one meeting without the attendance of Non-independent directors and members of management. However, for

the year 2019-20, if the Independent Directors of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.

5. Requirement under section 73(2)(c) of the Act to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020;
6. Requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest 15% of debentures maturing during a particular year in specified instruments before 30th April 2020, may be done so before 30th June 2020;
7. Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of incorporation under section 10A of the Act. However, an additional period of 180 more days has been allowed for this compliance;
8. Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company as required under section 149 of the Act, shall not be treated as a non-compliance for the financial year 2019-20.

❖ **MCA "Companies Fresh Start Scheme, 2020" vide General Circular no. 12 /2020 dated 30th March 2020:**

MCA in its efforts to provide relief to law abiding companies in the wake of COVID 19, has introduced the **Companies Fresh Start Scheme 2020** (herein after referred as the "**Scheme**") to provide a first of its kind opportunity to companies to make good any filing related defaults, irrespective of duration of default as stipulated under section 403 of the Act, and make a fresh start as a fully compliant entity. The Scheme has been introduced to encourage compliance and reduce compliance burden during the unexpected public health situation caused by COVID-19. The main intention of the Scheme is to provide a one-time waiver of additional filing fees for delayed filings by the companies with the MCA during the prevalence of the Scheme, i.e. during the period starting from 1st April 2020 and ending on 30th September 2020.

In addition, the Scheme is giving longer timelines for corporates to comply with various filing requirements under the Act, eventually decreasing the financial burden on them, especially for those companies with long standing defaults, thereby giving them an opportunity to make a "fresh start". The Scheme also contain provision for giving protection from any penal proceedings, including against imposition of penalties for late submissions and even provide for extra time for filing appeals before the concerned Regional Directors against imposition of penalties, if already imposed.

However, the immunity is only against delayed filings in MCA and not against any other substantive violation of law.

❖ **Clarification on passing of ordinary and special resolutions by companies under the Act**

MCA has allowed companies to pass ordinary and special resolutions of urgent nature, in view of the difficulties faced by the stakeholders on account of the threat posed by Covid-

19. As per the [General Circular No. 14/2020 dated 8th April 2020](#), it has been clarified that the Act does not contain any specific provision for allowing conduct of members' meetings through video conferencing (VC) or other audio-visual means (OAVC).

Hence, companies are requested to take all decisions of urgent nature requiring the approval of members, other than items of ordinary business or business where any person has a right to be heard, through the mechanism of postal ballot/e-voting in accordance with the provisions of the Act and rules made thereunder, without holding a general meeting, which requires physical presence of members at a common venue.

However, in case holding of an Extraordinary General Meeting (EGM) by any company is considered unavoidable, a set procedure as detailed in the aforesaid Circular needs to be adopted for convening the EGM through VC or OAVC on or before 30th June 2020.

The MCA in the [General Circular No. 17/2020 dated 13th April 2020](#), has issued further clarification regarding:

1. Manner and mode of issue of notices to members before convening the general meeting;
2. Requirement for voting by show of hands;
3. Passing of certain items only through postal ballot without convening a general meeting; and
4. Sending of e-mails by members, where a poll on any item is required for companies.

❖ **CSR FAQs COVID-19 related Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR)**

MCA vide its [General Circular No. 15/2020 dated 10th April 2020](#) has released a set of FAQs along with clarifications on eligibility of CSR expenditure related to COVID-19 activities, for better understanding of the stakeholders.

❖ **Filing under section 124 and 125 of the Act read with IEPFA (Accounting, Audit, Transfer and Refund) Rules, 2016**

As per [General Circular No. 16/2020 dated 13th April 2020](#), it has been clarified that, the MCA has already allowed filing in MCA registry without additional fees till 30th September 2020. These relaxations apply to IEPF e-forms (IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4, IEPF-7) and e-verification of claims filed in e-form IEPF-5 as well.

❖ **Holding of AGMs by companies whose financial year has ended on 31st December 2019**

MCA has clarified vide its [General Circular No. 18/2020 dated 21st April 2020](#) that if the companies whose financial year (other than first financial year) has ended on 31st December 2019, hold their AGM for such financial year within a period of nine months

from the closure of the financial year (i.e. on or before 30th September 2020), the same shall not be considered as a violation.

❖ **Extension for Names Reserved and Resubmission of Forms**

In view of the situation arising due to COVID-19 pandemic and extended lockdown period, the MCA on [22nd April 2020](#) has provided extension for names reserved and re-submission of forms expiring between 15th March 2020 to 3rd May 2020 by at least 15 to 20 days.

❖ **Relaxation in filing fees of FORMS DIR-3KYC, DIR-3KYC-WEB and ACTIVE**

MCA has recently deployed in its 'News & Important Updates' section that the DIN holders marked as 'Deactivated' due to non-filing of form DIR-3KYC or DIR-3 KYC-Web and those companies whose compliance status has been marked as "ACTIVE non-compliant" due to non-filing of Active Company Tagging Identities and Verification(ACTIVE) e-form are encouraged to become compliant once again in pursuance of the General Circulars mentioned above and file forms DIR-3KYC, DIR-3KYC-Web and ACTIVE as the case may be between 1st April 2020 to 30th September 2020 without any filing fee of INR 5000 or INR 10,000 respectively.

CONCLUSION

Evidently, the MCA is undertaking rampant initiatives to deal with present circumstances arising out of the spread of the COVID-19 virus and taking cognizance of the representations received for providing temporary relaxations in the provisions of Act.

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