

CORPORATE LAW COVID-19 AMENDMENTS 2020

With the increase in COVID 19 cases in India, the Indian Government announced a complete nationwide lockdown for 21 days starting from 00:00 hours of 25 March 2020. Knowing that this unprecedented lockdown will further disrupt the business continuity of all sectors, the Hon'ble Finance Minister, Ms. Nirmala Sitharaman (FM) on the afternoon of 24 March 2020 announced a slew of fiscal and monetary stimulus measures giving companies a huge sigh of relief in these trying times. Continuing the theme of FM, the Ministry of Corporate Affairs (MCA) in the evening of 24 March 2020 granted further relaxations from few statutory compliances under the Companies Act, 2013 (CA 2013) to companies and limited liability partnerships (LLP) vide a circular bearing no. 11/2020. These new relaxations are in addition to earlier relaxations granted by MCA on 19 March 2020 – elaborated in our earlier Ergos dated 21 March 2020 and 24 March 2020.

SUMMARY OF ADDITIONAL RELAXATIONS:

1. **Additional filing fees waived:** There will be a moratorium from 1 April 2020 to 30 September 2020 (Moratorium Period) on levying any late/ additional fees upon filings of any returns, statements, document etc. by companies or LLPs on the MCA portal irrespective of the due date of such filings. The benefit of this moratorium will be available not only for those forms and returns which are due during the Moratorium Period but also for those which were already due prior to the Moratorium Period. The benefit of this relaxation can be availed by existing defaulting companies. This would lead to a reduction of not only in the compliance burden but also the financial burden.
2. **Extension of interval between two board meetings:** As per the CA 2013, a company is required to hold a minimum of 4 board meetings every year with a maximum time gap of 120 days between two consecutive board meetings. The MCA has extended this time gap of 120 days by 60 days thereby increasing the interval limit between two consecutive board meetings to a maximum of 180 days. This one-time relaxation is available for the next two quarters i.e. up to 30 September 2020. Consequently, this aims at reducing the requirement to hold board meetings during the COVID 19 pandemic in adherence with social distancing measures. Since 19 March 2020, the MCA has already amended the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 (Amended Meeting Rules) to relax the requirement of holding board meetings with physical presence of directors for certain matters including inter-alia approval of financial statements and the report of the board of directors. For discussion and approval of such matters, holding of meetings through video conferencing or other audio-visual means has been permitted till 30 June 2020. Further, in order to curb public gathering, the Indian companies (mainly unlisted public companies and private companies) may consider providing the facility of "Remote e-Voting" to its shareholders to cast their votes on

a resolution proposed at a general meeting. Please click [here](#) to see a detailed report released by Khaitan & Co. on the relevant laws and procedure of e-voting.

3. Meetings of Independent Directors: Schedule IV of the CA 2013 mandates the independent directors (ID) of a company to hold at least one meeting in a financial year without the attendance of non-independent directors and members of management. Since the ID meeting is required to (i) review the performance of non-independent directors and the board of directors as a whole; (ii) review the performance of the chairperson taking into account the views of executive and non-executive directors; and (iii) assess the quality, quantity and timeliness of flow of information between the management and the board of directors, it is usual to hold such ID meetings towards the end of financial year. Considering the lockdown imposed in India due to the current pandemic situation across the world, the IDs may not have adequate time and information at hand to convene such ID meeting. Further, in the light of social distancing measures recommended by the Indian Government, the IDs will not be able to hold such meetings physically before 31 March 2020. In these circumstances, the MCA has clarified that if, the IDs are not able to hold at least one ID meeting during the financial year 2019-20, the MCA will not view it as a non-compliance of the statutory provisions. However, the MCA has encouraged the IDs to share their views amongst themselves through telephone, email or any other mode of communication, as they may deem fit. In the light of this relaxation, the IDs are free to decide to not hold the meeting at all and just share their views by means of a conference call or emails. The IDs may also hold the ID meeting through a video conference facility or other audio-visual means. In our view, this relaxation is limited to leniency towards the IDs' inability to hold such meeting within the regulatory timeline. The ID meeting pertaining to the financial year 2019-20 must be held, although, it may be convened after the end of the financial year.
4. Auditor's Report: The MCA had earlier on 25 February 2020 announced a new format of report of the statutory audits of companies, namely Companies (Auditor's Report) Order, 2020 (CARO 2020) replacing the earlier order under Companies (Auditor's Report) Order, 2016. CARO 2020 was made applicable for all statutory audits commencing on or after 1 April 2019 corresponding to the financial year 2019-20. The MCA has now postponed the applicability of CARO 2020 to the financial year 2020-21. This will significantly reduce the burden on the companies and its auditors to deal with more than 25 additional checks introduced under CARO 2020.
5. Deposit Provisions: Exercise of borrowing powers through acceptance of deposits is quite common for public companies in India, subject to compliance under the Companies (Acceptance of Deposits) Rules, 2014. A company, having outstanding deposits, is required to deposit at least 20% of the amount of its deposits maturing during the following financial year, into a separate deposit repayment reserve on or before 30 April of each year. For the deposits maturing in the financial year 2020-21, the MCA has extended the due date for deposit into the deposit repayment reserve to 30 June 2020. In the current market scenario, this extension will facilitate liquidity crunch situation faced by many companies, who have accepted deposits.

6. Declaration of Commencement of Business: A newly established company is required to file declaration for commencement of new business (Form 20-A) within 6 months of its incorporation. However, considering the hardships being faced by the newly incorporated companies, the MCA has extended the timeline for such compliance from 6 months to 1 year from the date of incorporation.
7. Resident Status of Director: Under CA 2013, every company is required to have at least one director who has stayed in India for a period of minimum 182 days during a financial year. Due to prolonged travel ban across several countries (including India), it is possible that the 'resident' director may not be able to comply with the minimum 182 days' stay in India during the financial year 2019-20. Realizing such difficulties, the MCA will not treat the non-fulfillment of the minimum stay as a non-compliance for the financial year 2019-20.
8. Debentures Maturing on 31 March 2021: As per Rule 18 (7) of the Companies (Share Capital and Debentures Rules), 2014, all companies (other than all Indian financial institutions and banking companies) are required to invest or deposit a sum not less than 15% of the amount of debentures maturing during the year, ending on 31 March of the following year. Such amount may be invested using one or more of the methods of investments or deposits namely, (a) deposits with any scheduled bank, free from any charge or lien; (b) unencumbered securities of the Central Government or any State Government; (c) unencumbered securities mentioned in sub-clause (a) to (d) and (ee) of section 20 of the Indian Trusts Act, 1882; and (d) unencumbered bonds issued by any other company which is notified under sub-clause (f) of section 20 of the Indian Trusts Act, 1882.

Such investments/ deposits are required to be made on or before the 30 April in each year and must at no time fall below 15% of the value of the debentures maturing on the 31 of March of a particular financial year (Maturing Debentures). Further, such amounts cannot be used for any purpose other than for redemption of the Maturing Debentures.

MCA has extended the last date of this deposit and investment compliance to 30 June 2020 in respect of the debentures maturing during the financial year ending on 31 March 2021. This is a welcome move. The relaxation on the timeline shall provide companies the much-needed flexibility in this turbulent period and the liquidity crisis arising from this unprecedented situation. The MCA is expected to issue necessary circulars and notifications regarding the above relaxations in due course.

Comments:

In the current lockdown scenario, the relaxations granted by MCA from a few of the compliance requirements will definitely ease the burden on the management of the companies and LLPs for a few months. In particular, the waiver of additional fees will help long-standing non-compliant companies and LLPs to make a fresh start. However, by waiving the additional fees, does the MCA intend to condone the delay in filing forms by the companies/ LLPs and absolve them from the relevant non-compliance under the CA 2013? Hopefully, this aspect will be clarified by MCA in the circulars to follow.

PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

Sl. No	Issue description	Period/Days of Extension
1	Names reserved for 20 days for new company incorporation. SPICe+ Part B needs to be filed within 20 days of name reservation.	Names expiring any day between 15 th March 2020 to 3 rd May would be extended by 20 days beyond 3 rd May 2020.
2	Names reserved for 60 days for change of name of company. INC-24 needs to be filed within 60 days of name reservation.	Names expiring any day between 15 th March 2020 to 3 rd May would be extended by 20 days beyond 3 rd May 2020.
3	Extension of RSUB validity for companies.	SRNs where last date of Resubmission (RSUB) falls between 15 th March 2020 to 3 rd May 2020, additional 15 days beyond 3 rd May 2020 would be allowed. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non- resubmission during this extended period as detailed above.
4	Names reserved for 90 days for new LLP incorporation/change of name. FiLLiP/Form 5 needs to be filed within 90 days of name reservation.	Names expiring any day between 15 th March 2020 to 3 rd May would be extended by 20 days beyond 3 rd May 2020.
5	RSUB validity extension for LLPs.	SRNs where last date of resubmission (RSUB) falls between 15 th March 2020 to 3 rd May 2020, additional 15 days would be allowed from 3 rd May 2020 for resubmission. However, for SRNs already marked under NTBR, extension would be provided on case to case basis. Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non- resubmission during this extended period as detailed above.

