

Israni's Novus Lex

Corporate Law Capsule

Covid-19 Special Vol 2 - 12 May 2020

MCA Updates

AGM

SEBI Updates

Various relaxations by SEBI in light of Covid-19

Other Developments

Important updates regarding Insolvency Law, NCLT, NCLAT, etc.

From the Editorial Desk

Firstly, we sincerely hope that you are doing fine and are safe!

As the lockdown continues well into May 2020, we all have had to adjust with the new normal. Confined to our home space full time, we have had to learn to enjoy and make the most of the situation.

As the Covid19 curve in India has not yet flattened, the lockdown keeps getting extended. Consequently, there is a need for change in the policies and laws to enable people and businesses to get through these troubled times.

The Government and its various regulatory bodies have been trying their best to keep up with the times and the need of the hour. There have been several regulatory changes which have been carried out and which are being carried out fairly frequently to enable people and businesses to cope with the financial and compliance challenges this lockdown situation has brought upon them.



The previous edition of our newsletter focussed on the special changes brought about due to Covid19 upto 20th April 2020. This issue highlights the various changes in law that have been brought about from 21st April 2020 till 12th May, 2020.

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The summaries have been prepared on the basis of content published on the various authorities' websites and manupatra.com



Ministry of Corporate Affairs

Annual General Meetings

The Government acknowledged that due to continuing restrictions on movement of persons all over the country, a physical meeting was impractical. Accordingly, vide General Circular No. 20/2020 dated 5th May, 2020, it clarified and allowed companies to hold their Annual General Meetings (AGMs) through Video Conferencing (VC) and Other Audio Visual Means (OAVM) during the calendar year 2020.

For Companies providing e-voting facility

- ✚ The framework, manner and mode of issuing notices to members for EGMs vide the Government's EGM Circular shall apply mutatis mutandis for AGMs as well.
- ✚ In such meetings, other than ordinary business, only those items of special business, which are considered to be unavoidable by the Board, may be transacted.
- ✚ Before sending notice of AGM, a public notice is required to be issued in one English language newspaper and one local language newspaper with the following information:
 - Statement that the AGM is being conducted through VC/OAVM as per the MCA General Circular;
 - Date and time of VC/OAVM;
 - Availability of notice of meeting on website of company;
 - Manner in which members holding physical shares or those whose email ids are not registered with the company can cast their votes;
 - The process for registering email ids with the company;
 - The manner for giving mandate for ECS of dividend;
 - Any other detail considered necessary by the company.
- ✚ The company shall send notice of AGM along with the financial statements to the members and other entitled persons via email.

- ✚ If the company is unable to pay dividend to any shareholder electronically, it shall pay by dividend warrant/cheque upon resumption of normalcy.
- ✚ In case a company has received permission to conduct its AGM physically, it must still provide the facility of VC/OAVM to members to attend and all the members attending through all such means shall be considered for the purpose of quorum.
- ✚ All resolutions shall be passed by e-voting system.

For Companies not required to provide e-voting facility

AGM can be conducted through VC/OAVM only if the company has in its records, the email addresses of at least half of its total number of members, who -

- in case of a Nidhi, hold shares of more than one thousand rupees in face value or more than one per cent of the total paid-up share capital, whichever is less;
- in case of other companies having share capital, who represent not less than seventy-five per cent of such part of the paid-up share capital of the company as gives a right to vote at the meeting;
- in case of companies not having share capital, who have the right to exercise not less than seventy-five per cent of the total voting power exercisable at the meeting.

The rest of the procedure is similar to that followed in case of companies providing e-voting facility.

Those companies which are unable to hold AGMs as prescribed in this circular are advised to apply to the concerned Registrar of Companies for extension of time for holding AGMs u/s 96 of the Companies Act, 2013.



Securities and Exchange Board of India

SEBI has continued with its present policy of bring in several reliefs and relaxations in compliances and timelines for the listed entities who are facing wide ranging challenges as a consequence of the COVID-19 pandemic. Some of the important circulars / notifications issued by SEBI are as follows:

- 1) SEBI has vide Circular No. SEBI/HO/CFD/DIL1/CIR/P/2020/66 dated 21st April, 2020, provided that in cases where SEBI has issued Observations for the purposes of Regulation 44(1), 85 and 140 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) regarding a public issue/rights issue, the validity of the SEBI Observations where the same have expired/will expire between March 1, 2020 and September 30, 2020 has been extended by 6 months, from the date of expiry of such observation.
- 2) SEBI has vide Circular No. SEBI/HO/CFD/DCR2/CIR/P/2020/69 dated 23rd April, 2020, temporarily relaxed a restriction under the SEBI (Buy-Back of Securities) Regulations, 2018 by reducing the minimum time between a buy back and raising of further capital from one year to six months. This relaxation is available only till 31st December, 2020.
- 3) SEBI has vide Circular No. SEBI/HO/IMD/DF3/CIR/P/2020/70 dated 23rd April, 2020, provided that in case if a delay in payment of interest/principal or extension of maturity of a security by the issuer has arisen solely due to COVID19 pandemic lockdown and/or in light of the moratorium permitted by the RBI creating temporary operational challenges in servicing debt, then valuation agencies may not consider the same as a default for the purpose of valuation of money market or debt securities held by Mutual Funds.
- 4) Vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/71 dated 23rd April, 2020, Regulation 44(5) of the LODR is relaxed whereby the top 100 listed entities by market capitalization whose financial year ended on December 31, 2019 may hold their AGM within a period of nine months from the closure of the financial year (i.e., by September 30, 2020).
- 5) SEBI has vide Circular No. SEBI/HO/MIRSD/DOP/CIR/P/2020/72 dated 24th April, 2020, relaxed the timelines for regulatory compliance by Depositories and Depository Participants.
- 6) SEBI has provided relaxation relating to procedural matters in respect of Issues and Listing under ICDR vide Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated 6th May, 2020:
 - i) Rights Issue opening upto 31st July, 2020 - relaxations under Reg 77(2) whereby allowing service of abridged letter of offer, application form by electronic means; relaxations under Reg 84(1) regarding issue related advertisements; relaxations under Reg 76 by providing an optional mechanism to ASBA, etc.
 - ii) Offer documents filed upto 31st July, 2020 - Authentication / Certification / Undertaking in respect of offer documents, may be done using digital signature certifications and the issuer along with lead manager(s) shall provide procedure for inspection of material documents electronically.

Other Developments (SC, IBC, NCLT, RBI)

- Viden Notifications dated 24th April, 2020, IBBI amended the Insolvency Resolution Process of Corporate Persons Regulations and the Liquidation Process Regulations to provide for exemption of the Covid19 lockdown period from computation of timelines thereunder.
- The Hon'ble President of NCLT has constituted 12 Special Benches of the NCLT to hear only Urgent Matters by Video Conferencing. Any such application is to be filed before the Registry of the respective Bench. NCLT Notice dated 3rd May, 2020
- The NCLT has cancelled the summer vacation during the months of May/June/July 2020 for all its benches in the country to ensure that the NCLT remains functional during this period. Notice dated 5th May, 2020.
- In the NCLAT, regular court work is suspended till further orders. Only urgent matters may be taken up. Notice dated 3rd May, 2020.
- The NCLT Mumbai has constituted Special Benches to take up matters under sections 230-232 (merger/amalgamation matters) and 252



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- ✚ MCA has extended the time limit for filing of the Form NFRA2 for the financial year 2018-19 to 210 days from the date of deployment of the said form on the website of the National Financial Reporting Authority. **General Circular No. 19/2020 dated 30th April, 2020**
- ✚ MCA has issued a clarification that for Rights Issues opening upto 31st July, 2020, in case of listed companies which comply with the SEBI Circular dated 6th May, 2020, inability to despatch the notice to shareholders, referred to in para 1 of the said circular, by the physical means such as registered post or speed post or courier, will not be treated as a violation under section 62(2) of the Companies Act, 2013. **General Circular No. 21/2020 dated 11th May, 2020**
- ✚ All petitions pending admission and new petitions to be filed under section 7 (Financial Creditors) of the Insolvency Code will compulsorily be required to file in the NCLT, the default record from Information Utility before next date of hearing. **NCLT Order dated 12th May, 2020**

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