

Israni's Novus Lex

Corporate Law Capsule

Covid-19 Special Edition - 20th April 2020

MCA Updates

Special Relief Measures, CFSS, LLPSS, CSR, EGM

SEBI Updates

Various relaxations provided by SEBI in light of Covid-19

Other Developments

Important updates regarding Insolvency Law, FDI Policy, Limitation in litigation matters, Board Meetings, etc.

From the Editorial Desk

Firstly, we sincerely hope that you are doing fine and are safe! At the time of writing this editorial, India has 11201 active cases of the Novel Coronavirus which have resulted in 437 deaths. The silver lining is that 1748 people have been cured and the death rate in India is amongst the lowest in the world.

Being a highly infectious virus and seeing the global carnage due to its effect, the WHO declared the situation as a Pandemic. Consequently, the Government of India initially announced a 21 day lockdown till 14th April, 2020 and which has now been extended to 3rd May, 2020 in the whole of India.

This is a unique situation and most of the population has never witnessed anything like this ever before in their lifetimes. A lockdown brings with it several challenges for people across all spectrums. One of the consequences is that people are forced to work from home and there is a dynamic shift in the way things have to be done. To survive in these Covid-19 times, one must innovate.



And it is not just the humans who have to make adjustments, the same is equally applicable to governments and the policies as well. Ever since Covid-19 broke out in India, in Jan 2020, the Government of India has made several important policy changes which are being highlighted in this newsletter for your benefit.

Disclaimer

This news letter does not constitute nor it should be treated to constitute any invitation, inducement, advertisement or solicitation by us and is meant for our clients only.

The name "Israni's Novus Lex" and the contents herein are protected by copyright. All rights reserved.

The contents of the news letter being of a general nature are for general guidance and should not be construed as legal advice. While all reasonable care has been taken to ensure that the information provided herein is fair and accurate, we shall not in any way be responsible for the consequences of any action taken on the basis of reliance upon the contents of this news letter.

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



Ministry of Corporate Affairs

Special Measures in view of Covid-19

The Government acknowledged that due to Covid-19, there was severe economic disruption for companies and intervention was required by the Government to ease the financial and compliance burden of the companies. Accordingly, it came out with a slew of relief measures vide General Circular No. 11/2020 dated 24th March, 2020 as follows:

1. No additional fees to be charged for filing during the moratorium period of 1st April to 30th September 2020 in respect of any document / return / statement required to be filed with the MCA irrespective of due date. This is being done to reduce the financial and compliance burden on companies and also to enable companies / LLPs to make a fresh start.
2. Allowing a one time relaxation of the time gap between two consecutive board meetings. Consequently, till 30th September, 2020, the gap between two board meetings can extend upto 180 days instead of the existing 120 days.
3. The Companies (Audit Report) Order, 2020 will be made applicable with effect from financial year 2020-21 and not from 2019-20.
4. Every Independent Director is required to abide by the provisions specified in Schedule IV to the Companies Act, 2013. One such provision being that the Independent Directors must hold at least one meeting in a financial year without the presence of Non Independent Directors and members of the management. However, the MCA has notified that in case of 2019-20, there are companies which have not been able to hold any such meetings, then it will not be considered a violation. However, at the same time the said Circular advises the Independent Directors to exchange thoughts amongst themselves by any audio or visual means.
5. The requirement for creation of a Deposit Repayment Reserve under Section 73(2) of the Companies Act, 2013, in a scheduled bank on or before 30th April, 2020 has been relaxed and time has been extended upto 30th June, 2020.
6. The requirement of investing or depositing atleast 15% of the debentures maturing in a financial year on or before 30th April, 2020 has been relaxed and time has been extended upto 30th June, 2020.
7. Section 10A of the Companies Act, 2013 requires every newly incorporated company to file a Declaration for Commencement of Business within 180 days of incorporation. An additional 180 days have been provided for this compliance.
8. There is a requirement under Section 149(3) of the Companies Act, 2013 that atleast one Director of every company should have stayed in India for atleast 182 days during the financial year. This criteria has been relaxed for the financial year 2019-20, therefore, failure to stay in India for 182 days shall not be treated as a non compliance.

A bird's eye view of the CFSS

This Scheme gives a one time opportunity to defaulting companies i.e. those companies that have defaulted in filing of

- i. annual returns,
- ii. financial statements,
- iii. various other statements, documents, returns, etc.

to file the belated documents with MCA, by condoning the delay for filing, relaxation on payment of additional filing fees and giving an immunity from launching of prosecution or imposing penalty on account of filing delay.

Duration:

1st April, 2020 to 30th September, 2020

Scheme not applicable in certain cases:

- a) Companies against which action for final notice for striking off u/s 248 of the Companies Act, 2013 has already been initiated;
- b) Cases where an application has already been filed for striking off;

- c) Companies which have amalgamated under a scheme of arrangement or compromise;
- d) Companies which have already applied for Dormant Status prior to this scheme;
- e) Vanishing Companies;
- f) Cases relating to increase in Authorised Capital
- g) Cases relating to Charge Documents

Procedure under the Scheme:

1. The Applicant Company has to file the belated documents and pay only the normal fee. No additional fee is payable.
2. The Applicant Company has to withdraw any appeal or proceeding it has filed / initiated challenging the show cause notice / prosecution by the authorities.
3. The Application for seeking

Continued...

Benefits of the Companies Fresh Start Scheme & LLP Settlement Scheme

- One of a kind opportunity to make good any filing related defaults irrespective of duration of default
- Make a fresh start as a fully compliant entity
- Both the schemes incentivize compliance and reduce compliance burden
- One time waiver of additional filing fees for delayed filings
- Provide longer timelines for filing related compliances
- Significantly reduces the filing related financial burden for long standing financial defaults
- Immunity from penal proceedings including imposition of penalties
- Inactive companies can get declared as Dormant Companies



immunity in respect of the belated documents filed under the Scheme has to be made electronically in Form CFSS-2020. It is pertinent to note here that the said Form can be filed only upon the closure of the Scheme and that too, only after the documents filed are taken on record / file / approved by the Designated Authority (Registrar of Companies of competent jurisdiction).

4. The time limit for filing the Application seeking immunity is upto 6 months from the closure of the Scheme.
5. No immunity shall be granted in case there is an appeal pending or the company in question has a management dispute.
6. No immunity shall be granted in case an order of conviction has already been passed or an order imposing penalty has already been passed and such an order has not been challenged when the Scheme came into force.
7. In respect of the cases mentioned in point no. 6 above, if the last date for filing an appeal falls between 1st March, 2020 and 31st May, 2020, then although no immunity can be applied for, but an additional 120 days have been provided with effect from such last date for filing of the appeal.
8. Based on the declaration given in the said Form CFSS-2020, an immunity certificate in respect of the documents filed under the Scheme will be issued by the Designated Authority.

Effect of Immunity:

After immunity is granted, the Designated Authority concerned shall withdraw the pending prosecution before the concerned court and will also withdraw and will also withdraw the proceedings for adjudication of penalties as allowed by the scheme. However, no such proceedings will be withdrawn where immunity under this Scheme cannot be granted only in the first place.

Inactive Companies

This Scheme has also provided for some relief to Inactive Companies. The Explanation (i) to Section 455(1) of the Companies Act, 2013 defines “Inactive Company” to mean a company which has not been carrying on any business or operation, or has not



made any significant accounting transactions during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.

If such an inactive company, has failed to apply for the status of “Dormant Company” and is still continuing to default in its filings, then such a company also has been allowed relief under this Scheme.

Inactive Companies have been given two options under this Scheme:

- a) They can submit an application in eForm MSC-1 by paying the normal fee to get themselves declared as “Dormant Company”; or
- b) They can apply for striking off the name of the company by filing eForm STK-2 by paying the fee payable on form STK-2.

Maximum companies are encouraged to take benefit of this Scheme, else there is also a veiled threat embedded in para 7 of the Scheme itself, which reads as follows:

“At the conclusion of the Scheme, the Designated Authority shall take necessary action under the Act against the companies who have not availed this Scheme and are in default of filing these in a timely manner.”

Thus, it is in every company’s best interest to take advantage of this Scheme and wipe its slate completely clean and get a fresh start!

A bird's eye view of the LLPSS

This Scheme gives a one time condonation of delay to defaulting LLPs who have not filed the following forms on their due dates:

- i. Statutory Documents (Information relating to change in the LLP Agreement, Notice of Appointment of Partner / Designated Partner, etc.)
- ii. Annual Documents (Statement of Account & Solvency and Annual Return)

This Scheme originally was brought in on 16th March, 2020 and was to be valid upto 13th June, 2020. However, due to countrywide lockdown and other consequences of the Coronavirus Pandemic, the Government of India has modified this scheme on 30th March, 2020.

Duration:

1st April, 2020 to 30th September, 2020

Applicability:

Any LLP which has defaulted in filing its documents on the due date till 31st August, 2020 (prior to modification it was 31st October, 2019) is permitted to take benefit of the Scheme in accordance with the provisions of the Scheme.

The Scheme shall not apply in certain cases:

The Scheme shall not apply to LLPs which have made an application in Form 24 to the Registrar of Companies, for Striking Off their name from the register as per the provisions of the LLP Rules, 2009.

Procedure under the Scheme:

1. The defaulting LLPs are required to file the documents not filed by them on the due dates or documents which have not been filed.



2. In the original scheme, a reduced additional fee of Rs. 10 per day of default subject to a maximum additional fee of Rs. 5000/- was to be paid. However, under the modified Scheme, no additional fee is required to be paid.
3. The normal fee as is prescribed has to be paid.
4. There is no separate application that has to be made to avail of the Scheme. The LLP has to simply file the belated forms under the Scheme to avail of its advantages.

Effect of Immunity:

The defaulting LLPs which have filed the belated documents under the Scheme till 30th September, 2020 and made good their defaults shall not be subjected to prosecution by the Registrar of Companies for such defaults.

Maximum companies are encouraged to take benefit of this Scheme, else the Designated Authority will take necessary action under the LLP Act, 2008, against the LLPs who have not availed this Scheme and are in default of filing documents in a timely manner.

Thus, it is in every LLP's best interest to take advantage of this Scheme and wipe its slate completely clean and get a fresh start!



Clarifications on Covid-19 related CSR Expenditure

- ✚ Spending of CSR Funds for Covid-19 is eligible CSR activity.
- ✚ Funds may be spent on various activities specified under items (i) and (xii) of Schedule VII of the Companies Act, 2013. All items of the said Schedule should be interpreted liberally.
- ✚ Contribution to PM Cares Fund qualifies as CSR expenditure under item (viii) of Schedule VII.
- ✚ Contribution to Chief Minister's Relief Fund or the State Relief Fund For Covid-19 does not qualify as CSR expenditure.
- ✚ Contribution to State Disaster Management Authority to combat Covid-19 qualifies as CSR expenditure.
- ✚ Payment of Salary / Wages to employees / workers during the lockdown period does not qualify as CSR expenditure.
- ✚ Payment to Casual / Temporary / Daily Wage workers during the lockdown period does not qualify as CSR expenditure.
- ✚ any ex-gratia payment made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

General Circular Nos. 10/2020 dated 23.3.2020 & 15/2020 dated 10th April, 2020



Clarifications on conduct of EGMs during Covid-19 times

Companies can hold EGMs through Video Conferencing (VC) or Other Audio Visual Means (OAVM) upto 30th June, 2020.

For Companies providing e-voting facility

- ✚ EGM Notices may be sent to members through registered email id and Public Notice to contain specific details prescribed by the General Circular.
- ✚ Recorded transcript should be kept
- ✚ Meeting should allow participants to talk
- ✚ Members attending to be counted for quorum. If less than 50 members, voting can be conducted by show of hands.
- ✚ Atleast 1 Independent Director and the Auditor/Authorised Representative of Auditor should attend
- ✚ All resolutions passed shall be filed with MCA within 60 days

For Companies not required to provide e-voting facility

Mostly similar procedure to be followed in case of companies providing e-voting facility save and except that instead of Public Notice, the Company has to contact members whose email id is not in their record as per procedure specified in the General Circulars.

For Postal Ballot Cases

The Companies will have to follow the procedure as prescribed for voting through electronic means under Rule 20 of the Companies (Management and Administration) Rules, 2014 read with the provisions prescribed in the two General Circulars issued by MCA.

General Circular Nos. 14/2020 dated 8.4.2020 & 17/2020 dated 13th April, 2020



Securities and Exchange Board of India

SEBI felt that in view of the developments arising due to the spread of the COVID-19 pandemic, a need for temporary relaxations in compliance with certain deadlines in SAST Regulations and extension of timelines under LODR, etc., was warranted due to the prevailing travel restrictions and various other logistical challenges. It has therefore, issued a slew of circulars relaxing several compliances and deadlines to provide some much needed breathing room for the listed entities, some of the important ones being:

- 1) SEBI has vide Circular No. SEBI/HO/CD/CMD1/CIR/P/2020/38 dated 19th March, 2020, provided certain relaxations to listed entities which have listed their specified securities with regard to extension of timelines prescribed under Regulations 7(3), 13(3), 33 etc. of SEBI (LODR) Regulations, 2015. It has further issued clarifications vide Circular No. SEBI/HO/DDHS/ON/P/2020/41 dated 23rd March, 2020. Through these two circulars, SEBI has provided the extension of timelines prescribed under Regulations 7(3), 13(3), 33 etc. of SEBI (LODR) Regulations, 2015. In so far as the Cut Off Date for Issuance of NCDs/NCRPS/CPs are concerned, the cut off date for their issuance has been extended from 31st March, 2020 to 31st May, 2020. However, with respect to the other timelines under LODR and those for Issuers of Municipal Debt Securities, the timelines have been extended to 30th June, 2020.
- 2) SEBI has vide Circular No. SEBI/HO/DDHS/CIR/P/2020/42 dated 23rd March, 2020 decided to extend the due date for regulatory filings and compliances for REIT and InvIT for the period ending March 31, 2020 by one month over and above the timelines, prescribed under SEBI (Infrastructure Investment Trusts) Regulations, 2014(InvIT Regulations) and SEBI (Real estate Investment Trusts) Regulations, 2014(REIT Regulations) and circulars issued thereunder.
- 3) SEBI has vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/48 dated 26th March, 2020, provided further relaxations from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) and the SEBI circular dated January 22, 2020 relating to Standard Operating Procedure - Reg 19(3A), 20(3A), 21(3A), 40(9), 44(5), etc.
- 4) Vide Circular No. SEBI/HO/CFD/DCR1/CIR/P/2020/49 dated 27th March, 2020, SEBI extended the due date of filing disclosures, in terms of Regulations 30(1), 30(2) and 31(4) of the SAST Regulations for the financial year ending March 31, 2020 to June 01, 2020.
- 5) SEBI has provided relaxation from adherence to certain timelines, compliances and disclosures vide Circular No. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/59 dated 13th April, 2020 to various intermediaries and market participants.
- 6) Vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/63 dated 17th April, 2020, SEBI has provided further relaxations in compliance with LODR such as:
 - Reg 29(2) - Prior intimation of 2 days allowed for board meetings held till 31st July, 2020
 - Reg 39(3) - Delay in intimating SE for loss of share certificates not to attract penal provisions
 - Reg 47, 52(8) - Publication of advertisements in newspapers exempt till 15th May, 2020
 - Filings / Submissions to SE can be made using digital signatures upto 30th June, 2020

Other Developments (SC, IBC, NCLT, RBI)

- The MCA has increased the amount of default to trigger the Insolvency and Bankruptcy Code, 2016 from Rs. 1 Lac to Rs. 1 Crore with effect from 24th March, 2020. This has been done with the intent of providing some relief to the MSME sector and also to decongest the NCLT. Notification No. S.O. 1205(E).
- On March 23, 2020, the Supreme Court passed an order, taking into account the difficulties faced by the litigants across the country on account of the Covid-19 pandemic and extending the period of limitation in all proceedings before all courts / tribunals with effect from 15th March, 2020 until further orders. *Suo Moto Writ Petition (Civil) No. 3/2020.*
- 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 20th April, 2020
- In the NCLAT, regular court work is suspended till 3rd May, 2020. Only urgent matters may be taken up. Notice dated 15th April, 2020



*The Government has modified its FDI Norms so that investments from neighbouring countries will not be permitted under Automatic Route
Press Note No. 3/2020
DPIIT - FDI Policy Section*

BOARD MEETINGS - IMPORTANT UPDATE

With effect from 19th March, 2020, the MCA has notified the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 whereby, meetings in respect of all the following matters also (which earlier had to be only through a physical meeting) can be conducted through Video Conferencing or Other Audio Visual Means:

- approval of the annual financial statements
- approval of the Board's report
- approval of the prospectus
- Audit Committee Meetings for consideration of financial statement including consolidated financial statement
- Approval of matter relating to amalgamation, merger, demerger, acquisition and takeover.

MCA Notification dated 19th March, 2020

SD Israni Law Chambers
Advocates & Solicitor(UK)
322, Tulsiani Chambers, Free Press Journal
Road, Nariman Point,
Mumbai - 400021.
Tel: 22040220 / 22810249
Email: contact@isranilaw.com