



**RELAXATIONS GIVEN BY**  
**MINISTRY OF CORPORATE AFFAIRS (MCA)**

**UPDATED TILL 21<sup>ST</sup> APRIL, 2020**



**I. Ministry of Corporate Affairs (MCA) has amended Companies (Meetings of Board and its Powers) Rules, 2014, vide Notification dated 19<sup>th</sup> March, 2020**

MCA has inserted sub-rule with respect to holding board meeting through video conferencing or other audio visual means for restricted matters specified in rule 4(1) i.e

- the approval of the annual financial statements;
- the approval of the Board's report;
- the 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 under sub-section (1) of section 134 of the Act; and
- the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover:

even when the quorum is not present through physical presence of directors **upto 30th June, 2020**

**II. MCA vide its General Circular no. 10/2020 dated 23<sup>rd</sup> March, 2020**

Keeping in view the spread of Novel Corona Virus (COVID-19) in India, its declaration as pandemic by the World Health Organisation (WHO) and, decision of Government of India to treat this as a notified disaster, it is hereby clarified that spending of CSR funds for COVID-19 is eligible CSR activity.

Further, it has also clarified that **funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care, sanitation and disaster management.** Further, as per General Circular no. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.

**III. MCA Relaxations**

MCA vide General circular no.11/ 2020 dated 24<sup>th</sup> March, 2020 has given the following relaxations:

- i. No additional fees shall be charged for late filing during a moratorium period from 01<sup>st</sup> April to 30<sup>th</sup> September 2020, in respect of any document, return, statement etc., required to be filed in



the MCA-21 Registry, irrespective of its due date, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large, but also enable **long-standing non-compliant companies/ LLPs to make a 'fresh start'**.

- ii. The mandatory requirement of holding meetings of the Board of the companies within the intervals provided in section 173 of the Companies Act, 2013 (CA-13) (120 days) stands extended by a period of 60 days till next two quarters i.e., till 30th September. Accordingly, as a one-time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the CA-13.
- iii. The Companies (Auditor's Report) Order, 2020 shall be made applicable from the **financial year 2020-2021** instead of being applicable from the financial year 2019-2020 notified earlier.
- iv. For the financial year 2019-20, if the Independent Directors (IDs) of a company have not been able to hold at least one meeting without the attendance of Non Independent Directors and members of management, the same shall not be viewed as a violation under Schedule IV to the CA-13. The Independent Directors, however, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.

**SGA Note:** *SEBI has not given any relaxation, till yet, on holding of separate ID meeting as required under regulation 25(3) of SEBI (LODR), 2015.*

- v. Requirement under section 73(2)(c) of CA-13 to create the deposit **repayment 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**.
- vi. Requirement under rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to **invest or deposit at least 15%** of amount of debentures maturing in specified methods of investments or deposits before 30th April 2020, may be complied with **till 30th June 2020**.
- vii. Newly incorporated companies are required to file a declaration for Commencement of Business within '180 days of incorporation under section 10A of the CA-13. **An additional period of 180 more days is allowed for this compliance.**



- viii. Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, under Section 149 of the CA-13 **shall not be treated as a non-compliance for the financial year 2019-20.**

#### **IV. MCA clarification on contribution to PM CARES Fund as eligible CSR activity**

The Ministry of Corporate Affairs ('MCA') has issued an office memorandum dated 28<sup>th</sup> March, 2020 bearing eF. No. CSR-05/1/2020-CSR-MCA, giving clarification on contribution to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund ('PM CARES Fund') as eligible CSR activity under item no. (viii) of Schedule VII of Companies Act, 2013.

The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation such as posed by COVID-19 pandemic.

Accordingly, it is clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013.

#### **V. Companies Fresh Start Scheme 2020**

Ministry of Corporate Affairs vide General Circular no.12/2020 dated 30<sup>th</sup> March, 2020 introduced the "Companies Fresh Start Scheme 2020" Scheme to provide an opportunity to Companies to make good any filing related defaults irrespective of the duration of default and make a fresh start as a compliant entity. Key features of this scheme are:

- i. This scheme shall remain in force from April 01, 2020 till September 30, 2020 applies on a company which has defaulted in filing of any document, statement, return etc on MCA21;
- ii. At the time of filing of any belated document, only normal fee would be required to be paid and no additional fee would be levied on such filing;
- iii. In case the company or any of its officer in default has filed any appeal against any prosecution launched or proceedings for imposing penalty then the said appeal should first be withdrawn;



- iv. Last Date of filing the appeal falls between 1<sup>st</sup> March, 2020 to 31<sup>st</sup> May, 2020 (both inclusive), a period of additional 120 days shall be allowed for filing the appeal before the Regional Director (RD). During such additional period, prosecution shall not be initiated against company and its officers.
- v. Once the delayed forms are filed and they are taken on record and after the closure of the scheme the company shall apply for an immunity certificate under this scheme in e-form CFSS but not later than expiry of six months from the date of closure of scheme;
- vi. No immunity shall be applicable in case any appeal is pending before court of law or tribunal and in case where any penalty has been imposed by adjudicating authority and no appeal is preferred;
- vii. This scheme shall not apply to Companies under striking off, amalgamation, dormancy, vanishing companies and where the increase in authorised capital(form SH-7) or filing of charge related documents( CHG-1, CHG-4, CHG-8 and CHG-9) are involved;
- viii. The defaulting inactive companies can file the due documents under this scheme and then either apply to get a dormancy status or apply for striking off the name of the company.

**Important Note:** Scheme is applicable only on the belated documents not on any other consequential proceedings for e.g.: Company cannot utilise the amount of share allotment in Private Placement unless the Return of Allotment (PAS-3) is filed with Registrar, here the immunity will be provided for filing of PAS-3 not on the account of utilisation of money raised through private placement.

Scheme is a one-time opportunity to all the defaulting Companies to complete their filings and get immunity from all related prosecutions.

## **VI. LLP Settlement Scheme 2020-Modifications**

Ministry of Corporate Affairs (MCA) vide General Circular no.13/2020 dated 30<sup>th</sup> March, 2020 has modified LLP Settlement Scheme, 2020 which was introduced by MCA on 04.03.2020 to provide an opportunity to LLP to make good any filing related defaults irrespective of the duration of default and make a fresh start as a compliant entity. The Modifications of this scheme are:

- i. This scheme shall remain in force from April 1, 2020 till September 30, 2020;



- ii. Applies on an LLP which has defaulted in filing of any document, statement, return etc. on MCA21;
- iii. Defaulting LLP is permitted to file belated documents which were due for filing until August 31, 2020;
- iv. Defaulting LLPs which have filed their belated documents till Sept 30, 2020 and made good the default, shall not be subjected to prosecution by the RoC;
- v. This scheme shall not apply to LLPs which have made an application for striking off their names.

Scheme is a one-time opportunity to all the defaulting LLPs to complete their filings and get immunity from all related prosecutions.

**VII. Clarification on passing of Ordinary and Special Resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19.**

Ministry of Corporate Affairs has issued a General Circular 14/2020 dated 8<sup>th</sup> April, 2020 about Clarification on passing of ordinary and special resolution under Companies Act 2013.

**Brief of the clarification**

In the view of the current extraordinary circumstances due to COVID-19 outbreak, Companies are requested take all decisions of urgent nature requires approval of members other than **ordinary business** or business where any person has right to be heard through the postal ballot/e-voting in accordance with provisions of Companies Act, 2013(the Act) and rules made thereunder.

If a Company wants to conduct Extra Ordinary General Meeting (EGM) in this current situation it can be conducted through Video Conferencing (VC) or any Other Audio Visual Means (OAVM) **upto 30.06.2020.**

**Companies which are required to provide facility of e-voting (Listed Company or Company having not less than 1000 members) shall comply with following provisions for conducting EGM through VC or OAVM:**

- i. At least 1000 members capacity shall be provided on first come first serve basis and it should be two way conferencing and the participant shall be allowed to pose questions or given time to submit question in advance on the e-mail address of the Company. Shareholder holding 2% or more, promoters, institutional investors, directors, key managerial personnel, the chairpersons of



the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors, etc may be allowed without restriction of first come first serve basis;

- ii. Before Actual date of meeting, facility of e-voting shall be provided in accordance with the Act;
- iii. Member who have voted through e voting are not allowed vote in the meeting.
- iv. Where there are less than 50 members present at the meeting, the voting may be conducted either through the e-voting system or by a show of hands, unless a demand for poll is made in accordance with section 109 of the Act, in which case, the voting shall be conducted through the e-voting system.

**Companies which are not required to provide facility of e-voting shall comply with following provisions for conducting EGM through VC or OAVM:**

- i. At least 500 members or members equal to the total number of members of the company (whichever is lower) capacity shall be provided on first come first serve basis and it should be two way conferencing and the participant shall be allowed to pose questions or given time to submit question in advance on the e-mail address of the Company. Shareholder holding 2% or more, promoters, institutional investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors, etc may be allowed without restriction of first come first serve basis;
- ii. The company shall provide a designated e-mail address to all members at the time of sending the notice of meeting so that the members can convey their vote. when a poll is required to be taken during the meeting on any resolution, at such designated email address;
- iii. The confidentiality of the password and other privacy issues associated with the designated email address shall be strictly maintained by the company at all times;
- iv. During the meeting held through VC or OAVM where a poll on any item is required the members shall cast their vote on the resolutions only by sending e-mails through their email



addresses which are registered with the Company. The said e-mails shall only be sent to the designated email address circulated by the company in advance.

- v. Where less than 50 members are present in a meeting, the Chairman may decide to conduct a vote by show of hands, unless a demand for poll is made by any member in accordance with section 109 of the Act. Once such demand is made the procedure provided above shall be followed.

**Common Points for both Companies providing facility of e-voting or company which are not required to provide e-voting facility**

- i. Recording shall be maintained in a safe custody and in case of a public company having a website, the recording shall be made available on it;
- ii. Facility shall be open for 15 minutes before the time scheduled and 15 minutes after the scheduled time;
- iii. Attendance through VC and OAVM shall be counted for the purpose of quorum under Section 103 of the Act;
- iv. Where a Company having less than 50 members present at the meeting, the chairman shall be appointed in accordance with Section 104 unless Articles provides any specific person to be appointed;
- v. Where a Company having less than 50 members present at the meeting, the Chairman shall be appointed by a poll conducted through the e-voting system during the meeting or where e-voting is not provided, the chairman shall be appointed in the manner specified for conducting poll;
- vi. Proxy is not allowed for voting in VC and OAVM, however, the representatives of the members may be appointed for the purpose of voting through remote e-voting or for participation and voting In the meeting held through VC or OAVM;
- vii. At least one independent director (where the company is required to appoint one), and the auditor or his authorized representative shall attend such meeting through VC or OAVM;





- viii. The notice for the general meeting shall make and also contain clear instructions on how to access and participate in the meeting. The company shall also provide a helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting. Intimation may be made to the exchanges in case of a listed company;
- ix. In case, a notice for meeting has been served prior to the date of this Circular, the framework proposed may be adopted for the meeting. In case, the consent from members has been obtained in accordance with section 101(1) of the Act, and a fresh notice of shorter duration with due disclosures In consonance with this circular is issued;
- x. All resolutions passed In accordance with this mechanism shall be filed with the Registrar of Companies **within 60 days** of the meeting, clearly indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly complied with during such meeting.

**VIII. Second Clarification on passing of Ordinary and Special Resolutions by companies under the Companies Act, 2013 and rules made thereunder on account of the threat posed by Covid-19**

Ministry of Corporate Affairs issued a General Circular no. 17/2020 dated 13<sup>th</sup> April, 2020 for providing clarifications w.r.t. passing of ordinary resolution and special resolution under Companies Act 2013 (the Act) to the General Circular no.14/2020 dated 8<sup>th</sup> April 2020

The Circular has been issued to clarify serving & receiving of notices/responses by post in current situation-

**IX. Manner and mode of issue of notices to the members before convening the Extraordinary General Meeting (EOGM) when conducting through Video Conferencing (VC) and other Audio visual means(OAVM):**

- A. For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility:
  - i. Notices to members may be given only through e-mails registered with the company or with the depository participant/depository



- ii. Publishing the public notice as required under rule 20(4)(v) of Companies (Management and Administration ) Rules, 2014 following matters shall also be stated:
  - a) A statement that the EGM has been convened through VC or OAVM in compliance with applicable provisions of the Act read with General Circulars issued in this regard;
  - b) The date and time of the EGM through VC or OAVM;
  - c) Availability of notice of the meeting on the website of the Company and the stock exchange;
  - d) The manner in which the members who are holding shares In physical form or who have not registered their email addresses with the company can cast their vote through remote e-voting or through the e-voting system during the meeting;
  - e) Manner in which the members can registered their email addresses with the company in case not registered;
  - f) Any other necessary details.

**B. For companies which are not required to provide the facility of e-voting under the Act:**

- i. Notices to members may be given only through e-mails registered with the company or with the depository participant/depository;
- ii. Notice shall also be prominently displayed on the website, if any;
- iii. Order to ensure awareness of General meeting(by VC or OAVM) Company shall:
  - a) Contact all those members whose e-mail addresses are not registered with the company over telephone or any other mode of communication for registration of their e-mail addresses before sending the notice for meeting to all its members;



b) In case the Company unable to contact members as mentioned above it shall cause a public notice immediately at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated and. and at least once In English language in an English newspaper having a wide circulation in that district. preferably both newspapers having electronic editions, and shall contain:

- Company's intends to convene a EOGM in compliance with applicable provisions of the Act read with the General Circulars issued in this regard and Company proposes to send notices to all its members by e-mail after, at least, 3 days from the date of publication of the public notice;
- E- mail and telephone number on which members may contact.

The Chairman for both types of Companies shall ensure certain efforts have been made by the company to enable members to participate and vote on the items being considered in the meeting and cause to record the same.

**X. Requirement of voting by show of hands:**

Companies required to provide the facility of e-voting under the Act was allowed to vote by show of hands which was mentioned in General Circular no. 14/2020 dated 8<sup>th</sup> April 2020, however it now clarified that facility of e-voting shall be available for the purpose of voting.

**XI. Passing of certain items through postal ballot without convening General Meeting:**

- Notice shall be send by e-mail and members shall be provided a process to register their email address in case not registered , the process shall be mentioned in public notice which is to be issued in this regard;
- Assent or dissent shall take place through remote e- voting, no meeting is required to be called.

**XII. Sending of e-mails by members, where a poll on any item is required as per General Circular No.14/2020 dated 8<sup>th</sup> April, 2020**



It has been clarified that poll will take place during the meeting not before that, and the members may convey their assent or dissent at the time of consideration of items in the meeting by sending an e-mails to the designated e-mail address of the company, which was circulated by the company in the notice sent to the members.

**IX. Filings under Section 124 and 125 of the Companies Act 2013 r/w IEPFA (Accounting, Audit, Transfer and Refund) Rules 2016 in view of emerging situation due to outbreak of COVID- 19.**

Ministry of Corporate Affairs issued a General Circular no. 16/2020 dated 13<sup>th</sup> April, 2020 which clarifying that various 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, required to filed under Section 124 and section 125 of the Companies Act 2013 r/w Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 **can be filed without additional fees upto 30<sup>th</sup> September, 2020**

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

Ministry of Corporate Affairs (MCA) vide General Circular No. 15/2020 dated 10<sup>th</sup> April, 2020 has released some FAQs, whether an expenditure will qualify as admissible Corporate Social Responsibility (CSR) Expenditure under Section 135 read with Schedule VII of Companies Act, 2013 (the Act) details are mentioned below:

**Contributions eligible for admissible CSR expenditure are:**

- i. **Contribution made to ‘PM CARES Fund’**  
MCA clarified vide Office memorandum F. No. CSR-05/1/2020-CSR-MCA dated 28<sup>th</sup> March, 2020;
- ii. **Contribution made to State Disaster Management Authority**  
It is mentioned under item no (xii) of Schedule VII of the Act and MCA clarified vide General Circular No. 10/2020 dated 23<sup>rd</sup> March, 2020;
- iii. **Spending of CSR funds for COVID-19 related activities**



MCA clarified that items mentioned in Schedule VII of the Act may be interpreted liberally for CSR expenditures and items relating to promotion of health care including preventive health care and sanitation, and disaster management will be eligible, MCA vide general circular No. 10/2020 dated 23<sup>rd</sup> March, 2020 has clarified that spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure;

iv. **Payment of exgratia to temporary /casual /daily wage workers**

If it is made over and above the disbursement of wages, specifically for the purpose of fighting COVID 19 and there is an explicit declaration to that effect by the Board of the Company, which is duly certified by the statutory auditor it will be eligible as an one-time exception.

**Contributions not eligible for admissible CSR expenditure are:**

i. **Chief Minister’s Relief Funds’ or ‘State Relief Fund for COVID-19**

This is not included in Schedule VII of the Act;

ii. **Payment of salary/wages to employees and workers, including contract labour, during the lockdown period**

It is a moral obligation of the employers in any case it shall not qualify as admissible CSR expenditure;

iii. **Payment of wages made to casual /daily wage workers during the lockdown period**

It is applicable to all Companies irrespective of any CSR obligation. Hence, it shall not count towards CSR expenditure.

**XI. Clarification Related to Trading Window Closure by BSE and NSE**

BSE and NSE issued a Circular dated 31<sup>st</sup> March, 2020, no relaxation will be provided for Listed Companies regarding trading window closure i.e. Companies shall close the trading window from the end of every quarter till 48 hours after the declaration of financial results

**XII. Extension of submission date of Share Capital Audit Report for the Quarter ended 31<sup>st</sup> March, 2020**



BSE Limited has issued a circular dated 14<sup>th</sup> April, 2020 permitting the filing of Share Capital Audit Report for the quarter ended 31st March, 2020 in terms of Regulation 76 of SEBI (D&P) Regulations, 2018 by 31st May, 2020.

**For any further clarification, you may contact**

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