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Email: [editor@whiteblacklegal.co.in](mailto:editor@whiteblacklegal.co.in)

Website: [www.whiteblacklegal.co.in](http://www.whiteblacklegal.co.in)

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Phone - +91-9990670288

Email - [whiteblacklegal@gmail.com](mailto:whiteblacklegal@gmail.com)

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With this thought, we hereby present to you

**WHITE BLACK LEGAL: THE LAW JOURNAL**

# **RELAXATION IN COMPLIANCE WITH COMPANIES ACT, 2013 IN VIEW OF COVID-19 OUTBREAK**

- Keshav Jatwani<sup>1</sup> & Priyanshi Chakraborty<sup>2</sup>

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Under the outbreak of the Novel Coronavirus which is declared to be a pandemic, the Finance Minister of India, Ms. Nirmala Sitharaman has on 24<sup>th</sup> of March, 2020 announced various filing extensions and relief to relax regulatory and compliance distress with the Companies Act, 2013 among the citizens of India. Similarly, to prevent further hardships in this adversity, the Security and Exchange Board of India (SEBI) has also introduced relaxation in compliance requirements and regulatory provisions relating to certain modes of raising funds from the securities market. In this article, the researcher intends to highlight all the major temporary measures that are taken by the Ministry of Corporate Affairs (MCA) and SEBI to deal with the unpredicted pandemic which has impacted businesses and their operations globally.

## **➤ RELAXATIONS INTRODUCED BY MCA**

**1. Meetings Of The Board And The Shareholders:-** A notice was issued by the Ministry of Corporate Affairs on 19<sup>th</sup> March 2020<sup>3</sup> regarding Companies (Meetings of Board and its Powers) Amendment Rules, 2020, whereby a new sub-rule was inserted to Rule 4 of the Companies (Meetings of Board and its Powers) Rule, 2014 to enable the companies to hold a board meeting on the specific matters through video-conferencing or audio-visuals means till 30<sup>th</sup> June 2020. The board meetings earlier had to be necessary to be held in the physical presence of the members. The specific matters in which the board meetings could be held virtually are:-

- i.** Approval of financial statements and boards' report;
- ii.** Approval of prospectus;
- iii.** Audit Committee meetings for consideration of Financial Statements; and

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<sup>1</sup> 3rd Year Student of B.Com (Hons.) Specialization in Taxation law, University of Petroleum and Energy Studies, School of Law, Dehradun, India

<sup>2</sup> 3rd Year Student of B.Com (Hons.) Specialization in Taxation law, University of Petroleum and Energy Studies, School of Law, Dehradun, India

<sup>3</sup> MCA Notification dated 19<sup>th</sup> March, 2020 on Companies (Meetings of Board and its Powers) Amendment Rules, 2020

- iv. Approval of amalgamation, merger, demerger, acquisition, and takeover.<sup>4</sup>

The Circular dated 8<sup>th</sup> April 2020<sup>5</sup> lays down certain conditions to be met to conduct an Extraordinary General Meeting (EGM) over video-conferencing and the key consideration *inter alia* include:-

- i. Attendance of at least one independent director and auditor or his authorized representative who is qualified to be the auditor.
- ii. Maintenance of recorded transcripts of the EGM and in case of the public company such transcript to be uploaded on the company website
- iii. E-Voting Facility being available

Further to resolve certain issues faced by the stakeholders in receiving and serving notices/responses by post in the current circumstances the government has provided some measures which include the use of electronic means for conducting the same such as emails, video conferencing, OAVM (Other Audio-Visual Method) and the procedure for the same is prescribed in Circular 17/2020.<sup>6</sup>

## **2. REGARDING SPECIAL MEASURES UNDER COMPANIES ACT, 2013:-**<sup>7</sup>

- a) No additional fees to be paid for delay in filing any document, return, statement, etc. during moratorium period from 1st April 2020 to 30th September 2020, in the MCA-21 Registry irrespective of the due dates.
- b) Section 173 of the Companies Act, 2013 requires that every company shall hold minimum 4 meetings of the board of directors and the gap between 2 meetings shall not exceed 120 days, here looking into the current situation due to COVID-19, an extended period of additional 60 days is provided till 30th September 2020, which means the gap between

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<sup>4</sup> MCA General Circular no. 14/2020 dated 8<sup>th</sup> April, 2020 on Clarification on passing General and Special Resolutions by Companies under Companies Act, 2013 and rules made thereunder on account of threat posed by Covid-19

<sup>5</sup> MCA General Circular no. 14/2020 dated 8<sup>th</sup> April, 2020 on Clarification on passing General and Special Resolutions by Companies under Companies Act, 2013 and rules made thereunder on account of threat posed by Covid-19

<sup>6</sup> MCA General Circular no. 17/2020 dated 8<sup>th</sup> April, 2020 on Clarification on passing General and Special Resolutions by Companies under Companies Act, 2013 and rules made thereunder on account of threat posed by Covid-19

<sup>7</sup> MCA General Circular No. 11/2020 dated 24<sup>th</sup> March, 2020 on Regarding Special measures under Companies Act, 2013 and rules made thereunder on account of threat posed by Covid-19

two consecutive meetings of the board may extend to 180 days till next 2 quarters, instead of 120 days. This is a one-time relaxation provided by the government.

- c) The Companies (Auditor's Report ) Order, 2020 shall be applicable from F.Y 2020-21 instead of F.Y 2019-20 to ease the burden on companies and auditors.<sup>8</sup>
- d) The independent directors of a Company have to attend at least one meeting in a year without the attendance of non-independent directors & members of management, as per Schedule IV of the Companies Act, 2013. For, the F.Y 2019-20, if independent directors were not able to hold even 1 meeting, then it will not be considered as a violation.
- e) The requirement of section 73(2)(c) of the Companies Act 2013 for depositing at least 20% of the number of deposits maturing during F.Y 2020-21, in deposit repayment reserve before 30th April 2020 can be compiled till 30th June 2020.
- f) As per section 149 of the act, every company shall have at least 1 director who has stayed in India for at least 182 days in the previous calendar year, non-compliance of this minimum residency requirement for F.Y 2019-20 will not be considered as a violation.
- g) The requirement of Rule 18 of Companies (Share Capital & Debenture) Rules 2014, to invest/deposit at least 15% of the number of debentures maturing during the year in specified investment methods, before 30th April 2020 can comply till 30th June 2020.
- h) For complying with the requirement of filing the declaration in MCA Registry, u/s 10A of Companies Act, 2013 by newly incorporated companies within 180 days of incorporation, an additional period of 180 days is allowed.

**3. Companies Fresh Start Scheme 2020:-**<sup>9</sup> A Circular was issued by MCA on 30<sup>th</sup> March 2020 introducing Companies Fresh start Scheme 2020 which, *inter alia*, grants a one-time opportunity to "Defaulting Companies" to make delayed filings without incurring any penalty or being prosecuted on account of such delays in filing. This scheme came into force on 1<sup>st</sup> April 2020 and is valid till 30<sup>th</sup> September 2020. To seek immunity from late filings from this scheme, an application has to be filed within 6 months from 30<sup>th</sup> September 2020, through Form CFSS-2020.

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<sup>8</sup> MCA Order No. S.O. 1219 € dated 24<sup>th</sup> March, 2020 on Companies (Auditors Report) Order, 2020

<sup>9</sup> MCA General Circular No. 12/2020 dated 30<sup>th</sup> March, 2020 on Companies Fresh Start Scheme, 2020

However there are situations where this immunity would not be available and the same is elaborated in Circular No. 12/2020.

The CFSS- 2020 is beneficial for the companies in these trying times as it allows:-

- i. Condonation of any delay in filing documents with the Registrar, insofar as it relates to the charging of additional fees
- ii. Grant of immunity from the launching of prosecution/proceedings for imposition of penalty on account of delay associated with certain filings.
- iii. Also, the CFSS-2020 allows inactive companies to get their companies declared as 'dormant company' under the Act by filing a simple application at a nominal fee. This allows them to remain on the Registrar of Companies with minimal statutory compliances.

**4. The Relaxation Provided Concerning Filings To Be Made U/S 124 And 125 Of The Companies Act, 2013 Read With IEPFA( Accounting, Audit, Transfer, And Refund) Rules, 2016.**

:- The government via circular 11/2020<sup>10</sup> has already provided that no additional fees shall be levied in case of delay in filing forms, statements, etc. in MCA-21 till 30th September 2020, the same applies to filings required under section 124 and 125 of the Act read with rules, also other forms like IEPF 1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4, IEPF-7, and e-verification form IEPF-5 shall be covered under the said relaxation.

**5. CSR Spending:-** A circular on 23<sup>rd</sup> March 2020<sup>11</sup> was issued by MCA and on 28<sup>th</sup> March 2020<sup>12</sup> by Office Memorandum clarifying that the amount spends on account of CSR funds for COVID-19 is eligible CSR activity. The funds may be spent for various activities which are mentioned under item number (i) which includes activities relating to and eradicating hunger, poverty, malnutrition, promoting healthcare including preventive healthcare, sanitation, making available safe drinking water and (xii) which relates to disaster management including relief, rehabilitation & reconstruction activities of Schedule VII of the Act.

It is further clarified via FAQs which expenditure will be considered as eligible expenditure for CSR activities related to COVID-19 such as Contribution to PM Cares Fund was eligible,

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<sup>10</sup> MCA General Circular No. 11/2020 dated 13<sup>th</sup> April, 2020 on filings to be made u/s 124 and 125 of the Companies Act, 2013 read with IEPFA (Accounting, Audit, Transfer and Refund) Rules, 2016 on account of threat posed by Covid-19.

<sup>11</sup> MCA General circular No. 10/2020 dated 23<sup>rd</sup> March, 2020 on Clarification of CSR spend on Covid-19

<sup>12</sup> MCA Official Memorandum No. CSR-05/01/2020-CSR-MCA dated 28 th March, 2020



Contribution to Chief Minister's Relief Fund or State Relief Fund was not eligible, Payment of salary/wages to Employees/ workers during lockdown was not eligible, Payment of wages to Casual/daily wage workers during lockdown was not eligible.

Further, a voluntary FORM CAR (Companies Affirmation of Readiness towards COVID-19) has been introduced to assess the companies' compliance with COVID-19 related measures, such as the implementation of work from home policy.<sup>13</sup>

### ➤ **RELAXATIONS INTRODUCED BY SEBI**

To reduce the compliance burden on listed entities, the Securities and Exchange Board of India (SEBI) has, inter alia, issued three circulars on March 19, 2020<sup>14</sup>, March 23, 2020,<sup>15</sup> and March 26, 2020<sup>16</sup>, respectively. These state that various compliances have been relaxed, including periodic filing requirements for listed entities under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR). The major relaxations are as below:

**1. Relaxation For Disclosure Filings Under The SEBI Takeover Regulations:** SEBI has relaxed the timelines for disclosure filings required to be made under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations") vide circular dated March 27, 2020. In terms of regulations 30(1), 30(2) and 30(4) of the Takeover Regulations, the shareholders of a company are required to compile, collate and disseminate information of their consolidated shareholding, as on March 31, 2020, to the company as well as to the stock exchange. Because of the Covid-19 pandemic, the due date for the said disclosure filings has been extended to June 1, 2020.<sup>17</sup>

**2. Board/ Audit Committee Meetings:** The board of directors and audit committee of listed entities are exempt from observing the maximum stipulated time gap of 120 days between two meetings as required under Regulations 17(2) and 18(2)(a) of the LODR, respectively, in respect of meetings between the period from December 01, 2019, to June 30, 2020. However,

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<sup>13</sup> The details regarding the form are available at [http://www.mca.gov.in/Ministry/pdf/Car\\_22032020.pdf](http://www.mca.gov.in/Ministry/pdf/Car_22032020.pdf).

<sup>14</sup> SEBI Circular on relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the CoVID-19 virus pandemic, SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020.

<sup>15</sup> SEBI Circular on relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and certain SEBI Circulars due to the COVID -19 virus pandemic – continuation, SEBI/HO/DDHS/ON/P/2020/41 dated March 23, 2020.

<sup>16</sup> SEBI Circular on further relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the SEBI circular dated January 22, 2020 relating to Standard Operating Procedure due to the COVID -19 virus pandemic, SEBI/HO/CFD/CMD1/CIR/P/2020/48 dated March 26, 2020.

<sup>17</sup> RELAXATIONS GRANTED BY SEBI AND IRDA ON ACCOUNT OF COVID-19 PANDEMIC "Intoday.com/2020/04/relaxations-granted-by-sebi-and-irda-on-account-of-covid-19-pandemic/" last accessed on 01.05.2020 at 01:10 a.m

the board of directors/ audit committee is required to ensure that they meet at least four times a year, as stipulated under Regulations 17(2) and 18(2)(a) of the LODR

**3. Extension Of Timelines Under The Alternative Investment Fund (“AIF”)**

**Regulations:** In terms of the circular issued by SEBI on March 30, 2020, SEBI has extended the due date for regulatory filings for AIFs and venture capital funds, for the period ending March 31, 2020, and April 30, 2020, by two months over and above the timelines prescribed under the SEBI (Alternative Investment Fund) Regulations, 2012.<sup>18</sup>

**4. Delayed Applicability Of Standard Operating Procedure:** The Standard Operating Procedure<sup>19</sup> on the imposition of fines and other enforcement actions for non-compliance with provisions of the LODR, the effective date of operation of which was “compliance periods ending on or after March 31, 2020”, will now come into force with effect from “compliance periods ending on or after June 30, 2020”. The Standard Operating Procedure circular dated May 3, 2018,<sup>20</sup> will continue to be applicable till June 30, 2020

**5. Extension Of Implementation Of The Stewardship Code:** SEBI in its circular dated December 24, 2019 had introduced a Stewardship Code for all mutual funds and all categories of AIFs, with their investment in liquid entities. The said Stewardship Code was due to come into effect from April 1, 2020. Upon consideration of the representations received from the Association of Mutual Funds of India and the Indian Association of Alternative Investment Funds, on account of the Covid-19 pandemic, SEBI vide circular dated March 30, 2020, extended the timeline for implementation of the Stewardship Code from April 1, 2020, to July 1, 2020.<sup>21</sup>

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<sup>18</sup> RELAXATIONS GRANTED BY SEBI AND IRDA ON ACCOUNT OF COVID-19 PANDEMIC “[intoday.com/2020/04/relaxations-granted-by-sebi-and-irda-on-account-of-covid-19-pandemic/](http://intoday.com/2020/04/relaxations-granted-by-sebi-and-irda-on-account-of-covid-19-pandemic/)” last accessed on 01.05.2020 at 01:10 a.m

<sup>19</sup> SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.

<sup>20</sup> SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2018/77 dated May 3, 2018.

<sup>21</sup> RELAXATIONS GRANTED BY SEBI AND IRDA ON ACCOUNT OF COVID-19 PANDEMIC “[intoday.com/2020/04/relaxations-granted-by-sebi-and-irda-on-account-of-covid-19-pandemic/](http://intoday.com/2020/04/relaxations-granted-by-sebi-and-irda-on-account-of-covid-19-pandemic/)” last accessed on 01.05.2020 at 01:10 a.m

## **CONCLUSION**

In the current scenario of the lockdown and restrictions imposed, the above temporary relaxations will enable companies to avoid penalties on account of unavoidable delays in meeting their regulatory compliances. However, companies ought to comply with any other regulatory requirement, which has not been specifically relaxed such as the disclosures under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

