



**Confederation of Indian Industry**

*Business and Beyond*

**125 Years: 1895-2020**

## **COVID – 19: REGULATORY UPDATE**

**(As on 23 March 2020)**

### **Relaxation from certain regulatory compliances**

#### **Introduction**

CII is continually representing challenges / issues to the Government and Regulators in the wake of the developing COVID-19 situation. Given the unprecedented times and situation globally, MCA, SEBI, CCI, IBBI etc have been responsive and have granted certain relaxations from regulatory compliances to industry. In addition, Hon'ble Courts/ Tribunals across the country have also taken similar steps. CII has collated few of the key relaxations and measures which have been introduced by the government<sup>1</sup>.

#### **Spending CSR funds for COVID-19 is now eligible as CSR activity (MCA Circular attached)**

On 23.03.2020, MCA vide its circular allowed companies to use their Corporate Social Responsibility (CSR) spending on measures to fight COVID-19.

As per the Circular, in view of the spread of novel coronavirus in India and its declaration as pandemic by the WHO, and decision of Government of India to treat this as notified disaster, it is clarified that amount spend by companies on activities relating to COVID-19 will be eligible as CSR activity.

It has further been clarified that funds may be spent for various activities related to COVID-19 relating to promotion of healthcare, including preventive health care and sanitation and disaster management

#### **Meetings through video conference - Directors not required to be physically present at Board Meetings**

As per rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 read with the Companies Act, 2013, the following matters cannot be dealt with in any meeting held through video conferencing or other audio-visual means:

- a. approval of annual financial statements
- b. approval of the Board's report
- c. approval of the prospectus
- d. audit committee meetings for consideration of financial statements; and
- e. approvals relating to amalgamations, merger, demerger, acquisition and takeover.

On March 19, 2020, Ministry of Corporate Affairs amended the above rules, as per which, from the date of the commencement of the Companies (Meetings of Board and its Powers)

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<sup>1</sup> This update primarily covers MCA and SEBI announcements.

Amendment Rules, 2020 **till June 30, 2020**, meetings on the above-mentioned matters may also be held through video-conferencing or other audio visual means.

### **MCA advisory to all companies/LLPs on 'work from home'**

MCA has issued an "Advisory on Preventive measures to contain the spread of COVID19" available on the website of the MCA ("**Advisory**"), stating that all companies/limited liability partnerships ("**LLPs**") are expected and 'strongly advised' to put in place an immediate plan to implement the 'work from home' policy (described below) as a temporary measure **till March 31, 2020** after which the position will be reviewed by appropriate authorities.

The Advisory details the following:

- implementation of work from home in the headquarters and field offices to the maximum extent possible, including by conduct of meetings, though video conference or other electronic/ telephonic/computerized means;
- even if essential staff is on duty, staggered timings may be followed with a view to minimize physical interaction; and
- 'Dos and Don'ts' advised by public health authorities are to be strictly followed.

### **Form CAR to be filed for confirming compliance with COVID-19 measures**

In pursuance of the above Advisory, MCA has introduced a simple web form for companies/LLPs to confirm their readiness to deal with the COVID-19 threat. A web form named **CAR (Company Affirmation of Readiness towards COVID-19)** would be required to be filled by an authorised signatory of companies and LLPs. CAR-2020 has been deployed on March 23, 2020. All companies/LLPs have been requested to report compliance using the web service w.e.f. 23<sup>rd</sup> March 2020 onwards at the earliest convenience". It has further been clarified by MCA on filing Form CAR 2020 that there is no penalty or enforcement related action applicable. This form is deployed as a purely voluntarily and confidence building measure to assess readiness of companies to deal with COVID-19 threats in India. Further, there is no fee applicable for filing this form.

### **MCA disabled 'View Public Documents' facility till March 31**

MCA has disabled the facility of viewing public documents till March 31, 2020.

Further, MCA also informed that due to the present total lockdown imposed on transport and people movement by Government, availability of MCA21 Voice and Ticketing Helpdesk services have been severely impacted, and the same would not be available till further notice.

### **SEBI: Extension of timeline for filings by listed companies**

On March 19, 2020, SEBI issued a circular ("**Circular**") granting relaxations in the timelines in respect of the below-mentioned requirements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**LODR**").

- a. Under regulation 7(3) of the LODR, a listed entity is required to submit a certificate relating to compliance with requirements pertaining to share transfer facility within 1 (one) month of the end of each half of the financial year. For the financial year ending

March 31, 2020, the period for compliance with this requirement has been extended to May 31, 2020.

- b. Under regulation 13(3) of the LODR, a listed entity is required to file a statement of investor complaints within 21 (twenty-one) days from the end of each quarter. For the quarter ending March 31, 2020, the period for compliance with this requirement has been extended to May 15, 2020.
- c. Under regulation 24A of the LODR read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019, a listed entity is required to comply with the requirement of filing the secretarial compliance report within 60 (sixty) days from the end of the financial year. For the financial year ending March 31, 2020, the period for compliance with this requirement has been extended to June 30, 2020.
- d. Under regulation 27(2) of the LODR, a listed entity is required to submit the corporate governance report within 15 (fifteen) days from the end of the quarter. For the quarter ending March 31, 2020, the period for compliance with this requirement has been extended to May 15, 2020.
- e. Under regulation 31 of the LODR, a listed entity is required to submit its shareholding pattern within 21 (twenty-one) days from the end of the quarter. For the quarter ending March 31, 2020, the period for compliance with this requirement has been extended to May 15, 2020.
- f. Under regulation 33 of the LODR, a listed entity is required to submit financial results: (i) within 45 (forty-five) days from the end of the quarter for quarterly results; and (ii) within 60 (sixty) days from the end of the financial year for annual financial results. For the quarter/ financial year ending March 31, 2020, the period for compliance with the above requirements has been extended to June 30, 2020.

In continuation of its earlier circular dated March 19, 2020, SEBI vide circular dated 23.03.2020 has given further relaxations to listed entities which have listed/ propose to list their Non-Convertible Debentures (NCDs) / Non-convertible Redeemable Preference Shares (NCRPS) / Commercial Papers due to the COVID-19 virus pandemics. Following are few relaxations in the timelines as notified by SEBI:

- a. Cutoff date for issuance of NCDs/NCRPs/CPs has been extended by 60 days i.e. upto May 31, 2020
- b. Extension of timelines for filing under SEBI LODR are extended by 60 days i.e. upto June 30, 2020 for initial disclosure and for annual disclosure, timelines are extended by 45 days upto June 30, 2020

### **Relaxation of time gap between two board / audit committee meetings**

Under regulations 17(2) and 18(2)(a) of the LODR, the board of directors and audit committee respectively, are required to meet at least 4 (four) times a year with a maximum time gap of 120 (one hundred twenty) days between any 2 (two) meetings. As per the Circular, the board of directors and audit committee of a listed entity are exempted from observing the maximum stipulated time gap between 2 (two) meetings for the meetings held or proposed to be held between the period of December 1, 2019 and June 30, 2020. However, the board of directors/

audit committee are required to ensure that they meet at least 4 (four) times a year, as stipulated under regulations 17(2) and 18(2)(a) of the LODR.

### **SEBI notifies measures to curb ongoing market volatility owing to COVID-19 w.e.f. 23 March 2020**

On 23<sup>th</sup> March, SEBI notifies regulatory measures pursuant to ongoing market volatility which shall take effect from the beginning of trading on March 23, 2020 and will be in effect for a period of 1 month:

- It apprised that in light of the continued abnormally high volatility in the market, appropriate measures were discussed with Stock Exchanges, Clearing Corporations and Depositories, with the objective of ensuring orderly trading and settlement, effective risk management, price discovery and maintenance of market integrity;
- It inter alia revised the Market Wide Position Limit ('MWPL') to 50% of the existing levels for stocks in F&O segment meeting the specified criteria, clarified that the said revised MWPL shall be for the purpose of introducing ban period on fresh positions and not for determining the enhanced eligibility criteria for derivatives stocks;
- Further, it revised position limits in equity index derivatives (futures and options) in which Mutual Funds / FPIs / Trading Members (Proprietary) / Clients may take exposure;
- A phased manner has been laid down in which minimum margin rate shall be increased for stocks with price band of 20% and witnessing an intraday (high-low) price movement of more than 10% for 3 or more days in last 1 month;
- The dynamic price bands may be flexed only after a cooling-off period of 15 minutes from the time of meeting the existing criteria specified by stock exchanges for flexing;
- Also, it stated that stock exchanges / clearing corporations will issue necessary instructions to market participants in this regard, and specifies that SEBI and stock exchanges will continuously monitor the market developments and review the position to take any further actions as may be required:

### **Supreme Court: Supreme Court announced to hear all cases through video conferencing from 23 March 2020**

The Apex Court has announced that it shall hear all the cases through video conferencing from 23 March, to avoid a complete shutdown of the legal system. The judges will sit in the court room while the advocates will be appearing and make arguments for the cases through a separate monitoring room in the court premises. It is further notified that the limited number of benches, that are functioning to hear urgent cases, shall hear them via Video Conferencing.

### **Only urgent matters to be heard; Only one litigant and lawyers permitted**

The Secretary General of the Supreme Court issued a notification on March 13, 2020 directing that the functioning of the Supreme Court from March 16, 2020 shall be restricted to urgent

matters with such number of benches as may be found appropriate. The lawyers who are going to act in the matter, i.e. either for arguments or for making oral submissions or to assist will be permitted in the court room along with 1 (one) litigant only.

### **High Courts to hear only urgent matters**

Various High Courts across the country have issued directives that only urgent matters shall be heard.

### **NCLAT: Adjournments for matters listed between March 21, 2020 to April 1, 2020, only urgent matters to be heard, Filing counters closed**

On March 20, 2020, the Registrar, National Company Law Appellate Tribunal (“**NCLAT**”) issued a directive listing out, *inter alia*, the following measures:

- a. With effect from March 21, 2020 till April 1, 2020 only urgent matters will be listed for admission. Urgent matters may only be listed upon mentioning of the same before the bench constituted for hearing urgent matters, which bench which would sit on March 25, 2020 and April 1, 2020.
- b. Matters listed for hearing during the aforesaid period will be adjourned and the date of hearing would be notified later.
- c. Interim order/stay order passed in the pending matters would continue till the next date of hearing.
- d. Filing counter will remain closed from March 21, 2020 till April 1, 2020.

### **NCLT: NCLT announced shutdown till 31 March 2020**

- (i) All NCLT benches shall remain closed from 23.03.2020 till 31 March 2020 for the purpose of judicial work;
- (ii) As to the unavoidable urgent matters, on application by aggrieved through email to the Registry, NCLT Chennai, Hon’ble Acting President sitting singly at Chennai will examine and pass necessary orders on Wednesday and Friday.
- (iii) As regard to the IBC, 2016 matters extension of time, approval of resolution plan and liquidation will not be construed as urgent matters. These matters will be taken up as soon as regular benches start functioning, until such time such application will not be filed.

### **Earlier NCLT announced adjournments for matters listed between March 16, 2020 to 27 March 2020, only urgent matters to be heard, Filing counters closed**

On March 15, 2020, the Registrar, National Company Law Tribunal (“**NCLT**”) issued a directive listing out, *inter alia*, the following measures:

- a. All benches of the NCLT are required to take up only those matters which require urgent hearing on a request made by the concerned parties.
- b. Adjournments would be granted on all matters other than those specified above from March 16, 2020 to March 27, 2020 for which presence of counsels, and parties was not required.
- c. All counsels were advised to restrict their presence only to the extent required.

On March 19, 2020, the Registrar of NCLT also issued a notice directing the closure of the filing counters of all the NCLT benches till March 27, 2020. If there is a 'limitation issue', matters may be filed online at the Delhi, Mumbai, Hyderabad, Amaravati and Jaipur benches, hard copies of which could be filed upon reopening of the filing counters. Other than matters which are likely to be hit by limitation, it has been directed that filings may be postponed until the filing counters were re-opened. For NCLT benches other than Delhi, Mumbai, Hyderabad, Amaravati and Jaipur, applications in matters which are possibly hit by a limitation issue may be filed (without annexures) by way of emails to the Registrars of the respective benches.

#### **SAT: Security Appellate Tribunal to remain closed till 31<sup>st</sup> March**

As per the notification of SAT dated 23.03.2020, since the Government has strictly enforced the lockdown and in view of the closure of public transport, the Tribunal shall remain closed till 31 March 2020.

The matters listed during this period will now be listed in April. The Tribunal and Office of Registry shall function from 01<sup>st</sup> April 2020 until further order. In case of urgent matters, parties may contact the Registrar who in turn will place the matter before the Hon'ble Presiding Officers/members for appropriate orders.

#### **CCI: Adjourns all matters listed for hearing till March 31 due to coronavirus**

On 23.03.2020, CCI has vide its notice announced that following shall remain suspended until 31<sup>st</sup> March, 2020

- a) All filings in relation to Section 3 and Section 4 of the Competition Act, 2002
- b) All notifications in relation to combination under Section 6 and 20 of the Act;
- c) All other filings, submissions and proceedings under the Act and regulations made thereunder, including those before the Director General and
- d) Pre-filing Consultation

Earlier, CCI vide its Circular dated 17<sup>th</sup> March 2020, has adjourned matters listed from hearing (excluding urgent matters, if any) till March 31, 2020.

#### **The Impact of COVID-19 on Contractual Obligations: Force Majeure**

On 19<sup>th</sup> February 2020, Ministry of finance vide its Office Memorandum clarified as follows:

“A doubt has arisen if the disruption of the supply chains due to spread of corona virus in China or any other country will be covered in Force Majeure Clause (FMC). In this regard it is clarified that it should be considered as a case of natural calamity and FMC may be invoked, wherever considered appropriate, following the due procedure.”

Given the supply chain disruption caused by the Covid-19 pandemic, performances under many contracts will be delayed, interrupted, or even cancelled. Companies may not be able to perform their obligations under their customer agreements because of their suppliers' non-performance. Taking the base of above office memorandum, companies may be suggested to expressly include Force Majeure clause in their contracts to include extraordinary events or circumstances beyond the control of parties.

### **Extension of Limitation**

The Supreme Court has taken suo motu cognizance of the situation and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including the Supreme Court, it has been ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

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