



India

Legal update in relation to the COVID-19 outbreak (As of March 24, 2020)

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***This article is based on the information as of March 24, 2020.**

Vide order dated March 24, 2020, the Ministry of Home Affairs, Government of India, invoking its powers under the Disaster Management Act, 2005 instructed complete lockdown of all States/Union Territories. In terms of the guidelines issued, all commercial and private establishments, industrial establishments, except providing essential services such as hospitals, banks, grocery and food stores, IT and IT enabled (only limited to providing essential services), to remain close for a period of 21 days with effect from March 24, 2020.

The inevitable situation arising out of COVID-19 has resulted in companies to face operational and compliance risks from every corner, more particularly under the Companies Act, 2013.

Amidst COVID-19 crisis, the problems for companies in India are exacerbated by the fact that there are stringent timelines for conducting Annual General Meeting, Board meeting, Extraordinary General Meeting under the Companies Act 2013 (“CA 2013”) and various other compliances. The companies were contemplating hurdles in holding such meetings and making necessary compliances due to sanctions imposed by the Government of India for gatherings, travel restrictions etc.

Subsequently, catering to the issues being faced by the companies and coming to their rescue, the Ministry of Corporate Affairs (“MCA”) on March 19, 2020 amended the Companies (Meetings of Board and its Powers) Rules 2014 (“Rules 2014”) by notifying Companies (Meetings of Board and its Powers) Rules 2020 (“Rules 2020”). By virtue of the said amendment, a sub-rule (2) was inserted, allowing the companies to hold the matters such as approval of the annual financial statements; approval of the Board’s report; approval of the prospectus; Audit Committee Meetings for consideration of accounts consideration of financial statement including consolidated financial statement through video conferencing or other audio visual means as provided under rule 3 of the Rules 2014. However, the said leverage has only been provided for a limited period beginning from the commencement of Rules

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2020 until June 30, 2020.

The MCA, further, vide notification dated March 23, 2020 has also clarified that funds spent for various activities related to COVID-19 under items relating to promotion of health care, including preventive health care sanitation and disaster management would be eligible under CSR activities as provided under CA 2013.

Also, the Ministry of Corporate Affairs on March 24, 2020 has issued a general circular implementing various measures to reduce compliance burden and risks under the CA 2013 and the Limited Liability Partnership Act, 2008 (“LLP Act”).

(http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf). Some of the key highlights are provided herein below:

- No additional fees to be charged for late filing during the period from April 1, 2020 to September 30, 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date;
- The mandatory requirement of holding meetings of the Board of the companies within prescribed interval provided in the CA 2013 (120 days), stands extended by a period of 60 days till next two quarters i.e., till September 30, 2020;
- Companies (Auditor’s Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of from 2019-2020 notified earlier;
- As per Schedule 4 to the CA 2013, independent directors are required to hold at least one meeting without the attendance of non-independent directors and members of management. For the year 2019-20, if the independent directors of a company have not been able to hold even one meeting, the same shall not be viewed as a violation;
- An additional time of 6 more months has been allowed to the newly incorporated companies who are required to file a declaration for Commencement of Business within 6 months of incorporation;
- 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 Companies Act, shall not be treated as a violation;
- Threshold of default under section 4 of the Insolvency and Bankruptcy Code, 2016 has been raised to INR 1 crore (from the existing threshold of INR 1 lakh).



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