

MCA Updates

A. Relaxation In Conducting Extra Ordinary General Meeting Through Video Conferencing:

- MCA vide its General Circular 14/ 2020 dated **April 8, 2020** has issued relaxation for holding Extra-Ordinary General meeting (not Annual General meeting) of members of the company through video conferencing (VC) or other audio-visual means (OAVM) till June 30, 2020 or till further order whichever is earlier.
- MCA has further issued the clarification under Circular no. 17/ 2020 dated April 13, 2020 clarifying on various difficulties faced by the Company in serving Notice for conducting EGM and gave more clarity on modalities/mechanism to follow while conducting EGM or transacting items through Postal Ballot without conducting EGM.

The links for the aforesaid Circulars and the article is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular14_08042020.pdf

http://www.mca.gov.in/Ministry/pdf/Circular17_13042020.pdf

<http://amitadesai.com/uploads/Convening%20of%20EGM%20as%20per%20MCA%20two%20Circulars%20-%20Amita%20Desai14042020.pdf>

B. FAQS ON CORPORATE SOCIAL RESPONSIBILITY:

- MCA vide its General Circular 15/ 2020 dated **April 10, 2020** has provided various clarification in the form of FAQs on the contributions made in certain fund will be treated as CSR contribution or not. It clarifies as follow:
 - a. Contribution made to **'PM CARES Fund' shall qualify as CSR expenditure** under item no (viii) of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum F. No. CSR-05/1/2020-CSR-MCA dated 28th March, 2020.
 - b. Contribution made to **'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19'** is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds **shall not qualify** as admissible CSR expenditure.
 - c. Contribution made to **State Disaster Management Authority to combat COVID-19 shall qualify** as CSR expenditure under item no (xii) of Schedule VII of the 2013 and clarified vide general circular No. 10/2020 dated 23rd March, 2020.
 - d. Ministry vide General Circular No. 10/2020 dated March 23, 2020 has clarified that **spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure**. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and 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.
 - e. **Payment of salary/ wages in normal circumstances** is a contractual and statutory obligation of the company. Similarly, payment of salary/ wages to employees and workers even during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Thus, payment

of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) **shall not qualify as admissible CSR expenditure.**

- f. **Payment of wages to temporary or casual or daily wage workers** during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Hence, payment of wages to temporary or casual or daily wage workers during the lockdown period **shall not count towards CSR expenditure.**
- g. **If any ex-gratia payment is 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.**

The link for the aforesaid Circular is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Notification_10042020.pdf

C. RELAXATION IN FILING FORMS U/S 124 AND 125 OF THE COMPANIES ACT, 2013:

- MCA vide its General Circular 16/ 2020 dated **April 13, 2020** clarified that MCA has noted that there are difficulties in complying with the procedures relating to transfer of money remaining unpaid or unclaimed for a period of 7 years in terms of provisions of Section 124 (5) of the Companies Act, 2013 and transfer of shares under section 124 (6) of the Companies Act, 2013 read with the IEPFA (Accounting, Audit, Transfer and Refunds) Rules, 2016, the relaxation is already provided to file the below mentioned forms without an additional fee levied till September 30, 2020 as per General Circular 11/ 2020 and 12/2020 dated March 24, 2020 and March 30, 2020, respectively.
 - 1. **IEPF-1:** Statement of amounts credited to Investor Education and Protection Fund
 - 2. **IEPF-1A:** Statement of Amounts credited to Investor Education and Protection Fund Pursuant to Rule 5(4A)
 - 3. **IEPF-2:** Statement of unclaimed and unpaid amounts
 - 4. **IEPF-3:** Statement of shares and unclaimed or unpaid dividend not transferred to the Investor Education and Protection Fund
 - 5. **IEPF-4:** Statement of shares transferred to the Investor Education and Protection Fund
 - 6. **IEPF-5:** Application to the Authority for claiming unpaid amounts and shares out of Investor Education and Protection Fund (IEPF)

7. **IEPF-7:** Statement of amounts credited to IEPF on account of shares transferred to the fund

The link for the aforesaid Circular is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular16_13042020.pdf

D. RELAXATION IN HOLDING ON ANNUAL GENERAL MEETING BY COMPANIES WHOSE FINANCIAL YEAR ENDED ON 31ST DECEMBER, 2019:

- MCA vide its General Circular no. 18/ 2020 dated **April 21, 2020** provided relaxation to the Companies whose financial year (other than first financial year) has ended on 31st December, 2019, to hold their Annual General Meeting (AGM) for such financial year within a period of nine months from the closure of the financial year (i.e. by 30th September, 2020), the same shall not be viewed as a violation. The references to due date of AGM or the date by which the AGM should have been held under the Act or the rules made thereunder shall construed accordingly.

The link for the aforesaid Circular is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular18_21042020.pdf

E. PERIOD/DAYS OF EXTENSION FOR NAMES RESERVED AND RESUBMISSION OF FORMS

- The Name Availability or the name can be reserved for formation of a Company for a period of 20 days and in case of change in name of the company the name can be reserved for maximum 60 days. Apart from this, in case of LLP the name is reserved for 90 days for new incorporation as well as for change in name of LLP. However, considering the difficulties faced during lockdown period, the names expiring any day between **March 15, 2020 to May 03, 2020** would be extended by **20 days beyond May 03, 2020**.
- Also, where the last date of resubmission for any form for the company or LLP falls between **March 15, 2020 to May 03, 2020** would be extended by additional **15 days beyond May 03, 2020**. However, for SRNs already marked under NTBR, extension would be provided on case to case basis.

Note: Forms will not get marked to (Not to be taken on Record)'NTBR' due to non-resubmission during this extended period as mentioned above.

The link for the aforesaid Notification is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Extension_22042020.pdf

F. Time extended to apply with Institute adding name in Data Bank for Independent Director

- On **April 29, 2020**, the Ministry of Corporate Affairs notified an amendment in the Companies (Appointment and Qualification of Directors) Rules, 2014 (“the Rules”) as the **Companies (Appointment and Qualification of Directors) Second Amendment Rules, 2020** (“the 2nd Amendment Rules, 2020”).
- The 2nd Amendment Rules, 2020 has brought amendment in **Rule 6** which deals with compliances required by any individual who is eligible and willing to be appointed as an Independent Director to apply online with the Indian Institute of Corporate Affairs at Manesar, for inclusion of his name in the data bank within seven months (earlier it was five months). This seven months is from December 1, 2019 when the 5th amendment Rules 2019 was notified. Now the **extension of time** is given and the new date to apply online with institute for inclusion of name in the Data Bank of Independent Director is **June 30, 2020**.
- On 22nd October, 2019, Rule 6 was of the Rules was amended as the Companies (Appointment and Qualification of Directors) Fifth Amendment Rules, 2019 which was made effective from December 1, 2019, notifying a new requirement of passing of proficiency test in one year from the date of application of inclusion of name online with the Indian Institute of Corporate Affairs at Manesar, an Institute, which will be creating and maintaining data base for Independent Director. Such application to the Institute to be made in **3 months from the date of notification that is three months from December 01, 2019 so by February 28, 2020**. He can include his name for a period of 1 year or 5 year or for his life-time and from time to time he shall take steps to renew it as long as he continues hold the office as an Independent Director in any company.
- However, further on February 28, 2020, MCA has notified and extended the period of making such application with the Institute for a further period of 5 months (earlier it was 3 months). This five months is from December 1st 2019 when the 5th amendment Rules 2019 was notified. The extension of time was given till April 30, 2020.

The link for the aforesaid Notification is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Rules_29042020.pdf

G. Extension for filing of Form NFRA-2

- MCA vide its General Circular no.19/2020 dated **April 30, 2020** extended the time limit for filing of Form NFRA-2 for the reporting period F.Y. 2018-19. The said period will be 210 days from the date of deployment of this form on NFRA website.

The link for the aforesaid Notification is mentioned below:

http://www.mca.gov.in/Ministry/pdf/Circular19_30042020.pdf