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Impact of MCA's special measures amid COVID - 19 Outbreak



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Amid the COVID-19 outbreak, the Ministry of Health and Family Welfare has come up with various schemes for the public. The Ministry of Corporate Affairs has also issued a Circular¹, relaxing a few provisions of the Act for better compliance ensuring the safety provisions. This article is a summary and analysis of the special measures introduced by the MCA and its impact on the compliance culture for next 6-9 months.

1. No Additional Fees during moratorium period: MCA has stated that, April 1, 2020 to September 30, 2020 shall be a moratorium period, i.e. during this time no additional fees would be charged for late filing, in respect of any document, return, statement etc., required to be filed, *irrespective of its due date*. As per the Circular, the objective is to reduce the compliance burden, financial burden and to provide a fresh start to long-standing non-compliant companies/LLPs. However, in this case, the applicable Govt. Fees shall be paid in accordance with Rule 12 of the companies (Registration of Offices and Fees) Rules, 2014. It is

interesting to note that, during the moratorium period of 6 months, MCA has permitted filing of any document, return, statement etc., (without any additional fees) irrespective of its due date. *i.e.* if a Company has not filed an e-Form related to the charge that was created in 2019 or annual return/financial statements of the Company for few years, then such companies can file the same by paying the Govt. fees only. This is a good step towards ensuring compliance of the non-compliant companies. However, the Government should have clarified about the prosecution/adjudication proceedings which could be initiated against such companies after the filing is complete. As compared to the LLP Settlement Scheme, 2020 (MCA General Circular No. 06/2020 dated March 4, 2020), wherein there is a specific provision - under clause (vi) of the LLP Settlement Scheme, 2020 that, the defaulting LLPs, which have filed their pending documents till June 13, 2020 and have made good the default, shall not be subjected to prosecution by Registrar for such defaults. The MCA should provide for such provision in case of the defaulting companies that complete the filings under the circular. Ultimately, this clause in the MCA Circular dated March 24, 2020 would be 'Company Law Settlement Scheme, 2020' (though not termed in such manner) with a sword hanging for adjudication or prosecution. The initiative would be to revive such companies and ensure that the filing is complete amidst the COVID-19 outbreak. Also, once the pending compliances are complete, such companies may voluntarily apply for the closure (either under voluntary winding-up or de-registration of companies/strike-off). Therefore, for non-compliant companies, this initiative by the MCA is a blessing in disguise. However, the MCA should have mentioned some cut-off date for the compliance. For example, all pending filings as on March 31, 2015, etc. are eligible for this scheme. This would have brought some clarity in the present panic situation for corporates and professionals.

2. Board Meetings: According to the provisions of Section 173 of the Act, every company shall hold the first meeting of the Board of Directors within 30 days from the date of its incorporation and thereafter hold a minimum number of four meetings of its board of directors every year in such a manner that not more than 120 days shall intervene between two consecutive board meetings. According to the MCA Notification dated June 5, 2015, in case of Section 8 company, such provision relating to holding of board meeting shall apply only to

the extent that the board of directors, of such companies shall hold at least one meeting within every 6 calendar months. By the MCA Notification dated January 4, 2017, a specified IFSC public company shall hold the first meeting of the board of directors within 60 days of its incorporation and thereafter hold atleast one board meeting in each half of a calendar year. By the MCA Notification dated June 13, 2017, an OPC, small company and dormant company shall be deemed to have complied with the requirements of Section 173 of the Act if at least one board meeting has been conducted in each half of a calendar year and the gap between the 2 meetings is not less than 90 days. Now, by the MCA Circular dated March 24, 2020, this provision has been relaxed thereby increasing the gap by 60 days *i.e.* the MCA has provided one-time relaxation between two consecutive meetings of the board of directors to 180 days till the end of the next two quarters. According to the MCA Circular, the benefit can be taken only till September 30, 2020.

3. Declaration of Commencement of Business: Presently, the newly incorporated companies are required to file a declaration for the Commencement of Business within a period of 180 days from the date of the incorporation². In this regard, an additional period of 180 more days has been granted *i.e.* now the compliance is to be done within a period of 360 days from the date of the incorporation of the company. However, there needs to be some clarity on the cut-off date of the incorporation *i.e.* whether the period of 180 days is to be calculated for companies incorporated prior to March 31, 2020 or for any Company which was incorporated after November 2, 2018³.

4. Resident Director: According to the extant provisions, every company shall have at least one Director who stays in India for a total period of not less than 182 days during the financial year. As per the MCA circular, if none of the directors of the company have complied with the said provision, then the same shall not be treated as a non-compliance for financial year 2019-20;

5. CARO, 2020: The Companies (Auditor's Report) Order, 2020 (*CARO*) included quite a few onerous provisions and compliance and which was to be made applicable from FY 2019-2020. By the MCA circular, the CARO shall now be applicable from the FY 2020-21, instead of FY 2019-20;

6. Independent Directors Meeting: Under the extant provisions, the Independent Directors shall hold at least one meeting in a financial year, without the attendance of non-independent directors and members of management. As per the MCA circular, for FY 2019-20, if Independent Director(s) have not been able to hold such a meeting, the same shall not be a violation of the provisions. The MCA has clarified that, the Independent Director(s) may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary. If the MCA could have directed that even this meeting could be conducted by video-conferencing or audio-visual means, the purpose would have been achieved.

7. Deposit Repayment Reserve⁴: As per extant provisions, there is a requirement to create a Deposit Repayment Reserve of 20% of the deposits maturing during FY 2020-21 before 30th day of April 2020. As per the MCA Circular, the duration stands extended to June 30, 2020.

8. Investing/Depositing 20% of maturing deposits⁵: Company is required to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th day of April 2020. As per MCA Circular, the duration stands extended to June 30, 2020.

It also noteworthy that in this difficult time, the MCA by amendment to Companies (Meetings of Board and its Powers) Rules, 2014⁶ has permitted board of directors to deal, discuss and deliberate the following matters in their meeting through video conferencing or other audio visual means: (i) Approval of the annual financial statements, (ii) Approval of the Board's Report, (iii) Approval of the prospectus, (iv) 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 (v) Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover. However, such relaxation is available from March 19, 2020 to June 30, 2020.

With an objective to promote the companies to spend their CSR fund for COVID-19, the MCA has issued a circular⁷ and clarified to include the promotion of health care, including preventive healthcare,

sanitation and disaster management activities as a part of the Schedule VII to the Act. Since, the activities are already part of the Schedule, the MCA Circular seems to promote the companies to spend their CSR funds for COVID-19.



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1. Circular No. 11/2020, dated March 24, 2020.
 2. Form 20A (under section 10A of the Co. Act, 2013).
 3. Since the provisions w.r.t. commencement of business u/s 10A of the Cos. Act, 2013 have been inserted by the Companies (Amendment) Act, 2019, w.e.f. 2-11-2018.
 4. U/s 73(2)(c) of Co. Act, 2013.
 5. As per Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014.
 6. MCA Notification F. No. 1/32/2013-CL-V-PART], dated Mach 19, 2002.
 7. Circular No. 10/2020, dated March 23, 2020.