

IMPACT OF COVID-19 ON CORPORATE AND ALLIED LAWS

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Prior to the manifestation of the Covid-19 pandemic, most of us would have heard about a disaster recovery plan or business continuity plan as part of the risk management plans. Such disaster recovery plans would seldom have envisaged a situation of countrywide, or even global, lockdowns which most of the world is currently experiencing. Therefore, it is unwise to expect that such a well-thought-out disaster recovery or continuity plan would have been prepared for a country as a whole. No doubt, there are certain legislations like the Disaster Management Act, 2005 and the Epidemic Diseases Act, 1897 which have come handy to the government in this unprecedented calamity.

Coming to the specific subject of the impact of Covid-19 on the Corporate and Allied Laws, we need to briefly touch base with the typical limitations that all of us are suffering from. The current situation of countrywide lockdown and social distancing norms is making most of us feel handicapped at not being able to attend office as we would generally do, have free access to the enabling office environment of accessing computers, the internet, physical records, printing and scanning documents, DSCs and all other tools that create a smooth working environment and enable the ease of working. For most of our working lives easy availability of such basic office infrastructure has been taken for granted and we did not pause and think even for a minute what would happen if the easy availability of such office infrastructure is interrupted for any length of time.

These aspects are highlighted to pinpoint the limitations which business enterprises are facing today as far as operational aspects are concerned. Apart from these operational limitations or micro issues, there are many substantive effects or macro issues which Covid-19 has triggered globally. Therefore, in the context of Corporate and Allied Laws we would need to dissect the Covid-19 impact from two broad perspectives, viz., (1) Operational or micro issues; and (2) Substantive or macro issues.

Various operational or micro issues are more to do with operational difficulties currently faced by corporates

causing hindrances in timely and adequate compliances for the short time span during the ongoing lockdown. On the other hand, the substantive or macro issues would require a much deeper understanding of certain provisions of the Corporate and Allied Laws in the context of the unique environment created by Covid-19 and its possible effects, which would have a long-lasting impact on Indian corporates in the medium to long term, say over a period of six to 18 months.

Many relaxations announced address the operational or micro issues under the Companies Act, 2013, FDI norms to check opportunistic takeovers of Indian companies and reducing the post buyback period for raising further capital from 12 months to six months under SEBI Regulations amongst others. Therefore, as the Indian corporates battle the disruptions caused by Covid-19 and endeavour to revive and streamline business operations post relaxations of the lockdown measures, there would be a greater need to evaluate the Corporate and Allied Laws provisions which could create hindrances or pose substantive or macro limitations to effective recovery and announce enabling relaxations to provide a free runway for a smooth take-off.

Most of us would be aware about these relaxations by now given the quick spread of such updates on social media platforms (even faster than coronavirus). Therefore, without getting into the details, I would like to briefly summarise most of the relaxations as a quick refresher for ease of reference.

1. Companies Act, 2013 and related rules

1. Board meeting permitted through video conferencing or other audio-visual means in respect of certain matters for which mandatory physical meeting is otherwise required, which includes approval of financial statements, Board's report, prospectus and matters relating to mergers, amalgamations, demergers, acquisitions and takeovers – **up to 30th June, 2020.**

2. Maximum time gap between two consecutive

Board meetings relaxed from the existing 120 days to 180 days for the next two quarters, i.e. **till 30th September, 2020.**

3. Non-holding of at least **one meeting of Independent Directors in a financial year** without the attendance of Non-Independent Directors **will not be treated as violation for F.Y. 2019-20.**

4. **Non-compliance of residency** in India for a minimum period of 182 days by at least one director of every company **will not be treated as violation for F.Y. 2019-20.**

5. Implementation of reporting by auditors as per the **Companies (Auditor's Report) Order, 2020 deferred by one year to F.Y. 2020-21.**

6. The time limit for (i) creating **Deposit Repayment Reserve of 20% of deposits** maturing during F.Y. 2020-21; and (ii) making specified investment or deposit of at least **15% of the amount of debentures maturing** during F.Y. 2020-21 extended from 30th April to **30th June, 2020.**

7. The time limit for **filing of declaration for commencement of business** by newly-incorporated companies extended from 180 days to **360 days.**

8. **Contribution** to newly-formed **PM CARES Fund** covered under **CSR** spending of corporates and FAQs released in relation to CSR spending in view of the peculiar situation of the Covid-19 pandemic.

9. Conduct of **Extraordinary General Meetings through video conferencing or other audio-visual means permitted till 30th June, 2020** in unavoidable cases, subject to certain safeguards and protective mechanisms as detailed in MCA Circular No. 14/2020 dated 8th April, 2020 as further clarified by MCA Circular No. 17/2020 dated 13th April, 2020.

10. **Extension of due date of AGM to 30th September, 2020** for companies whose **financial year has ended on 31st December, 2019**, i.e. time limit extended from six months from the end of the financial year to nine months.

11. **Companies Fresh Start Scheme, 2020 (CFSS)** has been announced in order to enable certain eligible defaulting companies to regularise their filings without payment of additional fees and granting immunity from launching prosecution or proceedings for imposition of

penalty on account of delay associated with certain filings. The detailed guidelines and operational procedures have been laid out in MCA Circular No. 12/2020 dated 30th March, 2020.

12. **LLP Settlement Scheme, 2020 (LSS)** which was announced through MCA Circular No. 06/2020 dated 4th March, 2020 has been modified **vide MCA Circular No. 13/2020 dated 30th March, 2020** keeping in mind the prevalent situation.

II. Securities and Exchange Board of India (SEBI) Regulations applicable to listed companies

A. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('LODR')

1. The following relaxations, in the form of extension of timeline for certain compliance requirements / filings **by entities whose equity shares are listed**, have been announced (*Refer Table A*).

Further, *vide* a separate circular¹, SEBI has granted similar relaxations to issuers who have listed their debt securities, non-convertible redeemable preference shares and commercial papers, and to issuers of municipal debt securities.

2. As per Regulations 17(2) and 18(2)(a), the Board of directors and the audit committee need to meet at least four times a year, with a maximum time gap of 120 days between two meetings. The listed entities are exempted from observing this maximum time gap for the meetings held / proposed to be held between 1st December, 2019 and 30th June, 2020. However, listed entities need to ensure that there are at least four Board and audit committee meetings conducted in a year.

3. The effective date of operation of the **new SEBI circular on Standard Operating Procedure (SOP)** dated 22nd January, 2020 in relation to imposition of fines and other enforcement actions for non-compliance with provisions of the LODR, has been extended to compliance periods ending on or after 30th June, 2020 instead of 31st March, 2020. Thus, the existing SEBI SOP Circular dated 3rd May, 2018 would be applicable till such date.

4. **Publication of newspaper advertisements** for certain information such as notice of Board meetings, financial results, etc. as required under Regulations 47

1 SEBI Circular No. SEBI/HO/DDHS/ON/P/2020/41 dated 23rd March, 2020

and 52(8) has been exempted for all events scheduled till 15th May, 2020.

Table A

No.	Regulation No.	Compliance requirement / filings	Relaxations w.r.t. quarter / F.Y. ending 31 st March, 2020	
			Due date	Extended date
1.	7(3)	Half-yearly compliance certificate on share transfer facility	30 th April, 2020	31 st May, 2020
2.	13(3)	Quarterly statement of investor complaints	21 st April, 2020	15 th May, 2020
3.	24A	Annual secretarial compliance report	30 th May, 2020	30 th June, 2020
4.	27(2)	Quarterly corporate governance report	15 th April, 2020	15 th May, 2020
5.	31	Quarterly shareholding pattern	21 st April, 2020	15 th May, 2020
6.	33	Quarterly financial results	15 th May, 2020	30 th June, 2020
		Annual financial results	30 th May, 2020	30 th June, 2020
7.	40(9)	Half-yearly certificate from practicing CS on timely issue of share certificates	30 th April, 2020	31 st May, 2020
8.	44(5)	Holding of AGM by top 100 listed entities by market capitalisation	31 st August, 2020	30 th September, 2020
9.	19(3A), 20(3A) and 21(3A)	Nomination and Remuneration Committee, Stakeholders Relationship Committee and Risk Management Committee need to meet at least once in a year	31 st March, 2020	30 th June, 2020
10.	Circular issued in terms of Regulation 101(2)	Disclosure requirement by large corporates		
		Initial disclosure	30 th April, 2020	30 th June, 2020
		Annual disclosure	15 th May, 2020	30 th June, 2020

5. Regulation 29(2) specifies that listed entities should give **prior intimation to stock exchanges about Board meeting** (i) at least **five days before the meeting wherein financial results** are to be considered, and (ii) **two working days** for all other matters. This requirement of prior intimation has been reduced to **two days** in all cases for Board meetings to be held till 31st July, 2020.

6. Any delay in submission of information to stock exchanges regarding loss of share certificates and issue

of duplicate share certificates within two days of receiving such information as required under Regulation 39(3) will not attract penal provisions for intimations to be made between 1st March, 2020 and 31st May, 2020.

7. In line with the relaxations announced by the MCA for allowing companies **whose financial year ended on 31st December, 2019** to hold their AGM till 30th September, 2020, SEBI has granted similar relaxation to top 100 listed entities, **whose financial year ended on 31st December, 2019**, for holding their AGM within a period of nine months instead of within a period of five months from the year-end.

8. SEBI has further clarified that authentication / certification of any filing / submission made to the stock exchanges under LODR may be done using digital signature certificate (DSC) until 30th June, 2020.

Suggested relaxations: Apart from the above relaxations proactively given by SEBI, the following further relaxations may be considered by it:

1. There were a few amendments made to the LODR based on the recommendations of the Kotak Committee which came into effect from 1st April, 2020, mostly relating to Board of directors and its meetings. These include (i) requirement of having at least one Independent woman director by the top 1,000 listed entities [Reg. 17(1)(a)]; (ii) requirement of having at least six directors on the Board by top 2,000 listed entities [Reg. 17(1)(c)] and (iii) a person shall not be a director in more than seven listed entities (Reg. 17A). While most of these provisions were introduced well before time for listed entities to be compliant beforehand, the current situation warrants reconsideration in extending the effective date of these provisions.

2. Regulation 25(3) of LODR requires Independent directors to hold at least one meeting in a year without the presence of Non-Independent directors and members of management. Here, too, relaxation should be granted by extending the due date to 30th June, 2020 as done for compliance of Regulations 19(3A), 20(3A) and 21(3A) in respect of committee meetings. It is worthwhile to recall that the MCA has waived the similar requirements under the Companies Act as stated above.

B. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST')

The time limit for filing annual disclosures under Regulations 30(1) and 30(2) by persons holding 25%

or more shares / voting rights in a listed company and by promoters (including persons acting in concert), respectively, regarding aggregate shareholding and voting rights held in the listed company, have been extended till 1st June, 2020 instead of seven working days from the end of the financial year. Further, a similar time limit extension has been granted for disclosure to be made by promoters under Regulation 31(4) regarding non-encumbrance of shares held by them, other than those already disclosed during the financial year.

C. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ('ICDR')

1. Rights Issues: SEBI has proactively announced certain much-needed relaxations to listed entities in order to create an enabling environment for fund-raising through rights issues that open on or before 31st March, 2021. SEBI, *vide* a Circular², has granted relaxations from strict application of certain provisions relating to rights issues, which broadly include the following:

a) **Eligibility conditions relating to Fast Track Rights Issues:** Certain eligibility conditions have been relaxed, *inter alia*, in the form of reduction of certain time periods and monetary caps so that companies can find it easy to comply with such conditions and come out with Fast Track Rights Issues for quick fund raising.

b) **Relaxation with respect to minimum subscription amount:** The requirement of receipt of minimum subscription amount in a rights issue has been **relaxed from the existing 90% to 75%**, provided that such companies need to ensure that at least 75% of the issue size is utilised for the objects of the issue other than general corporate purpose.

c) **Relaxation with respect to minimum threshold required for non-filing of draft offer document with SEBI for its observations:** The listed entities with a rights issue size of up to Rs. 25 crores (instead of Rs. 10 crores as earlier applicable) need not file draft letter of offer with SEBI and can directly proceed to issue letter of offer to shareholders.

2. Validity of Observations issued by SEBI: As per the existing provisions, a public issue / rights issue may be opened within a period of 12 months from the date of issuance of Observations by SEBI. This has been relaxed *vide* a SEBI Circular³ which provides that the validity of the SEBI Observations, where the same have expired / will expire between 1st March, 2020 and 30th September,

2020 has been extended by six months from the date of expiry of such Observations, subject to a requisite undertaking from the lead manager to the issue.

3. Relaxation from fresh filing of offer document with SEBI in case of increase / decrease in fresh issue size: As per the existing provisions, fresh filing of the draft offer document along with fees is required in case of any increase or decrease beyond 20% in the estimated fresh issue size. This has been relaxed *vide* a SEBI Circular³ whereby issuers have been permitted to increase or decrease the fresh issue size by up to 50% of the estimated fresh issue size without the requirement to file a fresh draft offer document with SEBI subject to fulfilment of certain conditions. This relaxation is applicable for issues (IPO / Rights Issues / FPO) opening before 31st December, 2020.

D. SEBI (Buy-back of Securities) Regulations, 2018 ('Buy-back Regulations')

Regulation 24(i)(f) of the Buy-back Regulations imposes a restriction that companies shall not raise further capital for a period of one year from the expiry of the buy-back period, except in discharge of their subsisting obligations. *Vide* a SEBI Circular⁴, this restrictive timeframe of one year has been reduced to six months in line with the provisions of section 68(8) of the Companies Act, 2013. This relaxation is applicable till 31st December, 2020. This is a welcome relaxation, much needed in the current scenario where many companies had announced buy-back prior to the outbreak of Covid-19 and may now need capital to survive these difficult times.

III. Insolvency and Bankruptcy Code, 2016 ('IBC')

The provisions of the IBC can play a crucial role to make or break an entity in this turbulent business environment. It is obvious that many businesses would find it difficult to honour their financial obligations on time due to loss of business, revenue and profit, as well as due to lack of liquidity in the market. In this regard, the government has already announced its intention to put in place requisite safeguards so that business entities are not dragged to insolvency proceedings to further worsen the ongoing business crisis. The following few key decisions / announcements have already been made or are at an advanced stage of consideration:

1. The threshold limit of debt default for invoking the

2 SEBI Circular No. SEBI/HO/CFD/CIR/CFD/DIL/67/2020 dated 21st April, 2020

3 SEBI Circular No. SEBI/HO/CFD/DIL/1/CIR/P/2020/66 dated 21st April, 2020

4 SEBI Circular No. SEBI/HO/CFD/DCR2/CIR/P/2020/69 dated 23rd April, 2020

Corporate Insolvency Resolution Process (CIRP) has been increased to Rs. 1 crore from Rs. 1 lakh.

2. An amendment has been made to the IBBI CIRP Regulations to provide that the period of lockdown imposed by the Central Government due to Covid-19 shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown in relation to a CIRP.

3. As per a news article, the provisions of sections 7, 9 and 10 relating to initiation of CIRP is proposed to be suspended for a period of six months which can be extended up to one year through promulgation of an ordinance.

To conclude, we must acknowledge the proactive relief

measures announced by the government and Regulators as far as Corporate and Allied Laws compliances are concerned, which would provide a much-needed breather to India Inc. to successfully sail through these difficult times. It would be imperative to continuously evaluate and announce further substantive reliefs that should be provided till business normalcy is achieved.

Let me recall the words of Swami Vivekananda, '**To think positively and masterfully, with faith and confidence, life becomes more secure, richer in achievement and experience**' in the hope that all of us would imbibe this thought in these difficult times; and once we overcome this situation, we will cherish this novel experience for the rest of our lives. ■

