

## **ICSI REQUEST TO MCA FOR COMPLIANCE RELAXATIONS**

- The Institute of Company Secretaries of India (ICSI) on 30<sup>th</sup> April, 2020 has made a Request to Shri Injeti Srinivas, IAS Secretary Ministry of Corporate Affairs, **for relaxations in the provisions of the Companies Act, 2013 due to COVID-19**
- Due to COVID-19 outbreak and lockdown situation prevailing in the Country, various provisions of the Companies Act, 2013 and rules made there under have already been relaxed by the Ministry of Corporate Affairs (MCA) for ease of compliance by the stakeholders.

**ICSI Requested to MCA to consider granting further relaxations from some of the compliances under the Companies Act, 2013 as below:**

S.No	Compliance	Details of the Provisions	Suggestion
1	<b>Exemption from requirement of dispatching the physical copies of the Annual Report</b>	In terms of the provisions of Section 136 of the Companies Act, 2013 read with Rule 11(c) of the Companies (Accounts) Rules, 2014, which <i>inter- alia</i> provides for the requirement of dispatching physical copies of the Financial Statements to such shareholders whose email IDs are not registered for this purpose. The process of designing, proof reading, printing etc. of the annual reports takes a minimum one month. This is an additional cost upon the Company in the current scenario when the industries are not operating and cash flows are stressed. There is practical difficulty being faced by the Companies as the future is unpredictable in terms of the containment of disease and upliftment of lockdown.	MCA has vide General Circular no. 17/2020 dated 13th April, 2020 has relaxed the requirements of sending notices required in terms of Section 101 read with Rule 19 of the Companies (Management and Administration) Rules, 2014. In similar lines, it is requested to exempt the companies from the requirements of the dispatch of the annual reports in physical form as envisaged under Sections 136 of the Companies Act, 2013 and rules framed thereunder. The copies of Annual Reports may be made available at the website of the Company for dissemination to the shareholders. The company may also provide link of the same in the newspaper publication of the notice calling AGM.

			Further, the Company shall be duty bound to send the copies of Annual Reports to all the shareholders who made specific request for the same.
2.	<b>Allowing Companies to pass circular resolutions requirement conducting</b>	<p>With reference to our request vide letter dated 16<sup>th</sup> March, 2020, we wish to reiterate and draw your kind attention to the provisions of Sub-section (3) of Section 179 of the Companies Act, 2013 read with Rule 4 and Rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 which provides that the Board of Directors of a company shall exercise certain powers on behalf of the company by means of resolutions passed only at meetings of the Board.</p> <p>MCA has amended the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 on 19<sup>th</sup> March, 2020 permitting the companies to consider the restricted matters at meetings of the Board through video conferencing or other audio visual means in accordance with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.</p> <p>In this regard representations have been received from our members stating that their directors are either not having any laptop / desktop or having no knowledge of the latest available applications and softwares and are also hesitant to join video conference meetings.</p>	The companies may be permitted to consider the restricted matters required to be conducted at meetings of the Board through circular resolutions.

3.	<b>Transfer of dividend amount in separate bank account within 5 days and payment with 30 days, including dispatch of physical dividend warrants through post.</b>	With reference to our request vide letter dated 24 <sup>th</sup> March, 2020, we wish to reiterate and draw your kind attention to the provisions of Section 123 and 124 of the Companies Act, 2013 which provides that the companies which have declared the dividend are required to open a Separate Bank Account within 5 days and make payment of the same to all the shareholders within 30 days of the declaration.	<p>In view of the current circumstances, the Company may not be able to open the separate bank account and despatch the physical dividends warrants to the shareholders, who have not mandated electronic payment facility. Also the banks are not fully functional and are providing only the limited services to the stakeholders.</p> <p>Further, the post offices and courier services in almost all over India are closed and may provide services after the lockdown is over in limited area only. In view of the same, the time limit may be relaxed subject to earmarking of the funds of dividend.</p>
4.	<b>Extension of date for utilisation of CSR spends beyond 31st March, 2020</b>	With reference to our request vide letter dated 24 <sup>th</sup> March, 2020, we wish to reiterate and draw your kind attention to the provisions of section 135 read with Rules made thereunder, which require the specified amount to be spent under the CSR on or before 31st March, 2020	<p>The deduction under section 80G of the Income Tax Act, 1961 can be claimed for the FY 2019-20, in respect of the donations made till 30th June, 2020.</p> <p>On similar lines, the time limit for spending CSR amount till March 31, 2020 under Sec 135 of the Companies Act, 2013 read with Rules made thereunder, may be suitably extended.</p>
5.	<b>Transfer of unpaid amount / shares to IEPF in terms of Section 124(5) &amp; 124(6) of the Act</b>	In terms of the provisions of Section 124(5) of the Companies Act, 2013 provide that any money transferred to the Unpaid Dividend Account of a company in terms of Section 124(2) of the Act, which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be	The MCA has vide its General Circular no. 16/2020 dated 13 <sup>th</sup> April, 2020 has extended the timeline for filing various IEPF e-forms without any additional fee. However, the timeline as prescribed in Section 124(5) for transfer of unpaid dividend and in Section 124(6) for

		<p>transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund (IEPF) established under Section 125(1) of the Companies Act, 2013. Further rule 5(1) of the IEPFA (Accounting, Audit, Transfer and Refund) Rules, 2016 require the company to send a statement containing details of such transfer in form IEPF – 1 to the authority within a period of thirty days of such amounts becoming due to be credited to the Fund. Also Sub rule 3 (a) of Rule 6 of the IEPFA (Accounting, Audit, Transfer and Refund) Rules, 2016 prescribes that the company is required to inform the shareholder concerned at the latest available address, regarding transfer of shares three months before the due date of transfer of shares and also simultaneously publish a notice in the leading newspaper in English and regional language having wide circulation informing the concerned that the names of such shareholders and their folio number or DP ID - Client ID are available on their website duly mentioning the website address.</p>	<p>transfer of shares had not been extended. Unless both these timelines are extended it may prejudice the interest of Investors as if Corporate choose to deposit the money/transfer of shares, the last opportunity available to Investor for prevention of the same may not be available/availed in view of lockdown. The required timelines in this regard may be relaxed.</p>
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6.	<p><b>Filing of Form MGT-14 &amp; Form INC - 28</b> (for order of Central Government for condonation of delay) <b>beyond the prescribed time period and Form SH - 7 for increase in authorized share capital</b></p>	<p>The MCA has also introduced Companies Fresh Start Scheme, 2020 wherein belated documents can be filed without any additional fees. However, stakeholders are facing the difficulties in filing of Form MGT-14, wherein delay of more than 300 days requires approval of central government. The provisions of section 117 read with section 403 of the Act were amended w.e.f. 7<sup>th</sup> May, 2018. But in respect of filing Form MGT-14, compliances of condonation of delay are being sought.</p>	<p>The MCA has vide its General Circular no. 11/2020 dated 24<sup>th</sup> March, 2020 has extended the timeline for filing various forms during April 01, 2020 to September 30, 2020.</p> <p>The MCA has also extended the period for reservation of name and for incorporation of companies.</p> <p>In view of the same it is hereby requested to consider the granting of moratorium / extension of last dates to all such e-form i.e MGT-14 (300 days), Form INC 28 (7 days as per Section 441 and / or 30 days from the order of the NCLT or central Government), and Form SH - 7 (30 days) if the last date of filing of these Forms is on or after 15<sup>th</sup> March, 2020.</p> <p>Further, as E-Form PAS-3 has been covered in Companies Fresh Start Scheme, 2020, which also changes the capital structure in master data.</p>
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7.	<b>Filing of Form CHG1 and Forms CHG 4</b>	<p>The MCA has introduced Companies Fresh Start Scheme, 2020 wherein companies are eligible for relief in additional fees and even penalties if the forms which were not filed earlier are filed during this scheme irrespective of the date of event. However, the scheme does not include Form CHG-1 and Form CHG – 4.</p>	<p>There are practical difficulties being faced by stakeholders in filing CHG-1:</p> <ul style="list-style-type: none"> <li>a) E-form CHG-1 requires digital signature of CS/Director of the company, charge holder and certifying professional. In the times of complete lockdown, it is difficult to arrange DSCs of concerned individuals.</li> <li>b) The attachment to this e-form generally have large file size due to which compressions are required in order to fit into 6 MB maximum e-form size. As employees are working from home, they don't have appropriate software to reduce the file size and complete the e-form.</li> <li>c) Additionally late filing fee of this e-form is very stringent, which will cost the companies to a great extent, whereas the reasons for late filing are beyond the control of the Companies.</li> </ul> <p>Further the Government has decided to amend the insolvency law and to suspend the provisions of IBC (Insolvency and Bankruptcy Code) that trigger insolvency proceedings against defaulters, up to one year. Accordingly, the</p>
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			<p>due date for filing charge related forms CHG-1 may be extended till 30<sup>th</sup> September 2020, thereby the charge holder rights which are available in the event of liquidation will not be impacted.</p> <p>The MCA has vide its General Circular no. 11/2020 dated 24<sup>th</sup> March, 2020 has extended the timeline for filing various forms during April 01, 2020 to September 30, 2020.</p> <p>The MCA has also extended the period for reservation of name and for incorporation of companies.</p> <p>In view of the same it is hereby requested to consider the granting of moratorium / extension of last dates to all Charge relating Forms such e-form CHG-1 (120 days)&amp; Form CHG - 4 (300 days), if the last date of filing of these Forms (120/300 days) is on or after 15<sup>th</sup> March, 2020.</p>
8.	<b>Filing of MSME Form I</b>	<p>The last date of filing of MSME Form I is due on 30<sup>th</sup> April, 2020 for the half year ended on 31<sup>st</sup> March,2020.</p> <p>The MCA has introduced Companies Fresh Start Scheme, 2020 wherein companies are eligible for relief in additional fees and even penalties if the forms which were not filed earlier are filed during this scheme irrespective of the date of event. However,</p>	<p>The MSME Form I is due on 30<sup>th</sup> April, 2020 for the half year ended on 31<sup>st</sup> March, 2020. There is no filing fees attached to the said form.</p> <p>However, there are practical difficulties being faced by stakeholders in filing MSME Form</p> <p>a) The said form requires compilation of accounts and recognizing the</p>

		<p>the scheme does not include MSME Form I because there is no fee attached to the form.</p>	<p>entries which are due to MSME, but due to the complete lockdown since 25<sup>th</sup> March, 2020 in the country, companies and their accounts department are not able to complete the entries and compilation of data is also pending.</p> <p>b) MSME Form I requires digital signature of CS/Director of the company and in the times of complete lockdown, it is difficult to arrange digital signatures of concerned individuals.</p> <p>It is requested that MSME Form I may also be included in Companies Fresh Start Scheme, 2020.</p>
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Source: ICSI Updates

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