Article- Analysis of the recent Corporate Law relaxation due to Covid-19 and its impact and its adherence.

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A. INTRODUCTION

With the Covid-19 lock down and consequent disruption in business operations the Finance Minister, Ministry of Corporate Affairs (MCA) and Securities Exchange Board of India (SEB) have issued advisories, circulars, press notes, etc., announcing revised timelines on key compliances and various relaxation.

This article seeks to look at the Corporate relaxations and ways and means to ensure adherence with them, keeping the spirit and intent intact.

This note is only an aid, and not a legal advice.

1. COMPANIES ACT 2013, AND RULES MADE THEREUNDER

1.1. Broad Directions

MCA Directions [Cir.11/20 dated 24.3.20]

	Particulars	Relaxation Period	Nature of Relaxation
1	**Filing on MCA-21 Registry** Related to documents, returns, statements, etc. beyond due date	1-Apr-20 to 30-Sep-20	No additional fees for late filing
2	CARO 2020, Applicability	2020-2021	Extended for One Year
3	**Board Meeting (Time Gap) U/S. 173 of CA 13** Time gap between two meetings not to exceed 120 days	1-Apr-20 to 30-Sep-20	Gap of 120 days extended to 180 days for the two quarters
4	**Independent Director Meeting for Fy-2019-20 , as per Para VII(1) of Schedule IV to the CA13** For the Quarter Ended March 31, 2020- to be filed within 15 days from the end of the quarter	Non-Holding of the same	Will not be viewed as a violation

1.2. Directions for conducting Board Meetings and general meetings of shareholders

1.2.1. Board Meeting (MCA Crl. Dated 19.3.20)

- The same has been done through issue of Companies (Meetings of Board and its Powers) Amendment Rules, 2020, which shall be effective till June 30,2020.

- The amendment is done by insertion of a new sub rule 4(2) which provides that Board Meetings can be conducted for the period up to June 30,2020 through video conferencing and other audio visual means in compliance with the existing Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

- There is no relaxation provided related to the existing Rule 3 and hence the same has to be followed in its entirety along with the requirements of Section 173 of the Companies Act, 2013 and the Secretarial Standard (SS-1) issued by the Institute of Companies Secretaries of India (ICSI).

- However, ICSI, vide a clarificatory release dated 3.4.2020 has allowed relaxation of the requirements of SS-1, to bring it in line with the Amended Rules of 2020 as aforementioned.

Key Compliance Take Away:

a. Board and Committee Meetings for the next two quarters, that is Q4 of FY 20 (January to March 20) and Q1FY21 (April to June 20) can be held through video conferencing in compliance with Rule 3;

b. Items, which hitherto could be conducted through video conferencing, for example- approval of financial statements, approval of Board's report, approval of prospectus and matters relating to amalgamation, merger, demerger, acquisition and takeovers can now be taken through video conferencing.

c. Similarly Audit Committee Meeting where in draft accounts are approved can also be taken through virtual meetings.

d. Listed Companies would have to do outcome reporting to Stock Exchanges as per existing LODR, 2015 regulations. There is no respite, as the stock markets are open.

Some observations:

While lauding the pro-activeness of MCA is bringing out timely clarifications who come as a welcome relief as many companies would be conducting board meetings through this facility to handle critical issues related to the Company and its operations as a consequence of Covid-19 impact. Some Challenges

Book Closure, IND-AS Reporting's and Audit:

a. Even book closure would be a challenge, be it for the quarter end or year end.

b. However, getting a limited review done (for listed Companies) would be a herculean task, as the Auditors cannot be expected to do e-audits.

c. Further in my view the impact of Covid-19 on the Company and its business health needs to be quantified and reported under INDAS. This would be a big challenge as quantifying the impact in an accurate manner and proper time scales would not be easy. This will impact right from IND-AS 1 (Presentation of Financial Statements) to IND-AS7 (Cash Flow statement) to IND-AS17 (Leases) and so on and so forth. So the impact would be wide spread and across IND-AS.

Force Majeure Clause:

d. All the existing contracts (especially the large ones and having cross-board transactions/relationships have to thoroughly revisited as many enterprises across the globe would be treating Covid-19 as a "force-majeure clause". However, the underling agreements should have such a clause in the first place and secondly the parties concerned may have to litigate or invoke Arbitration Clauses to prove their stand, this would have a further damaging effect on the financial health of the Company.

e. The Government of India, in a recent notification titled- Office Memorandum- Force Majeure Clause (FMC) dated 19th February 2020, has classified Covid-19 as a natural calamity and hence "force majeure clause" can be invoked in appropriate circumstances related to procurement of goods.

Is it possible to invoke the same incase a Company is unable to fulfil its statutory obligations, say deduction of TDS, GST payment or even labour payments due to genuine constraints or cash flow problems (say startup companies or companies in pure retail play)?

1.2.2. General Meeting of Shareholders (MCA Crl.14-2020) Dated 08.04.2020

- Again, a laudable effort, but there are many grey areas and practical issues which a Company would have to confront in order to conduct the shareholder meetings in its true spirit and intent.

- With work from home, the secretarial and compliance team will be hard pressed to coordinate and arrange all the facilities. Also getting through to other agencies like RTA and service providers is also posing a big challenge.

Let's look at some key requirements (For Companies which are mandatorily required to provide such facilities or Companies which have opted to provide such facilities) :

- Section 105, proxies have been dispensed with.

- Presence of one independent Director (where the company has appointed such a class of director) is mandatory

- Presence of Auditors or his authorised representative who is qualified to be an Auditor shall also be present.

- Facility to shareholders to pose question as the virtual meeting or prior intimation to a dedicated e-mail id- so this has to be taken at the meeting and confirmed that such a facility was provided, and these questions raised therein and duly taken by the Chairman for answering. All questions put up there has to be taken up, there is no let-up on this.

- Hence this method should only be resorted if there are extraordinary circumstances which require the Company to seek shareholder approval be it ordinary or special. Or the Company has already called the meeting and hence would like to take it through.

- Remote e-voting facility to be provided as per existing guidelines, so change.

- Dedicated helpline through RTA (Registrar and Share Transfer Agent)

Let's look at some key requirements (For other Companies) :

- The facility should allow access to not less than 500 members or total number of members, whichever is lower.

- Again, presence of Auditor, Independent Director is required as in the other case.
- Similarly, proxy dispensed with.
- Dedicated e-mail id.

Hence in my understanding this facility should only be taken up if there are compelling circumstances which needs the Company to go to its shareholders or it has already called a meeting and would like to take it through.

It should also be noted that all reporting requirements related to such meetings have to be done within 60 days thereof, there is no relaxation in the reporting requirements and hence would be similar to what is presently being done for meeting related to members.

2. SECURITIES EXCHANGE BOARD OF INDIA (SEBI) GUIDLINESS

SEBI- SAST REGULATIONS , 2011	DUE DATE	REVISED DATE
Disclosure Filing U/R. 30(1), (2) & 30(4) of SAST [Crl. Dated 27.3.20] Shareholing Pattern- Consolidated Shareholding as on March 31,2020	15-Apr-20	01-Jun-20

SEBI- DAP REGULATIONS , 1996	DUE DATE	REVISED DATE
Reconciliation of Share Capital U/R. 55A of DAP Submission of Audit Report within 30 days of end of March'20 quarter	30-Apr-20	No Extension

	SEBI- LODR REGULATIONS , 2015	DUE DATE	REVISED DATE
1	**Half Yearly Compliance Certificate U/R. 7(3)** Compliance Certificate on Share Transfer Facility for the half year ended March 31,2020 signed by the Compliance Officer of the Company and Authorised Signatory of RTA- Within one month from the end of each half of the FY.	**30-Apr-20**	**31-May-20**
2	**Statement Related to Investor Compliants U/R.13(3)** For the quarter ended March 31, 2020- to be filed within 21 days of the end of each quarter.	**21-Apr-20**	**15-May-20**
3	**Annual Secretarial Compliance Report U/R. 24A, R/w. Cir. CIR/CFD/CMDI/27/2019 dt. 8.2.19** PCS Audit Report (MR3)-Within 60 days of the end of the Financial Year	**30-May-20**	**30-Jun-20**
4	**Corporate Goverance Report U/R. 27(2)** For the Quarter Ended March 31, 2020- to be filed within 15 days from the end of the quarter	**15-Apr-20**	**15-May-20**
5	**Financial Results U/R.33** For the year ended March 31, 2020- within 60 days from the end of the Financial Year	**30-May-20**	**30-Jun-20**
6	**TIME GAP BETWEEN TWO BOARD MEETING**	**Relaxation**	**REMARKS**
	R17(2)- BOD shall meet at least 4 times in a year and between two meeting the maximum gap allowed is 120 days	1-dec-19 to 30-June-20	Exempted from observing the stipulated gap for Board Meetings held during the said relaxation period

7	**TIME GAP BETWEEN TWO AUDIT COMMITTEE MEETING**	**Relaxation**	**REMARKS**
	R18(2) (a)- Audit Committee shall meet at least 4 times in a year and between two meeting the maximum gap allowed is 120 days	1-dec-19 to 30-June-20	Exempted from observing the stipulated gap for Audit Meetings held during the said relaxation period

However, SEBI has also instructed that the 4 meetings as mandated under the aforementioned regulations have to be held and cannot be dispensed with.