

Latest changes
under the Companies Act, 2013
in 2020

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- to be professional advice, or
 - solicitation of professional assignment.
- &
- Only for sharing of knowledge

CIRCULARS ISSUED BY THE MCA

Circular No. /Date	Subject	Section/ Rules	Remarks
18/2020 21.04.2020	Holding of AGMs by companies whose FY has ended on 31.12.2019	Section 96	On account of the difficulties highlighted for social distancing due to COVID-19, it is clarified that if the companies whose financial year (other than first financial year) has ended on 31st December, 2019, may hold their 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.

CIRCULARS ISSUED BY THE MCA

Circular No. /Date	Subject	Section/ Rules	Remarks
17/2020 13.04.2020 & 14 /2020 08.04.2020	Clarification on passing of OR & SR on account of the threat posed by COVID-19	Section 101, 103, 104, 105, 108, 109, 110, 112, 113 Rule 18, 20(4)(v)	Passing of OR /SR on urgent nature during 08-04-2020 to 30-06-2020 by members other than Ordinary business and where a person has rights to be heard without holding a general meeting which requires physical presence of members at a common venue can be passed through VC or OAVM

CIRCULARS ISSUED BY THE MCA

Circular No. /Date	Subject	Section/ Rules	Remarks
16/2020 13.04.2020	Filing of Form u/s 124 & 125 of the CA 2013 to IEPF in view of emerging situation due to outbreak of COVID-19	124(5), (6) Read with IEPF (Accounting, Audit, Transfer & Refund) Rules, 2016	The relaxation as provided by Circular No. 11/2020 dated 24.03.2020 and No. 12/2020 dated 30.03.2020 for allowing time to file various forms at the portal of the MCA without additional filing fee till 30.09.2020 shall also apply on filing of Form IEPF-1, IEPF-1A, IEPF-2, IEPF-3, IEPF-4 and IEPF-7 and E-verification of Claims in IEPF-5

CIRCULARS ISSUED BY THE MCA

Circular No. /Date	Subject	Section/ Rules	Remarks
15/2020 10.04.2020	COVID-19 related FAQs on CSR	135 Read with Schedule VII	<ol style="list-style-type: none"> 1. Contribution to ‘PM CARES Fund’ shall qualify as CSR expenditure (Refer CSR-05/1/2020-CSR-MCA dated 28.03.2020) 2. Contribution to ‘CM Relief Funds’ or ‘State Relief Fund for COVID-19’ is not included in Schedule VII therefore, any contribution to such funds shall not qualify as CSR Expenditure. 3. Contribution to State Disaster Management Authority to Combat COVID-19 qualify as CSR expenditure under Item (xii) of Schedule VII and as clarified vide Circular No.10/2020 dated 23.03.2020. 4. Spending for COVID-19 related activities qualify under Items Nos. (i) and (xii) of Schedule VII shall quality 5. Payment of salary/wages to employees & workers, including contract labour, during lockdown period cannot be adjusted in the CSR 6. Payment of wages to temporary workers, including/casual labour, during the lockdown period cannot be adjusted in the CSR 7. Ex-gratia payment to temporary/casual/daily wage workers over and above the disbursement of wages, for the purpose of fighting COVID 19, shall be qualify as admissible as CSR Expenditure

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Remarks
13/2020 30.03.2020 & 06/2020 04.03.2020	LLP Settlement Scheme, 2020- Modification	<ul style="list-style-type: none">• As per Notification No. GSR 59(E) dated 30.01.2020 u/s 67(2) as powers available u/s 460 of the CA, 2013.• One-time relaxation Scheme, named as LLP Settlement Scheme have been divided into two parts under Para No. 8 and 8A (1) for the period from 16.03.2020 to 31.03.2020; and (2) 01.04.2020 to 30.09.2020 permitted to file belated documents (Form 3, 4, 8, 11 etc. due for filing till 31.08.2020)• No additional filing fee (from 01.04.2020 to 30.09.2020) but for 16.03.2020 to 31.03.2020 Rs. 10/- per day of default but not exceeding Rs. 5,000/-• For claiming Immunity from prosecution by Registrar (Need not apply)• LLP which has applied in Form LLP-24 for strike off cannot avail the benefits of the Scheme.

Detailed discussion

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Section/ Rules	Remarks
12/2020 30.03.2020	Companies Fresh Start Scheme, 2020 (CFSS-2020)	403, 404, 454, 455, 460	<p>Any defaulting company may file belated documents during the period of 01.04.2020 to 30.09.2020 with the normal filing fee only.</p> <ul style="list-style-type: none">- No additional filing fee payable- Immunity from prosecution relating to non filing of documents only to the company and its directors, etc. but not for other non compliances, if any. <p>Detailed discussion followed</p>

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Section/Rules	Remarks
11/2020 24.03.2020	Special Measures under Companies Act, 2013 and LLP Act, 2008 in view of COVID-19	CA, 2013 & LLP Act, 2008 CA-2013, 10A, 73(2)(c), 149, 173,	<ul style="list-style-type: none"> - Moratorium period from 01.04.2020 to 30.09.2020, any document, return, statement etc., required to be filed at the portal of MCA-21 by a company or LLP irrespective of its due dates shall be filed without any additional filing fee - One time relaxation to hold Board meeting within 120+60 days extended time = 180 days till the next 2 quarters (June & Sept., 2020) - Effective date for CARO-2020 extended - Non holding of Independent Directors meeting, not a violation for the year 2019-20 - Extended period to deposit 20% from 30.04.2020 to 30.06.2020 - Extended period to deposit 15% of amount of Debentures from 30.04.2020 to 30.06.2020 - 180 days additional time limit for file declaration for commencement of business - Non compliance of the requirement for at least 182 days stay in India

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Section/Rules	Remarks
10/2020 23.03.2020	Clarification on spending of CSR funds for COVID-19	135 Schedule VII Item No. (i) and (xii)	<p>COVID-19 has been notified as “Disaster” and any amount spending from CSR funds for COVID-19 is eligible for CSR;</p> <p>Fund may be expended in promotion of health care, sanitation, and disaster management.</p>
09/2020 12/03/2020 & 03/2020 31/01/2020	Relaxation of additional fees of Companies in UT of J&K and UT of Ladakh		<p>Date for filing of the Form MGT-7, AOC-4, AOC-4 (CFC), AOC-4 XBRL from 01.01.2020 to 31.03.2020 & further extended from 31.03.2020 to 30.06.2020 Automatically extended to 30.09.2020</p>

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Section/ Rules	Remarks
08/2020 24.03.2020	Filing of forms in the Registry (MCA-21) by the Insolvency Professional (IRP or RP or Liquidator appointed under IBC, 2016	-	<ol style="list-style-type: none">1. IP who is IRP/ RP/ Liquidator have to file a copy of the NCLT order approving his appointment as IRP/ RP/ Liquidator in Form INC-28 with his designation as "CEO" quoting date of Order of NCLT.2. Request for Change in the status of Company by the IBBI3. IRP/RP/Liquidator shall be responsible for filing of all the e-forms in the capacity to CEO through GNL-24. Earlier orders of the NCLT for appointment of IRP/RP/Liquidator-also needs to be filed in Form INC-28 to RoC.

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Section/ Rules	Remarks
07/2020 05/03/2020	Extension of last date of filing of Form NFRA-2		Filing of Form NFRA-2, by the Auditors of the eligible companies for the year 2018-19, will be within 150 days from the date of deployment of this form on the website of NFRA on 09.12.2019 i.e. on or before 9th May, 2020 (Relaxation for moratorium upto 30.09.2020 not applicable, as its web form to be filed at he portal of NFRA)
05/2020 02/03/2020	Clarification on prosecutions filed or internal adjudication proceedings initiated against IDs, non-promoters and non-KMP non-executive directors	2(60), 149(12)	No unnecessary civil or criminal proceedings, against IDs, Non-Promoter Director and NED, shall be initiated and, if it is required, guidance may be sought and prosecution should be initiated after receiving due sanction from MCA

CIRCULARS ISSUED BY THE MCA

Circular No. Date	Subject	Remarks
03/2020 30.01.2020	Relaxation of additional fees and extension of last date of filing of AOC-4 NBFC (Ind AS) and AOC-4 CFS NBFC (Ind AS) for FY 2018-19	Last date for filing of AOC-4 NBFC (Ind AS) and AOC-4 CFS NBFC (Ind AS) for all eligible companies for the FY 2018-19, without payment of additional fee till 31st March, 2020. (Now upto 30.09.2020 with moratorium period)
01/2020 01/01/2020	Relaxation of additional fees and extension of last date of filing of Form BEN-2 along with BEN-1 under Companies Act, 2013	Time for filing e-form BEN-2 is extended upto 31.03.2020 without payment of additional fee (Now upto 30.09.2020 with moratorium period).

LLP SETTLEMENT SCHEME, 2020

General Circular No. 13/2020 Dated: 30.03.2020

The details of the scheme as modified, are as under:

- (i) The Scheme came into force with effect from 01.04.2020 and applicable till 30.09.2020
- (ii) “*defaulting LLP*” means a LLP which has made a default in filing of documents on the due date(s)
- (iii) **Applicability** - Any ‘*defaulting LLP*’ is permitted to file belated documents, which were due for filing till **31st August 2020**
- (iv) **Payment of fee-** as payable for filing of such document or return, **no additional fees shall be payable for filing any belated documents under this scheme.**
- (v) The defaulting LLPs, which have filed their belated documents till 30.09.2020 and made good the default, **shall not be subjected to prosecution** by the Registrar for such defaults
- (vi) This **Scheme shall not apply** to LLPs which have made **applications in Form 24** to the Registrar, **for striking off** their name from the register as per provisions of Rule 37(1) of the LLP Rules, 2009

COMPANIES FRESH START SCHEME, 2020

General Circular No. 12/2020 Dated: 30/03/2020

In order to give an opportunity to all the defaulting companies and to enable them to file the belated documents in the MCA 21 registry the Central Govt. in exercise of powers conferred u/s 460 read with section 403 of CA 2013 has decided to introduce a Scheme namely; **“Companies Fresh Start Scheme- 2020 (CFSS-2020)** condoning the delay in filing the documents with the Registrar, in so far as it relates to charging **of additional fees, and granting of immunity from launching of prosecution or proceedings for imposing penalty on account of delay associated with certain filings.** Only normal fees for filing of documents in the MCA-21 registry will be payable in such case during the currency of **CFSS-2020** as per provisions of section 403 & 460 read with Companies (Registration Offices and Fee) Rules, 2014.

- The **scheme came into force on the 01.04.2020 and shall remain in force till 30.09.2020**
- **Immunity from launch of prosecution or proceedings** for imposing penalty shall be provided only to the extent such prosecution or the proceedings for imposing penalty under the Act pertain to any delay associated **with the filing of belated documents.** Any other consequential proceedings, including an proceedings involving interest of any shareholder or any other person qua the company or its directors or key personnel would not be covered by such immunity

COMPANIES FRESH START SCHEME, 2020

.....General Circular No. 12/2020 Dated: 30/03/2020

- **Withdrawal of appeal against any prosecution launched** or the proceedings for imposing penalties initiated
- **Special measures for cases where the order of the adjudicating authority was passed but the appeal could not be filed** and no appeal has been preferred by the concerned company or its officer before the RD u/s 454(6) as on the date of commencement of the Scheme, the following would apply:-

(A) Where the **last date for filing the appeal** against the order of the adjudicating authority u/s 454(6) falls between **1st March, 2020 to 31st May, 2020**, a **period of 120 additional days** shall be allowed with effect from such last date to companies and their officers for filing the appeal before the concerned RD;

(B) During such additional period as stated in (A) above, prosecution u/s 454(8) for non-compliance of the order of the adjudicating authority, insofar as it relates to delay associated in filing of any document, statement or return, etc. in MCA-21 registry shall not be initiated against such companies or their officers

COMPANIES FRESH START SCHEME, 2020

.....General Circular No. 12/2020 Dated: 30/03/2020

- **Application for issue of immunity** in respect of document(s) filed under the Scheme shall be made **within 6 months from** the closure of the Scheme
- This **immunity shall not be applicable** in the matter of **any appeal pending before the Court of law and in case of management disputes** of the company pending before Court or Tribunal
- No immunity shall be provided in case any Court has ordered conviction in any matter, or an order imposing penalty has been passed by an Adjudicating Authority under the Act, and no appeal has been preferred against such orders of the Court or of the Adjudicating Authority, as the case may be, **before this Scheme has come into force**

COMPANIES FRESH START SCHEME, 2020

.....General Circular No. 12/2020 Dated: 30/03/2020

Scheme not to apply in certain cases –

- to such companies against which action for **final notice (STK-5)** for striking off the name u/s 248 of the Act has already been initiated by the Designated Authority;
- where any **application (STK-2)** has already been **filed by the companies for action of striking off**;
- to companies which have **amalgamated** under the scheme of arrangement under the Act;
- where applications have already been filed for **obtaining Dormant Status u/s 455** before this Scheme;
- **vanishing** companies;
- Where **increase in authorized capital is involved** (Form SH-7) and also charge related documents (**CHG-1, CHG-4, CHG-8 & and CHG-9**) MGT-14 beyond 270+30 days;

COMPANIES FRESH START SCHEME, 2020

.....General Circular No. 12/2020 Dated: 30/03/2020

Effect of immunity:

After granting immunity, Designated Authority concerned shall **withdraw such prosecution(s) pending, if any, before the concerned Court(s) regarding delayed filing and the proceedings of Adjudication of penalties u/s 454, in respect of defaults against which immunity has been so granted shall be deemed to have been completed without any further action by the Designated Authority.**

Scheme for Inactive Companies:

The defaulting inactive companies, while filing due documents under **CFSS-2020** can, simultaneously, either:

(a) **apply to get themselves declared as Dormant Company u/s 455** by filing e-form MSC-1 at a normal fee on said form; or

(b) **apply for striking off the name** of the company by filing e-Form 'STK-2 by paying the fee payable on form **STK-2**.

SPECIAL MEASURES UNDER CA-2013 AND LLP ACT, 2008 IN VIEW OF COVID-19 OUTBREAK

General Circular No. 11 /2020 Dated 24.03.2020

- No additional fees shall be charged for late filing during a moratorium period from 01.04.2020 to 30.09.2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date, which also enable long-standing noncompliant companies/ LLPs to make a-fresh start. **The Circulars specifying detailed requirements in this regard are being issued separately (is Pending till now);**
- The mandatory requirement of holding meetings of the Board of the companies within **the intervals of not exceeding 120 days** provided in section **extended by a period of 60 days till next two quarters i.e., till 30th September**. Accordingly, as a one time relaxation the gap between two consecutive meetings of the Board may extend to 180 days till the next two quarters, instead of 120 days as required in the Companies Act, 2013.

SPECIAL MEASURES UNDER CA-2013 AND LLP ACT, 2008 IN VIEW OF COVID-19 OUTBREAK

..... General Circular No. 11 /2020 Dated 24.03.2020

- The CARO- 2020 shall be made applicable from the financial year 2020-21 instead of 2019-2020 as notified earlier.
- As per Para VII(1) of Schedule IV to the CA-13, IDs are required to hold at least one meeting without the attendance of Non-Independent Directors and members of management. For the financial year 2019-20, if the IDs have not been able to hold such a meeting, shall not be viewed as a violation. The IDs, however, may share their views amongst themselves through telephone or e-mail or any other mode of communication, if they deem it to be necessary.
- Requirement u/s 73(2)(c) of CA-13 to create the deposit repayment reserve of 20% of deposits maturing during the financial year 2020-21 before 30.04.2020 shall be allowed to be complied with till 30.06.2020.

SPECIAL MEASURES UNDER CA-2013 AND LLP ACT, 2008 IN VIEW OF COVID-19 OUTBREAK

.....General Circular No. 11 /2020 Dated 24.03.2020

- Newly incorporated companies are required to file a declaration for Commencement of Business within 180 days of its incorporation u/s 10A. An additional period of 180 more days is allowed for this compliance
- Non-compliance of minimum residing in India for a period of at least 182 days by at least one director of every company, under section 149 of the CA-13 shall not be treated as a non-compliance for the financial year 2019-20.

**CLARIFICATION ON PROSECUTIONS FILED OR INTERNAL ADJUDICATION PROCEEDINGS
INITIATED AGAINST INDEPENDENT DIRECTORS, NON-PROMOTERS AND
NON-KMP NON-EXECUTIVE DIRECTORS**

General Circular No. 5/2020 Dated: 22 March, 2020

- Ordinarily, a WTD and a KMP are associated with the day-to-day functioning of the company and accordingly such WTDs and KMPs would be liable for defaults committed by a company. In absence of a KMP, such director who have expressly given his consent for incurring liability in terms of the e-form **GNL-3** filed with the ROC would be liable.
- Section 149(12) is a *non obstante* clause which provides that the liability of an ID or NED not being promoter or KMP **would be only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.** In view of the express provisions of section 149(12), IDs and NEDs should not be arrayed in any criminal or civil proceedings under the Act, unless the above mentioned criteria is met. Typically, apart from IDs, non-promoter and non-KMP, NEDs, would exist in the following cases:
 - a) Directors **nominated by the Government on the public sector undertakings;**

**CLARIFICATION ON PROSECUTIONS FILED OR INTERNAL ADJUDICATION PROCEEDINGS
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NON-KMP NON-EXECUTIVE DIRECTORS**

.....**General Circular No. 5/2020 Dated: 22 March, 2020**

- b) Directors **nominated by Public Sector Financial Institutions, Financial Institutions or Banks** having participation in equity of a company, or otherwise;
- c) Directors **appointed in pursuance to any statutory or regulatory requirement such as directors appointed by the NCLT.**
- At the time of serving notices to the company, during inquiry, inspection, investigation, or adjudication proceedings, necessary documents may be sought so as to ascertain the involvement of the concerned officers of the company. In case, lapses are attributable to the decisions taken by the Board or its Committees, **all care must be taken to ensure that civil or criminal proceedings are not unnecessarily initiated against the IDs or the NEDs, unless sufficient evidence exists to the contrary.**
 - The records available in the office of the ROC, including e-forms DIR- 11 or DIR-12, along with copies of the annual returns or financial statements should also be examined.

**CLARIFICATION ON PROSECUTIONS FILED OR INTERNAL ADJUDICATION PROCEEDINGS
INITIATED AGAINST INDEPENDENT DIRECTORS, NON-PROMOTERS AND
NON-KMP NON-EXECUTIVE DIRECTORS**

.....**General Circular No. 5/2020 Dated: 22 March, 2020**

- In case of any doubts, with regard to the liability of any person, for any proceedings required to be initiated by the ROC, **guidance may be sought from the MCA** through the office of Director General of MCA, consequently any such proceedings must be initiated **after receiving due sanction from the Ministry**.

- All ROC are **directed to immediately** follow the above mentioned **Standard Operating Procedure (SOP)** with respect to all ongoing cases. Further, with respect to **cases where prosecution may have been already filed but the above- mentioned cases criteria is not satisfied**, the same may be submitted to MCA for necessary examination and further direction thereon.

COMPANIES (MEETINGS OF BOARD AND ITS POWERS) RULES, 2014

Amended by the Notification No. GSR (E) dated 19.03.2020

- The followings items specified as restricted to transact through the Video conferencing or other audio-visual means (OAVM) as covered under rule 4 has been permitted from 19th March, 2020 to 30th June, 2020
 - (a) Approval of annual financial statements;
 - (b) Approval of the Board's Report;
 - (c) Approval of the prospects;
 - (d) Audit Committee Meeting for approval of A/c by the Board u/s 134;
 - (e) Approval of the matters relating to the merger and amalgamation.

COMPANIES (APPOINTMENT AND QUALIFICATION OF DIRECTORS) RULES, 2014

Amended by the Notification No. GSR 145(E) dated 28.02.2020 and Further Amended by Notification dated 29.04.2020

- (a) In the rule 6 the time period for enrolment of the IDs on the data base have been increased from 3 to 5 and then 5 to 7 months i.e. upto 30th June, 2020.
- (b) Exemption to pass online proficiency self assessment test have been granted when he has served as a director or KMP, for a total period of not less than 10 years, as on the date of inclusion of his name in the databank in one or more of the followings;
- (i) Listed public company; or
 - (ii) Unlisted Public Company having paid up share capital of Rs. 10 Crores or more; or
 - (iii) Body corporate listed on a recognized stock exchange

COMPANIES (INCORPORATION) RULES, 2014

Amended by the Notification No. GSR 128(E) dated 18.02.2020 (w.e.f. 23.02.2020)

1. The Rule 9 have been amended to make an application through web services at www.mca.gov.in by using SPICe+ (Simplified Proforma for Incorporating Company Electronically Plus: INC-32 and for change of name by using web service RUN (Reserve Unique Name) with option for resubmission within 15 days for rectification of defect if any.
2. The Rule 38A have been amended to make an application for registration of various facilities through AGILE-PRO as under:
 - (a) GSTIN w.e.f. 31.03.2019
 - (b) EPFO w.e.f. 08.04.2019
 - (c) ESIC w.e.f. 15.04.2019
 - (d) Professional Tax 23.02.2020
 - (e) Opening a Bank Account 23.02.2020



vrkmPhoto

Thanks for your interest and appreciation

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