

AN INSIGHT ON RECENT CHANGES ON COMPANIES ACT, 2013 AND RULES MADE THEREUNDER

We wish to bring to your kind attention an insight on the recent amendments, the applicable compliances for a Private Limited Company under Companies Act, 2013 & the rules thereunder and the possible penal consequences in event of non-compliance of the same.

The Companies Act 2013 read with rules made thereunder has undergone enormous changes since its enactment. The amendments in the various aspects of the existing law require constant knowledge on the part of the management for efficient and effective corporate governance.

The Companies Act, 2013 requires all companies to make annual statutory compliance by filing the Annual Return and Financial Statements. Apart from this, various other statements, documents, returns, etc are required to be filed on the MCA21 electronic registry within prescribed time limits. Filing fees for filing such statements, documents, returns, etc is governed by section 403 of the Companies Act, 2013 read with Companies (Registration Offices and Fees) Rules 2014.

COMPANIES FRESH START ON A CLEAN SLATE

The Ministry of Corporate Affairs has issued a Circular 12/2020 dated 30th March, 2020, in order to facilitate the companies registered in India to make a fresh start on a clean slate, it has been decided to take certain alleviative measures for the benefit of all companies.

In order to give an opportunity to the defaulting companies and to enable them to file the belated documents in the MCA-21 registry, the Central Government has decided to introduce a Scheme namely Companies Fresh Start Scheme, 2020 (CFSS-2020).

COMPANIES FRESH START SCHEME 2020 (CFSS-2020) – AN ONE TIME OPPORTUNITY

The Ministry of Corporate Affairs (MCA), in pursuance of the Government of India's efforts to provide relief to law abiding companies in the wake of COVID 19, has introduced the "Companies Fresh Start Scheme, 2020" (CFSS-2020) to provide a first of its kind opportunity to companies to make good any filing related defaults, irrespective of duration of default, and make a fresh start as a fully compliant entity without being subject to a higher additional fee on account of such delay.

The Fresh Start scheme incentivizes compliance and reduce compliance burden during the unprecedented public health situation caused by COVID-19. The Scheme is in force on the 1st April, 2020 and shall remain effective up to 30th September, 2020 (both days inclusive)

WHO CAN AVAIL CFSS-2020?

The Scheme shall be applicable on any “defaulting company” which has not filed any document, statement, return etc. including annual statutory documents, which were due for filing on any given date in accordance with the provisions of this Scheme. Contextually, filing of such overdue document, statement, return etc. should be pending on the date of accessing the Scheme.

WHAT ARE ALL THE DOCUMENTS/FORMS CAN BE FILED?

A defaulting company is permitted to file any of the documents, statement, returns, etc., including annual statutory documents on the MCA-21 registry wherein the default was made in filing for any period in the past. Thus, document, statement, return etc. can be relating any period from past from incorporation of the company till the date.

IMMUNITY CERTIFICATE UNDER CFSS-2020

The application for seeking immunity is required to be made by electronically filing Form CFSS-2020 after submission of all applicable documents, statement, returns etc. On filing Form- CFSS 2020, an immunity certificate is issued. Based on the declaration made in the Form CFSS-2020, the immunity certificate gives Immunity from the launch of prosecution or proceedings for imposing penalty to the extent such prosecution or the proceedings for Imposing penalty under the Act pertain to any delay associated with the filings of belated documents.

No fee is payable on filing of Form CFSS. Kindly note that 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 any court of law or tribunal.

ACTION AGAINST THE DEFAULT COMPANIES

At the conclusion of the Scheme, the Designated Authority shall take necessary action under the Act against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.

OTHER KEY AMENDMENTS IN THE RECENT PAST

Key Amendments	Particulars
Spending on COVID-19 is eligible as CSR Expenditure	<p>Keeping in view of the spread of novel Corona Virus (COVID-19) in India, its declaration as pandemic by the World Health Organization (WHO), and, decision of Government of India to treat this as a notified disaster, it is hereby clarified that spending of CSR funds for COVID-19 is eligible CSR activity.</p> <p>Funds may be spent for various activities related to COVID-19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation, and, disaster management.</p>
Contribution to PM CARES Fund and State Disaster Management Authority will qualify as CSR Expenditure	<p>The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013.</p> <p>Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure.</p>
MCA Clarification on passing of Ordinary and Special Resolutions by Companies under the Companies Act, 2013 on account of threat posed by COVID-19.	<p>Companies are requested to take decisions of urgent nature requiring approval of members through the mechanism of postal ballot/e-voting without their physical presence at a common venue.</p> <p>For conducting EGM on or before 30th June 2020 through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) detailed procedure to be adopted have been provided.</p>
Relaxation of holding physical board meeting until June 30th 2020 for approving financial statement and Board report for FY Ending 2019-20	<p>As a precautionary step to overcome the outbreak of the coronavirus (Covid-19), the Government has in-principle decided to relax the requirement of holding Board meetings with physical presence of directors for approval of the annual financial statements, Board's report, etc.</p> <p>Such meetings may till 30th June, 2020 be held through Video Conferencing (VC) or Other Audio-Visual Means (OAVM)</p>
Deferment of CARO 2020 to next financial year.	The Companies (Auditor's Report) Order, 2020 shall be made applicable from FY 2020-21 instead of FY 2019-20 as notified earlier.

<p>CAR (Company Affirmation of Readiness towards COVID-19)</p> <p>w.e.f. 23rd March 2020</p>	<p>A new web-based form that all companies & LLPs, through their authorized signatories, are requested to report compliance for confirming their readiness towards COVID-19.</p> <p>Please note that Web Service “Company Affirmation of Readiness towards COVID-19” has been discontinued on 14th April 2020.</p>
<p>Gap between 2 consecutive Board Meetings extended to 180 days</p>	<p>The mandatory requirement of holding meetings of the Board of the companies within 120 days stands 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 CA-13.</p>
<p>Relaxation on the Meeting of Independent Directors</p>	<p>independent Directors (IDs) are required to hold at least one meeting without the attendance of Non-independent directors and members of management.</p> <p>For FY 2019-20, if the IDs of a company have not been able to hold such a meeting, the same 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.</p>
<p>Declaration on the Commencement of Business for the Newly Incorporated Companies</p>	<p>An additional period of 180 more days is allowed for the newly incorporated companies to file a declaration for the Commencement of Business in addition to the existing limit of 180 days.</p>
<p>Relaxation on the Director Residency requirement</p>	<p>Non-compliance of minimum residency 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 FY 2019-20.</p>
<p>EPFO / ESI Returns for the Companies incorporated under SPICE+</p>	<p>New companies incorporated through SPICE+ who thereby have obtained EPFO/ESI numbers will have to file statutory returns only when they cross thresholds prescribed under the relevant Acts.</p>
<p>Nidhi Company forms acceptable only through e-Forms Submissions</p> <p>w.e.f. 11th Feb 2020</p>	<p>Nidhi Company related Forms NDH-1, NDH-2 and NDH-3 shall have to be filed only as e-Forms and the submission through GNL-1/RD-1 shall not be processed by ROCs/RDs and the same shall be rejected.</p>

<p>Filing of MCA Forms by Insolvency Professional (IRP/RP/Liquidator) appointed under IBC 2016</p>	<p>To enable compliance of companies under CIRP or Liquidation process, IRP/RP/Liquidator shall file the NCLT order of approving him as IRP/RP/Liquidator in Form INC 28.</p> <p>Once it gets approved, other forms would be enabled for filing by IRP/RP/Liquidator in the role of Designated CEO.</p>
<p>Deployment of SPICe+ web form for the Incorporation Services</p> <p>w.e.f. 23rd Feb 2020</p>	<p>SPICe+ would be an integrated Web form offering multiple services viz. name reservation, incorporation, DIN allotment, mandatory issue of PAN, TAN, EPFO, ESIC, Profession Tax (Maharashtra), GSTIN and Opening of Bank Account.</p>
<p>Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020</p> <p>w.e.f. 01st April 2020</p>	<p>Applicability of Secretarial Audit to every company having outstanding loans or borrowings from banks or public financial institutions of Rs.100 crore or more.</p>
<p>Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020</p> <p>w.e.f. 01st April 2020</p>	<p>Every private company which has a paid up share capital of Rs. 10 crore rupees or more shall have a whole -time company secretary (Earlier the limit was Rs.5 Crore)</p>

APPLICABLE COMPLIANCES AND ITS PENAL CONSEQUENCES

Companies Act, 2013 has stringent penalty and / or imprisonment for failure to comply with the section and/or Rules. Therefore, one should look into the same to avoid such implications and may seek professional guidance from not to make failure otherwise. Penalty have been replaced with higher amounts and punishment provisions as compared to the earlier Companies Act 1956. For the benefit of Company or officer of Company the below table may stands useful for ready reference.

S No.	Applicable Compliance	Penal Consequences
1.	Holding Board Meetings As per section 173 of companies Act-2013 All the Companies are required to hold at least 4 meetings in a financial year in such a manner that not more than 120 days shall intervene between 2 consecutive meetings of the Board.	Every officer of the company whose duty is to give notice under this section and who fails to do so shall be liable to a penalty of twenty-five thousand rupees. The company shall be liable to a penalty of twenty-five thousand rupees and every officer of the company who is in default shall be liable to a penalty of five thousand rupees for not observing and following Secretarial Standard – 1
2.	Holding Annual General Meeting As per section 96 of companies Act-2013 Every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next: First annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the any financial year i.e. by 30th September of every year.	the company and every other officer of the company acting on its behalf and are in default will be punishable with fine which may extend to INR One Lakh and in case of continuing default with a further fine which may extend to INR 5000/- per day during the continuance of such default.
3.	Appointment of Auditor As per section 139 of companies Act-2013 the Auditor will be appointed for the 5 (Five) years and form ADT-1 will be filed for 5-year appointment. The first Auditor will be appointed within 30 days from the date of incorporation of the Company. E-form ADT-1 for intimation for appointment of the subsequent Auditor has to file with ROC within in 15 days from the date of appointment.	the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees, or with both.
4.	STATUTORY REGISTERS REQUIREMENT Every Private Limited Company is required to maintain following Statutory registers: 1. Register of members as per Section 88 (Form MGT-1) 2. Books containing minutes of general meeting, Board, Committees of Directors as per Section 118	For Register of Members – Fine Minimum Rs.50,000 Maximum Rs.300,000 and Rs. 1000/day during which default continues For Minutes of Board/ General/ Committee Meeting – Fine Rs.25,000/Meeting and Rs.5,000/- on every officer in default

	<p>3. Register of charges as per Section 85 (Form CHG-7)</p> <p>4. Register of directors and KMP as per Section 170</p> <p>5. Register of loan and guarantee per Section 186(9) (Form MBP 2)</p> <p>6. Register of Related Party Contracts</p>	<p>For Register of Charges - Fine Minimum Rs.100,000 Maximum Rs.1,000,000 and Every officer shall be punishable with imprisonment of 6 months and Rs. 25,000-100,000 on every officer in default</p> <p>For Register of directors, KMP & their Shareholdings - Fine Minimum Rs.50,000 Maximum Rs.500,000</p> <p>For Register of Related Party Contracts – Fine of Rs. 25,000 on every officer in default</p>
5.	<p>E-Form INC-22A Active compliance</p> <p>This form is applicable for every Company registered on or before the 31st December, 2017 shall file the particulars of the Company and registered office in e-form ACTIVE (Active Tagging and Identities and Verifications) on or before 15th June, 2019.</p> <p>However, till date the same was required to be filed one time only and the annual compliance of the same is not mandated yet.</p>	<p>those Companies whose compliance status has been marked as “ACTIVE non-compliant” due to non-filing of Active Company Tagging Identities and Verification (ACTIVE) eform are encouraged to become compliant once again between 1st April, 2020 to 30th September, 2020 without any filing fee of Rs. 10,000.</p>
6.	<p>DIR-3 KYC FOR ALL THE DIRECTORS OF THE COMPANY</p> <p>All the Directors of the Company are required to get their KYCs done on or before 30th April of every financial year.</p>	<p>DIN holders of DINs marked as ‘Deactivated’ due to non-filing of DIR-3KYC/DIR-3 KYC-Web may file their DIR-3KYC/DIR-3KYC-Web as the case may be between 1st April, 2020 to 30th September, 2020 without any filing fee of Rs.5,000.</p>
7.	<p>E-Form DPT-3</p> <p>All the Company having any outstanding loan/amount as on 31st March of every financial year has to furnish details and bifurcation of such outstanding amount irrespective of the fact whether such amount is falling under the definition of deposit or not.</p>	<p>Not filing of Form DPT 3 within the given due dates shall attract a penalty of Rs 5,000 and Rs 500 per day in case of a continuing default, on the company and its officers in default.</p>
8.	<p>E-Form BEN-2</p> <p>Return to the Registrar under section 90 of the Companies Act, 2013. by company in respect of declaration received in form BEN 1. In this form BEN-2 every company gives a disclosure about the Significant Beneficial Owners interest in the shares of the company.</p>	<p>the reporting company and every officer of the company in default will be punishable with fine of not less than ₹10 lakh but which may extend to ₹50 lakh and for continuing failure, a fine of ₹1,000 per day</p>
9.	<p>E-Form MSME</p> <p>the Central Government vide notification number S.O.5622 (E), dated the 2nd November, 2018 has directed that all companies, who get supplies of goods or services from micro and small enterprises and whose payments to micro and small enterprise suppliers exceed forty five days from the date of acceptance or the date of deemed acceptance of the goods or services as per the provisions of section 9 of the Micro, Small and Medium Enterprises Development Act, 2006 (27 of 2006) (hereafter referred to as “Specified Companies”), shall submit a</p>	<p>Any company defaulting under these provisions would be forced to remit a fine of up to Rs. 25,000; whereas the defaults of officer in default for an imprisonment term of up to six months or a fine ranging between Rs. 25,000 to Rs. 3,00,000</p>

	<p>half yearly return to the Ministry of Corporate Affairs stating the following:</p> <p>(a) the amount of payment due; and</p> <p>(b) the reasons of the delay;</p> <p>Every specified company shall file a return as per MSME Form I annexed to this Order, by 31st October for the period from April to September and by 30th April for the period from October to March.</p>	
10.	<p>Filing of Financial Statements (E-Form Form AOC-4)</p> <p>As per section 137 of companies Act-2013 Every Private Limited Company is required to file its Balance Sheet along with statement of Profit and Loss Account and Director Report in this form within 30 days of holding of Annual General Meeting.</p>	<p>Rs.1,000/every day during which the failure continues but which shall not be more than Rs.1000,000 on company and the managing director and the Chief Financial Officer of the company, if any, and, in the absence of them any director who is charged by Board for that compliance, and, in the in the absence of any such director, all the directors of the company, shall be liable to a penalty of Rs.100,000 and in case of continuing failure, with further penalty of Rs.1000/each day after the first during which such failure continues, subject to a maximum of Rs.500,000.</p>
11.	<p>Filing of Annual Return (Form MGT-7)</p> <p>As per section 92 of companies Act-2013 Every Private Limited Company is required to file its Annual Return within 60 days of holding of Annual General Meeting.</p>	<p>The company and its every officer who is in default shall be liable to a penalty of 50,000 and in case of continuing failure, with further penalty of Rs.1,000/day during which such failure continues, subject to a maximum of Rs.500,000</p>

Kindly note that the above mentioned is not the exhaustive list; a company may need to file other forms as applicable to it based on the events. A Company must fulfil all the compliances within the due date to avoid late filing fees/penalties. Every director and the Key Managerial Person of the company shall be liable for non-compliance and thus for penalties.

There is a quote that says - **a candle loses nothing by lighting another candle**. As a part of knowledge dissemination, the above insight was circulated for information purpose only. We will not be responsible for any loss or damage caused by the readers reliance on the information provided.

Thank you.

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