

COVID-19:

LATEST RELAXATIONS FROM PROVISIONS OF THE COMPANIES ACT, 2013 AND THE IBC

March 24, 2020

Introduction

The Novel Coronavirus (COVID-19) has been declared a pandemic by the World Health Organization and has affected numerous countries, including India. In response to the developing COVID-19 situation, the Ministry of Corporate Affairs (“MCA”) and other regulatory authorities have granted several relaxations from regulatory compliances for the corporate sector. In our previous updates dated March 20, 2020, and March 23, 2020, we had summarised some of the key relaxations and measures which have been introduced by the MCA, Securities and Exchange Board of India and other courts/tribunal across the country¹. The update dated March 20, 2020 can be found here- <http://www.argus-p.com/papers-publications/thought-paper/covid-19-relaxations-from-certain-regulatory-compliances-for-corporates-and-other-measures/>. The update dated March 23, 2020 can be found here- <http://www.argus-p.com/papers-publications/thought-paper/covid-19-update-csr-funds-can-be-used-for-covid-19/>.

In this update, we have summarized the latest announcements made by the Hon’ble Minister of Finance on March 24, 2020 granting certain relaxations under the Companies Act, 2013 (“**Companies Act**”) and Insolvency and Bankruptcy Code, 2016 (“**IBC**”). Detailed notifications/circulars in this regard shall be issued by the MCA separately.

Threshold for triggering CIRP enhanced

The current threshold of Rs. 1,00,000 (Rupees one lac) to trigger insolvency proceedings under Chapter I (*Insolvency Resolution and Liquidation for Corporate Persons*) of the IBC has been revised to Rs. 1,00,00,000 (Rupees one crore).

Likelihood of suspension of s. 7, 8, 9 and 10 of IBC for MSMEs

It has been announced that sections 7 (*initiation of corporate insolvency resolution process by financial creditor*), 8 (*insolvency resolution by operational creditor*), 9 (*application for initiation of corporate insolvency resolution process by operational creditor*) and 10 (*initiation of corporate insolvency resolution process by corporate applicant*) of the IBC, for MSMEs, might be suspended for a period of 6 (six) months, depending on the situation.

¹ The updates do not deal with the administrative and public measures/ prohibitions (such as closure of shops and establishments, restrictions on travel etc) announced by the Government.

Extension of timeline for filing declaration of commencement of business

Under section 10A(1)(a) of the Companies Act, any company incorporated after the commencement of the Companies Amendment Ordinance, 2019 is prohibited from commencing its business or exercising borrowing powers unless a declaration is filed with the Registrar of Companies by a director of the company within a period of 180 (one hundred eighty) days of the date of incorporation of the company. It has been announced that an additional time of 6 (six) months will be granted to newly incorporated companies to file the declaration under section 10A(1)(a) of Companies Act.

MCA 21 Registry: No late fee

During the period between April 1, 2020 to September 30, 2020, no additional fees will be charged for late filing in respect of any document, return, statement etc. required to be filed in the MCA 21 Registry irrespective of its due date.

Relaxation from requirement of conducting Board Meetings every quarter

As per section 173(1) of the Companies Act, every company is required to hold a minimum number of 4 (four) meetings of its directors every year in such a manner that not more than 120 (one hundred twenty) days shall intervene between 2 (two) consecutive meetings of the board. The prescribed interval of 120 (one hundred twenty) days) has been extended by a period of 60 (sixty) days till the next 2 (two) quarters i.e. September 30, 2020.

Minimum residency requirement done away with

Under section 149(3) of the Companies Act, every company is required to have at least 1 (one) director who stays in India for a period of not less than 182 (one hundred eighty two days) during the financial year. Non-compliance with the above minimum residency requirement of 182 days (one hundred eighty two) days, will not be treated as a violation of the Companies Act.

Applicability of Companies (Auditor's Report) Order, 2020 deferred

The Companies (Auditor's Report) Order, 2020 will be applicable from financial year 2020-2021, instead of financial year 2019-2020, as notified earlier.

Exclusive meeting of independent directors not required

Schedule IV (*Code for Independent Directors*) of the Companies Act provides that the independent directors of a company must hold at least 1 (one) meeting in a financial year, without the attendance of non-independent directors and members of management. In financial year 2019-2020, if the independent directors of a company have not held even 1 (one) meeting without the attendance of non-independent directors and members of management, the same will not be treated as a violation of the Companies Act.

Extension of deadline to deposit the stipulated amount in the deposit repayment reserve account

The requirement under section 73(2)(c) of the Companies Act and rule 13 of the Companies (Acceptance of Deposits) Rules, 2014 to deposit an amount equivalent to 20% (twenty percent) of the deposits of a company maturing during financial year 2020-2021 in the deposit repayment reserve account before April 30, 2020 may now be complied with till June 30, 2020.

Extension of deadline to invest/ deposit 15% (fifteen percent) of maturing debentures

The requirement under rule 15 of the Companies (Share Capital and Debenture) Rules, 2014 to invest or deposit 15% (fifteen percent) of the amount of debentures of a company maturing during a particular year in specified instruments before April 30, 2020 may now be complied with till June 30, 2020.

This update has been contributed by Adity Chaudhury (Partner) and Kshitija Naik (Associate).

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