

THE NEWSLETTER

Update Yourself

The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020

INSIDE THIS ISSUE:

- The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020** 1.
- Relief Measures by the Ministry of Finance Amidst COVID-19** 1.
- FAQ's on recent GST** 3.
- Employee payment obligations amid lockdown and COVID – 19** 7.
- Moratorium allowed by RBI for payment of Instalments/Interest for 3 months amid COVID-19** 8.
- Relaxation Provided by MCA under Companies Act, 2013 / Limited Liability Partnership Act, 2008** 9.
- SEBI has temporarily relaxed compliance norms under Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015 in the backdrop of COVID-19** 11.
- Companies Fresh Start Scheme, 2020** 13.
- LLP Settlement Scheme, 2020** 13.
- Article : Impact of COVID-19 on Performance of Obligations under Pre-existing** 14.

Due to the recent outbreak of the global pandemic COVID-19 various countries have faced and still facing significant loss of lives of people and it is also severely impacting the economy of the countries. In order to control the spread of coronavirus by implementing the concept of social distancing, Prime Minister Narendra Modi announced the nationwide lockdown on 24th March, 2020. Considering this development of lockdown and to resolve the challenges faced by the tax payers in abiding by the statutory and regulatory compliances of taxation and other laws, the Government of India promulgated The Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020 (“**Ordinance, 2020**” for short) to provide for extension of various time limits under the Taxation and other Laws including the Income-tax Act, 1961, The Direct Tax Vivad Se Vishwas Act, 2020, The Prohibition of Benami Property Transactions Act, 1988, etc. (“**Specified Act (s)**” for short). As per the Ordinance, 2020, wherever any time limit for statutory and regulatory compliances specified in or prescribed in or notified under the Specified Act(s) falls during the period ranging from 20.03.2020 to 29.06.2020 then by virtue of the Ordinance, 2020, such time limit stands extended to 30.06.2020 or such other date after 30.06.2020 as the Central Government may, by notification, specify in this behalf in certain cases.



In order to bring clarity regarding the compliance under the Specified Act(s) and extension of time limits therein along with other related aspects, we have attempted to address certain common queries related to the Ordinance, 2020 by way of Frequently Asked Questions which can be found at <http://www.chiramritlaw.com/faq-rlaxation-under-taxation/>

Relief Measures by the Ministry of Finance Amidst COVID-19

Due to the outbreak of pandemic Covid-19 Virus, the Ministry of Finance has taken various relief measures to mitigate hardships caused to the assessee(s)/payers as well as the Department of Revenue during such challenging times. The said relief measures include certain orders passed by the CBDT u/s 119 of the Income Tax Act, 1961 (“**Act**”), press releases, etc. which are discussed herein below:



1. Validity of Nil/Lower Deduction Certificate w.r.t. TDS Extended By 3 months (F. No. 275/25/2020- IT(B) dated 31.03.2020).

- Where assessee has obtained certificate of Nil/lower deduction u/s 195/197 or 206C of the Act (“**Certificate**” in short) for FY 2019-20 and (i) has applied for Certificate for FY 2020-21 and it is pending for disposal or (ii) could not apply for Certificate for FY 2020-21 then, Certificate of FY 2019-20 shall remain valid till 30.06.2020 for the purpose of FY 2020-21 or up to the disposal of pending application for FY 2020-21, whichever is earlier.
- Where assessee has neither obtained Certificate for FY 2019-20 nor applied for FY 2020-21, then assessee has to apply for the certificate for FY 2020-21 at the earliest as per the modified procedure. The said modified procedure provides that Assessee shall e-mail duly filed Form 13 along with all documents/information to the concerned AO. The said documents include projected financial statements for FY 2020-21 and provisional financial statements for FY 2019-20 along with financial statements and ITR of FY 2018-19. The certificate shall be issued to the applicant via email specifying necessary details like applicable rate and the validity of certificate.
- Where payments have been made to Non-residents/Foreign Companies having permanent establishment in India and not covered in 1st bullet point, TDS shall be deducted @10% (including surcharge and cess) till 30.06.2020 for FY 2020-21 or up to the disposal of applications, whichever is earlier.

2. Disposal of Application for Lower/Nil deduction of TDS/TCS for FY 2019-20 by AO (F. No. 275/25/2020- IT(B) dated 03.04.2020).

Considering the constraints of the Field Officers in disposing off the pending applications for lower or nil rate of TDS/TCS for FY 2019-20 and to mitigate the hardships of payees on account of outbreak of COVID 19, the CBDT has issued Order u/s 119 of the Act dated 03.04.2020 to provide that in case of applications of lower/Nil rate of TDS/TCS filed by the assessee for F.Y 2019-20 which is pending for disposal at the end of AO (TDS), then the applicant shall intimate the pendency of the application via email to the AO along with the required documents and evidences TRACES Portal. The AO shall dispose-off the said applications by 27.04.2020 and communicate the rejection/acceptance of the same to the applicant via Email. Certificate issued for lower/nil deduction shall be applicable for the amounts credited/debited during the FY 2019-20 after the date of making application u/s 195/197/206C of the Act and remaining unpaid/not received till the date of issuance of such certificate.

3. Validity of Forms 15G and Forms 15H submitted for FY 2019-20 Extended by 3 Months (F. No. 275/25/2020- IT(B) dated 03.04.2020)

- On account of the complete lockdown in the country, CBDT has issued Order u/s 119 of the Act to provide relief to the persons who are not able to submit Form 15G or 15H, as the case may be, to the banks/financial institutions for the purpose of lower/nil

deduction of tax at source during FY 2020-21 on their certain incomes. It has been provided by the said Order that:

(i) where a person has submitted valid Form 15G and Form 15H for FY 2019-20, to the banks/financial institutions, then its validity shall be extended to 30.06.2020 for the purpose of nil/lower deduction of tax at source upto the said date.

(ii) the payer, who has not deducted TDS on account of the aforesaid Forms, is required to report details of such payments/credits in the TDS statement for the quarter ending 30.06.2020 in accordance with Rule 31A(4)(vii) of the IT Rules.

4. Immediate Relief to Business Entities and Individuals in respect of pending tax refunds (Press Release dated 08.04.2020)

With a view to provide immediate relief to business entities and individuals, the MoF has decided to issue all pending income tax refunds upto Rs. 5 Lakhs along with all pending GST and Custom refunds to the said entities and individuals with immediate effect.

FAQ's on recent updates in GST

E-Invoice

1. When will the provisions for E-invoice and QR code be effective?

Ans: The provisions of E-Invoice would now be effective from 01.10.2020 instead of 01.04.2020(Notified *vide* Notification No. 13/2020-Central Tax dated 21.03.2020 and Notification No. 14/2020-Central Tax dated 21.03.2020)

2. Has anyone been exempted from issuing E-Invoices and QR code?

Ans: Yes, Insurance company, banking company, financial institution including Non-banking financial institution, GTA which supplies goods by road, supplier of passenger transportation service, supplier of services by way of admission to exhibition of cinematograph films in multiplex screens have been exempted from issuing e-invoices. Further, the suppliers of Online Information and Database Access or Retrieval services are also exempted from the compliance of QR Code.

Aadhar Authentication

3. Is Aadhar Authentication necessary for grant of GST registration?

Ans: Yes, it is necessary for grant of registration w.e.f. 01.04.2020.

4. How would registration be granted to a person in case Aadhar authentication is not done?

Ans: Such person would be granted registration only after physical verification of the principle place of business in the presence of the said person



5. Is Aadhar authentication applicable for everyone?

Ans: It shall be applicable to Indian citizens and the following class of persons:

- A) Individual
- B) Authorized signatory of all types
- C) Managing and Authorized partner and
- D) Karta of a Hindu undivided family.

(Notification No. 16,17,18 and 19/2020-Central Tax dated 23rd March 2020)

Extension of due dates and conditional waivers during pandemic time

6. Would any late fees be applicable if GSTR 1 is filed late during this pandemic period?

Ans: No late fees would be applicable if:

Entities having turnover > 1.5 crores- file GSTR 1 for March-May 2020 by 30.06.2020

Entities having Turnover < 1.5 crores- file GSTR 1 for January-March, 2020 quarter by 30.06.2020

7. Would any late fees or interest be applicable on delay in filing of GSTR 3B during this pandemic?

Ans: The Central Government has provided the following reliefs w.r.t. GSTR-3B for the tax periods February-April, 2020:

For the taxpayers having turnovers exceeding 5 crores: No late fees shall be levied. Further, interest shall also not be levied for first 15 days from the due date and thereafter a reduced rate of interest at 9% p.a. (CGST) shall be applicable. However, the benefits w.r.t. the late fees and interest shall be available only if GSTR 3B for the said tax periods are filed by 24.06.2020.

For the taxpayers having turnover more than 1.5 crores but upto 5 crores: Neither the late fees shall be levied nor the interest subject to the condition that the GSTR-3B for the period February and March, 2020 are filed by 29th June, 2020 and for April, 2020 it is filed by 30th June, 2020

For the taxpayers having turnover upto 1.5 crores: Neither the late fees shall be levied nor the interest subject to the condition that the GSTR-3B for the period February, March, and April, 2020 is filed by 30th June, 2020, 3rd July, 2020 and 6th July, 2020, respectively.

8. What are the due dates of GSTR 3B for May, 2020?

Ans: The due dates as notified vide Notification No. 36/2020 – Central Tax dated 03.04.2020 for GSTR 3B of May, 2020 are as follows:

For taxpayers with turnover above Rs 5 crores in previous financial year 27.06.2020

For taxpayers whose principal place of business is in the States of Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Te-



langana, Andhra Pradesh, the Union territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands or Lakshadweep and turnover is up to Rs 5 crores in previous financial year-12.07.2020

Taxpayers whose principal place of business is in the States of Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand or Odisha, the Union territories of Jammu and Kashmir, Ladakh, Chandigarh or Delhi and turnover is up to Rs 5 crores in previous financial year-14.07.2020

9. Have the due dates for other compliances like filing appeals, applications, replies and other returns been extended due to the ongoing pandemic?

Ans: Yes, the due date for mostly all other compliances like appeals, returns (other than discussed in FAQ No.6,7 and 8 above), replies, applications etc. which falls during the period from the 20.03.2020 to 29.06.2020 have been extended up to 30.06.2020.

Relief for composition dealers in pandemic time

10. Has any relaxation been provided to Composition dealers?

Ans: Yes, now details of payment of self-assessed tax in FORM GST CMP-08 for the quarter ending 31st March, 2020 can be filed till the 07.07.2020 and FORM GSTR-4 for the financial year ending 31st March, 2020 can be filed till the 15.07.2020.

11. In case one could not opt for composition scheme for FY 2020-2021 by the due date 31.03.2020, what is the remedy available?

Ans: One can now file Form CMP-02 for opting composition scheme for FY 2020-2021 by 30.06.2020 as per Notification No.30/2020-Central Tax dated 03.04.2020 and the time limit for furnishing statement in ITC-03 has also been extended up to 31.07.2020.

12. Some service providers who had opted for composition scheme vide Notification No. 02/2019-CT rate had furnished details of their self-assessment tax in GSTR 3B instead of Form CMP-08. Are they required to furnish Form CMP-08 again?

Ans: It has been notified vide Notification No. 12/2020-Central Tax dated 21.03.2020 that persons who have furnished GSTR 3B for FY 2019-20 instead of Form CMP-08 are not required to furnish Form CMP-08 or GSTR 1 for FY 2019-20 again.

E-way bills in pandemic time

13. What will be the status of e-way bills which have expired during the lockdown period?

Ans: As per Notification No. 35/2020- Central Tax dated 03.04.2020 where the validity of an e-way bill generated expires during the period 20.03.2020 to 15.04.2020, the said validity period has been extended till the 30th day of April, 2020.

ITC and Annual Returns in pandemic time**14. How to comply with the condition of availing ITC only upto 110% of the eligible ITC appearing in GSTR 2A as per Rule 36(4) during this pandemic time?**

Ans: Cumulative application of the condition has been allowed for the months of February, 2020 to August, 2020 in the return for tax period of September, 2020. (Notification No.30/2020-Central tax dated 03.04.2020)

15. What are the due dates for Annual Returns for FY 2018-19?

Ans: The due date for GSTR 9 and GSTR 9C have been extended to 30.06.2020 from the earlier date of 31.03.2020 vide Notification No. 15/2020- Central Tax dated 23.03.2020.

16. Is there any change in threshold limit for audit under GST?

Ans: Yes, the aggregate turnover limit for the purpose of GST audit and GSTR-9C has been increased to Rs. 5 Crores from Rs. 2 Crores for the FY 2018-19. (Vide Notification No.16/2020 dated 23.03.2020).

Amendments in Refund related provisions**17. Whether refund of tax will be disbursed in cash always?**

Ans: No, any refund of tax paid on supplies other than zero rated supplies will now be admissible proportionately in the respective original mode of payment only. This means that refund will be granted in cash and credit in the same proportion as the proportion of cash and credit ledger used for paying the tax originally. In this regard the Government has also amended the CGST Rules vide Notification 16/2020- Central Tax dt. 23.03.2020 and issued a clarification vide Circular 135/5/2020- GST dated 31.03.2020.

18. Has any recommendation been made in statement GSTR 2A to include HSN?

Ans: As per Circular 135/05/2020- GST dated 31.03.2020, it has been recommended that a column relating to HSN/SAC Code should be added in the statement of invoices relating to inward supply as Annexure-B to facilitate segregation of ITC on capital goods and/or input services out of total ITC for a relevant tax period for refund purposes.

Note: The corresponding notifications under State GST Acts in relation to some provisions above have not been issued yet.

Employee payment obligations amid lockdown and COVID – 19

Ministry of Labour and Employment, Government of India *vide* letter dated 20.03.2020 had urged all employers of private and public establishments not to terminate their employees, particularly casual or contractual workers or reduce their wages. It was also advised that in event any worker takes leave, such employee should be deemed to on duty without any consequential deduction in wages for the period of lockdown. Further, in event, the place of employment is non-operation on account of COVID-19, the employee working there would be deemed to be on duty. On similar lines, the Government of Rajasthan also *vide* dated 20.03.2020 advised the employers of industrial and shops and commercial institutions and managers of public sector undertakings to provide workers/employees of their institute mandatory work from home facility till 31.03.2020. While the said orders were in the nature of advisories, the Ministry of Home Affairs issued notification dated 29.03.2020 under the provisions of Disaster Management Act, 2005 and directed all employers whether industry or shops and commercial establishments to make payment of wages to their workers, at their work places, on the due date, without any deduction, for the period their establishment is under closure during the lockdown. It may be noted that violation of orders issued under the said Act are punishable with imprisonment and/or fine. There have been speculations on account usage of the term ‘worker’ in the said notification as to whether it is applicable to all category of employees or just the labourers. In this regard, in our view, since the notification refers to employers of both industries and shops and commercial establishments, the intent of is to cover persons working at the industries as well as the shops and commercial establishments. In case the intent was to cover labourers only, reference to employers in shops and commercial establishments was not required.

Recently, the Hon’ble Supreme Court in the matter of **Alakh Alok Srivastava vs. Union of India** (W.P. 468/2020) has held that ‘*Disobedience to an order promulgated by a public servant would result in punishment under Section 188 of the Indian Penal Code. An advisory which is in the nature of an order made by the public authority attracts Section 188 of the Indian Penal Code*’. Since this judgement did not deal with the advisory issued by the Ministry of Labour and Employment, Government of India dated 20.03.2020, it remains to be seen whether the Court would treat the said advisory dated 20.03.2020 as an order for the purpose of Section 188 or just a humanitarian appeal.



Moratorium allowed by RBI for payment of Instalments/Interest for 3 months amid COVID-19 pandemic

Reserve Bank of India (“RBI”) had announced a number of relief measures on 27.03.2020 vide Notification No. RBI/2019-20/186 to deal with the economic fallout caused by the COVID-19 pandemic. One of the measures was to give permission to the lending institutions to allow moratorium period of three months to their borrowers on payment of instalments falling due between 01.03.2020 to 31.05.2020. Salient features of the above relief are as follows-



- It is applicable on all term loans such as Home Loans, Loan Against Property, Vehicle loans, Business loans, Personal loans, Education loans, Agri Loans, etc as well as Working Capital facility in form of Cash credit / Overdraft which are outstanding as on 01.03.2020
- All commercial banks, Small Finance Banks, Co-operative Banks, All India Financial institutions, Non-banking Finance Companies including Housing Finance Companies etc. are permitted to offer this facility to their borrowers.
- This would be deferment of payment of Instalments for three months and should not be treated as waiver of payment.
- Interest will continue to accrue on the outstanding portions of the term loan or working capital facility during the moratorium period. However, there will not be levy of any overdue or penal charges if this moratorium has been availed by the borrower.
- Deferred Instalments along with accrued interest would be recovered by the lending institutions either through extension of remaining loan tenure or change in EMI.
- Accrued interest in case of CC/OD shall be recovered immediately after the expiry of the moratorium period.
- Above deferment in paying instalments will not affect the credit history and score of the borrower.
- This facility would not be available for the instalments which became due prior to 01.03.2020. Thus, borrowers should pay them to avoid any overdue or penal charges and impact on their credit history and reporting to credit bureau.
- Lending institutions are required to frame their board-approved policies to offer the moratorium to their borrowers and need to place this policy in public domain. Hence, this facility will be governed by the lender specific policy and borrower should refer their respective lender policy in this regard before acting upon it.

For further understanding the implications of the notification you may refer to our detailed FAQ's prepared in this regard by clicking the link below:-
<http://www.chiramritlaw.com/faqs-on-moratorium-by-rbi/>

Relaxation Provided by MCA under Companies Act, 2013 / Limited Liability Partnership Act, 2008 in View Of COVID-19

- In order to reduce the financial burden on the Companies/ LLPs, no additional filing fee shall be charged for late filing of any returns or documents on the website of MCA irrespective of the due date of filing of such returns or documents.
- The MCA has provided relaxation in respect of mandatory gap of 120 days between two consecutive board meetings as per Section 173 of the Companies Act, 2013 by a further period of 60 days till 30th September.
- The MCA has extended the applicability of Companies (Auditor's Report) Order, 2020 on companies. Now, the CARO 2020 shall be applicable from the financial year 2020-21 instead of financial year 2019-20.
- The Companies are now allowed to create deposit repayment reserve of 20% till 30th June, 2020 u/s 73(2) of Companies Act, 2013 instead of the earlier statutory period of 30th April, 2020 in respect of deposits maturing during the financial year 2020-21.
- Requirement of investing or depositing minimum 15% of amount of debentures maturing in specified methods of investment or deposits before 30th April, 2020 as per rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 has been allowed to be complied till 30th June, 2020.
- The newly incorporated companies are required to file a declaration of commencement of business with the Registrar of Companies as per the provisions of the Companies Act, 2013 within 180 days of incorporation. Now, the MCA has provided an additional period of 180 days for filing declaration of commencement of business.
- As per Section 149 of the Companies Act, 2013 every company must have at least one director who should have stayed in India for a period of atleast 182 days during the financial year. The non-compliance of this period of minimum residency shall not be treated as non-compliance for the financial year 2019-20.
- As per Schedule IV of the Companies Act, 2013, Independent Directors (IDs) are required to hold at least one meeting in a financial year which must be without the attendance of non-independent directors and company's management wherein the IDs review the performance of non-independent directors and company's board of directors. The MCA has provided relaxation in this regard, that in case the IDs are unable to hold any meeting as specified above for the financial year 2019-20, the same shall not be treated as violation. However, the IDs may share their views on



telephone, e-mail or any other mode of communication.

- Holder of Director Identification Number (DIN) whose DINs have been marked as 'Deactivated' due to non-filing of DIR-3KYC/DIR-3 KYC-Web can comply with the requirement of filing of DIR-3 KYC/DIR-3 web KYC between 1st April, 2020 to 30th September, 2020 without payment of filing fee of INR 5000/-
- Companies whose compliance status has been marked as "ACTIVE non-compliant" due to non-filing of Active Company Tagging Identities and Verification (ACTIVE) form can obtain "ACTIVE Compliant" status by filing form ACTIVE on the MCA without payment of filing fee of Rs. 10,000/- for the period between 1st April, 2020 to 30th September, 2020
Link for above mentioned amendments: http://www.mca.gov.in/Ministry/pdf/Circular_25032020.pdf
- The Government of India has set up the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund' (PM CARES Fund) with the primary objective of dealing with any kind of emergency or distress situation such as that posed by COVID 19 pandemic. Item no. (viii) of Schedule VII of the Companies Act, 2013, which provides for the activities that may be undertaken by a company to discharge its CSR obligations, inter alia provides that contribution to any fund set up by the Central Government for socio-economic development and relief qualifies as CSR expenditure. The PM-CARES Fund has been set up to provide relief to those affected by any kind of emergency or distress situation. Accordingly, it is clarified that any contribution made to the PM CARES Fund shall qualify as CSR expenditure under the Companies Act 2013. (Office memorandum eF. No. CSR-05/1/2020-CSR-MCA 28.03.2020.)
Link for above mentioned amendment: http://www.mca.gov.in/Ministry/pdf/Circular_29032020.pdf
- The MCA has allowed the Companies to transact certain business through video conferencing which were earlier not allowed to be transacted through video conferencing like approval of Board's report, approval of financial statement etc. till 30th June, 2020.
Link for above mentioned amendment: <http://egazette.nic.in/WriteReadData/2020/218797.pdf>

Securities Exchange Board of India has temporarily relaxed compliance norms under Securities Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulation, 2015 in the backdrop of COVID-19

Securities Exchange Board of India (“SEBI”), vide circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated March 19, 2020 and circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/48 dated March 26, 2020 (“Circulars”), has granted temporary relaxation in compliance requirements of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (“LODR”) for listed entities with immediate effect. Some of the key dispensations granted by SEBI through the Circulars are as follows:



Extension of Timelines for filings:

Sr. No.	Regulation and associated filing	Filing	Relaxation w.r.t quarter/ financial year ending March 31, 2020	
			Due Date	Extended Date
1.	Regulation 7(3) of LODR relating to compliance certificate on share transfer facility	Half yearly	April 30, 2020	May 31, 2020
2.	Regulation 13(3) of LODR relating to Statement of Investor Complaints	Quarterly	April 21, 2020	May 15, 2020
3.	Regulation 24A of LODR read with circular No. CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Secretarial Compliance Report	Yearly	May 30, 2020	June 30, 2020
4.	Regulation 27(2) of LODR relating to Corporate Governance report	Quarterly	April 15, 2020	May 15, 2020
5.	Regulation 31 of LODR relating to Shareholding Pattern	Quarterly	April 21, 2020	May 15, 2020
6.	Regulation 33 of LODR relating to Financial Results	Quarterly	May 15, 2020	June 30, 2020
		Annual	May 30, 2020	June 30, 2020
7.	Regulation 40(9) of LODR relating to Certificate from Practicing Company Secretary on timely issue of share certificate	Half yearly	April 30, 2020	May 31, 2020
8.	Regulation 44(5) of LODR relating to holding of AGM by top 100 listed entities by Market Capitalization for FY 19-20	Annual	August 31, 2020	September 30, 2020

Time gap between two Board/ Audit Committee Meetings:

Sr. No	Regulation	Requirement	Relaxation
1.	Regulation 17(2) of LODR	The board of directors shall meet at least four times a year, with a maximum time gap of one hundred and twenty days between any two meetings.	The board of directors and audit committee of listed entity are exempted from observing the maximum stipulated time gap for meeting held or proposed to be held between December 01, 2019 and June 30, 2019.
2.	Regulation 18(2) of LODR	The audit committee shall meet at least four times in a year and not more than one hundred and twenty days shall elapse between two meetings	However, board of directors and audit committee shall ensure that they meet at least 4 times a year as required as per the LODR.

Conduct of Committee Meetings

Sr. No.	Regulation	Requirement	Due Date	Extended Date
1.	Regulation 19(3A) of LODR	The nomination and remuneration committee shall meet at least once in a year	March 31, 2020	June 30, 2020
2.	Regulation 20(3A) of LODR	The stakeholders relationship committee shall meet at least once in a year.		
3.	Regulation 21 (3A) of LODR	The risk management committee shall meet at least once in a year		

Other Important Relaxations**i. Standard Operating Procedures**

On January 22, 2020, SEBI issued a circular revising its standard operating procedures (the “SOP”) for imposition of fines and other enforcement actions against listed entities for non-compliances with provisions of the LODR. The revised SOP superseded those issued by SEBI on May 03, 2018 and would have come into effect for compliance periods ending on or after March 31, 2020. However, the Circular stipulates that the revised SOP will now be applicable for compliance periods ending on or after June 30, 2020, and till such time, the erstwhile SOP dated May 03, 2018 will apply.

ii. Publication of advertisement in the newspapers:

The Regulation 47 of LODR requires publication of certain category of information, including notices of the board meeting where financial results etc in the newspapers. Since, certain newspapers have stopped issuing printed versions for limited periods, the Circular exempts the listed companies from publication of such information in newspapers till May 15, 2020.



Companies Fresh Start Scheme, 2020

The Ministry of Corporate Affairs (“MCA”) vide its general circular No – 12/2020 dated 30/03/2020 has come up with a Companies Fresh Start Scheme, 2020 (“CFSS”). CFSS is providing a one-time opportunity to all the Companies to file their pending/delayed returns or documents with the Registrar of Companies (“ROC”) without payment of any additional filing fee for such delays. Under CFSS, the companies which have defaulted in filing returns or forms with the ROC on MCA website can make the filings and get the delay condoned without paying any additional filing fee and these companies will also get immunity from prosecution against such filing delays. The MCA has put in place the CFSS to reduce the financial burden on those companies which have defaulted in filing documents or returns with the ROC and to provide them an opportunity of making a fresh start. As per the CFSS, all the filing related non-compliances like non-filing of annual returns, financial statements or any other documents or returns except forms relating to increase in authorised share capital and charge related forms can be filed under the CFSS. The benefits of CFSS cannot be availed in cases like where final notice for strike of under Section 248 of the Companies Act, 2013 (“Act”) has already been issued by ROC, companies which have voluntarily made application to ROC u/s 248 for striking off its name, Companies which have amalgamated, Companies applied for dormant status u/s 455 of the Act, Vanishing Companies etc. Through the CFSS, the MCA is providing a one-time opportunity to defaulting companies to make their defaults good by filing all pending forms that are required to be filed under the provisions of Act and rules made there under. The CFSS shall remain in force with effect from 1st April, 2020 till 30th September, 2020 (both days inclusive). After closure of the Scheme or after approval of belated returns or documents by ROC on MCA website but not after 6 months from the expiry of tenure of CFSS, the concerned company shall file form CFSS 2020 on MCA website seeking immunity certificate from the concerned authority, the said immunity certificate will be considered as withdrawal of prosecution by the authority against filing defaults so committed by the defaulting company. As per the CFSS, the inactive companies which have defaulted in filing of returns can simultaneously obtain dormant status or can apply for strike off after filing of belated returns with the ROC under CFSS. The adjudicating authority shall take necessary actions against those companies which have not availed the benefits of CFSS.

LLP Settlement Scheme, 2020

The Ministry of Corporate Affairs (“MCA”) vide its **general circular No – 6/2020 dated 04th March 2020** has come up with a LLP Settlement Scheme, 2020 (“Scheme”) and the same was further modified on 30th March 2020, vide General Circular No – 13/2020. The scheme provides a one-time opportunity to all the Limited Liability Partnerships (“LLPs”) to file their pending returns or docu-

LLP Settlement
Scheme, 2020



of 'force majeure' events which may also be referred as 'acts of God'. The purpose of such clauses is to not burden any party to the contract due to the happening of certain events which were not in the control of parties to the contract. In such clauses, the events are generally described to include unforeseeable events such as natural calamities, war, sudden change of government policies, floods, etc.

In the context of COVID-19, it would have to be assessed if such 'force majeure' clause specifically include 'epidemic' or 'pandemic', since the World Health Organisation (WHO) has also classified COVID-19 outbreak as a worldwide pandemic. For example, the Central Government and various State Government have notified COVID-19 outbreak as a force majeure event for the respective government contracts thereby easing the performance obligations for the counter-parties to such government contracts.

If any force majeure clause does not include references to epidemic or pandemic, such clauses would be required to be interpreted in the context of the entire agreement and it shall be a subjective analysis. As non-inclusion of epidemic or pandemic as force majeure events may be construed in two ways, viz. (a) that parties did not intent to classify pandemics as force majeure events and accordingly the performance of contract shall not be affected due to COVID-19 and (b) depending on the totality of the contract, one may also argue that COVID-19 outbreak is covered under natural disaster or natural calamities. However, the correct answer in such situations will depend on detailed review of the such contracts where pandemic is not specifically included as a force majeure event.

2. Understanding Material Adverse Change (MAC) Clauses

MAC Clauses are typically included in financing contracts or in any purchase contracts where the performance of the contract is in a phased manner. In such contracts, parties stipulate very specific conditions and terms and any change in such terms before completion of the contract may amount to material change, giving the non-defaulting party a right to suspend and / or terminate the contract. Typical examples include maintenance of financial ratios, EBIDTA, non-filing of any insolvency petition against the company, etc. Indian laws also prescribe that anything which in the eyes of a reasonable person becomes impossible or prevents them from fulfilling their obligation due to reasons uncontrolled by the parties under the contract, same can be deemed as material adverse change. Considering such conditions are specific and occurred due to the lockdown across the

country, if any party is not able to meet such specific conditions stipulated under a contract, the same may trigger a right in favour of the non-defaulting party as per the terms of such MAC clause.

It is to note that, even after being declared a pandemic by the World Health Organization and a force majeure by the Indian government, it is yet to determine the long-term impact of COVID-19. Therefore, whether the impact of COVID-19 will trigger MAC clause is difficult to determine at this point in time and very much dependent upon the clause of the contract. The party invoking the force majeure or MAC, should carefully review the wordings around the clause beforehand.

3. Understanding Doctrine of Frustration

If any contract does not have either force majeure clause or MAC clause, the parties may find recourse in Section 56 of the Indian Contract Act 1872 (**Contract Act**). Section 56 of the Contract Act stipulates that a contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, becomes void when the act becomes impossible or unlawful. The courts have further expounded the following key requirements for invoking doctrine of frustration, the result of which is termination of the contract:¹

1. The word "impossible" in Section 56 does not mean physical or literal impossibility.
2. Contract can be held to be frustrated if its performance is "impracticable" and "useless" from the point of view of the object and purpose of the parties, though the performance is not literally impossible. In other words. If the untoward event totally upsets the very foundation upon which the parties entered their agreement, the contract can be held to be frustrated.

Accordingly, in the context of COVID-19, it would have to be assessed if the outbreak of COVID-19 and the supervening lockdown imposed by the government has resulted into fundamental change in circumstances basis which the contract was originally entered into thereby making performance of such contract "impracticable", "useless" or "impossible". Such determination of 'frustration' of a contract would result into the agreement being void, i.e. the parties cannot merely suspend the obligations for a certain period of time but the agreement as a whole shall stand terminated. The parties may though suspend their obligations instead of terminating the contract in terms of the force majeure or MAC clauses (*as discussed above*).

1. Satyabrata Ghose vs. Mugneeram Bangur and Company and Ors., AIR 1954 SC 44



It is also worth noting that the Courts have held that merely because of some change in circumstances, if the contract becomes economically and commercially more onerous on one party, the same would not amount to frustration of the contract. ²

Significantly, the consequence of having Doctrine of Frustration being a statutory remedy in terms of Section 56 of the Contract Act can only be resorted to where the parties have 'not foreseen' the event due to which the supervening impossibility has occurred. In other words, if parties have dealt with certain acts of God or other situations outside the control of parties, such as change in law, as part of the force majeure clause or MAC clause, one may not be able to resort to making out a case of frustration under Section 56 of the Contract Act, as the very basis of invoking Section 56 is the requirement of such event being 'unforeseen'. If parties have contemplated epidemics, pandemics or temporary lockdowns by Government orders as part of their contract, it would be difficult to make out a case for frustration of contract.³

4. Understanding Contingent Contracts

While contingent contracts that provide for obligations of parties upon happening or not happening of any event are legally recognised, Section 32 of the Contract Act also provides that if the event upon happening or not happening of which the contract is to be performed, becomes impossible, such contract becomes void. The performance of the act may not be literally impossible but it may be impracticable and useless from the point of view of the object and purpose of the parties. If an event entirely upsets the foundation upon which the parties entered their agreement, it can be said that the promisor finds it impossible to do the act which he had promised to do. If the contract itself either impliedly or expressly contains a clause, according to which performance would stand discharged under certain circumstances, the dissolution of the contract would take place under the terms of the contract itself and such cases would be dealt with under section 32.

Accordingly, in the context of COVID-19, it would have to be seen if the condition on which the performance of any commercial contract was based has become impossible due to the outbreak of COVID-19 or due to the subsequent lockdown, making the contract void.

2. The Naihati Jute Mills Ltd vs Hyaliram Jagannath, AIR 1968 SC 522

3. Energy Watchdog and Ors. vs. Central Electricity Regulatory Commission and Ors., (2017)14SCC 80

Conclusion

The parties to a contract shall conduct a thorough analysis of their rights and obligations in the wake of COVID-19 outbreak before taking any commercial step in performing, suspending or terminating their respective commercial contracts. Such analysis shall depend on the totality of the contract and also the sectoral laws and regulations applicable to such contract. In some circumstances, the non-defaulting party to a contract is also under a duty of mitigation of damage which shall also be assessed as part of the impact of COVID-19.

WE ARE ON THE
WEB

www.chiramritlaw.com

For any queries regarding
'**THE NEWSLETTER**', please get in
touch with us at:
newsletter@chiramritlaw.com

DISCLAIMER

The views expressed and the information provided in this newsletter are of general nature and are not intended to address the circumstances of any particular individual or entity. Further, the above content should neither be regarded as comprehensive nor sufficient for making decisions. No one should act on the information or views provided in this publication without appropriate professional advice. It should be noted that no assurance is given for any loss arising from any actions taken or to be taken or not taken by anyone based on this pub-

Jaipur- 6th Floor,
'Unique Destination',
Opp. Times of India,
Tonk Road, Jaipur -
302 015
Off: +91-141-4044500

Surat- 202, 2nd Floor,
SNS Square, Opp. Reli-
ance Market, Vesu Main
Road, Vesu, Surat—
395007

New Delhi- The Execu-
tive Centre— DLF Cyber
City,
Level 18, DLF Building
No. 5, Tower A, Phase
III, DLF Cyber City, Gur-
gaon-122002

Mumbai- The Execu-
tive Centre, The Capita-
tal, Level 7, B- Wing,
The Capital, Bandra
Kurla Complex, Bandra
(East), Mumbai—
400051