

Special Measures under the Companies Act 2013 and Limited Liability Act 2008 and allied Laws. – in view of COVID 19

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Ministry of Corporate Affairs General circular 11/2020 dated 24th March 2020

1. **Late Filing Fees** - No additional fees shall be charged for late filing during a moratorium period from 01st April to 30th September 2020, in respect of any document, return, statement etc., required to be filed in the MCA-21 Registry, irrespective of its due date.
2. **Board Meetings[^]** - As a onetime 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.
3. **Companies (Auditor's Report) Order, 2020** shall be made applicable from the financial year 2020-2021 instead of being applicable from the financial year 2019-2020 notified earlier.
4. As per Act, **Independent Directors (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 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.
5. **Resident Director:** According to the extant provisions, every company shall have at least one Director who stays in India for a total period of not less than 182 days during the financial year. As per the MCA circular, if none of the directors of the company have complied with the said provision, then the same shall not be treated as a non-compliance for financial year 2019-20;
6. **Deposit Repayment Reserve^{^^}:** As per extant provisions, there is a requirement to create a Deposit Repayment Reserve of 20% of the deposits maturing during FY 2020-21 before 30th day of April 2020. As per the MCA Circular, the duration stands extended to June 30, 2020.
7. **Investing / Depositing 20% of maturing deposits^{^^^}:** Company is required to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before 30th day of April 2020. As per MCA Circular, the duration stands extended to June 30, 2020.
8. **Declaration of Commencement of Business:** Presently, the newly incorporated companies are required to file a declaration for the Commencement of Business within a period of 180 days from the date of the incorporation. In this regard, an additional period of 180 more days has been granted i.e. now the compliance is to be done within a period of 360 days from the date of the incorporation of the company. However, there needs to be some clarity on the cut-off date of the incorporation i.e. whether the period of 180 days is to be calculated for companies incorporated prior to March 31, 2020 or for any Company which was incorporated after November 2, 2018.

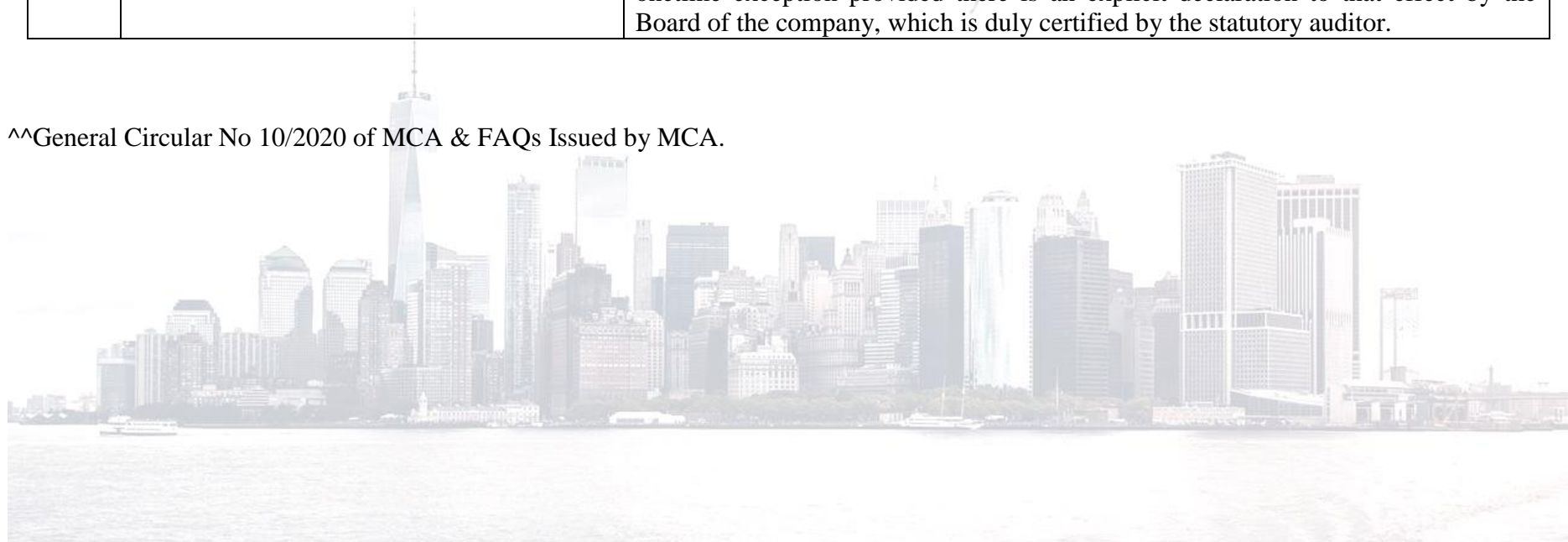
[^]Reference Section 173 of the Act | ^{^^} u/s 73(2) of the Act 2013 | ^{^^^} As per Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014.

Updates on Corporate Social Responsibility – Covid 19

S No	FAQs/Query	Clarification
1	Whether contribution made to ‘PM CARES Fund’ shall qualify as CSR expenditure?	Contribution made to ‘PM CARES Fund’ shall qualify as CSR expenditure under item no (viii) of Schedule VII of the Companies Act, 2013 and it has been further clarified vide Office memorandum F. No. CSR-05/1/2020-CSR-MCA dated 28th March, 2020.
2	Whether contribution made to ‘Chief Minister’s Relief Funds’ or ‘State Relief Fund for COVID-19’ shall qualify as CSR expenditure?	‘Chief Minister’s Relief Fund’ or ‘State Relief Fund for COVID-19’ is not included in Schedule VII of the Companies Act, 2013 and therefore any contribution to such funds shall not qualify as admissible CSR expenditure.
3	Whether contribution made to State Disaster Management Authority shall qualify as CSR expenditure?	Contribution made to State Disaster Management Authority to combat COVID-19 shall qualify as CSR expenditure under item no (xii) of Schedule VII of the 2013 and clarified vide general circular No. 10/2020 dated 23rd March, 2020.
4	Whether spending of CSR funds for COVID-19 related activities shall qualify as CSR expenditure?	Ministry vide general circular No. 10/2020 dated 23rd March, 2020 has clarified that spending CSR funds for COVID-19 related activities shall qualify as CSR expenditure. It is further clarified that funds may be spent for various activities related to COVID-19 under items nos. (i) and (xii) of Schedule VII relating to promotion of health care including preventive health care and sanitation, and disaster management. Further, as per general circular No. 21/2014 dated 18.06.2014, items in Schedule VII are broad based and may be interpreted liberally for this purpose.
5	Whether payment of salary/wages to employees and workers, including contract labour, during the lockdown period can be adjusted against the CSR expenditure of the companies?	Payment of salary/ wages in normal circumstances is a contractual and statutory obligation of the company. Similarly, payment of salary/ wages to employees and workers even during the lockdown period is a moral obligation of the employers, as they have no alternative source of employment or livelihood during this period. Thus, payment of salary/ wages to employees and workers during the lockdown period (including imposition of other social distancing requirements) shall not qualify as admissible CSR expenditure.

6	Whether payment of wages made to casual /daily wage workers during the lockdown period can be adjusted against the CSR expenditure of the companies?	Payment of wages to temporary or casual or daily wage workers during the lockdown period is part of the moral/ humanitarian/ contractual obligations of the company and is applicable to all companies irrespective of whether they have any legal obligation for CSR contribution under section 135 of the Companies Act 2013. Hence, payment of wages to temporary or casual or daily wage workers during the lockdown period shall not count towards CSR expenditure.
7	Whether payment of exgratia to temporary /casual /daily wage workers shall qualify as CSR expenditure?	If any ex-gratia payment is made to temporary / casual workers/ daily wage workers over and above the disbursement of wages, specifically for the purpose of fighting COVID 19, the same shall be admissible towards CSR expenditure as a onetime exception provided there is an explicit declaration to that effect by the Board of the company, which is duly certified by the statutory auditor.

^^General Circular No 10/2020 of MCA & FAQs Issued by MCA.



LLP Settlement Scheme 2020[^]

Scheme Validity – 1st April 2020 – 30th September 2020

Applicability	Any Defaulting Limited Liability Partnership	
Forms Defaulted on (Upto 31st August 2020)	<p>Forms</p> <p>Form-3- Information with regard to limited liability partnership agreement and changes, if any, made therein;</p> <p>Form-4- Notice of appointment, cessation, change in name/ address/ designation of a designated partner or partner and consent to become a partner/ designated partner;</p> <p>Form-8 - Statement of Account & Solvency (Annual or Interim);</p> <p>Form-11 - Annual Return of Limited Liability Partnership (LLP)</p>	<p>Due Dates</p> <p>Within 30days of Registration.</p> <p>Within 30 days of any changes</p> <p>Within October 30th of next Financial Year.</p> <p>Within 30th May of the next Financial year.</p>
Fee	Per Form Rs. 10 per day from the due date Upto Maximum of Rs. 5,000/- per document	
Prosecution	No Prosecution if all compliances made upto 30 th September 2020	

[^] MCA Circular No 6 of 2020 as amended by Circular No 13 of 2020

Companies Fresh Start Scheme 2020 (CFSS 2020) – General Circular 12 of 2020.

Applicability	Any Company, having defaulted in filing of any documents, statements, returns etc. with MCA – 21 registry before the Registrar of Companies (‘Designated Authority’).	
Not Applicable for (Upto 31st August 2020)	<ol style="list-style-type: none"> 1. To companies for which final notice for striking off name of the company has been initiated by Designated Authority. 2. To companies which has filed for striking off name of the company from the register of companies. 3. To companies which have amalgamated. 4. To companies which has filed for obtaining dormant status before this scheme. 5. To vanishing companies 6. Issue involving increase in authorized share capital or charge related documents. 	<p>U/s 248 of the Companies Act 2013 (560 of Companies Act 1956).</p> <p>Under a Scheme of Amalgamation or Compromise under the Act.</p> <p>U/s 455 of the Act.</p> <p>Form SH – 7 / CHG 1, CHG 4, CHG 8 and CHG 9</p>
Fee	Pay normal fees (<i>No additional Fees</i>) as applicable under the Companies’ rules 2014 on date of filing of each belated document and shall obtain Immunity under the scheme.	

<p>Immunity from Prosecution</p>	<p>Immunity from Prosecution shall be obtained only against the delay in filing of belated document and not against consequential proceedings including interest of Shareholders, or any other person qua of company or its Directors or KMP.</p> <p>Application of Immunity shall be made by filing of Form CFSS-2020 electronically after closure of scheme and after filing of defaulting documents and same is taken on file or on record or approved by Designated authority but before expiry of 6 months from closure of the scheme.</p> <p>Note: Immunity shall not be applicable in matter of appeal pending before court of Law and in case of management disputes pending before court of Law or tribunal.</p> <p>Immunity shall not be provided on matter for which order has been passed by any court or by any adjudicating authority and no appeal has been preferred on the same before the scheme has come in force.</p>
<p>Withdrawal of Appeals</p>	<p>Any appeal filed against any notice, order or prosecution in respect of which the application is made under the scheme, shall have to be withdrawn from the respective forums, before filing of application for Immunity.</p> <p>In all case where penalties were imposed for delay in filing of any document with MCA – 21 registry and no appeal has been preferred either by the Company or the Imposing officer the following shall apply;</p> <ol style="list-style-type: none"> a. If the due date falls between 01.03.2020 to 31.05.2020, the due shall be extended by 120 additional days with effect from last date of filing of such appeal. b. During such additional period as stated in (a) Prosecution for non-compliance of order in relation to delay in filing of documents with MCA – 21 registry shall not be initiated.
<p>Inactive Companies</p>	<p>The defaulting inactive company, while filing CFSS-2020 shall also file either,</p> <ol style="list-style-type: none"> a. Form MSC – 1 – For the Company to be declared as Dormant Company or b. Form STK – 2 - For striking off of name of the company (Fees as applicable)

Amendments to Insolvency and Bankruptcy Code

- The threshold of default under section 4 of the IBC 2016 to Rs 1 crore (from the existing threshold of Rs 1 lakh). This will by and large prevent triggering of insolvency proceedings against MSMEs. If the current situation continues beyond 30th of April 2020, we may consider suspending section 7, 9 and 10 of the IBC 2016 for a period of 6 months so as to stop companies at large from being forced into insolvency proceedings in such force majeure causes of default.

Amendments to Foreign Direct Investment Policy

- In a note dated April 17, 2020, the Department for Promotion of Industry and Internal Trade under the Ministry of Commerce and Industry released an amendment of the Foreign Direct Investment Policy. The government has reviewed the extant FDI policy in order to curb the opportunistic takeovers/acquisitions of Indian companies due to the current pandemic. As per the note, para 3.1.1 of the extant FDI policy as contained in the Consolidated FDI Policy, 2017 has been amended.
- The present position as per the policy states that a nonresident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, a citizen of Bangladesh and Pakistan or an entity registered in both countries can only invest under the government route. Additionally, for Pakistan sectors/activities such as defense, space and atomic energy are prohibited for investment in addition to the sectors/activities already in that category.
- The amended para 3.1.1 (a) states that an entity of a country which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country can invest only under the government route. The additional prohibitions for Pakistan still hold. Additionally, the amendment also states that the transfer of ownership of an existing or future FDI in an entity in India, directly or indirectly, resulting in the beneficial ownership falling within the restriction/purview of the para 3.1.1 (a), the change will also require government approval.

Pradhan Mantri Garib Kalyan Yojana Scheme,

Scheme Objective	A Scheme to implement the PMGKY package for credit of employee's share of EPF (12% of Wages) & employer's EPS contributions (12% of wages) for three months by Govt. of India	
	Central Govt. proposes to pay 24% of the monthly wages into EPF accounts for next three months of Wage-earners below Rs.15000/p.m., who are employed in establishments, already covered under the EPF & MP Act, 1952, having up to 100 employees, with 90% or more of such employees earning monthly wages less than Rs.15000/-.	
Validity	The Scheme will be in operation for the wage months- March, 2020, April, 2020 and May 2020.	
Eligibility	Establishment	Employees
	<p>(i) The establishment or factory should already be covered and registered under the Employees' Provident Funds & Misc. Provisions Act, 1952.</p> <p>(ii) The total number of employees employed in the establishment should be up to 100 (one hundred), with 90% or more of such employees should be drawing monthly wages less than Rs.15000/-.</p>	<p>(i) Employee should be employed in any eligible establishment earning monthly wages of less than Rs.15000/-. The UAN of the employee should be seeded with his/her Aadhaar.</p> <p>(ii) Employee should be a member of EPF Scheme, 1952 & Employees' Pension Scheme, 1995 whose contributions are received for any period during last six months (September 2019 to February 2020) in the ECR filed by any eligible establishment against his/her UAN.(Refer Note 1) Such contributions in ECR should have been received on monthly wage of less than Rs.15000/-</p> <p>(iii) It is clarified that if any employee is already a registered beneficiary and his/her employer is availing benefits of payment of employer's share by Central Govt. under PMRPY/PMRPY 2016, no such benefit in r/o such employee shall be available under this Scheme of PMGKY.</p>

Procedure	<p>(i) The employer in relation to any eligible establishment, shall disburse wages for the month to all employees of the establishment and file Electronic Challan cum Return (ECR) Online to avail the benefit under the Scheme. (only one valid ECR for Eligible & Ineligible Employees for each of 3 months)</p> <p>(ii) The employer shall not make any deduction of employee's share of EPF contributions from the monthly wages of any eligible employee drawn for the wage months- March 2020, April 2020 and May 2020.</p> <p>(iii) The employer of establishment claiming benefits under this Scheme have to file only one valid ECR for each of the months- March, 2020, April, 2020 and May, 2020.</p> <p>(iv) That Form 5A (Ownership return) filed electronically should contain the details of all branches/departments and EPF Code numbers, if any, allotted separately to such branches/departments.</p> <p>(v) Once ECR is uploaded by an employer eligible for relief, then the challan will separately show such amounts of employees' and employers' contributions as Central Govt. relief due under this Scheme in respect of eligible employees and the remaining amount payable by the employer-contributions towards EDLI Scheme, 1976 and EPF administrative charges in respect of all employees as well as EPF & EPS contributions due in respect of ineligible employees.</p> <p>(vi) After the employer remits the payment due from him as reflected in challan as noted at (v) above, the EPF & EPS contributions in respect of eligible employees will be credited directly in their respective UAN by the Central Govt.</p> <p>(vii) At the time of submission of the ECR, the employer shall be required to certify correctness of information furnished electronically in ECR and in Form 5A with an undertaking that the employer is liable for penal and coercive consequence for submitting any incorrect or false information/declaration to avail the relief.(Refer Note 2)</p>
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Notes

1. EPF members who are not EPS members due to completion of 58 years shall be eligible provided other conditions are fulfilled and the contribution from Central Govt. will be credited to his EPF account.
2. The employer and establishment, seeking benefits of this Scheme, shall be fully responsible for the information furnished electronically in ECR or Form 5A or otherwise. If it is found that employer or any person has filed a false information or statement or made a false declaration, the employer shall be treated as defaulter and liable for penal consequences for such contravention as per the provisions of the EPF & MP Act, 1952 and EPF Scheme, 1952 and the relief paid by the Central Govt. shall be liable for recovery along with interest and penalty.

3. CERTIFICATE/ DECLARATION OF EMPLOYER

“I hereby certify that the information relating to the names of employees who are members of the EPF Scheme, 1952 and/or EPS’ 1995, UANs seeded with Aadhaar of employees, EPF/EPS wages already disbursed to employees, number of excluded employees in the ECR for wage month of March/April/May, 2020 are true and correct.

That I have disclosed names & UANs seeded with Aadhaar of every employee employed in all units/branches/departments as well as number of excluded employees of my establishment in the ECR for wage month of March/April/May, 2020, the total number of employees being ____ (EPF members and excluded employees), out of which ____employees earned EPF/EPS wages less than Rs.15000/- qualifying for Central Govt. relief. I further certify that the Form 5A contains the details of all branches/departments and EPF Code numbers allotted separately to these.

I also certify that monthly wages due to all employees for the month of March/April/May, 2020 has been disbursed and also certify that no deductions towards either employees’ EPF contributions or employers’ EPF/EPS contributions have been made from wages of eligible employees for the month of March/April/May, 2020.

That I have neither suppressed any material information nor omitted any particulars and submitted correct information to avail the relief of employer’s and employees’ share of contributions in r/o eligible employees from the Central Govt. for the month of March/April/May, 2020.

I understand that the employer is liable to refund the relief amount and is also liable for any penal and coercive consequence for submitting any - incorrect or false information/declaration to avail the Central Govt. relief.”

Relaxation for Employees Provident Fund Contributions for March 2020

- Retirement fund manager EPFO on Wednesday deferred payment of March contributions till May 15, giving relief to 6 lakh firms and over 5 crore subscribers in the wake lockdown to contain COVID-19. The contributions towards social security schemes - run by Employees' Provident Fund Organisation (EPFO) - for March was due till April 15, which has been extended till May 15. "Considering the unprecedented situation created by Covid-19 and lockdown announced by the Central Government from March 24, 2020 midnight onwards to prevent the spread of Covid-19, the due date for filing of Electronic Challan Cum Return (ECR) for wage month March 2020 is extended up to May 15, 2020, for employers who have paid wages to their employees for March 2020,"