

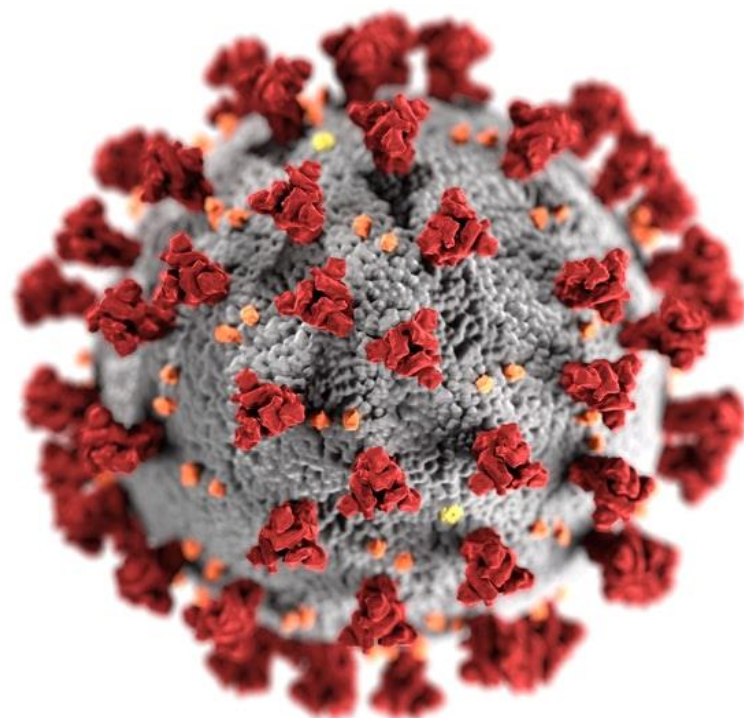
COVID -19 LEGAL FAQ SERIES

FOX MANDAL & ASSOCIATES



COVID-19 GLOBAL PANDEMIC

The sudden outbreak of the pandemic and the nation-wide lock-down has put a heavy constraint on individuals as well as the economy. To minimise the impact of the pandemic on the general public as well as business establishments and ensure minimum disruption in the supply chain, many amendments, advisories and announcements have been introduced which would ideally subsist during the containment period but could have long-term implications. Understanding the ramifications of these developments is essential for the smooth operation of enterprises. We decode the queries that have surfaced appurtenant to the multitudinous notifications that attorneys across our diverse practice domains have responded to.



Are there any date extensions granted to Corporates in the wake of the COVID-19 Pandemic?

On 24th March, the Finance Minister declared a few measures to support and enable Companies and Limited Liability Partnerships (LLPs) in India to focus on taking necessary measures to address the COVID-19 threat, including the economic disruptions caused by it.

Moratorium for Filing of Forms:

The [Circular](#) provided that 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, which will not only reduce the compliance burden, including financial burden of companies/ LLPs at large but also enable long-standing noncompliant companies/ LLPs to make a 'fresh start'.

In order to give such an opportunity to the defaulting Companies and LLPs and to enable them to file the belated documents in the MCA 21 registry, the Ministry of Corporate Affairs (MCA) has issued [Companies Fresh Start Scheme, 2020](#) and [Modified LLP Settlement Scheme, 2020](#) (collectively "Schemes") condoning the delay in filing the above-mentioned documents with the Registrar insofar as it relates to charging of additional fees and granting of immunity from launching of prosecution or proceedings for imposing a penalty on account of delay associated with certain filings. Both the schemes are effective from 1st April 2020 and would remain in force till 30th September 2020. Companies will have to file Form CFSS-2020 in order to avail of the said benefit.

Companies that can avail the Companies Fresh Start Scheme, 2020:

Any defaulting Company is permitted to file the belated documents which were due for filing on any given date in accordance with the provisions of the scheme. It is pertinent to note that, the scheme cannot be applied in certain cases listed below:

- To companies against which action for final notice for striking off the name u/s.248 of the Companies Act, 2013 [previously Section 560 of the Companies Act, 1956] has already been initiated by the designated authority.
- where an application has already been filed by the Companies for the action of striking off the name of the Company from the register of companies.

- To Companies which have amalgamated under a scheme of arrangement or compromise under the Act.
- Where applications have already been filed for obtaining Dormant Status under section 455 of the Act before this Scheme.
- To vanishing Companies.
- Where an increase in authorised capital is involved (Form SH 7) and charge related documents (CHG -1, CHG-4, CHG-8 and CHG-9).

Companies that can avail the Modified LLP Settlement Scheme:

Any defaulting LLP is permitted to file belated documents that were due for filing till 31st August 2020 in accordance with the provisions of this scheme. The 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.

Declaration on Commencement of Business

For newly incorporated companies filing of a declaration of commencement of business is mandatory within 6 months which is being extended to 12 months.

Deposit & Investment Requirement

The requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before 30th April 2020 shall be allowed to be complied with till 30th June 2020.

The requirement to invest 15% of debentures maturing during a particular year in specified instruments before 30th April 2020, maybe done before 30th June 2020.

Auditors Report

The Companies (Auditor's Report) Order,2020 is applicable from the financial year 2020-2021 instead of being applicable from the financial year 2019-2020 notified earlier. This will significantly ease the burden on companies & their auditors for the financial year 2019-20. [Click here](#) to read the notification.

With the nation-wide lockdown in force, what are the meeting/residency related relaxations granted to Corporates?

Section 173(2) of the Companies Act, 2013 read with Rule 4 of the Companies (Meeting of Board and its Powers) Rules, 2014 requires the physical presence of directors in such board meetings where audited

financial statements, board's report, prospectus, etc are approved by the Board. However, the Ministry of Corporate Affairs has dispensed with the requirement of the physical presence of directors for such approvals until June 30, 2020. The Ministry of Corporate Affairs has permitted such meetings to be held through video conferencing or other audio-visual means until June 30, 2020. [Click here](#) to read the notification.

Further, Section 173 requires that the board of every company meets at-least 4 times in a year and that the time gap between two consecutive meetings shall not exceed 120 days. The Ministry of Corporate Affairs has relaxed this requirement stating that the time gap between two consecutive meetings of the board can be extended to 180 days until September 30, 2020.

Moreover, independent directors are required to hold at least one meeting without other directors or management personnel. The Government has decided to condone those independent directors who have been unable to hold such meetings for the financial year 2019-2020. However, the Ministry of Corporate Affairs has urged independent directors to share their views with each other telephone, e-mail or any other mode of communication.



In addition, 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 Companies Act, 2013 shall not be treated as a violation.

Also, the Ministry of Corporate Affairs has waived off the filing fee for those directors and/or companies who are marked as “Deactivated” or “ACTIVE non-compliant” due to non-filing of DIR-3KYC/DIR-3 KYC-Web or ACTIVE e-form, respectively, in an effort to encourage such directors and/or companies to become compliant.

What is the CAR form and when is the last day to file it?

The Company Affirmation of Readiness (CAR) towards COVID-19 form is a simple web-based form seeking the following information: (i) CIN (ii) Name of Company (iii) Whether Company is in compliance of COVID-19 guidelines including work from home policy (iv) Authorized Signatory (v) Mobile Number (vi) OTP.

The MCA released the form for companies to confirm their readiness to deal with threats posed by COVID-19. While it was initially stated that the same would have to be mandatorily filed from March 23, 2020, the MCA later issued a clarification stating that filing the form was a voluntary exercise. The filing of CAR has been discontinued with effect from 14th April 2020.

What are the ways in which a Company can contribute to combating COVID-19 as part of its Corporate Social Responsibility (CSR)?

In the wake of the Coronavirus pandemic, the Ministry of Corporate Affairs issued a circular dated March 23, 2020, in [General Circular No. 10/2020](#) declaring that funds spent for activities related to COVID-19 (Corona), namely, promotion of health care - including preventive health care and sanitization, and disaster management will be treated as funds spent towards CSR Activity in accordance with Section 135 of the Companies Act, 2013.

Further, any contribution made by Companies to the Prime Ministers Citizen Assistance and Relief in Emergency Situations Fund (PM CARES FUND) will also be treated as CSR expenditure. [Click here](#) to read the office memorandum.

However, '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. Further, payment of salary/ wages to employees and workers as well as casual/daily wage workers during the lockdown period (including the imposition of other social distancing requirements), shall not qualify as admissible CSR expenditure. Nevertheless, 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. [Click here](#) for detailed FAQ on COVID-19 related CSR spending.

Are there any regulatory policies put in place to address the stress in financial conditions caused by COVID-19?

The Reserve Bank of India (RBI) has announced a [regulatory package](#) to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses.

- With respect to term loans, lending institutions, are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period.
- With respect to working capital facilities sanctioned in the form of cash credit/overdraft ("CC/OD"), lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from March 1, 2020 upto May 31, 2020 ("deferment"). The accumulated accrued interest shall be recovered immediately after the completion of this period.
- In case of CC/OD to borrowers facing stress on account of the economic fallout of the pandemic, lending institutions may recalculate the 'drawing power' by reducing the margins and/or by reassessing the working capital cycle. This relief shall be available in respect of all such changes effected up to May 31, 2020 and shall be contingent on the lending institutions satisfying themselves that the same is necessitated on account of the economic fallout from COVID-19. Further, accounts provided relief under these instructions shall be subject to subsequent supervisory review with regard to their justifiability on account of the economic fallout from COVID-19.

- Since the moratorium/deferment/recalculation of the 'drawing power' is being provided specifically to enable the borrowers to tide over economic fallout from COVID-19, the same will not be treated as concession or change in terms and conditions of loan agreements due to financial difficulty of the borrower. Consequently, such a measure, by itself, shall not result in asset classification downgrade. Further, the rescheduling of payments, including interest, will not qualify as a default for the purposes of supervisory reporting and reporting to Credit Information Companies (CICs) by the lending institutions. CICs shall ensure that the actions taken by lending institutions pursuant to the above announcements do not adversely impact the credit history of the beneficiaries.

Is there any special relief for start-ups affected by COVID-19?

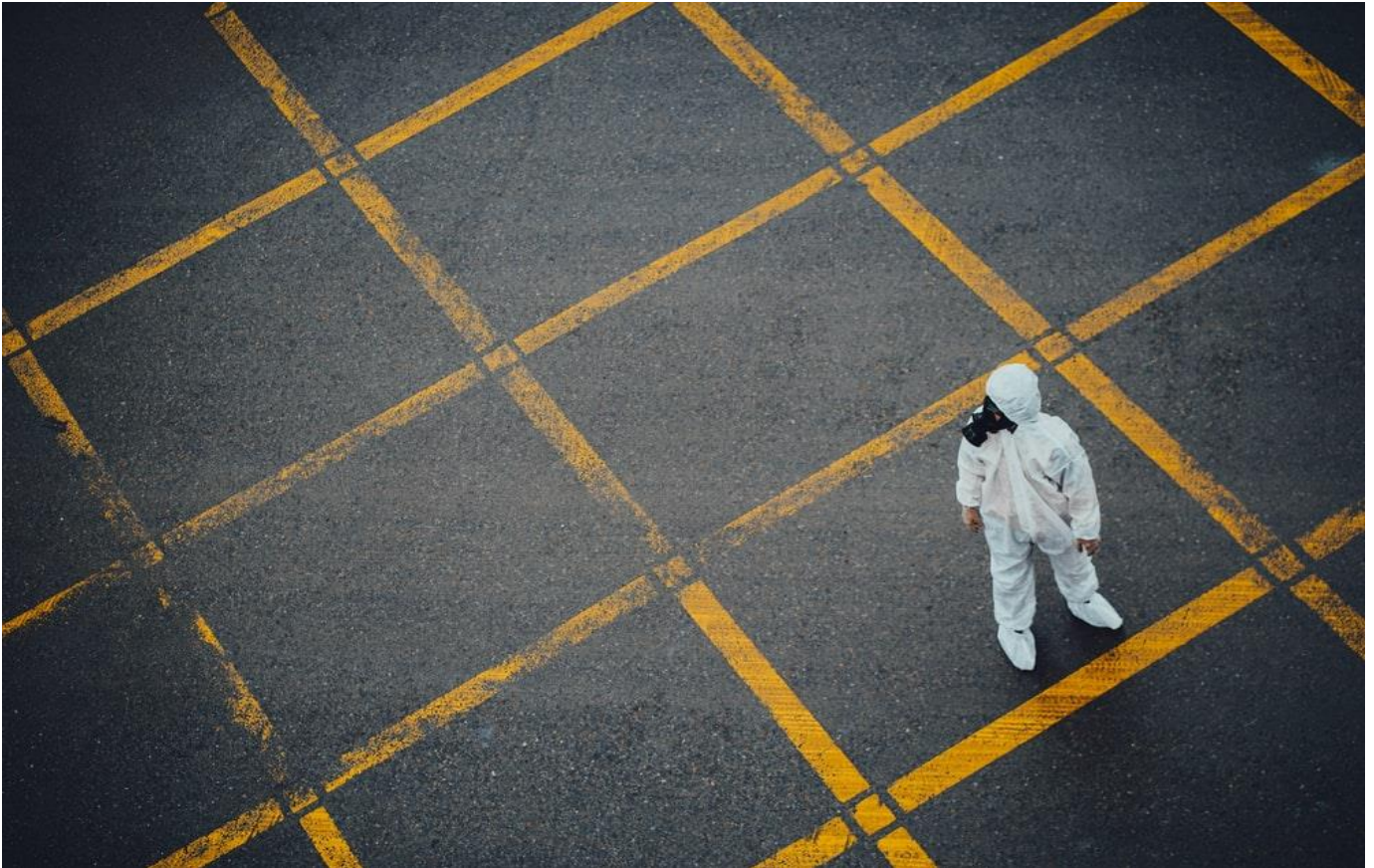
Small Industries Development Bank of India (SIDBI) has introduced the [COVID-19 Start-Up Assistance Scheme](#) to provide financial assistance to innovative start-ups that have demonstrated ability to adapt to the economic impact from COVID-19, by providing quick working capital in the form of working capital term loan within 45 to 90 days. The loan will be required to be repaid within 36 months extendable by a maximum of 12 months and can be used for various working capital requirements like salaries, wages, rent, administrative expenses and so on and so forth. The loan will be provided at an interest of 12% p.a. on a reducing balance basis and will be disbursed either in single or multiple tranches, as the need may be.

The start-up must fulfil the following conditions to be eligible for availing this scheme:

- Government defined start-ups which have received funding through an alternate investment fund or any VC/PE/Angel Fund investing in India.
- Minimum employee base of 50 employees.
- Minimum turn-over between INR 20 crore to INR 60 crore between FY 2019 and FY 2020.
- EBIDTA positive in December 2019 or project positive EBIDTA for the quarter ending June 2020.
- Incorporated less than 10 years ago.
- Positive net worth.
- Demonstrated innovative measures for ensuring business continuity during the COVID-19 phase.
- Taken measures to ensure employee safety and financial stability during the COVID-19 phase.
- Promoter/Founder should have invested his own funds in the start-up.
- Further terms and conditions as prescribed in the scheme.

Is there any special relief for MSMEs in the wake of COVID-19?

SIDBI has enhanced the financing limit under SAFE (SIDBI Assistance to Facilitate Emergency response against coronavirus) from Rs. 50 lakhs to Rs. 2 crores and has introduced a new product, SAFE PLUS to provide emergency working capital against confirmed government orders. The loans will be without collateral properties and will be delivered within 48 hours and the rate of interest would be a nominal 5%. An additional financial window for healthcare sector has also been introduced under its flagship scheme called



SMILE (SIDBI Make in India Soft Loan Fund for Micro Small and Medium Enterprises). [Click Here](#) for further details.

Is there any relaxation given by MCA for IEPF related compliances?

MCA through its [General circular No.16/2020](#) dated 13th April 2020 clarified that it has received representations from various stakeholders to ease the provisions of transfer of unclaimed dividend or shares which are due to be transferred to the fund as specified under section 124(5) and 124(6) of the

Companies Act of 2013. The MCA reiterated that it has allowed filing in the MCA-21 registry without additional fees till 30th September 2020 through various previous circulars. Therefore, the necessary relaxation has already been provided in so far as filing of various other IEPF e-forms (IEPF – 1, IEPF – 1A, IEPF – 2, IEPF – 3, IEPF – 4, IEPF – 7) and e-verification of claims filed in e-form IEPF-5 is concerned.

If it is unavoidable to conduct General Meeting for the matter's requiring shareholder's approval. How can an EGM be conducted then?

The MCA (through its [General Circular No.14/2020 dated 08th April 2020](#) and [General Circular No. 17/2020 dated April 13, 2020](#)) has taken a step forward to facilitate timely decisions by corporate entities without hampering the rights of shareholders by allowing postal ballot/e-voting facility, without holding a general meeting, in accordance with the provisions of the act and rules on urgent matters, other than items of ordinary business or business where a person has a right to be heard. However, if an Extra-Ordinary General Meeting (EOGM / EGM) is unavoidable for matters that need to be decided on or before 30th June 2020, the procedure for conducting such a meeting through video conferencing (VC) or other audio-visual means (OAVM) has been provided in the above-mentioned Circulars.

Can any matter be decided in the general meeting conducted through electronic means?

No. Companies can conduct a meeting through video conferencing (VC) or other audio-visual means (OAVM) to only decide matters **other than “ordinary Business or business where any person has rights to be heard”**.

What are some responsibilities of the Companies providing the electronic meeting facility?

- 1) The Company shall take necessary measures to ensure meeting through VC or OAVM facility allows two way teleconferencing or WebEx for the ease of participation of the members and ensure the convenience of different persons positioned in different time zones before scheduling the meeting.

- 2) The facility must have a capacity to allow at least 1000 members to participate on a first-come-first-served basis. The large shareholders (i.e. shareholders holding 2% or more shareholding), promoters, institution all Investors, directors, key managerial personnel, the chairpersons of the Audit Committee, Nomination and Remuneration Committee and Stakeholders Relationship Committee, auditors etc. may be allowed to attend the meeting without restriction on account of first-come- first-served principle. At least one independent director and auditor, or authorized representative, must attend the meeting.
 - 3) The notice for the general meeting shall make disclosures with regard to the manner in which the framework provided in this Circular shall be available for use by the members and also contain clear instructions on how to access and participate in the meeting. The company shall also provide a helpline number through the registrar & transfer agent, technology provider, or otherwise, for those shareholders who need assistance with using the technology before or during the meeting.
 - 4) A copy of the meeting notice shall also be prominently displayed on the website of the Company and due Intimation may be made to the exchanges in the case of a listed company.
 - 5) All resolutions passed in accordance with this mechanism shall be filed with the Registrar of Companies within 60 days of the meeting clearly Indicating therein that the mechanism provided herein along with other provisions of the Act and rules were duly complied with during such meeting.
- Other requirements can be found [here](#).

What is the manner of sending notice of a general meeting to members?

The MCA has clarified through [General Circular No. 17/2020 dated April 13, 2020](#), that Companies that **are required** to provide e-Voting facility or any other Companies opting for such facility, must notify its members regarding the meeting **only through e-mail** registered with the Company or with the depository.

Following matters must be included in the notice of the meeting:

- a) a statement that the EGM has been convened through VC or OAVM in compliance with applicable provisions of the Act read with Circulars dated 8th April 2020 and 13th April.
- b) the date and time of the EGM through VC or OAVM.
- c) availability of notice of the meeting on the website of the company and the stock exchange.
- d) the way the members can cast their vote through remote e-voting or through the e-voting system during the meeting.
- e) the way the members who have not registered their email addresses with the company can get the same registered with the company.

What is the option for companies to notify members in the absence of email addresses?

Those companies which **are not required** to provide the facility of e-voting and where the contact details of any of the members are not available with the Company, they should contact members whose email addresses are not registered with the company over the telephone or any other mode for registration of email address. Where the contact is still not available, the company shall cause public notice by way of advertisement to be published Immediately at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the Company is situated and having a wide circulation in that district and at least once in English language in an English newspaper having a wide circulation in that district, preferably both newspaper having electronic editions. [Click here](#) for more details.

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