

4

Regulatory updates

Chapter



MCA clarification on extension of AGM for the financial year ended 31 March 2020

Background

The Ministry of Corporate Affairs (MCA) through a circular (no. 20/2020) dated 5 May 2020 allowed companies to conduct their Annual General Meetings (AGMs) through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) during the calendar year 2020 subject to fulfilment of prescribed conditions. Further, in case companies are unable to hold their AGMs, they were advised to file an application for extension of AGM before the Registrar of Companies (ROC) under Section 96 of the Companies Act, 2013 (2013 Act).

New development

On 17 August 2020, MCA through its circular further clarified that the companies that are unable to hold their AGMs for the financial year ended 31 March 2020 (despite the above-mentioned relaxations) should file an application in Form No. GNL -1 to seek an extension of time to hold AGMs. The application should be made to the concerned ROC on or before 29 September 2020.

ROCs are advised to consider all such applications (filed in Form No. GNL -1) liberally in view of the hardships faced by the stakeholders and to grant extension for the period as applied for (up to three months) in such applications.

(Source: MCA general circular no. 28/2020 dated 17 August 2020)

Amendments to the provisions relating to CSR

The MCA through a notification dated 24 August 2020 has issued amendments to the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules). As per the amendments, any company engaged in research and development activity of new vaccine, drugs and medical devices in their normal course of business may undertake research and development activity related to COVID-19 for financial years 2020-21, 2021-22 and 2022-23 subject to the following conditions:

- Such research and development activities should be carried out in collaboration with any of the institutes or organisations mentioned in item (ix) of Schedule VII to the 2013 Act.
- Details of such activity should be disclosed separately in the annual report on CSR included in the board's report.

Additionally, effective 24 August 2020, contribution to incubators or research and development projects in the field of science, technology, engineering and medicine, funded by the central government or state government, public sector undertaking or any agency of the central government or state government will be considered as an eligible CSR activity.

(Source: MCA notification no. G.S.R. 526(E) and notification no. G.S.R. 525(E) dated 24 August 2020)

Relaxation from sending physical copy of notice of offer for rights issue by listed companies

Currently, Section 62(2) of the 2013 Act requires an issuer to send physical copy of notice of offer for rights issue through a registered/speed post or through electronic mode with proof of delivery to all the existing shareholders at least three days before the opening of the issue.

Relaxation

MCA through a circular dated 3 August 2020 has clarified that the inability to dispatch the relevant notice to shareholders by listed companies through registered/speed post or courier would not be viewed as violation of Section 62(2) of the 2013 Act for rights issues opening up to 31 December 2020.

(Source: MCA general circular no. 27/2020 dated 3 August 2020)

Proposed framework of business responsibility and sustainability reporting in India

Background

Currently, top 1,000 listed companies¹ in India are required to furnish a Business Responsibility Report (BRR) to the stock exchanges as a part of their annual reports. The BRR should describe the initiatives taken by them from an environmental, social and governance perspective, in the format as specified by SEBI. Other listed companies can submit the BRR voluntarily².

BRR is based on the business responsibility and sustainability indicators contained in the *National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business* (NVGs) issued in 2011 by MCA. These guidelines were updated as the *National Guidelines for Responsible Business Conduct* (NGRBC) in 2019.

1. Based on market capitalisation calculated as on 31 March of every financial year.

2. Regulation 34 of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulation, 2015 (Listing Regulations).



In 2018, while the NVGs were being updated, it was decided that the SEBI-BRR framework should also be revised to reflect the changes made in the base document. Accordingly, MCA constituted a committee³ for finalising revised BRR formats for listed and unlisted companies.

New development

On 11 August 2020, MCA has issued the report of the committee on BRR. Key recommendations made by the committee in its report are as follows:

- **Business responsibility and sustainability formats:**

The committee recommended that the format of reporting should be called the Business Responsibility and Sustainability Report (BRSR) (instead of BRR) to better reflect the intent and scope of the reporting requirement. It proposes two new formats for disclosures:

- A comprehensive format and
- A Lite version.

The information sought in the formats is a mix of quantitative and qualitative data.

- **BRSR Lite:** In order to ease the sustainability reporting requirements, the committee has proposed a lite version of the BRSR format for companies reporting first time on sustainability reporting related issues such as unlisted companies.

- **Scope of reporting to cover unlisted companies:**

The committee recommended that the reporting requirement may be extended by MCA to unlisted companies above specified thresholds of turnover and/or paid-up capital. Further, it recommended that smaller unlisted companies below this threshold can adopt a lite version of the format, on a voluntary basis.

- **Integration with the MCA21 portal:** The committee recommended that the BRSR be integrated with the MCA21 portal.

Effective date: The committee recommended to implement the disclosures under BRSR effective from financial year 2021-22 in a phased manner over a period of five years.

SEBI consultation paper on format of BRSR

In accordance with the above, recently, the Securities and Exchange Board of India (SEBI) has also issued a consultation paper on the 'Format for BRSR' and

proposed that the format for BRSR, as recommended by the committee, should be made applicable to top 1,000 listed companies by market capitalisation.

To begin with, it proposed that the new format should be adopted by top 1,000 listed companies on a voluntary basis for the financial year 2020-21 and mandatorily from the financial year 2021-22. Existing format of BRR will continue to apply in case a company choose not to adopt the new format in financial year 2020-21.

Comments on the proposed format have been invited up to 18 September 2020.

For a detailed read, please refer to KPMG in India's First Notes on 'Proposal for top 1,000 listed companies to adopt BRSR voluntarily for FY20-21' dated 26 August 2020.

(Source: MCA Report of the Committee on BRR dated 11 August 2020 and SEBI 'Consultation paper on the format of BRSR' dated 18 August 2020)

Relaxation in timelines for use of digital signature certifications

SEBI through a circular dated 31 July 2020 has extended the permission to listed companies to use digital signature certifications for authentication/certification of filings/submissions made to the stock exchanges under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) up to 31 December 2020 (earlier it was permitted till 30 June 2020).

The relaxation is applicable for filings/submissions made to stock exchanges from 1 July 2020 onwards.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/145 dated 31 July 2020)

Clarification on open offers, buybacks and delisting of securities of listed companies

Currently, as per Regulation 40(1) of the Listing Regulations, request for transfer of securities is permitted to be processed only when the securities are held in dematerialised form with a depository (except in case of transmission or transposition of securities).

Clarification

SEBI through a circular dated 31 July 2020 has allowed shareholders holding securities in physical form to tender shares in open offers, buy-backs through tender offer route and exit offers in case of voluntary or compulsory delisting. However, such tendering would be as per provisions of respective regulations.

3. The committee was formed under the Chairmanship of Mr. Gyaneshwar Kumar Singh, Joint Secretary, MCA. The committee comprised of SEBI, MCA, three professional institutes and two eminent professionals who had worked on developing the NGRBC.

The provisions of the circular are effective from 31 July 2020.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/144 dated 31 July 2020)

Amendments to the Listing Regulations

Currently, Regulation 42(1) of the Listing Regulations requires a listed entity to intimate the record date to all the stock exchanges where it is listed, *inter alia*, for the purpose of declaration of dividend or issue of right or bonus shares.

Amendment

SEBI through a notification dated 5 August 2020 has amended Regulation 42(1) of the Listing Regulations. As per the amendment, a listed entity is required to intimate the record date to all the stock exchange(s) where it is listed, **where stock derivatives are available on the stock of the listed entity, or where listed entity's stock form part of an index on which derivatives are available.**

(Emphasis added to highlight the change)

The amendment is effective from 5 August 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/25 dated 5 August 2020)

Resolution framework for COVID-19-related stress

The Reserve Bank of India (RBI) through a notification dated 6 August 2020 introduced a 'Resolution Framework for COVID-19-related Stress' (the framework) with an aim to mitigate the impact of the COVID-19 pandemic on the ultimate borrowers. The framework would enable lenders to implement a resolution plan in respect of eligible corporate exposures without change in ownership and personal loans, while classifying such exposures as standard, subject to specified conditions.

Key features of the framework are as follows:

- The lending institutions should frame board approved policies pertaining to implementation of viable resolution plans for eligible borrowers under the framework, ensuring that the resolution under this facility is provided only to the borrowers experiencing stress on account of COVID-19.
- The reference date for the outstanding amount of debt that may be considered for resolution should be 1 March 2020.

- Resolution plans in respect of accounts where the aggregate exposure of the lending institutions at the time of invocation of the resolution process is INR100 crore and above, would require an Independent Credit Evaluation (ICE) by any one Credit Rating Agency (CRA) authorised by RBI under the Prudential Framework.
- Lending institutions publishing quarterly statements should, at the minimum, make disclosures as per the specified format in their financial statements for the quarters ending 31 March 2021, 30 June 2021 and 30 September 2021.

The lending institutions are also required to make half-yearly disclosures in the financial statements as on 30 September and 31 March starting from the half-year ending 30 September 2021 till all exposures on which resolution plan was implemented are either fully extinguished or completely slips into Non-Performing Asset (NPA), whichever is earlier.

(Source: RBI notification no. RBI/2020-21/16 dated 6 August 2020)

Restructuring of advances for MSMEs

Background

RBI through a circular dated 11 February 2020 had permitted a one-time restructuring of existing loans to Micro, Small and Medium Enterprises (MSMEs) which were classified as 'standard' as on 1 January 2020 without a downgrade in the asset classification subject to the specified conditions.

New development

To provide more support to MSMEs during COVID-19, RBI through a circular dated 6 August 2020 has extended the above mentioned scheme and allowed restructuring of existing loans to MSMEs classified as 'standard' as on 1 March 2020 without a downgrade in the asset classification subject to compliance with the following conditions:

- The aggregate exposure, including non-fund based facilities of banks and Non-Banking Financial Companies (NBFCs) to the borrower should not exceed INR25 crore as on 1 March 2020.
- The borrower's account was a 'standard asset' as on 1 March 2020 and the restructuring of the borrower account is implemented by 31 March 2021.
- The borrowing entity is GST-registered on the date of implementation of the restructuring except those which are specifically exempt from GST-registration.



- Asset classification of borrowers classified as standard may be retained. The accounts which may have as slipped into NPA category between 2 March 2020 and date of implementation may be upgraded as 'standard asset'.
- Banks should maintain an additional provision of five per cent over and above the provision already held by them for accounts restructured under these guidelines.

(Source: RBI notification no. RBI/2020-21/17 dated 6 August 2020)

Exposure draft of guidance note on revenue from operations in case of contractors

Recently, the Institute of Chartered Accountants of India (ICAI) issued an Exposure Draft of 'Guidance note on revenue from operations in case of contractor' (ED). The ED deals with the issue as to whether the revenue recognised in the financial statements of contractors as per Accounting Standard (AS) 7, *Construction Contracts* (Revised 2002) and Indian Accounting Standard (Ind AS) 115, *Revenue from Contracts with Customers* can be considered as 'revenue from operations' for presentation in Schedule III to the 2013 Act.

As per the guidance note, the term 'revenue from operations' is used in relation to the source of revenue that arises from the principal revenue generating activity of an enterprise. In case of a contractor, the construction activity is its principal revenue generating activity. Accordingly, the revenue recognised in the statement of profit and loss of a contractor in accordance with the principles laid down in AS 7 (Revised 2002) and Ind AS 115, by whatever nomenclature described in the financial statements, is considered as 'revenue from operations'.

The ED is open for comments up to 31 August 2020.

(Source: ED of the 'Guidance note on revenue from operations in case of contractor' issued by ICAI on 1 August 2020)

ICAI publications on COVID-19

Review engagements on interim financial information in the current evolving environment due to COVID-19

On 7 August 2020, ICAI has issued a guidance on '*Review engagements on interim financial information in the current evolving environment due to COVID-19*'. The guidance highlights key areas of focus during COVID-19 when undertaking a review of interim financial information in accordance with Standard on Review Engagements (SRE) 2410, *Review of Interim Financial Information Performed by the Independent Auditor of the Entity*.

(Source: ICAI publication 'Review engagements on interim financial information in the current evolving environment due to COVID-19' issued on 7 August 2020)

Relaxations from regulatory compliances due to outbreak of COVID-19 pandemic

On 10 August 2020, ICAI has issued a publication '*Relaxations from regulatory compliances due to outbreak of COVID-19 pandemic*' which summarises key relaxations and measures introduced by MCA and SEBI in response to the COVID-19 pandemic.

(Source: ICAI publication 'Relaxation from regulatory compliances due to outbreak of Covid-19 pandemic' issued on 10 August 2020)

MSME business continuity checklist

Recently, ICAI has issued a business continuity checklist for MSMEs '*Rebooting MSMEs in the COVID-19 era*'. The checklist focusses on a number of factors that require special attention by the management of MSMEs during the pandemic. Those factors, *inter alia*, include, managing finances and working capital, liquidity, digitisation, internal controls and risk management.

(Source: ICAI-MSME business continuity checklist issued in July 2020)

FAQs pertaining to Form NFRA-2

Recently, the National Financial Reporting Authority (NFRA) has issued clarifications on issues relating to applicability/filing/uploading of Form NFRA-2 (Annual return to be filed by the auditor) in the form of Frequently Asked Questions (FAQs).

(Source: FAQs pertaining to NFRA-2 Form issued by NFRA)