

# Regulatory updates



## Extension of timeline to hold AGMs by companies with year-end 31 December 2019

### Background

Currently, Section 96 of the Companies Act, 2013 (2013 Act) requires every company (other than a one-person company) to hold Annual General Meeting (AGM) within a period of six months from the end of Financial Year (FY) and not later than 15 months from the date of last AGM. On the other hand, the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulation, 2015 requires top 100 listed companies to hold their AGMs within a period of five months from the date of closing of the FY.

As part of the relaxations amid COVID-19, SEBI extended the timeline to hold AGMs by listed companies with year-end 31 March 2020 by one month i.e. 30 September 2020 (earlier due date was 31 August 2020).

### New development

Recently, the Ministry of Corporate Affairs (MCA) through a circular dated 21 April 2020 allowed companies whose FY (other than first FY) has ended on 31 December 2019 to hold their AGMs within a period of nine months from the end of FY. i.e. up to 30 September 2020.

In line with the MCA circular, SEBI has also allowed top 100 listed companies by market capitalisation whose FY ended on 31 December 2019 to hold their AGMs within a period of nine months from the closure of the FY (i.e. by 30 September 2020).

*(Source: MCA general circular no. 18/2020 dated 21 April 2020 and SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/71 dated 23 April 2020)*

1. Section 108 of 2013 Act read with Rule 20 of the Companies (Management and Administration) Rules, 2014 (M&A Rules)
2. Listed companies and companies with at least 1,000 shareholders are required to provide e-voting facility.
3. For companies which are not required to provide e-voting facility.

## MCA clarification on passing of ordinary and special resolutions by companies during COVID-19

### Background

The 2013 Act does not contain any specific provision which allows conduct of general meeting of companies through Video Conferencing (VC) or Other Audio-Visual Means (OAVM). However, following companies are mandatorily required to provide its members e-voting facility in a general meeting :

- Listed companies and
- Companies with at least 1,000 members.

Additionally, Section 110 of 2013 Act allows companies to pass resolution (excluding items of ordinary business and items where any person has a right to be heard) through postal ballot (which includes e-voting), instead of transacting such business at a general meeting.

The MCA has received various representations to provide relaxations to companies for passing ordinary and special resolution amid COVID-19.

### New development

The MCA through a circular dated 8 April 2020 allowed companies to take all decisions of urgent nature requiring the approval of members (excluding items of ordinary business or business where any person has a right to be heard) through e-voting mechanism without holding a general meeting.<sup>1</sup>

Further, in case holding of an Extraordinary General Meeting (EGM) is unavoidable, companies are required to follow a prescribed procedure for conducting such a meeting on or before 30 June 2020.

Some of the key requirements are as follows:

- EGMs may be held through VC or OAVM with e-voting facility<sup>2</sup> or voting through registered e-mails<sup>3</sup>.
- At least one independent director and the auditor/ authorised representative should attend the meeting.
- All resolutions passed through the mechanism to be submitted with the Registrar of Companies (ROC) within 60 days of the meeting.

Additionally, MCA through a circular dated 13 April 2020 clarified the manner and mode of issue of notices to the members to facilitate EGMs with e-voting facility or voting through registered e-mails, as the case may be.

*(Source: MCA general circular no. 14/2020 dated 8 April 2020 and general circular no.17/2020 dated 13 April 2020)*

## MCA issues FAQs on eligibility of CSR expenditure relating to COVID-19

Recently, the MCA has issued clarifications on eligibility of Corporate Social Responsibility (CSR) expenditure related to COVID-19 activities, in the form of Frequently Asked Questions (FAQs).

Those are as follows:

### Eligible CSR expenditure

- Contribution made to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund)
- Contribution made to State Disaster Management Authority to combat COVID-19
- Spending CSR funds for COVID-19 related activities such as those relating to promotion of health care including preventive health care and sanitation, and disaster management
- Payment of ex-gratia to temporary/casual/daily wage workers over and above the disbursement of wages is an eligible CSR expenditure as a one-time exception. The board of directors is required to give declaration to this effect which should be duly certified by the statutory auditor.

### Ineligible CSR expenditure

- Any contribution made to 'Chief Minister's Relief Fund' or 'State Relief Fund for COVID-19'
- Payment of wages to temporary, casual or daily wage workers during the lockdown period
- Payment of salary/wages to employees and workers during the lockdown period (including imposition of other social distancing requirements).

*(Source: MCA general circular no. 15/2020 dated 10 April 2020)*

## SEBI issues further relaxations for listed companies

### Listing Regulations

SEBI through its circular dated 17 April 2020 has provided relaxations from compliance with certain provisions of the Listing Regulations. Those relate to the following:

- **Prior intimation to stock exchanges about board meetings:** Regulation 29(2) of the Listing Regulations requires equity listed companies to give prior intimation to stock exchange about the meeting of its board of directors in the following manner:

- **For meeting held to consider financial results (quarterly, half yearly, or annual):** At least five days before the meeting (excluding the date of the intimation and date of the meeting)
- **For meeting held for other purposes:** At least two working days.

### Relaxation

For board meetings held up to 31 July 2020 to consider any matter as specified in Regulation 29(2) of the Listing Regulations, prior intimation has to be given within two working days.

- **Intimation to stock exchanges regarding loss of share certificates and issue of the duplicate certificates:** Regulation 39(3) of the Listing Regulations requires equity listed companies to submit information regarding loss of share certificates and issue of duplicate certificates, to the stock exchange within two days of receiving information.

In case a company fails to ensure compliance with the above requirement, then it is liable to penal provisions in accordance with the SEBI circular dated 3 May 2018.

### Relaxation

Any delay beyond the stipulated time (two days) for intimations to be made between 1 March 2020 to 31 May 2020 will not attract penal provisions as provided under SEBI circular dated 3 May 2018.

- **Use of digital signatures:** It has been clarified that authentication/certification of any filing/submission made to stock exchanges under the Listing Regulations may be done using digital signature certifications until 30 June 2020.
- **Publication of advertisements:** Companies with listed Non-Convertible Debentures (NCDs) and Non-Convertible Redeemable Preference Shares (NCRPS) are required to publish their financial results within two calendar days of the conclusion of the board meeting in at least one English national daily newspaper circulating in the whole or substantially the whole of India.

### Relaxation

Companies are exempt from publication of advertisements in newspapers as required under Regulation 52(8) of the Listing Regulations till 15 May 2020.

The provisions of the circular are effective from 17 April 2020.

*(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/63 dated 17 April 2020)*

## ICDR Regulations

In order to improve access to funding to the corporates through capital markets, recently, SEBI has granted temporary relaxations to listed companies from certain provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations).

The key relaxations relate to the following:

### Rights issue

- **Fast track rights issuance:** The eligibility requirement of average market capitalisation of public shareholding has been reduced from INR250 crore to INR100 crore.

The requirement related to period of listing of equity shares of the issuer for at least three years has been reduced to listing for 18 months.

Also, the condition related to no audit qualifications on issuer's audited accounts has been replaced with the requirement to disclose the impact of audit qualifications on issuer's financials.

- **Minimum subscription:** The minimum subscription threshold requirement for a rights issue has been reduced from existing 90 per cent to 75 per cent of the offer size, subject to certain conditions.
- **Threshold for not filing draft letter of offer with SEBI:** Listed entities raising funds up to INR25 crore in a rights issue will not be required to file draft offer document.

These relaxations are applicable to rights issues that open on or before 31 March 2021.

### Flexibility on issue size

An issuer whose offer document is pending receipt of SEBI observation, would be permitted to increase or decrease the fresh issue size by up to 50 per cent of the estimated issue size (instead of the present limit of 20 per cent) without the requirement to file fresh draft offer document with SEBI. The relaxation would be applicable for all offer documents pending receipt of SEBI observations up to 31 December 2020.

### Validity of SEBI observations

The validity of SEBI observations on all public issues/ rights issues has been extended by six months from the date of expiry for issuers whose observation has expired/ shall expire between 1 March 2020 and 30 September 2020.

*(Source: SEBI press release no. PR No.23/2020 dated 21 April 2020)*

## Buy-back Regulations

Currently, Regulation 24(i)(f) of the SEBI (Buy-back of Securities) Regulations, 2018 (Buy-back Regulations) restrict companies from raising further capital for a period of one year from the expiry of buyback period, except in discharge of their subsisting obligations.

In order to enable relatively quicker access to capital, SEBI has decided to temporarily relax the above-mentioned period of restriction from one year to six months.

The relaxation is applicable up to 31 December 2020.

*(Source: SEBI circular no. SEBI/HO/CFD/DCR2/CIR/P/2020/69 dated 23 April 2020)*

## IRDAI issues relaxations for insurance companies amid COVID-19

Recently, the Insurance and Regulatory Development Authority of India (IRDAI) has issued certain relaxations for insurance companies to address the impact of COVID-19 pandemic. The key relaxations are as follows:

- **Board meetings through VC or OAVM:** For the periods commencing from 19 March 2020 and ending on 30 June 2020, meetings to discuss following matters<sup>4</sup> can be held through VC or OAVM:
  - Approval of the annual financial statements/board's report/prospectus
  - Audit committee meetings for consideration of financial statements including consolidated financial statements, if any, to be approved by the board of directors under Section 134(1) of the 2013 Act and
  - Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.
- **Additional time to file regulatory returns:** IRDAI has allowed additional time<sup>5</sup> for filing regulatory returns as at 31 March 2020 by insurance companies as follows:
  - Monthly returns: 15 days
  - Quarterly, half-yearly and yearly returns: 30 days
  - Cyber security audit: 30 days.
- **Rescheduling of term loans:** In respect of term loans, insurers are permitted to grant a moratorium of three months towards payment of instalments falling due between 1 March 2020 and 31 May 2020. The repayment schedule for such loans and also the residual tenor, will be shifted across the board by three months subsequent to the moratorium period.

4. Specified in Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014

5. This time is granted in addition to the time normally available for filing the returns.

The rescheduling of payments, including interest, will not qualify as a default for the purpose of reporting of Non-Performing Assets (NPAs).

The concurrent auditors would be required to confirm that the insurers have complied with the board approved policy in granting moratorium in their reports for the quarter ending June 2020.

*(Source: IRDAI circular no. IRDA/F&A/CIR/2019-20/481 dated 23 March 2020, circular no. IRDAI/INSP/CIR/MISC/077/03/2020 dated 30 March 2020 and circular no. IRDA/F&I/CIR/INV/085/04/2020 dated 8 April 2020)*

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

On 31 March 2020, the Ministry of Law and Justice issued the Taxation and Other Law (Relaxation of certain provisions) Ordinance, 2020 (ordinance) and provided relaxations in the provisions of 'specified Acts<sup>6</sup>' with immediate effect.

The key relaxations are as follows:

### Direct tax

- Under 'Vivaad Se Vishwas Scheme', the time limit for making payment to avail the scheme without any additional amount has been extended from 31 March 2020 to 30 June 2020.
- 100 per cent deduction to donation made to PM CARES Fund under Section 80G of the Income-Tax Act, 1961 (IT Act). Further such income will be exempt in the hands of recipient under Section 10(23C) of the IT Act.
- Where any time limit specified in the IT Act falls between 20 March 2020 to 29 June 2020 for completion or compliance of any proceedings, filing of any appeal, making of an investment/deposit to claim deduction, etc. and the completion/compliance of such action has not been made within such time, then the time limit for compliance/completion has been extended to 30 June 2020 or such other date after 30 June 2020 as the government may notify.

### Indirect tax

- Amount payable under the Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019 has been extended up to 30 June 2020.
- The due dates for completion of any proceedings, filing of an appeal, document, etc. under the Central Excise Act, 1994, Customs Act, 1962, Customs Tariff Act, 1975 and Finance Act, 1994 (relating to service tax) have been extended up to 30 June 2020.

For a detailed read, please refer KPMG in India's Tax Flash News on 'President promulgates the Taxation and Other Laws (Relaxation of Certain Provisions) Ordinance, 2020' dated 1 April 2020.

*(Source: The Taxation and Other Law (Relaxation of certain provisions) Ordinance, 2020 issued by the Ministry of Law and Justice dated 31 March 2020)*

## IASB proposes to amend IFRS 16 with respect to rent concessions

### Background

IFRS 16, *Leases* defines a lease modification as a change in the scope of a lease, or the consideration for a lease, that was not part of the original terms and conditions of the lease. If a change in lease payments results from a lease modification, then unless the change meets particular criteria to be accounted for as a separate lease, a lessee is required to remeasure the lease liability by discounting the revised lease payments using a revised discount rate.

On account of COVID-19, many lessors are expected to provide rent concessions to lessees. However, it would be difficult for a lessee to assess whether a potentially large volume of COVID-19-related rent concessions are lease modifications and, for those that are, applying the required accounting in IFRS 16, especially in the light of the challenges entities might face during the pandemic.

### New development

Recently, the International Accounting Standards Board (IASB) issued an exposure draft and proposes an amendment to IFRS 16 to allow lessees, as a practical expedient, not to apply lease modification accounting to rent concessions arising as a direct consequence of COVID-19 in 2020.

The proposed exemption would only apply if:

- The revised consideration is substantially the same or less than the original consideration
- The reduction in lease payments relates to payments due in the year 2020 and
- No other substantive changes have been made to the terms and conditions of the lease.

The exposure draft proposes that a lessee would apply the amendment for annual reporting periods beginning on or after 1 June 2020, with earlier application being permitted.

6. The Income Tax Act 1961, The Wealth Tax Act, 1957, The Prohibition of Benami Property Transaction Act, 1988, Chapter VII of the Finance (No.2) Act, 2004, Chapter VII of the Finance, 2013, The Black Money (Undisclosed Foreign Income and Assets and Imposition of Tax Act, 2015, Chapter VII of the Finance, 2016, The Direct Tax Vivad se Vishwas Act, 2020.

Comments on the proposals are invited up to 8 May 2020.

*(Source: IASB's exposure draft on Covid-19-related rent concessions issued in April 2020)*

## Interest rate reforms - IASB issues Phase 2 amendments

Recently, the IASB issued an exposure draft with proposals to address the accounting issues that can arise when an interest rate benchmark is either reformed or replaced (IBOR reform - Phase 2). The proposals are issued as part of its project to consider the effects of the

IBOR reform on financial reporting.

While Phase 1 amendments dealt with the accounting issues that would arise before IBOR reform and focussed only on hedge requirements, the Phase 2 amendments deal with IBOR replacement issues and consider various accounting topics.

The exposure draft proposes amendments to specific requirements in IFRS 9, *Financial Instruments*, International Accounting Standard (IAS) 39, *Financial Instruments: Recognition and Measurement* and IFRS 7, *Financial Instruments: Disclosures*, IFRS 4, *Insurance Contracts* and IFRS 16. The key amendments relate to:

Area	Key points
Modification of a financial instrument	Clarifies what constitutes a modification of a financial instrument in the context of IBOR reform and provides a practical expedient for modifications directly required by IBOR reform.
Hedge accounting	Provides relief to continue hedge accounting when IBOR reform occurs.
End of application for Phase 1 amendments	Provides relief to continue hedge accounting when the Phase 1 amendments cease to apply.
New disclosures	Provides disclosures about the nature and extent of risks arising from IBOR reform, a company's progress in completing IBOR reform and how it is managing the transition.
Lessee accounting for IBOR reform	Provides a practical expedient for modifications directly required by IBOR reform.

**Source:** KPMG IFRG Limited web article on 'IBOR reform – Phase 2 exposure draft issued' dated 9 April 2020

The exposure draft proposes an effective date of 1 January 2021 for the amendments with early application being permitted. It also proposes mandatory retrospective application, which would include reinstating hedging relationships that have been discontinued solely due to changes directly required by IBOR reform.

Comments on the proposed amendments have been invited up to 25 May 2020.

*(Source: IASB's exposure draft on Interest Rate Benchmark Reform - Phase 2 issued in April 2020)*

## IAASB issues confirming amendments to the international standards as a result of revised IESBA Code

On 8 April 2020, the International Auditing and Assurance Standards Board (IAASB) released conforming amendments to the IAASB's international standards as a result of the recently restructured and revised International Ethics Standards Board for Accountants' (IESBA) International Code of Ethics for Professional Accountants (including International Independence Standards) (IESBA Code).

The conforming amendments aim to align the IAASB's international standards with the revisions to the IESBA Code, thus ensuring that they can continue to be applied together with the IESBA Code.

Broadly, the proposed amendments to the IAASB's International Standards can be characterised into the following categories:

- Proposed amendments to reflect structural changes to, and the applicability of, the revised IESBA Code
- Proposed amendments to the framework for addressing threats to compliance with the fundamental principles to the revised IESBA Code.
- Updates to reflect the revised title of the IESBA Code.
- Proposed amendments to align with terminology used in the revised IESBA Code.

The conforming amendments to the IAASB's international standards would become effective as of 15 July 2020.

*(Source: IAASB announcement dated 8 April 2020)*