

IMPORTANT DIRECTIVES/ADVISORIES ISSUED IN WAKE OF THE COVID 19 PANDEMIC IN INDIA

Sl. No.	Directive(s)/ Advisory(ies)																					
1.	Department of Expenditure Procurement and Policy Division, Ministry of Finance vide Office Memorandum No. F. 18/04/2020-PPD dated 19.02.2020, has clarified that disruption of the supply chains due to spread of corona virus in China or any other country, will be covered in the Force Majeure clause 9.7.7 of the Manual of Procurement of Goods, 2017.																					
2.	Ministry of Corporate Affairs vide Notification No. F. No. I/32/2013-CL-V-Part dated 19.03.2020, allowed companies to hold board meetings via video conference till June 30.																					
3.	<p>Securities and Exchange Board of India vide Circular No. SEBI/HO/CFD/CMD1/CIR/P/2020/38 dated 19.03.2020, granted temporary relaxations from certain compliance stipulations specified under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to listed entities w.r.t. the quarter / financial year ending March 31, 2020. The said relaxations are detailed as follows:</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 10px;"> <thead> <tr> <th style="width: 10%; text-align: center;">S. No</th> <th style="text-align: center;">Regulation and associated filing</th> <th style="text-align: center;">Period of relaxation</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Regulation 7(3) relating to half yearly compliance certificate on share transfer facility</td> <td style="text-align: center;">1 month</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Regulation 13(3) relating to quarterly statement of Investor complaints</td> <td style="text-align: center;">3 weeks (appx.)</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Regulation 24A read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Annual Secretarial compliance report</td> <td style="text-align: center;">1 month</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Regulation 27(2) relating to filing of quarterly Corporate Governance report</td> <td style="text-align: center;">1 month</td> </tr> <tr> <td style="text-align: center;">5.</td> <td>Regulation 31 relating to filing of quarterly Shareholding Pattern</td> <td style="text-align: center;">3 weeks (appx.)</td> </tr> <tr> <td style="text-align: center;">6.</td> <td>Regulation 33 relating to filing of quarterly and annual Financial Results</td> <td style="text-align: center;">45 days/1 month</td> </tr> </tbody> </table>	S. No	Regulation and associated filing	Period of relaxation	1.	Regulation 7(3) relating to half yearly compliance certificate on share transfer facility	1 month	2.	Regulation 13(3) relating to quarterly statement of Investor complaints	3 weeks (appx.)	3.	Regulation 24A read with circular No CIR/CFD/CMD1/27/2019 dated February 8, 2019 relating to Annual Secretarial compliance report	1 month	4.	Regulation 27(2) relating to filing of quarterly Corporate Governance report	1 month	5.	Regulation 31 relating to filing of quarterly Shareholding Pattern	3 weeks (appx.)	6.	Regulation 33 relating to filing of quarterly and annual Financial Results	45 days/1 month
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4.	Ministry of Labour & Employment vide Notification No. M-11011/08/2020-Media dated 20.03.2020, issued an advisory to all the employers of public/ private establishments to not terminate their employees, particularly casual or contractual workers from job or reduce their wages. It is also advised that if any worker takes leave during the subsistence of COVID-19 outbreak in India, he should be deemed to be on duty without any consequential deduction in wages.
5.	The Hon'ble Supreme Court in a suo-moto Writ Petition (Civil) No. 3/2020 has taken cognizance for extension of limitation and vide order dated 23.3.2020, the Hon'ble Supreme Court has directed that the period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not, shall stand extended w.e.f. 15 March, 2020 till further order/s to be passed by the Supreme Court.
6.	Ministry of Corporate Affairs vide General Circular No. 10/2020 dated 23.03.2020 clarified that spending of CSR Funds for COVID 19 is an eligible CSR activity. It is further clarified that funds may be spent for various activities related to COVID 19 under item nos. (i) and (xii) of Schedule VII relating to promotion of health care, including preventive health care and sanitation and disaster management.
7.	National Consumer Dispute Redressal Commission, Govt. of India (NCDRC) vide Office Order No. A-2/Listing/NCDRC/2020 dated 24.03.2020 ordered that the limitation for filing Complaints, Appeals, Revision Petitions, Execution Applications, Execution Appeals, Review Applications and all other miscellaneous application before NCDRC shall stand extended with effect from 15.03.2020 till further orders.
8.	To mitigate the impact of coronavirus on the Indian economy, Finance Minister Smt. Nirmala Sitharaman announced number of relief measures on 24.03.2020. Summary of reliefs made are annexed below as Annexure A .

9.	<p>Hon'ble Prime Minister of India Shri. Narendra Modi on 24.03.2020 announced 21 days nationwide lockdown. Immediately after the announcement, Ministry of Home Affairs vide Order No. 40-3/2020-DM-I(A) dated 24.03.2020, issued Guidelines on the measures to be taken by the Ministries / Departments of Government of India, State / Union Territory Governments and State / Union Territory Authorities for containment of COVID-19 Epidemic in the Country. Under the said guidelines it is specifically provided that commercial and private establishments shall remain closed during the lockdown period. The said guidelines also contain comprehensive list of essential services that will remain operational during the nationwide lockdown.</p>
10.	<p>Ministry of Corporate Affairs vide General Circular No. 11/2020 dated 24.03.2020 notified special measures under Companies Act, 2013 and Limited Liability Partnership Act, 2008 to support and enable Companies and Limited Liability Partnerships to focus on taking necessary measures to address the COVID 19 threat. The following are the measures notified under the said circular:</p> <ol style="list-style-type: none"> a) No additional fees shall be charged for late filing during a moratorium period from April 1, 2020 to September 30, 2020; b) One-time relaxation on the gap between two consecutive meetings of the Board, extended to 180 days till the next two quarters (instead of 120 days); c) Companies (Auditor Report) Order, 2020 shall be made applicable from the financial year 2020 – 2021 instead of financial year 2019-2020; d) No violation of provisions for the financial year 2019-20, if Independent Directors of a company have not been able to hold meeting; e) Creation of deposit repayment reserve of 20% of deposits maturing during the financial year 2020-2021 before April 30, 2020 shall be allowed to be complied with till June 30, 2020; f) Requirement under Rule 18 of the Companies (Share Capital & Debentures) Rules, 2014 to invest or deposit at least 15% of amount of debentures maturing in specified methods of investments or deposits before April 30, 2020, may be complied with till June 30, 2020; g) Period for filing declaration for Commencement of Business within 180 days of incorporation by newly incorporated companies, has been extended for 180 more days; and h) Non-compliance of minimum residency in India for a period of at least 182 days by at least one director of every company, shall not be treated as a non-compliance for the financial year 2019-20.

11.	Health and Family Welfare Department, Government of NCT of Delhi vide order no. F.51/DGHS/PH-IV/COVID-19/2020/prsecyhfw/3316-30 dated 24.03.2020, clarified that landlords/house-owners cannot force their tenant public servants including doctors/paramedical staff/healthcare personnel to vacate the rented residences.
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SUMMARY OF ANNOUNCEMENTS MADE BY FINANCE MINISTER ON MARCH 24, 2020

INCOME TAX

1. Extension of last date for filing of Income Tax Returns for financial year 2081-19 from March 31, 2020 to June 30, 2020.
2. Aadhaar-PAN linking date to be extended from March 31, 2020 to June 30, 2020.
3. **Vivad se Vishwas Scheme (VSVS)** – VSVS extended to June 30, 2020. No additional 10% to be paid, if payment made by June 30, 2020.
4. Due dates for issue of notice, intimation, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents and time limit for completion of proceedings by the authority and any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains under the Income Tax Act, Wealth Tax Act, Prohibition of Benami Property Transaction Act, Black Money Act, STT law, CTT Law, Equalization Levy law, Vivad Se Vishwas law, where the time limit is expiring between March 20, 2020 to June 29, 2020 shall be extended to June 30, 2020.
5. For delayed payments of advanced tax, self-assessment tax, regular tax, TDS, TCS, equalization levy, STT, CTT made between March 20, 2020 and June 20, 2020, reduced interest rate at 9%, instead of 12%/18% per annum (i.e. 0.75% per month instead of 1/1.5 percent per month) will be charged for this period. No late fee/penalty shall be charged for delay relating to this period.
6. Necessary legal circulars and legislative amendments for giving effect to the aforesaid relief shall be issued in due course.

GST/INDIRECT TAX

1. Last date for filing form GSTR-3B in March, April and May 2020 will be extended till the last week of June 30, 2020 for those having aggregate annual turnover less than Rs. 5 Crore. No interest, late fee, and penalty to be charged.
2. For any delayed payment made between March 20, 2020 and June 30, 2020, reduced rate of interest @9% per annum (current interest rate is 18% per annum) will be charged. No late fee and penalty to be charged, if complied before till June 30, 2020.

3. Date for opting for composition scheme is extended till the last week of June, 2020. Further, the last date for making payments for the quarter ending March 31, 2020 and filing of return for 2019-20 by the composition dealers will be extended till the last week of June, 2020.
4. Date for filing GST annual returns of FY 18-19, which is due on 31st March, 2020 is extended till the last week of June 2020.
5. Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing of return, statements, applications, reports, any other documents, time limit for any compliance under the GST laws where the time limit is expiring between March 20, 2020 to June 29, 2020 shall be extended to June 30, 2020.
6. Necessary legal circulars and legislative amendments to give effect to the aforesaid GST relief shall follow with the approval of GST Council.
7. Payment date under **Sabka Vishwas Scheme** shall be extended to June 30, 2020. No interest for this period shall be charged if paid by June 30, 2020.

CUSTOMS

1. 24X7 Custom clearance till end of June 30, 2020.
2. Due date for issue of notice, notification, approval order, sanction order, filing of appeal, furnishing applications, reports, any other documents etc., time limit for any compliance under the Customs Act and other allied Laws where the time limit is expiring between March 20, 2020 to June 29, 2020 shall be extended to June 30, 2020.

FINANCIAL SERVICES

Relaxations for 3 months for –

1. Debit cardholders to withdraw cash for free from any other banks' ATM for 3 months
2. Waiver of minimum balance fee
3. Reduced bank charges for digital trade transactions for all trade finance consumers

COMPANIES ACT

1. No additional fees shall be charged for late filing during a moratorium period from April 1, 2020 to September 30, 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 non-compliant companies/ LLPs to make a 'fresh start'.
2. The mandatory requirement of holding of meetings of the Board of the companies within prescribed interval provided in the Companies Act, 2013 (120 days), shall be extended by a period of 60 days till next two quarters i.e., till September 30, 2020.
3. Applicability of Companies (Auditor's Report) Order, 2020 shall be made applicable from the financial year 2020-2021 instead of from 2019-2020 notified earlier. This will significantly ease the burden on companies & their auditors for the year 2019-20.
4. As per Schedule 4 to the Companies Act, 2013, Independent Directors are required to hold at least one meeting without the attendance of Non-independent directors and members of management. For the year 2019-20, if the Independent Directors of a company have not been able to hold even one meeting, the same shall not be viewed as a violation.
5. Requirement to create a Deposit reserve of 20% of deposits maturing during the financial year 2020-21 before April 30, 2020 shall be allowed to be complied with till June 30, 2020.
6. Requirement to invest 15% of debentures maturing during a particular year in specified instruments before April 30, 2020, may be done so before June 30, 2020.
7. Newly incorporated companies are required to file a declaration for Commencement of Business within 6 months of incorporation. An additional time of 6 more months shall be allowed.
8. 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, shall not be treated as a violation.

9. Due to the emerging financial distress faced by most companies on account of the large-scale economic distress caused by COVID 19, it has been decided to raise 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 April 30, 2020, the Government 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.

10. Detailed notifications/circulars in this regard shall be issued by the Ministry of Corporate Affairs separately.

DEPARTMENT OF COMMERCE

Extension of timelines for various compliance and procedures will be given. Detailed notifications will be issued by Ministry of Commerce.



COVID-19 OUTBREAK: A FORCE MAJEURE EVENT?

On March 11, 2020, the World Health Organisation (WHO) classified the COVID-19 outbreak as a “pandemic” which is considered more severe than an epidemic and the determination is made based on its geographical spread and its effects on the society. WHO declared the outbreak as a “public health emergency” of international concern, which led to governments of various countries, including India taking emergency measures and imposing lock downs of all social, commercial, industrial activities.

Given the supply chain disruption caused by the COVID-19 pandemic, it is likely that performances under many contracts will be delayed, interrupted, or even cancelled. Counterparties to such contracts may seek to delay and/or avoid performance (or non-performance liability) of their contractual obligations and/or terminate contracts, either because COVID-19 has legitimately prevented them from performing their contractual obligations, or even as an excuse to extricate themselves from an unfavourable deal. Parties may also cite COVID-19 pandemic as a basis for re-negotiation of price or other key contractual provisions. In this context, it is important to determine if COVID-19 pandemic will be considered as a ‘Force Majeure’ event.

Force Majeure is a French phrase that means a ‘superior force’. Black’s Law Dictionary defines Force Majeure as “an event or an effect that can neither be anticipated nor controlled”. It can be understood as an exception to what would otherwise amount to a breach of contract.

Indian courts have generally recognised this concept and have enforced it where appropriate. The law in India was laid down in the decision of the Supreme Court in the case of *Satyabrata Ghose vs Mugneeram Bangur & Co. (AIR 1954 SC 44)*. Subsequently, in the case of *Energy Watchdog vs CERC (2017) 14 SCC 80*, the Supreme Court while discussing the *Satyabrata Ghose* judgment (supra) observed that “What was held was that the word “impossible” has not been used in the Section in the sense of physical or literal impossibility. The performance of an 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 untoward event or change of circumstance totally upsets the very 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. It was further held that where the Court finds that the contract itself either impliedly or expressly contains a term, 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 of the Act. If, however, frustration is to take place de hors the contract, it will be governed by Section 56.¹”

Many contracts set out an exhaustive list of events/circumstances including “Epidemics”, man-made interventions like wars, blockades, strikes and Acts of God, while in some contracts Force Majeure events are an inclusive list that recites events or circumstances for illustration only. In contracts where “Epidemic/Pandemic” is not specifically included as a Force Majeure event, reference can be sought from other terms of the clause such as “Acts of God” or “Natural calamity” and also from the fact that the Government of India also believes that the spread of COVID-19 falls within the definition of “Acts of God” like a “Natural calamity”. The Department of Expenditure, Procurement Policy Division, Ministry of Finance issued an Office Memorandum No. F. 18/4/2020-PPD dated February 19, 2020, in relation to the Government’s ‘Manual for Procurement of Goods, 2017’, which serves as a guideline for procurement by the Government. The Office Memorandum effectively states that the COVID-19 pandemic could be covered by a Force Majeure clause on the basis that it is a “natural calamity” and force majeure provisions may be invoked “wherever considered appropriate”.

Although the Supreme Court has also observed that Epidemics can fall within the purview of Force Majeure events, it may be still be debatable whether COVID-19 pandemic would be considered accordingly in contracts where the word “Epidemic/Pandemic” is not specifically included as a Force Majeure event, and if in such a case, the non-performing party would get the benefit of Force Majeure clause. Also, factors like: how long the Force Majeure clause can be invoked; who would bear the risks and losses lie; the portion in which the losses be borne, etc., would depend on the facts of each case.

¹ Sections 32 (“Enforcement of contracts contingent on an event happening”) and Section 56 (“An Agreement to do an impossible act in itself is void”)