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15th April, 2020

To,
The Secretary,
Ministry of Corporate Affairs,
Shashtri Bhawan, New Delhi

Dear Sir,

Sub: Relaxation of certain provisions under the Companies Act and Rules made there under and some provisions of Secretarial Standards

The Chamber of Tax Consultants (CTC), Mumbai was established in 1926. CTC is one of the oldest voluntary non-profit making organizations in Mumbai formed with the object of educating and updating its members on Tax and other Laws. It has robust membership strength of about 4000 professionals, comprising Advocates, Chartered Accountants and Tax Practitioners. The Chamber also has created a niche with the Government and other regulatory agencies, where representations by the Chamber are received with all seriousness and continues this commitment since more than 90 years now.

Considering the lockdown and the work from home situation due to COVID-19, there is a need, to further relax some provisions pertaining to the Board and the General meetings by way of amending some of the Rules under the Companies Act, 2013 ("the Act") and issuing relaxations from compliance with certain sections of the Companies Act, 2013.

We would urge to consider making following relaxation for the benefit of corporate world.

I. E-forms filing related:

A. All Filings (routine):

Currently, MCA has given a relaxation for waiver of the additional fees for filing of all the documents, forms, statements and returns to be filed to MCA during a moratorium period of April 01, 2020 to September 30, 2020. It is requested to **MCA that it may extend the "due date" of compliances, instead of waiving the additional fees of form filing to avoid any interpretation issue.**

Especially from the standpoint of highly compliant companies which may not desire to go into the non-compliance stage (delay in filing a form is a non-compliance, even

if the additional fees is waived), it is important that due date, in itself, should undergo a change.

The Secretarial Auditor will report on the non-compliances in his report which is factually not the case.

In the Board's Report, in the Directors' Responsibility Statement the Directors may not be in a position state that they have complied with all the applicable laws, as these non-filings on time may amount to non-compliance of law.

B. All filings (event based):

- There are certain compliances/ transactions (against which even if the additional fees is waived) where the Company is not able to complete the corporate action without filing the forms.
- **MCA may kindly consider waiving the delay in filing of forms, related to the issue of share capital and debentures in order to reduce the compliance burden, for at least six months.**

C. Coverage of eForm MGT-14 under Companies Fresh Start Scheme ("CFSS 2020")

Under the Company Fresh Start Scheme, 2020 (CFSS 2020) launched by MCA, the e-form MGT-14 is also covered.

However **earlier Section 403** of Companies Act, 2013 **restricted the filing of e-form MGT-14** where delay in filing was more than 270 days, i.e., which were being filed **beyond a period of 300 days from the date of event**. These forms could be filed only after seeking approval for Condonation of delay from the Central Government. The approval given by Central Government for condonation of delay was required to be filed with MCA in e-form INC-28 and then **only after entering the SRN (challan number) of e-form INC-28, the e-form MGT-14 could be filed with MCA.**

Subsequently, **Section 403 of Companies Act, 2013 was modified** vide Companies Amendment Act, 2017 with effect from 7th May 2018 which **allowed filing of MGT-14 even in cases where event date was beyond 300 days**. However, the relevant column in e-form MGT-14 which asked for SRN (Challan number) of e-form INC-28 (for filing Central Government's Order for Condonation of delay) still continues in e-form MGT-14. Hence, **even after the amendment in Section 403, technically Companies cannot file MGT-14 forms** where event date is beyond 300 days, **even though they are allowed to file these delayed forms legally.**

Now, under the CFSS 2020 also, due to the above-mentioned technical reason, e-form MGT-14 whose event date is beyond 300 days cannot be filed without undergoing the process of Condonation of Delay. Hence, **now even though there is no legal provision**

which restricts the filing of e-form MGT-14 beyond 300 days from the date of event, corporates are not able to file this e-form due to technical issue in the eform.

Hence, in the backdrop of amendment in Section 403 in 2018, MCA may consider revising the version of e-form MGT-14 by removing the requirement of mentioning SRN of e-form INC-28 in cases where event date is beyond 300 days, so that corporates can avail benefit of this Scheme.

II. Extension of time for holding AGMs

As per Section 96 of the Act, every company shall in each year hold its annual general meeting, other than first annual general meeting, within a period of six months from the date of closing of the financial year, and not more than fifteen months shall elapse between the date of one annual general meeting and that of the next.

Before the actual conduct of annual general meeting, lot of activities need to be conducted by companies with regard to finalisation and audit of financial statements, preparation and dispatch of Annual Report and making logistics arrangements for convening the annual general meeting.

For the companies having financial year ending on 31st December 2019, the due date of convening Annual General meeting in the year 2020 is 30th June 2020. Now, since we are already in the month of April 2020, and in the midst of lock-down situation due to Covid-19, it will be practically very difficult for such companies to complete all the activities prior to conducting the annual general meeting and conduct it by 30th June 2020.

Third Proviso to section 96(1) of the Companies Act, 2013 provides that the Registrar may, for **any special reason**, extend the time within which any annual general meeting, other than first annual general meeting, shall be held, by a period not exceeding three months.

Similarly, **even in case of companies having financial year ending on 31st March 2020**, many companies would have conducted the last annual general meeting on various date ranging from April 2019 to June 2019 (without waiting till 30th September 2019), and hence the due date of annual general meeting in the year 2020 of such companies shall be on various dates ranging from July 2019 to September 2019. For all other companies, the due date of annual general meeting is by 30th September 2019. **Considering the lock-down situation, and the various activities which need to be worked out before convening the annual general meeting given that the financial year has ended just now, it will be very difficult for companies to complete all these activities and convene annual general meeting by 30th September 2020.**

Accordingly, it is proposed that **extension of 3 months may kindly be considered for conducting the AGM without approaching the ROC i.e. companies whose financial year is ending on 31st December 2019 be allowed to hold annual general meeting by 30th**

September 2020 and companies whose financial year is ending on 31stMarch 2020 be allowed to hold annual general meeting by 31stDecember 2020.

Consequentially:

- (i) there will be a relaxation to the condition with respect to the maximum gap between the two AGMs, but one meeting in a calendar year as provided in section 96(1) of the Companies Act be complied with;
- (ii) the companies will get extended time to finalise the accounts for the financial year ending 31st December 2019 and 31st March 2020 to place it before the extended time of annual general meeting of the company.
- (iii) the companies will get extended time to obtain the financial statements from their overseas subsidiaries.
- (iv) it will correspondingly extend the pre-set tenure of Directors, Independent Directors, Executive Directors, which may end during this interim period till the date of the AGM or at the AGM, with the extension of the AGM date

If the above mentioned relaxations are issued by MCA, it will go a long way in reducing the compliance burden of the Corporates and ensuring smooth and proper compliance of law for urgent matters during this COVID-19 lockdown period.

There is a need to provide managements with adequate time to focus on rebuilding their business and systems once Lockdown opens up and if the dates are not extended, then the first focus will have to be closure of year ended on 31st December 2019/31st March 2020 – whereas that may not be on the priority for most businesses which may have structural damages caused due to months of lockdown. Also it is possible that support staff may not return back immediately.

Hence, we request you to kindly consider the above extension of dates.

Thanking You,

Sincerely,

For The Chambers of Tax Consultants

Sd/-

VIPUL CHOKSI

President

Sd/-

MAHENDRA SANGHVI

Chairman – Laws and Representation Committee