

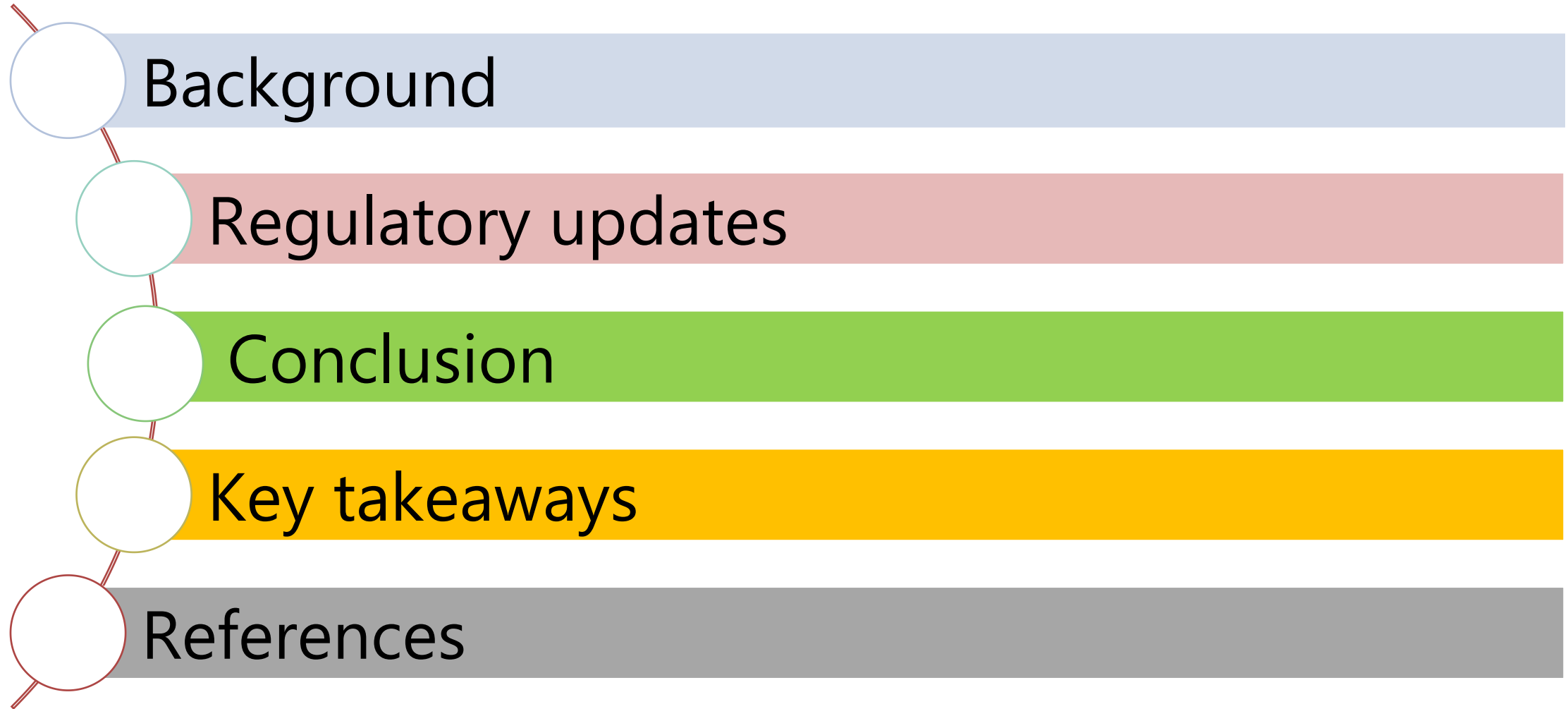
COVID-19 and impact on the provisions of Companies Act, 2013

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Date: 29th May 2020

Webinar – WIRC ICAI

Content



The ICAI – Partner in nation building



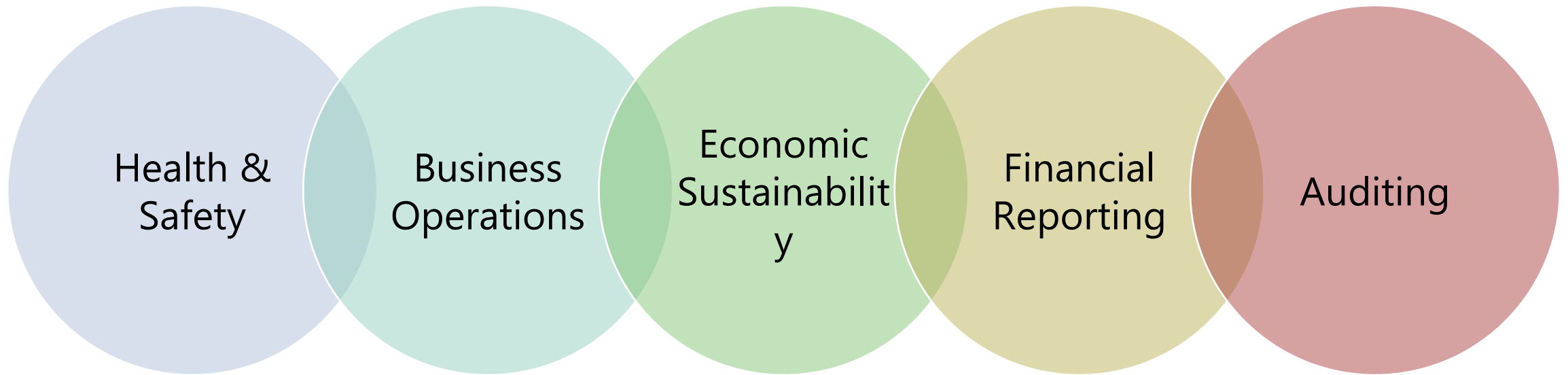
In service to the Indian economy in public interest

Stay HOME. Stay SAFE.



Background

Impact of Covid-19 - Global pandemic



The impact of COVID-19 is **pervasive**

Relaxations / guidance given by Regulators



- Accounting & auditing advisory for impact of coronavirus on financial reporting & the auditors consideration - [Link](#) of e-learning on this advisory
- Published summary of updates from MCA during this era along with FAQ's
- Issued FAQ 's on Ind AS
- Guidance issued amid COVID-19 on:
 - Going concern
 - Physical stock verification
 - Subsequent events
 - Auditors' reporting
- Use of digital signature for signing audit reports and certificates
- Allowing incoming auditor to communicate with the retiring auditor vide e-mail
- Guidance for conducting remote audit of bank branch



- Extension in deadlines for financial results, corporate governance report, etc.
- Time period of not raising further capital reduced from 12 to 6 months from expiry of buyback period (to align with Section 68(8) of the Companies Act, 2013). Applicable up to 31st December 2020
- Listed entities having insurance/banks as subsidiary need not publish consolidated financial results for June 2020 quarter
- Issued advisory on disclosure of material impact of COVID-19

Relaxations (Continued)..



सत्यमेव जयते

Government Of India

- Reliefs given in direct taxes and indirect taxes such as
 - Deadline extended for ITR's & tax audit report (31st Oct 2020), GST annual return for FY 18-19 (30th Sep 2020) & validity of lower / Nil TDS certificate of FY 19-20 up to 30th June 2020 and various other returns under GST / Income tax act & claiming benefit under Chapter VI-A
 - Reduction in TDS & TCS rate by 25%
 - Donations to PM CARES fund made eligible for 100% deduction
- Extended the time period of FTP 2015-2020 scheme by one year



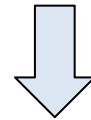
- Moratorium for term loans for six months i.e. up to 31st August 2020
- Extended the period for receipt of export proceeds from 9 to 15 months. Similarly, timeline for import payment are also relaxed



- Extension of six months – for projects whose completion date is expiring post 15th March 2020
- Extension for statutory compliances due in the period March to May – Up to 30th June 2020

Ministry of Corporate Affairs (MCA)

Primary role of MCA is administration of Companies Act, LLP Act & rules there under

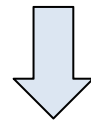


In wake of this pandemic, proactive measures are announced by MCA

Extending the due dates / timelines

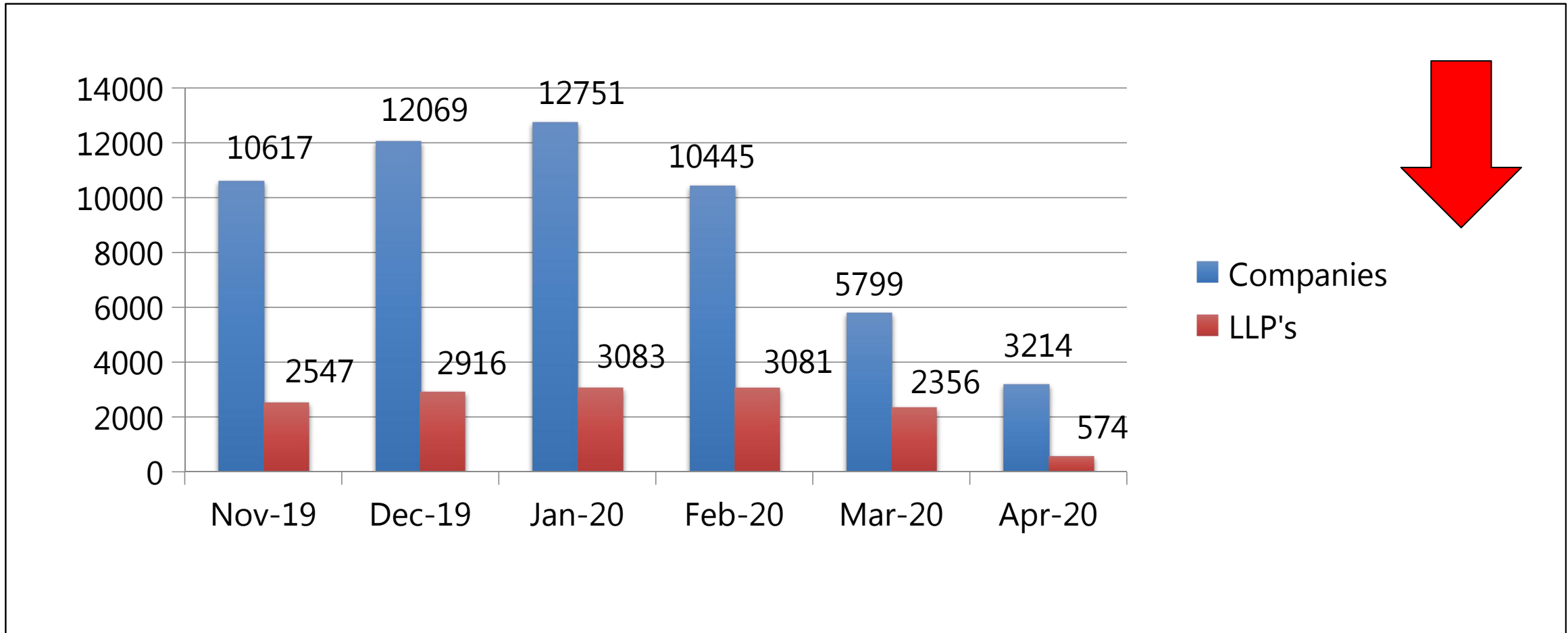
Relaxation from certain compliances

Use of alternate modes to comply with provisions

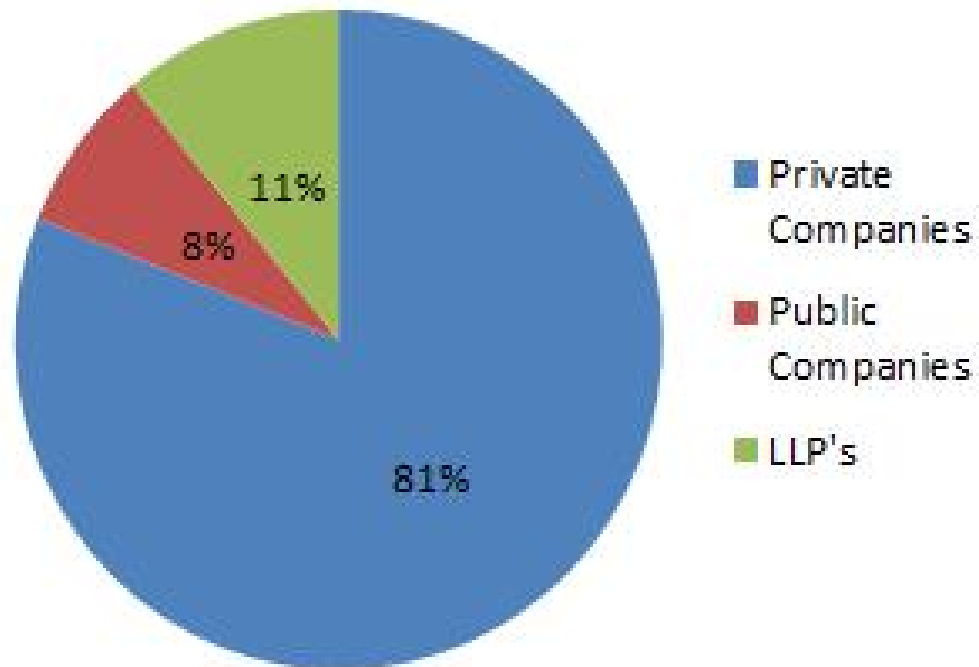


Around 13 circulars, 2 notices & 1 FAQ published by MCA relating to COVID 19

Dip in new companies / LLP's incorporated



Initiative of COVID-19 Form



Companies Affirmation of Readiness towards COVID-19

- This was the first form amid COVID-19 issued by MCA on 23rd March 2020 for assessing the Companies' & LLP's readiness for combating this pandemic
- MCA has advised all companies & LLP's to comply with COVID-19 guidelines including work from home policy
- It is a simple web form with no filing fees and it does not require DSC
- 2.07 lakhs forms have been filed under this initiative
- Web service of this form has been discontinued w.e.f. 14th April 2020



Regulatory
updates



Meetings of
board /
members

Meetings of board [Section 173]

Increase in time-gap

- Time-gap between two consecutive meetings extended from 120 days to 180 days till next two quarters i.e. till 30th September 2020

Use of VC / OAVM

- Matters such as approval of financial statements, board's report, prospectus, audit committee meetings and mergers & acquisitions were not permitted via video conferencing / audio video means
- However, now relaxation is granted for such matters till 30th June 2020

Meetings of members

Annual general meeting [Section 96]

- 3 months extension for companies following calendar year
- Option given of video conferencing or other audio visual means
- For AGM, the same procedure applies as laid down for EGM via VC / OAVM
- Apply for extension if companies are unable to hold AGM before due date even through VC / OAVM
- Circulation of financial statements, board report, auditor's report via electronic mode

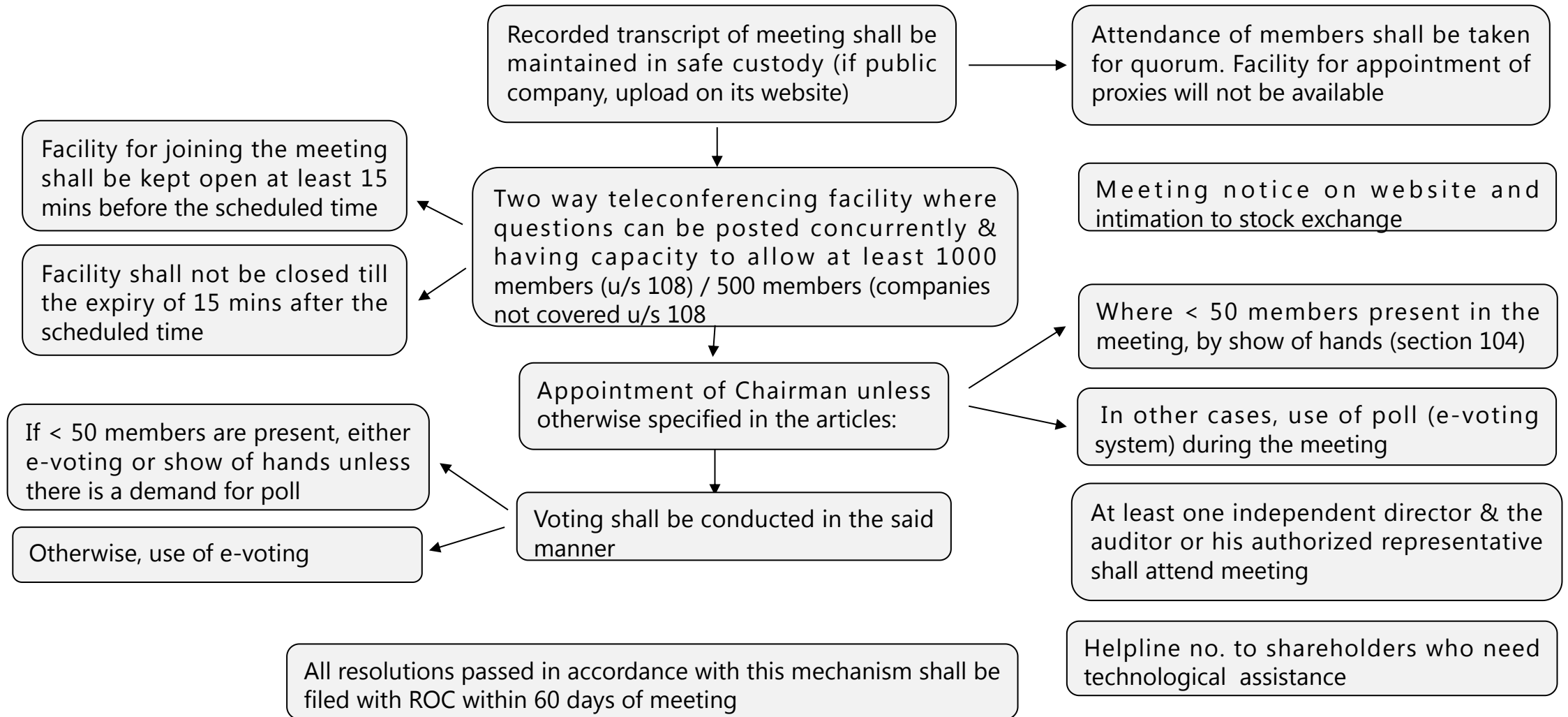
Extraordinary general meeting [Section 100]

- Option given of video conferencing / audio visual means till 30th June 2020
- Procedure is laid down in the circular for conduct of EGM via VC / OAVM

Key points – Conducting e-meetings

- Clarification issued by MCA for 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
- Listed entities and companies with at least 1000 members were already mandated to provide e-voting facility. SEBI has given guidelines for above entities as well those who are not mandated to have e-voting facility i.e. less than 1000 members and Nidhi companies
- Transcript and recording of meeting
- Involvement of independent director and auditor
- Convenience of different time zone
- Quorum to include attendance through VC / OAVM

Procedure for conducting meeting with members through VC / OAVM



Relaxation in dispatch of dividend warrant

Dividend shall be paid within 30 days of the declaration by cheque / warrant / any electronic mode to the shareholder [2nd proviso to Section 123(5)]



Issue: Companies are unable to pay dividend due to either disruption in postal services or non-availability of bank account details of the shareholder



Remedy: Company shall upon normalization of postal services, dispatch the dividend warrant / cheque by post

- *ACC Limited has revoked final dividend and declared interim dividend [6th May 2020]*
- *Similar relaxation is explicitly not provided for interest to debenture holders*



Directors

Relaxation from mandatory requirements

Requirement

Meeting of ID's
[Para VII(1) of Schedule IV]

Independent directors (ID's) are required to hold **at least 1 meeting** without the attendance of non-independent directors

Period of stay in India
[Section 149(3)]

Every company shall have **at least 1** director who stays in India for **not less than 182 days** during the financial year

Data bank of ID's
[Rule 6(1)(a) of Companies (Appointment & Qualification of Directors) Rules, 2014]

ID's shall apply for inclusion of his / her name in the data bank by 30th April 2020

Relaxation

For FY 19-20, if ID's are **unable** to hold such meeting, it shall **not** be construed as a violation [option of e-meeting is given]

Non-compliance of minimum residency in India shall **not be** treated as violation for FY 19-20
"expect similar relaxation for FY 20-21"

Extended by **2 months** i.e. till 30th June 2020



Corporate Social Responsibility

CSR [Section 135]

Government of India have decided to treat COVID-19 as a notified disaster



Item nos. (i) & (xii) of Schedule VII covers activities related to promotion of healthcare, including preventive healthcare & sanitation & disaster management

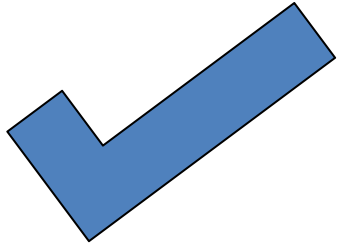


Hence, funds spent for various activities related to COVID-19 will get covered under CSR activity

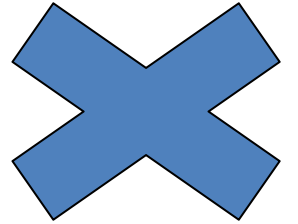


MCA has clarified that funds spent for COVID-19 are eligible as CSR

FAQ's on CSR



- * Contribution to 'PM CARES Fund'
- * Contribution to 'State Disaster Management Authority'
- * Ex-gratia to temporary / casual / daily wage workers over & above regular wages to fight against COVID-19 (explicit declaration from Board and duly certified



- * Contribution to 'Chief Minister's Relief Fund' or 'State Relief Fund'
- * Payment of salary / wages in normal cases (contractual)

Share capital ,
debentures &
deposits

Additional time given for funding of amounts due within next 12 months

As per the provisions of the Act and rules, Companies are mandatorily required to

Deposit at least **20% of its deposits** amount in Deposit Repayment Reserve account [Section 73(2)(c)]

Invest or deposit at least **15% of its debentures** amount [Rule 18 of Companies (Share Capital & Debentures) Rules, 2014]

before 30th April 2020

Now **extended to 30th June 2020**

Relaxation for notice for rights issue for listed entities

Provision: Notice shall be dispatched via registered post / speed post / electronic mode / courier **at least 3 days** before the opening of rights issue [Section 62(2)]



Issue: Listed companies are unable to dispatch the notice due to disruption in postal services / courier services



Remedy: SEBI has relaxed the (Issue of Capital and Disclosure Requirements) Regulations, 2018 for listed entities up to 31st July 2020 and told to disseminate the notice / other documents through electronic means i.e. company website, stock exchange, lead managers, digital advertisement, audio-visual advertisement on television. MCA has also issued a clarification on this relaxation provided by SEBI



Audit

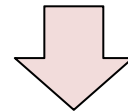
Extension of CARO 2020

Applicability of CARO 2020 (notified on 29th Feb 2020)
has been extended from FY 2019-20 to FY 2020-21

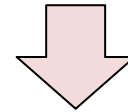
This will significantly ease the burden on
companies & their auditors

Due date of Form NFRA-2 extended

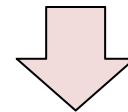
Annual return to be filed by the auditor with NFRA in Form NFRA 2



Within 150 days from date of deployment of form on its website



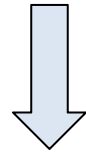
Extended by **60 days** from 7th May 2020



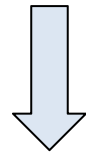
Due date of form NFRA 2 for FY 18-19 will now be **06th July 2020**

Guidelines given by NFRA for audit of regulated entities

NFRA proposes to prescribe procedures to be followed by all entities regulated by NFRA for submission of Audit files to NFRA



The Audit file has to be submitted in an electronic format to NFRA



NFRA will only accept files in the formats of PDF, MS Word, MS Excel or MS PowerPoint or any equivalent file formats, or any combination of the same



Form filings

Companies Fresh Start Scheme, 2020

To provide an opportunity to companies to make good any filing related defaults e.g. document / statement / return in wake of COVID 19 & make a fresh start as a fully compliant entity, MCA has introduced "Companies Fresh Start Scheme, 2020" on 23rd March 2020



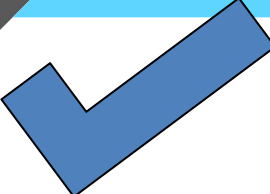
Key highlights of the scheme

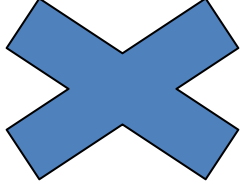
Belated documents to filed on or before 30th September 2020

Summary of belated documents to be filed electronically in **Form CFSS 2020** from 1st October 2020 to 31st March 2021

Immunity certificate from penalty & prosecution will be issued by designated authority

FAQ's on CFSS 2020

- 
- * Waiver of additional fees
 - * Applicable to foreign companies
 - * Deactivated director can become activate (if not disqualified u/s 164)
 - * Filings of past years / since incorporation
 - * Company whose name was automatically struck off due to non-filing of

- 
- * Waiver of normal fees
 - * Permanent scheme
 - * Prosecution of proceedings
 - * Order convicted but not preferred an appeal before the start of this scheme
 - * Strike off filed / initiated, dormant status already applied / scheme of

LLP Settlement Scheme, 2020

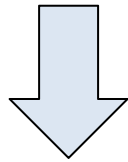
MCA has provided a one-time opportunity to LLP's as well to make good any filing related defaults. It was applicable only till 31st March, 2020. However, to extend the benefits, MCA has introduced revised scheme applicable from 1st April 2020

Difference between original and revised scheme		
Particulars	Original scheme	Revised scheme
Launched on	4 th March 2020	30 th March 2020
Applicable from	16 th March to 31 st March 2020	1 st April to 30 th September 2020
Additional fees	Rs. 10 per day per document subject to maximum of Rs. 5,000 per document (individually & not in aggregate)	No additional fees
Applicable on	Only 4 forms (Form 3, 4, 8 & 11 - LLP agreement, details of partners, statement of account & insolvency & annual return)	All forms to be filed under LLP Act, 2008

Relaxation for newly incorporated companies

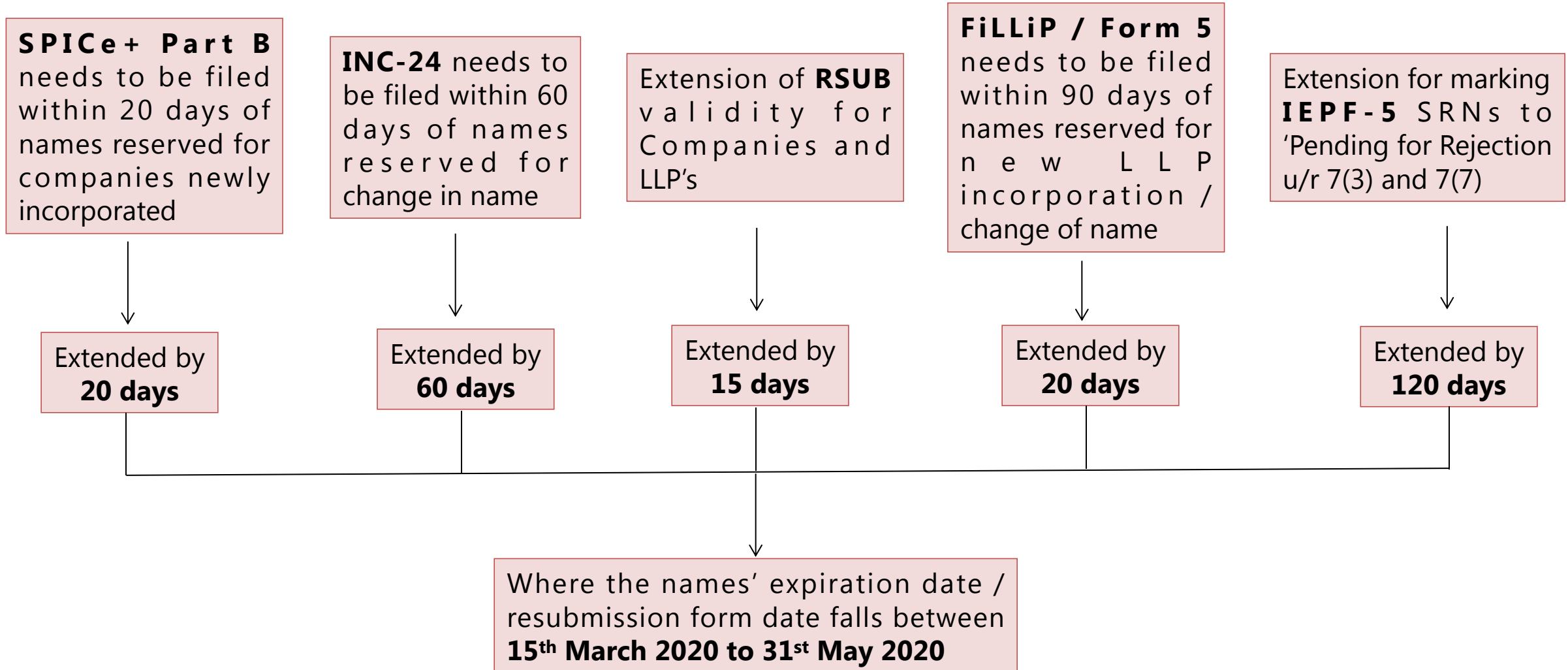
Declaration for commencement of business

Within 180 days of incorporation
[Section 10A – Form INC 20A]



Additional period of 180 days granted

Extension for names reserved and resubmission of forms





Others

Changes in MSME and IBC

MSME

- Honorable FM of India in "Aatma Nirbhar scheme" announced change in the definition of MSME.
- Below are the key highlights:
 - No distinction between manufacturing & service sector
 - Additional criteria of turnover introduced
 - Investment limit revised upwards
- Now, MSME's will not have to worry about growing their size & can still avail benefits

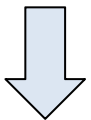
IBC

- The Central Government has increased the minimum amount of the default from Rs. 1 lakh to Rs. 1 crore for Insolvency & liquidation process of corporate debtors [Rule 4 of IBC, 2016]
- As announced by Honorable FM, no fresh insolvency proceedings to be initiated for one year under IBC. Also, coronavirus related debt will be excluded from the definition of the default.

Decriminalization of defaults

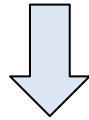
Recently Honorable FM of India in "Aatma Nirbhar scheme" announced decriminalization of defaults under the Companies Act which is yet to be notified. Below are the highlights:

Violations involving minor technical & procedural defaults will be decriminalized



E.g. Shortcomings in CSR reporting, inadequacies in board report, filing defaults, delay in AGM

Majority of compoundable offences sections to be shifted to Internal Adjudication Mechanism (IAM)



58 sections will be dealt with under IAM as compared to 18 earlier

Powers of regional directors for compounding will be enhanced

7 compoundable offences will be dropped & 5 to be dealt under alternative framework

Impact of COVID-19 on other aspects

RBI and IRDAI have deferred the implementation of Ind AS for banks and insurance companies respectively (announced prior to covid 19)

COVID-19 related rent concessions not to be considered as lease modification as given in exposure draft by IASB

Government allows direct listing by Indian Companies abroad



Conclusion


Key proposed amendments in main Act

By 'The Companies (Amendment) Bill, 2020'	
Section	Provision
129A	Central government may require certain class of unlisted companies to prepare financial results on periodical basis
135	Excess amount spent to setoff in subsequent years and specific penalty provisions added
197	Non-executive & independent directors shall fall within the ambit of remuneration payable as per Schedule V in case of no / inadequate profits

By 'The Companies (Amendment) Act, 2019'	
Section	Provision
135	Unspent amount to be transferred to special bank account / specified fund depending on ongoing / other than ongoing project

Considering the present circumstances, probability of these sections getting notified in near future is low and they might remain in abeyance

Conclusion



MCA measures aims at mitigating hardships of corporates amid COVID-19

Such measures / relaxations are only temporary in nature

Existing provisions to be complied, unless specific relaxation granted

Further relaxation & clarification on certain matters & timelines are expected

Key takeaways

Tracker sheet to be updated with revised due dates to ensure timely compliance

To remain updated with the frequent changes to take timely advantage of the benefits

Apply to MCA if any difficulties faced to comply with the Act

References (MCA)

Circular no.	Subject
10/2020	Clarification on spending of CSR funds for COVID-19
11/2020	Special Measures under Companies Act, 2013 & LLP Act, 2008
12/2020	Companies Fresh Start Scheme, 2020
13/2020	LLP Settlement Scheme, 2020 –Modification
14/2020	Clarification on passing of ordinary & special resolution by companies amid COVID-19
15/2020	COVID-19 related FAQ's on CSR
16/2020	Filing under section 124 & 125 of the Companies Act 2013 read with IEPFA Rules 2016
17/2020	Clarification on passing of ordinary & special resolution by companies amid COVID-19
18/2020	Holding of AGM by companies whose FY has ended on 31 st December 2019
19/2020	Extension of the last date of filing of form NFRA 2
20/2020	Clarification on holding of AGM through VC / OAVM
21/2020	Clarification on dispatch of notice by listed companies for rights issue opening upto 31 st July, 2020
G.S.R 268[E]	Extension of time period for independent directors to apply for inclusion of their names in the databank
2 notices on extension in resubmission of forms and guidelines by NFRA on audit of regulated entities	
1 FAQ on Companies Fresh Start Scheme, 2020 & LLP Settlement Scheme, 2020	

Questions ??



Thank You

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