

# EXPERT COMMITTEE ON COMPANY LAW/CORPORATE MATTERS

## THE MADRAS CHAMBER OF COMMERCE AND INDUSTRY

Chairman: Dr B Ravi

Co-Chairman: Mrs B Chandra

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### **ARTICLE: ADJUDICATION OF PENALTIES: SECTION 454**

- Dr B Ravi

**Meaning of the term Adjudication:** According to Wikipedia, Adjudication is the legal process by which an arbiter or judge reviews evidence and argumentation, including legal reasoning set forth by opposing parties or litigants to come to a decision which determines rights and obligations between the parties involved. In short it is a legal process of resolving a dispute. **Section 454** of the Act details the process relating to adjudging penalty under the provisions of this Act. This concept was brought in to the statute book for the first time by the Companies Act 2013 (hereinafter referred to as Act) and enforced with effect from 01.04.2014 vide S.O 902(E) dated 26.03.2014.

**Background: Journey from Section 622 of the Companies Act 1956 to Section 452 of the Companies Act 2013**  
Every offence committed under the Act is punishable under the Act be it committed by the Company or any officer thereof, either by way of imposing fine only, or imprisonment only or punishable with imprisonment or fine or with both.

As we are all aware all the offences under the Companies Act were triable only in a Court of the First-Class Magistrate till Section 435 of the Companies Act was amended to exclude the offences falling with Section 452 of the Companies Act, for which a separate civil mechanism is provided in the said Section 452 of the Act. The decriminalisation of the offences have been made with an intention to allow the Registrars to focus on serious offences while allowing the less serious or technical offences to be dealt with in an internal adjudication mechanism.

The difference between "Fine" & "Penalty" has been well brought out in the case of Director of Enforcement v. M.C.T.M. Corpn. (P.) Ltd by the Supreme Court which sums up as under In the proceedings before them, the adjudicators do not try "an accused" for commission of "any crime" (not merely an offence) but determine the liability of the contravenor for the breach of his "obligations" imposed under the Act. They impose "penalty" for the breach of the "civil obligations" laid down under the Act and not impose any "sentence" for the commission of an offence. An order made by an adjudicating authority under the Act is not that of conviction but of determination of the breach of the civil obligation by the offender. This will clearly explain the concept decriminalisation the Government has introduced.

The offences which when committed will be punishable with imprisonment only or punishable with imprisonment and fine cannot be compounded, notwithstanding anything contained in the Code of Criminal Procedure 1973

Thus, the offences which when committed will be punishable with fine only or with imprisonment or fine can be compounded under Section 441

The compounding can be done by Tribunal or where the maximum amount of fine that may be imposed for the offence committed does not exceed Rs.25 lakhs can be compounded by RD or any office authorized by the Central Government

The Compounding can be made either before or after the institution of any prosecution under the Act.

The Companies Amendment Act 2019 (with effect from 02.11.2018) has dispensed with the requirement of the permission of the Special Court to compound an offence which is punishable with imprisonment or fine or with both, even though the apex Court has held in the case of VLS Finance that the power under sub-section (1) and sub-section (7) of Section 621A are parallel powers to be exercised by the Company Law Board or the authorities mentioned therein and prior permission of Court is not necessary for compounding the offence, when power of compounding is exercised by the Company Law Board.

## **ADJUDICATION OF PENALTIES:**

Before proceeding to analyze the provision relating to Adjudication of penalties introduced by the Act and enforced from 01.04.2014 a quick reference to the terms Fine and penalties will be appropriate.

The term **fine** is not defined under the Act. Sentence of fine is forfeiture of money by way of penalty (**Kameshwari, G. and Rao, V.N.; "The Sentencing Process - Problems and Perspectives", 41 JIL (1999) 55.**) Fine is most common punishment in every part of the world and it is a punishment the advantage of which are so great and obvious that we propose to authorise the courts to inflict it in every case ..." Note A, p.5, quoted in Second Report on the IPC, 165(1947). In the absence of a definition proper, one can conclude that for any offence committed for which the law has not mandated imprisonment or imprisonment and fine, penalty by way of monetary payment can be imposed and the quantum is based on the gravity of the offence and such quantum of money is termed as fine.

A **penalty** is a punishment that someone is given for doing something which is against a law or rule. The Act introduced the concept of Adjudication of penalties for the first time for non compliance of any procedural formalities contemplated under the Act. The Act has prescribed stricter and heavy penalties and left to the adjudicating officer to decide the quantum to be imposed.

## WHO CAN BE APPOINTED AS ADJUDICATING OFFICERS?

**Officers of the Central Government not below the rank of Registrar can be appointed as adjudicating officers** for adjudging penalty under the provisions of this Act. The appointment will be made by the Central Government by an order published in the Official Gazette which shall also specify the jurisdiction of the adjudicating officers

## WHAT IS THE POWER OF THE ADJUDICATING OFFICER?

The Companies Amendment Act 2019 (w.e.f 02.11.2018) provides that the adjudicating officer may, by an order: (a) impose the penalty on the company, the officer who is in default, or any other person, as the case may be, stating therein any non-compliance or default under the relevant provisions of this Act; and (b) Direct such company, or officer who is in default, or any other person, as the case may be, to rectify the default, wherever he considers fit. However, he shall, before imposing any penalty, give a reasonable opportunity of being heard to such company and the officer who is in default or any other person.

### **Circumstances under which no penalty can be imposed by the Adjudicating officer:**

In case the default relates to non-compliance of section 92(4) or section 137(1) or (2) and such default has been rectified either prior to, or within 30 days of, the issue of the notice by the adjudicating officer, no penalty shall be imposed in this regard and all proceedings under this section in respect of such default shall be deemed to be concluded. **(Inserted by the Companies Amendment Act 2020 - date of coming in to force to notified)**

*92(4) Every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting, with such fees or additional fees as may be prescribed.*

*137. (1) A copy of the financial statements, including consolidated financial statement, if any, along with all the documents which are required to be or attached to such financial statements under this Act, duly adopted at the annual general meeting of the company, shall be filed with the Registrar within thirty days of the date of annual general meeting in such manner, with such fees or additional fees as may be prescribed.*

*Provided that where the financial statements under sub-section (1) are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents under sub-section (1) shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose:*

*Provided further that financial statements adopted in the adjourned annual general meeting shall be filed with the Registrar within thirty days of the date of such adjourned annual general meeting with such fees or such additional fees as may be prescribed.*

*Provided also that a One Person Company shall file a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, within one hundred eighty days from the closure of the financial year:*

*Provided also that a company shall, along with its financial statements to be filed with the Registrar, attach the accounts of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.*

*Provided also that in the case of a subsidiary which has been incorporated outside India (herein referred to as "foreign subsidiary"), which is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the requirements of the fourth proviso shall be met if the holding Indian company files such unaudited financial statement along with a declaration to this effect and where such financial statement is in a language other than English, along with a translated copy of the financial statement in English.*

*(2) Where the annual general meeting of a company for any year has not been held, the financial statements along with the documents required to be attached under sub-section (1), duly signed along with the statement of facts and reasons for not holding the annual general meeting shall be filed with the Registrar within thirty days of the last date before which the annual general meeting should have been held and in such manner, with such fees or additional fees as may be prescribed*

### **What is the remedy available to the person aggrieved by the order of Adjudication officer?**

Any person aggrieved by an order made by the adjudicating officer may prefer **an appeal to the Regional Director** having jurisdiction in the matter.

### **What is the time limit within which the appeal should be preferred?**

Every appeal to the Regional director shall be filed within **60 days** from the date on which the copy of the order made by the adjudicating officer is received by the aggrieved person. The form and the manner in which the appeal should be made and the fee to be paid is prescribed in Companies (Adjudication of penalties) Rules 2014

### **What is the power available to Regional director on the appeal received?**

The Regional Director may, after giving the parties to the appeal an opportunity of being heard, pass such order as he thinks fit, confirming, modifying or setting aside the order appealed against.

**What are the consequences if the order of the Adjudicating officer or the Regional director is not complied with?** Where company fails to comply with the order made under Section 454(3) or 454(7), within a period of 90 days from the date of the receipt of the copy of the order, the company shall be punishable with fine which shall not be less than Rs.25,000 but which may extend to Rs. 5 lakhs.

Where an officer of a company or any other person who is in default fails to comply with the order made under Section 454(3) or 454(7), within a period of 90 days from the date of the receipt of the copy of the order, such officer shall be punishable with imprisonment which may extend to 6 months or with fine which shall not be less than Rs.25,000 but which may extend to 1 lakh rupees, or with both. **(For non compliance the section mentions "such officer" and does not include "any other person" which may raise technical issue before the authorities)**

### **What are the consequences if the default is repeated?**

Section 454A provides that where a company or an officer of a company or any other person having already been subjected to penalty for default under any provisions of this Act, again commits such default **within a period of three years** from the date of order imposing such penalty passed by the adjudicating officer or the Regional Director, as the case may be, it or **he shall be liable for the second or subsequent defaults** for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of the Act. **(This section was inserted by the Companies (Amendment) Act 2019 and is effective from 02.11.2018 being the date of the Companies (Amendment) Ordinance 2018).**

## The Companies (Adjudication of Penalties) Rules, 2014

### PROCEDURE TO BE FOLLOWED BY THE ADJUDGING OFFICER:

**Written notice to show cause:** Before adjudging penalty, the adjudging officer shall issue a written notice in the **specified manner**:

- to the company
- the officer who is in default (or)
- any other person, as the case may be,

to show cause, within such period as may be specified in the notice (not being less than 15 days and not more than 30 days from the date of service thereon), why the penalty should not be imposed on it or him.

**“Specified manner”** shall mean service of documents as specified under section 20 of the Act and rules made thereunder and details in respect of address (including electronic mail ID) provided in the KYC documents filed in the registry shall be used for communication under this rule)

**Mandatory contents of the notice:** Every notice issued shall clearly indicate the nature of non-compliance or default under the Act alleged to have been committed or made by such company, officer in default, or any other person, as the case may be.

The notice shall also draw attention to the relevant penal provisions of the Act and the maximum penalty which can be imposed on the company and each of the officers in default, or the other person.

**Mode of reply to the show cause notice:** The reply to such notice shall be filed in electronic mode only within the period as specified in the notice. (The requirement of submission of replies in electronic mode shall become mandatory after the creation of the e-adjudication platform.)

**Power of the Adjudicating officer to extend the period to reply:** If the company or officer in default or any person as the case may be, satisfies the adjudicating officer that it or he has sufficient cause for not responding to the notice within the stipulated period or the adjudicating officer has reason to believe that the company or the officer or the person has received a shorter notice and did not have reasonable time to give reply, the adjudicating officer may, for reasons to be recorded in writing, extend the period within which the reply to the notice shall be filed and such further period not to exceed 15 days.

**Fixing the date of appearance:** If, after considering the reply submitted by such company, its officer, or any other person, as the case may be, the adjudicating officer is of the opinion that physical appearance is required, he shall issue a notice, within a period of 10 working days from the date of receipt of reply fixing a date for the appearance of such company through its authorised representative, or officer of such company, or any other person, whether personally or through his authorised representative.

**Oral Representation:** If any person, to whom a notice is issued under desires to make an oral representation, whether personally or through his authorised representative and has indicated the same while submitting his reply in electronic mode, the adjudicating officer shall allow such person to make such representation after fixing a date of appearance

**Order from the Adjudicating officer:** On the date fixed for hearing and after giving a reasonable opportunity of being heard to the person concerned, the adjudicating officer may, subject to reasons to be recorded in writing, pass any order in writing as he thinks fit including as order for adjournment.

**Written reply:** After hearing, adjudicating officer may require the concerned person to submit his reply in writing on certain other issues related to the notice relevant for determination of the default.

**Time limit within which the order shall be passed:** The adjudicating officer shall pass an order,-

- (a) within 30 days of the expiry of the period in sub-rule (2), or of such extended period as referred therein, where physical appearance was not required under sub rule (5).
- (b) within 90 days of the date of issue of notice under rule (2), where any person appeared before the adjudicating officer under sub rule (5).

In case an order is passed after the aforementioned duration, the reasons of the delay shall be recorded by the adjudicating officer and no such order shall be invalid merely because of its passing after the expiry of such 30 days or 90 days as the case may be.

Every order of the adjudicating officer shall be duly dated and signed by him and shall clearly state the reasons for requiring the physical appearance under sub-rule (5).

**Copy of the Order:** The adjudicating officer shall send a copy of the order passed by him to the concerned company, officer who is in default or any other person or all of them and to the Central Government. Copy of the order shall also be uploaded on the website

**Powers of the Adjudicating officer:** The adjudicating officer shall exercise the following powers, namely:-

- to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case after recording reasons in writing;
- to order for evidence or to produce any document, which in the opinion of the adjudicating officer, may be relevant to the subject matter

**Power to pass order if any person fails to reply or neglects or refuses to appear:** If any person fails to reply or neglects or refuses to appear as required under sub-rules (5) or (10) before the adjudicating officer, the adjudicating officer may pass an order imposing the penalty, in the absence of such person after recording the reasons for doing so.

**Matters to be borne in mind by the adjudicating office while adjudging quantum of penalty:** While adjudging quantum of penalty, the adjudicating officer shall have due regard to the following factors, namely:-

- size of the company;
- nature of business carried on by the company;
- injury to public interest;
- nature of the default;
- repetition of the default;
- the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default; and
- the amount of loss caused to an investor or group of investors or creditors as a result of the default:

**In no case, the penalty imposed shall be less than the minimum penalty prescribed, if any, under the relevant section of the Act**

In case a fixed sum of penalty is provided for default of a provision, the adjudicating officer shall impose that fixed sum, in case of any default therein.

**Manner of payment of penalty:** Penalty shall be paid through Ministry of Corporate Affairs portal only.

All sums realized by way of penalties under the Act shall be credited to the Consolidated Fund of India

**PROCEDURE TO BE FOLLOWED FOR MAKING AN APPEAL AGAINST THE ORDER OF ADJUDICATING OFFICER**

**Appeal to be made to whom and within what time:** According to Rule 4 every appeal against the order of the adjudicating officer shall be filed in writing with the Regional Director having jurisdiction in the matter within a period of 60 days from the date of receipt of the order of adjudicating officer by the aggrieved party

**Format in which the appeal to be made:** The form in which the appeal shall be filed is Form ADJ setting forth the grounds of appeal and shall be accompanied by a certified copy of the order against which the appeal is sought.

Where the party is represented by an authorised representative, a copy of such authorisation in favour of the representative and the written consent thereto by such authorised representative shall also be appended to the appeal

**Can relief be sought for more than one order in an appeal:** An appeal in Form ADJ shall not seek relief(s) therein against more than one order unless the reliefs prayed for are consequential

**Fees to be paid:** Every appeal filed under this rule shall be accompanied by such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014.

**ROLE OF THE REGIONAL DIRECTOR ON RECEIPT OF THE APPEAL**

**Rule 5** mandates that on the receipt of an appeal, office of the Regional Director:

**Step 1:** Shall endorse the date on such appeal and shall sign such endorsement.

**Step 2:** On scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number:

**Step 3:** Where the appeal is found to be defective, the Regional Director may allow the appellant such time, not being less than 14 days following the date of receipt of intimation by the appellant from the Regional Director about the nature of the defects, to rectify the defects.

**Step 4:** If the appellant fails to rectify such defects within the time period allowed as above, the Regional Director may by order and for reasons to be recorded in writing, decline to register such appeal and communicate such refusal to the appellant within a period of seven days thereof.

**Step 5:** The Regional Director may, for reasons to be recorded in writing, extend the period of 14 days by a further period of 14 days if an appellant satisfies the Regional Director that the appellant had sufficient cause for not rectifying the defects within the period of 14 days.

**DISPOSAL OF APPEAL**

**Rule 6** prescribes the following steps in disposing the appeal

**Step 1:** On the admission of the appeal, the Regional Director shall serve a copy of appeal upon the adjudicating officer against whose order the appeal is sought. Along with it a notice requiring such adjudicating officer to file his reply thereto within such period, not exceeding 21 days, as may be stipulated by the Regional Director in the said notice.

The Regional Director may, for reasons to be recorded in writing, extend the period of 21 days referred above for a further period of 21 days, if the adjudicating officer satisfies the Regional Director that he had sufficient cause for not being able to file his reply to the appeal within the above-said period of 21 days.

**Step 2:** A copy of every reply, application or written representation filed by the adjudicating officer before the Regional Director shall be forthwith served on the appellant by the adjudicating officer.

**Step 3:** The Regional Director shall notify the parties, the date of hearing of the appeal which shall not be a date earlier than 30 days following the date of such notification for hearing of the appeal.

**Step 4:** On the date fixed for hearing the Regional Director may, subject to the reasons to be recorded in writing, pass any order as he thinks fit including an order for adjournment of the hearing to a future date.

In case the appellant or the adjudicating officer does not appear on the date fixed for hearing, the Regional Director may dispose of the appeal ex-parte.

Where the appellant appears afterwards and satisfies the Regional Director that there was sufficient cause for his nonappearance, the Regional Director may make an order setting aside the ex-parte order and restore the appeal.

**Step 5:** Every order passed under this rule shall be dated and signed by the Regional Director

**Step 6:** A certified copy of every order passed by the Regional Director shall be communicated to the adjudicating officer and to the appellant forthwith and to the Central Government.

## **RULES, NOTIFICATIONS, CIRCULARS**

### **RULES, NOTIFICATIONS, CIRCULARS AND ORDER ISSUED DURING THE MONTH OF DECEMBER 2020 BY MINISTRY OF CORPORATE AFFAIRS**

1. MCA vide notification dated 18.12.2020 has amended the Companies (Appointment and Qualification of Directors) Rules 2014. This is the fifth amendment to the rules. As per the Amendment:

a) Rule 6 (4) Every individual whose name is so included in the data bank under sub-rule (1) shall pass an online proficiency self-assessment test conducted by the institute within a period of **Two years** from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the databank of the institute:

b) Provided that an individual shall not be required to pass the online proficiency self-assessment test, when he has served for a total period of not less than 3 years as on date of inclusion of his name in the data bank,

c) i) as a director or key managerial personnel, as on date of inclusion of his name in the data bank, in one or more of the following, namely:-

(a) listed public company; or

(b) unlisted public company having a paid-up share capital of rupees ten crore or more; or

(c) body corporate listed in any recognized stock exchange or in a country which is a member state of the Financial Action Task Force on Money Laundering and the regulatory of Securities market in such member State is a member of International Organization of Securities Commission or

(d) bodies corporate incorporated outside India having a paid up share capital of US\$ 2 million or more or

(e) statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities or

(B) in the pay scale of Director or above in the Ministry of Corporate Affairs or the Ministry of Finance of Ministry of Commerce and Industry of the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws or securities laws or economic laws or

(C) in the pay scale of Chief General Manager or above in the Securities and Exchange Board or the Reserve Bank of India or the Insurance Regulatory and Development authority of India or the Pension Fund Regulatory and Development authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws:

For the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

An individual who has obtained a score of not less than **fifty percent** in aggregate in the online proficiency self-assessment test shall be deemed to have passed such test.

**1. MCA vide notification dated 18.12.2020 has amended the Companies (Compromises, Arrangements and Amalgamations) Rules 2016. As per the Amendment:  
Rule 2(1)(e) was inserted to define the term "Corporate Action"  
Rule 26A has been inserted to deal with Purchase of minority shareholding held in demat form.**

**2. MCA by General Circular No 38/2020 dated 01.12.2020** has further relaxed on payment of additional fees and extension of last date of filing of CRA 4 – FORM for filing of Cost audit Report – for the financial year 2019-20 under the Companies Act 2013.

**3. MCA by General Circular No 39/2020 dated 31.12.2020 – which reads as follows:** In continuation to this Ministry's General Circulars No.14/2020 dated 8th April, 2020, No.17/2020 dated 13th April, 2020, No.22/2020 dated 15.06.2020 and No.33/2020 dated 28.09.2020 and after due examination, it has been decided to allow companies to conduct their EGMs through VC or OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid Circulars upto 30th June, 2021. All other requirements provided in the said Circulars shall remain unchanged.

4. In exercise of the powers conferred by sub-section (2) of section 1 of the Companies (Amendment) Act, 2020 (29 of 2020), the Central Government hereby appoints the **21st day of December, 2020** as the date on which the following provisions of the said Act shall come into force, namely:- (a detailed write up on the sections that have come in to force and that which are yet to notified was already circulated to the members and hence not repeated here)

**5. The Companies (Auditor's Report) Order, 2020 -Paragraph 2:**

**2. Auditor's report to contain matters specified in paragraphs 3 and 4.** - Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2019, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable: Provided this Order shall not apply to the auditor's report on consolidated financial statements except clause (xxi) of paragraph 3. **(S.O. 849(E).— dated 25.02.2020)**

**MCA has deferred the application of the Order from 01.04.2019 to 01.04.2020.** i.e. Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2020, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable. **(S.O. 1219(E) dated 24.03.2020.**

**The Companies (Auditor's Report) Second Amendment Order, 2020 issued on 17.12.2020 defers the applicability of the Order for one more year.** i.e. Every report made by the auditor under section 143 of the Companies Act on the accounts of every company audited by him, to which this Order applies, for the financial years commencing on or after the 1st April, 2021, shall in addition, contain the matters specified in paragraphs 3 and 4, as may be applicable. **(S.O. 4588(E).— dated 17.12.2020.**

Net impact: CARO 2020 will apply for the financial years commencing on or after 01.04.2021

**6. MCA vide notification dated 24.12.2020 has amended the Companies (Share Capital and Debentures) Rules 2014** by substituting new form SH7 in the place of existing form. SH 7 relate to notice to Registrar of any alteration of share capital

**7. MCA vide notification dated 24.12.2020 has amended the Companies Incorporation) Rules 2014** by inserting rule 9A with the title "Extension of Reservation of name in certain cases". By the same notification they have also amended the form Spice+ Part A by substituting a new Part A in the place of existing Part A in the annexure. **Rule 9A will take effect from 26.01.2021**

**8. MCA vide notification dated 30.12.2020 has amended the Companies (Meetings of Board and its powers) Rules 2014. 4 Matters Not to be Dealt With in a Meeting Through Video Conferencing or Other Audio Visual Means**

**Rule 4 (1)** of the said Rules states that the following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under sub-section (1) of section 134 of the Act and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Where there is quorum presence in a meeting through physical presence of directors, any other director may participate conferencing through video or other audio visual means

For the period beginning from the commencement of the Companies (Meetings of Board and its Powers) Amendment Rules, 2020 and ending on the 31st December, 2020, the meetings on matters referred to in sub-rule (1) may be held through video conferencing or other audio visual means in accordance with rule 3. The words "31st December 2020" is now amended to read as "30th June 2021".

#### **IMPORTANT NEWS AND UPDATES FROM MCA:**

*Stakeholders may please note that there is no change in the additional fee logic of eform MGT-7 and AoC-4/AOC-4 XBRL/AOC-4 CFS/AOC-4 NBFC for the FY 2019-20 w.e.f 01 January 2021 since extension was provided to all the companies for conducting AGM and not for filing the form. Hence, the due date of form filing shall be computed based on the actual date of AGM or due date/extended due date of AGM as the case may be. Post 31st December 2020, additional fee shall be applicable from the actual date of AGM or due date/extended due date of AGM + 30/60 days as the case may be and Rs.100 per day shall be charged starting from such day even if such date falls prior to 31st December 2020.*

*Stakeholders may please note that the Field 'SRN of the application filed for extension' (GNL-1) in eform MGT-7 is made optional for FY 2019-20 w.e.f 01 January 2021 due to blanket extension provided for all companies to conduct AGM. Consequently, eForm MGT-7 has been revised on MCA21 Company Forms Download page w.e.f 1st January, 2021. Stakeholders are advised to check the latest version before filing*

*Please note that the last date for filing DIR-3 KYC for Financial year 2019-20 has expired on 31st December 2020. The process of deactivating the non-compliant DINs is in progress and will be completed shortly. Please note that web service DIR-3 KYC shall not be available for filing during the pendency of this activity. Filing of DIR-3 KYC can be made after completion of the scheduled activity, as above, when the service is made available on the portal after payment of applicable fees. Stakeholders may kindly note and plan accordingly.*

## **IMPORTANT CIRUCLARS ISSUED BY SEBI IN THE MONTH OF DECEMBER 2020:**

1. **SEBI/HO/MIRSD/DOP/CIR/P/2020/235 December 01, 2020** - Relaxation in timelines for compliance with regulatory requirements.
2. **SEBI/HO/MIRSD/RTAMB/CIR/P/2020/236 02.12.2020** - Operational guidelines for Transfer and Dematerialization of re-lodged physical shares.
3. **SEBI/HO/CFD/DIL1/CIR/238/2020 December 08, 2020** - Additional Payment Mechanism (i.e. ASBA, etc.) for Payment of Balance Money in Calls for partly paid specified securities issued by the listed entity.
4. **SEBI/HO/CFD/CMD/CIR/P/2020/242 December 09, 2020** - e-Voting Facility Provided by Listed Entities.
5. **SEBI/HO/MRD2/DCAP/CIR/P/2020/243 December 18, 2020** - Framework for issue of Depository Receipts – Clarifications.
6. **SEBI/HO/CDMRD/DRMP/CIR/P/2020/244 December 21, 2020** - Review of inclusion of Historical Scenarios in Stress Testing in Commodity Derivatives Segment
7. **SEBI/HO/MRD2/DCAP/CIR/P/2020/245 December 21, 2020** - Core Settlement Guarantee Fund, Default Waterfall and Stress Test for Limited Purpose Clearing Corporation (LPCC).

## **SEBI HAS ISSUED THE FOLLOWING CONSULTATIVE PAPERS/REPORTS DURING THE MONTH OF DECEMBER 2020 FOR PUBLIC COMMENTS:**

Consultation Paper - Review of the 'NCDs along with warrants' as a staple product and as a Segregated product, offered through Qualified Institutional Placement under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Extension of Timeline for submission of public comments on the consultation paper Review of requirement of Minimum Public Offer for large issuers in terms of Securities Contracts (Regulation) Rules, 1957.

Consultation Paper - Compliance Standards for Index Providers.

Consultation Paper Review of framework of Innovators Growth platform (IGP) under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

NOTE: Details relating to the circulars issued can be seen from SEBI Website. The last date for responding to the consultation papers are given under each of the papers mentioned above in the respective documents and also to whom it should be addressed and in which format.

## **IMPORTANT CIRUCLARS ISSUED BY RBI IN THE MONTH OF DECEMBER 2020:**

Amendment to Master Direction (MD) on KYC - Centralized KYC Registry - Roll out of Legal Entity Template & other changes

Opening of Current Accounts by Banks - Need for Discipline

Regional Rural Banks - Access to Call/Notice/Term Money Market

External Trade - Facilitation - Export of Goods and Services

Introduction of Liquidity Adjustment Facility (LAF) and Marginal Standing Facility (MSF) for Regional Rural Banks (RRBs)

Declaration of dividends by banks

Processing of e-mandates for recurring transactions

Authorisation of entities for operating a Payment System under the Payment and Settlement Systems Act, 2007 (PSS Act) - Introduction of Cooling Period

Perpetual Validity for Certificate of Authorisation (CoA) issued to Payment System Operators (PSOs) under Payment and Settlement Systems Act, 2007 (PSS Act)

Card transactions in Contactless mode - Relaxation in requirement of Additional Factor of Authentication

24x7 Availability of Real Time Gross Settlement (RTGS) System

Dec 09, 2020 - RBI releases Draft Circular on Declaration of Dividend by NBFCs

Dec 04, 2020 - RBI releases Draft Directions on Money Market Instruments under Section 45 W of the RBI Act, 1934

RBI releases Draft Reserve Bank of India (Market-makers in OTC Derivatives) Directions, 2020 under Section 45 W of the RBI Act, 1934

**LEGAL MAXIMS: FOR THE MONTH:**

1. **Ab initio** – From the very beginning of the law/ act it was bad
2. **Actus Dei Nemini Injuriam** – law holds no man responsible for the Act of God
3. **Actio Personalis Moritur Cum Persona** – A personal right of action dies with the person.
4. **Actori incumbit onus probandi** - the burden of proof lies on the plaintiff
5. **Actus Non Facit Reum Nisi Mens Sit Rea** – The intent and act must both concur to constitute the crime.

**HAPPY & HEALTHY  
NEW YEAR 2021**

**DISCLAIMER**

*The above compilation is only for the purpose of information and easy understanding and does not constitute or purport to be an advice or opinion in any manner. The objective is only to share information based on recent developments and regulatory changes. Neither the Madras Chamber or the Expert Committee on Company Law/Corporate Matters is responsible for any error or mistake or omission in this compilation or for any action taken or not taken based on the contents of this newsletter. It is advisable to refer the legislation and the Notifications issued by the Government before taking any decision or action.*

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