

Company Compliances and Covid-19

written by Sindhuja Kashyap | March 23, 2020



Covid 19 Company Compliances

The global outbreak of the novel coronavirus has taken the world by storm. While the issue pertaining to public health is the talk of the town, the impact of COVID-19 on businesses and corporates seems to be the least talked about. The day-to-day business of the corporates is being affected due to decreased inflow of human resources and a decrease in the workflow. While technologies have provided a relief to the human resource for physical attendances and conferences, there seemed to be unsettled trouble regarding legal compliances that required various filings and physical meetings.

Board Meetings

during the COVID-19 phase

Section 173 of the Companies Act, 2013 ("Act") mandates a minimum of four board meetings to be held by a company each year with not more than 120 days of gap between two consecutive board meetings. Therefore, any company having held its last board meeting in the first half of November 2019 would be legally mandated to hold a board meeting in the month of March 2020.

However, provided the restriction on movements and physical meetings amidst the fear of contraction or spread of the coronavirus, business entities would be forced to conduct such meetings via video conferencing or other audio-visual means as duly authorized under Section 173(2) of the Act. Such restriction on movement would be even more strictly followed in cases of foreign subsidiaries wherein the directors would be required to fly down from various countries to the Indian office to satisfy the quorum for such a board meeting.

However,

Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 ("Rule")

details the matters which cannot be dealt with in a meeting through video conferencing or other audio-visual means which include important agendas such as the approval of the annual financial statements, the approval of the board's

report, the approval of the prospectus, the Audit Committee Meetings for consideration of account and the approval of the matter relating to amalgamation, merger, demerger, acquisition, and takeover. Since the annual financial statements and board's report cannot be approved in a board meeting being conducted vide audio-visual means, all the companies having their

financial year as a period ending
on the 31st day of March every year
may suffer consequences of non-compliance.

Therefore, considering the need to take precautionary steps to overcome the outbreak of the coronavirus (Covid-19) in concord with the statutory compliance, Ministry of Corporate Affairs vide Companies (Meetings of Board and its Powers) Amendment Rules, 2020 dated March 19, 2020,^[1] decided to relax the requirement of holding board meetings with the physical presence of directors for such abovementioned agendas. For the purpose of discussion and approval of such agendas, holding of meetings through video conferencing or other audio-visual means shall be permitted till June 30, 2020. However, the companies must strictly comply with Rule 3 of the Rules which details various procedures, for convening and conducting board meetings through video conferencing or other audio-visual means.

Company

Affirmation of Readiness towards COVID-19

Social distancing has gained importance as a way to contain the spread, morbidity, and mortality of COVID-19. The government of India ("GOI"), responsible for the public welfare at large, has realized that social distancing can be achieved in its true sense only if the employers of the Indian public make the same application on their respective premises. Considering that major employers of the nation belong to the companies or limited liability partnership ("LLP") type entity, GOI as part of disaster management has advised all companies/LLPs to put in place an immediate plan to implement the "work from home" policy as a temporary measure up till March 31, 2020. Further, in case of a requirement of physical visits of the essential staff to such offices by the employers, staggered timings may be followed in order to minimize physical interactions of all kinds.

A simple web form for companies/LLP shall be deployed by MCA on March 23, 2020, in order to confirm the readiness of the employers to deal with COVID-19 threat.[2] The webform shall be called CAR (Company Affirmation of Readiness towards COVID-19) and would be required to be signed and submitted by the authorized signatory of the company/LLP. Therefore, it shall be expected by each company/LLP to ensure reporting of the compliance through CAR instantly from the date of its deployment.

Conclusion

Business entities in India are requested and expected to keep an eye on the major government websites to ensure timely compliance with all such immediate requirements and mandates issued by GOI as need of the hour from time to time. We at King Stubb and Kasiva are ensuring that all such notifications/circulars/notices as and when issued by the GOI regarding compliance for the business entities are simplified and published on our website for better understanding and quick compliance.

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- [1] http://www.mca.gov.in/Ministry/pdf/Rules_19032020.pdf
 - [2] A message regarding this can be viewed as a pop-up on the home page of <http://www.mca.gov.in/>

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