

## COVID-19

# Statutory and Regulatory Updates for Companies

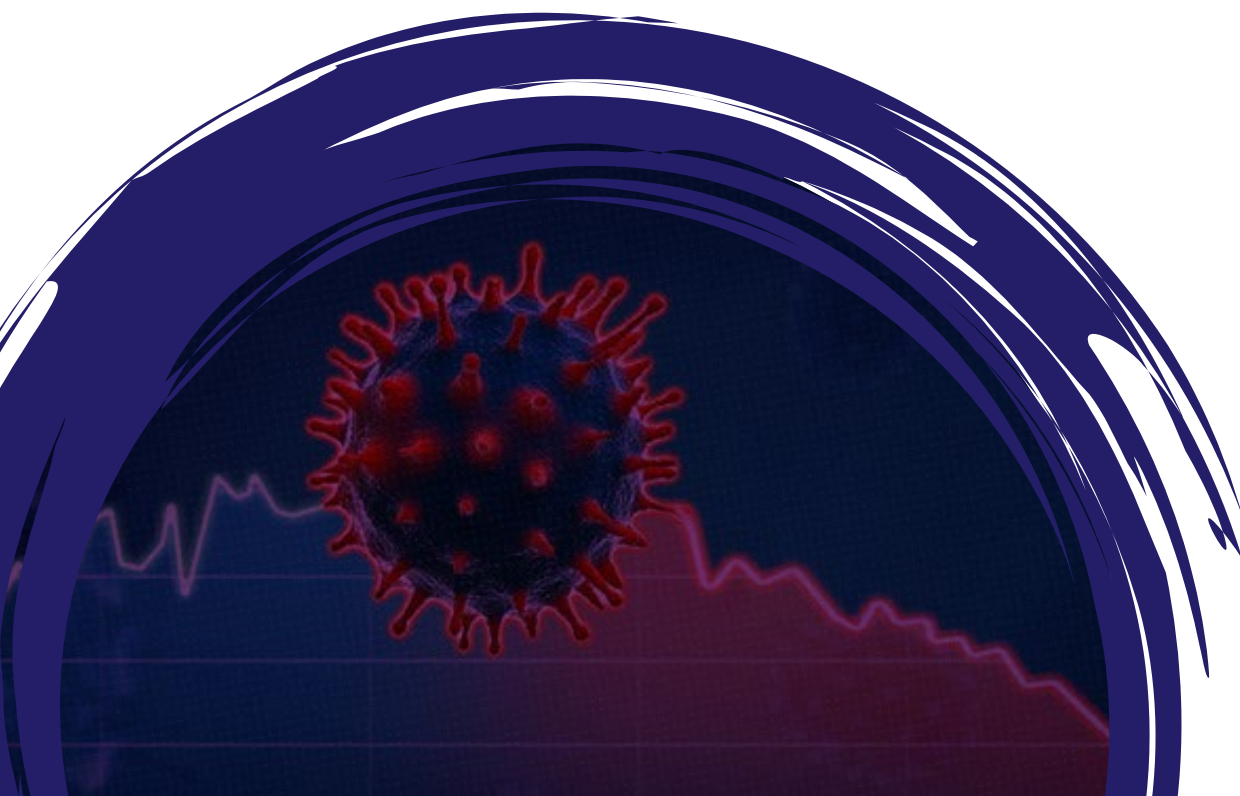


Lakshmikumaran  
& Sridharan  
attorneys

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On March 24, 2020, the Finance Minister announced several relief measures across sectors, relating to Statutory and Regulatory compliance matters, in view of the COVID-19 outbreak in the country. The main relief measures have been detailed below, along with their implications for businesses.



# CORPORATE LAW

## MEASURES UNDER THE COMPANIES ACT, 2013

### 1. Filing of returns

- Declaration of Moratorium during the period from April 01, 2020 to September 30, 2020: During this time, all filings with the Ministry of Corporate Affairs (MCA) would not attract any 'additional fee'. This applies to long standing non-compliant companies/LLPs.



- This will reduce burden on the companies/LLPs and may facilitate even defunct and inactive companies to revive and do a 'fresh start' without any financial burden.
- However, this shall not sanctify time bound actions prescribed under the Companies Act, 2013 (like filing of return of allotment, orders of NCLT, etc.), but only grants relaxation from payment of additional fee.

### 2. Extension of interval between two board meetings

- The mandatory interval of 120 days between two board meetings is allowed to be extended by an additional 60 days till next two quarters i.e., till September 30, 2020.



- A total of 180 days is being allowed to intervene between two board meetings.
- This may lead to an extension for approval of quarterly / yearly financial results of listed companies and convening the annual general meeting of all the companies.

### 3. Extension of Time

- Companies shall be allowed to implement Companies (Auditors Report) Order, 2020 from FY 2020-21, instead of FY 2019-20 as notified earlier.
- The due date for the following has been extended from April 30, 2020 to June 30, 2020:
  - Creating a deposit reserve of 20% of deposits maturing during the FY 2020-21
  - Investing 15% of debentures maturing during a particular year
- All newly incorporated companies can file a declaration of commencement of business within 12 months from incorporation instead of 6 months.



#### 4. Other Significant Provisions:

- Meetings of independent directors: For the FY 2019-20, even if a single meeting of independent directors is not held as per Schedule IV, that shall not be considered as a violation.
- Minimum residency for a resident Indian director: The requirement to be in India by a resident Indian director for at least 182 days, is relaxed and non-compliance of the same shall not be treated as a violation.

These relaxations will be effective and implemented as per the notifications / circulars to be issued by MCA.



The several measures will assist the companies in their functioning. Since the requirement of resident Indian director will not be treated as a violation, this will provide a much-needed relief specially to foreign owned companies in India.

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# INSOLVENCY & BANKRUPTCY

## INSOLVENCY & BANKRUPTCY CODE, 2016 (IBC)

1. Threshold of default under Section 4 of IBC increased to INR 1 Crore from existing INR 1 Lacs, as a measure to prevent triggering of insolvency proceedings against MSMEs, i.e. medium and small enterprises.



- Government has identified that the fall out of COVID-19 will affect MSMEs the most. In order to protect them, the overall limits to trigger insolvency proceedings have been increased.
- No creditor can trigger IBC for any default under INR 1,00,00,000/-. This is not only limited to MSME companies but also applies to all other companies / LLPs.
- At present no relief for companies (MSME and, or large companies) for defaults in the amounts in excess of INR 1,00,00,000/- even if the same is impacted by circumstances related to COVID-19.

2. Government to monitor situation till April 30, 2020, if the situation continues as it is or extends, then sections 7, 9 and 10 of IBC shall stand suspended for a term of 6 months thereafter, i.e. between May 01, 2020 to October 31, 2020.



- Section 7 relates to commencement of insolvency proceedings by financial creditors (banks, financial institutions, corporates having disbursed loans including bond holders, debenture holder etc.), Section 9 relates to commencement of insolvency proceedings by operation creditors to whom money is due and payable against the provision of goods or services, and Section 10 relates to commencement of insolvency proceedings by the shareholders, members, the Company by itself.
  - All the above sections to commence insolvency will be suspended for a period of 6 months if the situation does not improve before April 30, 2020. No fresh petitions will be entertained during this time of suspension. However, at present, there is no clarity as to whether this is intended to apply to only those cases where default has occurred in or after March 2020 or to all cases.
  - More clarity is expected when the actual notification comes out, if at all, at the end of April 2020 in the unfortunate event of COVID-19 situation not improving
  - Please note the relaxation from legal proceedings is given only under IBC. However, creditors still have an option to proceed with other civil remedies (by approaching courts and arbitral tribunals) for recovery of the outstanding payments.
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## GST / INDIRECT TAX

1. Taxpayers having an aggregate annual turnover of less than INR 5 Crore can file GSTR-3B due in the months of March, April and May 2020 by the last week of June 2020. No interest, late fee, and penalty to be charged.



- The extension has been given for returns due for filing in the months of March, April and May 2020, i.e. returns for the supplies made in the months of February, March and April 2020 - This view has also been clarified by Central Board of Indirect Taxes and Customs (CBIC) through their twitter handle.
- Which would be the relevant financial year for determination of aggregate annual turnover – 2019-20 or 2020-21? It is expected that a notification may bring some clarity.
- Whether the interest and late fee for the relevant returns furnished beyond June 2020 will be reckoned / calculated from July 01, 2020? More clarity will emerge once the relevant notification is issued.

2. Other taxpayers (having an aggregate turnover of INR 5 crores or more) can file returns due in March, April and May 2020 by last week of June 2020 but the same would attract reduced rate of interest @ 9% per annum from 15 days after the due date (current interest rate is 18% per annum). No late fee and penalty to be charged, if complied till June 30, 2020.



• Due date for furnishing of FORM GSTR-3B for the month of March 2020 is April 20, 2020. If a return is furnished on June 20, 2020, then interest @ 9% per annum will apply from May 06, 2020 to June 20, 2020. On the other hand, if a return is furnished on July 20, 2020, then clarity is required whether interest @ 18% per annum will apply from April 21, 2020 to July 20, 2020. A government notification should adequately address the interest computation issue.

3. Due date for opting for composition scheme stands extended till last week of June 2020. Further, the due date for making payments for the quarter ending March 2020 and filing of annual return for FY 2019-20 by the composition dealers is extended till last week of June 2020.

4. Date for filing GST annual returns of FY 18-19, which is due on March 31, 2020 is extended till the last week of June 2020.



• The above relief is in pursuance of the decision taken by the GST Council in the 39th meeting held on March 14, 2020.

• It has also been recommended by the GST Council to provide relaxation to MSMEs (turnover below INR 5 crores) from filing FORM GSTR-9C.

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 said 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 relief shall follow with the approval of the GST Council
  
7. The payment date for the amount liable to be paid under the *Sabkha Vishwas Scheme* shall be extended to 30th June 2020 and no interest will be charged if the amount is paid by the said date.



Currently, under *Sabka Vishwas Scheme*, payment is to be made within 30 days of the Statement issued by the Designated Committee intimating the amount which is payable by the taxpayer. No provision for payment after 30 days on payment of interest.

#### **GENERAL OBSERVATIONS**

- No extension has been given for filing of Form GST TRAN – 1 in respect of taxpayers who could not submit the said declaration by the due date on account of technical difficulties on the common portal. The current provision allows the Commissioner to extend the due date for submitting FORM GST TRAN-1 by a further period not beyond March 31, 2020.
  
  - The due date for furnishing Letter of Undertaking for FY 2020-21 has not been extended and the same needs to be furnished on the common portal by March 31, 2020.
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# DIRECT TAX

## 1. Extension of last date for income tax returns for Financial Year (FY) 18-19 from March 31, 2020 to June 30, 2020.

- Sub-section 4 to Section 139 of the Income-tax Act, 1961, provides that where an assessee has not filed its return of income by the due date provided under sub-section (1), then such assessee may file its return of income before the end of the relevant assessment year (AY).
- The relevant AY corresponding to the FY 2018-19 is the AY 2019-20 and for which the return of income can be filed by March 31, 2020. The press release extends the date of such filing of return of income to June 30, 2020 as against the due date of March 31, 2020.



By way of the above relaxation, another opportunity has been extended to such assesseees who have yet not filed the return of income for the AY 2019-20.

2. The date of linking of Aadhar number with permanent account number (PAN) has been further extended from March 31, 2020 to June 30, 2020. The earlier extension was made vide notification no. 107/2019 to move it from December 31, 2019 to March 31, 2020.



### 3. *Vivad se Vishwas* scheme – no additional 10% amount, if payment made by 30.06.2020.

- Section 3 of the Direct Tax *Vivad Se Vishwas* Act, 2020 provides that where a declarant opts for the scheme and files a declaration then the amount payable by such declarant shall be only the disputed tax if such amount is paid by March 31, 2020. However, where the said declarant pays the amount on or after April 01, 2020, the amount payable shall be the disputed tax plus 10% of such disputed tax.
- The government has decided to waive the classification of dates and proposed that a taxpayer can pay the disputed tax by June 30, 2020 without having to pay additional 10% of the disputed tax.



The measure will come as a relief for the assessees who may want to opt for the scheme but are unable to proceed further considering the present pressing situation posed by COVID-19 leading to factors such as monetary liquidity and necessary approval from the parent company.

4. As per the table below, the timelines for various actions (both on the part of the assessee as well as the revenue department), under the specified laws, which were expiring between March 20, 2020 to June 29, 2020, have been extended till June 30, 2020.

Actions under respective laws	Laws
<p><b>Issuance of:</b></p> <ul style="list-style-type: none"><li>• Notice,</li><li>• Intimation,</li><li>• Notification,</li><li>• Approval order,</li><li>• Sanction order.</li></ul> <p><b>Filing of:</b></p> <ul style="list-style-type: none"><li>• Appeals,</li><li>• Return,</li><li>• Statements,</li><li>• Applications,</li><li>• Reports,</li><li>• Any other documents.</li></ul> <p><b>Misc:</b></p> <ul style="list-style-type: none"><li>• time limit for completion of proceedings by the authority and</li><li>• any compliance by the taxpayer including investment in saving instruments or investments for roll over benefit of capital gains.</li></ul>	<ul style="list-style-type: none"><li>• Income Tax Act,</li><li>• Wealth Tax Act,</li><li>• Prohibition of Benami Property Transaction Act,</li><li>• Black Money Act,</li><li>• Securities Transaction Tax,</li><li>• Commodities Transaction Tax,</li><li>• Equalization Levy,</li><li>• <i>Vivad Se Vishwas</i> Act.</li></ul>



Specific circulars and legislative amendments will bring in more clarity on the nature, manner and impact of the extension.

## 5. The delay in payments of:

- Advance tax,
- Self-assessment tax,
- Regular tax,
- Tax Deductible at Source (TDS),
- Tax Collectible at Source (TCS),
- Equalisation levy,
- Securities Transaction Tax (STT); and
- Commodity Transaction Tax (CTT)

attract interest @ 1% or 1.5% per month, as the case may be. It has been proposed that in case of delayed payments with respect to the abovementioned dues made between March 20, 2020 and June 30, 2020, the beneficial interest rate of 0.75% per month shall be charged. Further, waiver has been prescribed with respect to any fee/ penalty for the above delay.

6. Legal circulars and legislative amendments giving effect to the reliefs as stated in the press release to be issued in the due course of time.



# CUSTOMS

- The facility of 24X7 clearance at all customs formations has been extended till June 30, 2020
- The due date for issuance of notice, notification, approval order, sanction order, filing of appeal, furnishing of applications, etc. and time limit for any compliance under the Customs Act, 1962 and other allied laws has been extended to June 30, 2020, where the said time limit was expiring between March 20, 2020 to June 29, 2020.



1. To ensure smooth business operations, 24X7 clearance at all customs formations has been extended till June 30, 2020. The CBIC had introduced the said facility of 24X7 clearance at all customs formations vide instruction No. 2/2020 dated February 20, 2020. The 24X7 clearance is being done to ensure the following:
    - uninterrupted supply of raw materials; and
    - export of goods from India continues smoothly.
  2. The time limit for various compliances such as filing appeals, issuance of Show Cause Notices (SCNs) or other procedural compliances under the Customs Act, 1962 and other allied laws has been extended to June 30, 2020 where such time limit was expiring between March 20, 2020 to June 29, 2020. Now, in cases, where the last date for such compliance i.e. filing of appeal or issuance of SCN was March 26, 2020, the said last date would now stand extended to June 30, 2020. Thus, appeals filed upto June 30, 2020 will not be time-barred. SCNs issued in this period cannot be challenged on the ground of time bar i.e. issued beyond 2 years or 5 years period.
  3. The said extension in time limits has been made applicable to the Customs Act, 1962 and other allied laws such as the Foreign Trade Development (Regulation) Act, 1992, Legal Metrology Act, 2009, etc. It is important to note that such extension will have to be backed by an ordinance or a suitable amendment by way of a notification under the respective Acts.
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## LOCATIONS

[www.lakshmisri.com](http://www.lakshmisri.com)

### NEW DELHI

5 Link Road, Jangpura Extension,  
New Delhi 110 014  
PHONE: 011-4129 9800

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B-6/10, Safdarjung Enclave,  
New Delhi 110 029  
PHONE: 011-4129 9900  
E-MAIL: [lsdel@lakshmisri.com](mailto:lsdel@lakshmisri.com)

### MUMBAI

2<sup>nd</sup> Floor, CNERGY IT Park,  
Old Standard Mill,  
Appa Saheb Marathe Marg,  
Prabhadevi,  
Mumbai 400 025  
PHONE: 022-2439 2500  
E-MAIL: [lsbom@lakshmisri.com](mailto:lsbom@lakshmisri.com)

### CHENNAI

2, Wallace Garden, 2<sup>nd</sup> Street,  
Chennai 600 006  
PHONE: 044-2833 4700  
E-MAIL: [lsmds@lakshmisri.com](mailto:lsmds@lakshmisri.com)

### BENGALURU

World Trade Center,  
No. 404-406, 4<sup>th</sup> Floor, South Wing,  
Brigade Gateway Campus,  
No. 26/1 Dr. Rajkumar Road,  
Malleswaram West,  
Bengaluru 560 055  
PHONE: 080-4933 1800  
E-MAIL: [lsblr@lakshmisri.com](mailto:lsblr@lakshmisri.com)

### HYDERABAD

'Hastigiri', 5-9-163, Chapel Road,  
Opp. Methodist Church, Nampally,  
Hyderabad 500 001  
PHONE: 040-2323 4924  
E-MAIL: [lshyd@lakshmisri.com](mailto:lshyd@lakshmisri.com)

### AHMEDABAD

B-334, SAKAR-VII,  
Nehru Bridge Corner, Ashram Road,  
Ahmedabad 380 009  
PHONE: 079-4001 4500  
E-MAIL: [lsahd@lakshmisri.com](mailto:lsahd@lakshmisri.com)

### PUNE

607-609, Nucleus,  
1 Church Road, Camp  
Pune 411 001  
PHONE: 020-6680 1900  
E-MAIL: [ispune@lakshmisri.com](mailto:ispune@lakshmisri.com)

### KOLKATA

2<sup>nd</sup> Floor, Kanak Building,  
41, Chowringhee Road,  
Kolkata 700 071  
PHONE: 033-4005 5570  
E-MAIL: [lskolkata@lakshmisri.com](mailto:lskolkata@lakshmisri.com)

### CHANDIGARH

SCO No. 59, 1<sup>st</sup> Floor,  
Sector 26, Madhya Marg,  
Chandigarh 160 026.  
PHONE: 0172-492 1700  
E-MAIL: [lschd@lakshmisri.com](mailto:lschd@lakshmisri.com)

### GURUGRAM

OS2 & OS3, 5<sup>th</sup> Floor,  
Corporate Office Tower,  
AMBIENCE Island, Sector 25-A,  
Gurugram 122 001  
PHONE: 0124-477 1300  
E-MAIL: [lsgurgaon@lakshmisri.com](mailto:lsgurgaon@lakshmisri.com)

### PRAYAGRAJ (ALLAHABAD)

3/1A/3, (Opp. Auto Sales)  
Colvin Road, Lohia Marg,  
Prayagraj 211 001  
PHONE: 0532-242 1037/242 0359  
E-MAIL: [lsallahabad@lakshmisri.com](mailto:lsallahabad@lakshmisri.com)

### KOCHI

1<sup>st</sup> Floor, PDR Bhavan,  
Palliyil Lane, Foreshore Road,  
Ernakulam,  
Kochi 682016  
PHONE: 0484-486 9018/486 7852  
E-MAIL: [lskochi@lakshmisri.com](mailto:lskochi@lakshmisri.com)



Lakshmi  
& Sridharan  
attorneys

exceeding expectations  
SINCE 1985

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