



COVID-19 India: Corporate, tax, employment and bankruptcy law measures announced by the Indian government

COVID-19 Alert

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In response to the global outbreak of coronavirus disease 2019 (COVID-19), governments in many countries have issued emergency legislation to mitigate the impact of the pandemic on companies' day-to-day operations. Since March 24, 2020, the Indian government has been announcing various measures aimed to ease corporate and tax compliance for companies doing business in India, as well as other measures pertaining to employment and bankruptcy matters. Below is a high-level overview of some of the most relevant aspects of these measures as they pertain to India subsidiaries of US companies.

Corporate law measures

- The India Ministry of Corporate Affairs (MCA) announced that COVID-19 spending would now be covered under the (general) Corporate Social Responsibility (CSR) activities of Schedule VII pertaining to the promotion of health, preventative healthcare and sanitation and disaster relief. This means that, in case Indian subsidiaries have donated or otherwise provided, on a voluntary basis, any medical help or supplies for the COVID-19 disaster, such contributions will now be regarded as CSR contributions under any of the respective Schedule VII activities.

- The MCA further advised that all companies and limited liability partnerships (LLPs) in India are to implement “Work from Home” as a temporary measure until March 31, 2020. To be able to prove that work-from-home measures were, in fact, implemented, Indian subsidiaries are asked to voluntarily report the same online on the MCA web portal.
- The MCA has relaxed the rules for holding Indian subsidiaries’ board meetings. Among other things, the MCA has dispensed the requirement of holding physical (in-person) board meetings on matters such as the approval of financial statements, board reports and restructurings, through June 30, 2020.
- From April 1 through September 30, 2020, there will be no additional fees for late filings on Register of Companies (RoC) forms.
- Starting April 1, 2020, and valid for the next two quarters (*i.e.*, through September 30, 2020), the time period to hold mandatory board meetings is extended by another 60 days. This means that board meetings can now be held with a gap of 180 days.

Under normal circumstances, every company (other than specified small companies) is required to hold its board meetings at regular intervals so that the time gap between the two board meetings should not exceed 120 days. With this additional 60-day extension, the time gap for the next two quarters (*i.e.*, from April 1, 2020 through September 30, 2020) can be 180 days.

Example: If the last board meeting was held in early March 2020, the next meeting can now be held in late August 2020 (within 180 days) instead of late June (within 120 days under normal circumstances).

- If the resident director of the Indian subsidiary does not comply with the minimum mandatory requirement of a stay of 182 days in India under the Companies Act, 2013, such non-compliance will not be treated as a violation through September 30, 2020.
- The applicability of the Companies (Auditor’s Report) Order, 2020 (CARO 2020) will be made applicable starting as of financial year 2020-2021 (instead of 2019-2020). This will significantly ease the burden on companies and their auditors for the financial year 2019-2020 because the enforcement of CARO 2020 at this stage would have resulted in additional compliance measures for companies and necessitated enhanced due diligence and disclosures on the part of auditors.
- Newly incorporated companies have an additional six months to file their “commencement of business” forms.
- Extension of timelines for various compliance and other procedures may be granted on a case-by-case basis.

Tax law measures

The Finance Minister of the Central Government announced various provisions and extensions to ease the tax and regulatory compliance burden for companies and the general public (the Announcement). Though official notifications from different ministries in India, which would give legal effect to the Announcement, are still pending, the Announcement included the following measures which we are anticipating will likely become legally effective in the near term:

Announcement relating to income tax

- For tax returns pertaining to financial year 2018-2019, tax return filings have been extended to June 30, 2020.
- For delayed payments of advanced tax, self-assessment tax, regular tax, withholding taxes (*i.e.*, tax deduction at source and tax collection at source), equalization levy, security transaction tax, and commodity transaction tax made between March 20, 2020, and June 30, 2020, a reduced interest rate of 9 percent (instead of 12 percent or 18 percent per annum) will be charged for this period. No late fee or penalty shall be charged for delays occurring in this period.
- The extension of due dates for various other compliance obligations shall be announced.
- Due dates are extended to June 30, 2020, for all notices, orders, appeals, applications, reports (etc.) by taxpayers.

Announcement related to Goods and Service Tax (GST)

- Last date for filing of GST returns for the months of March, April and May 2020 is extended to June 30, 2020.
- For Indian subsidiaries with an annual turnover less than INR50 million (approximately US\$660,000), no interest, late fees or penalty shall be payable; for companies with an annual turnover higher than INR50 million (approximately US\$660,000), there shall be no late fee and penalty, but interest shall be payable at a reduced rate of 9 percent on the

outstanding GST payments to the government.

- The date for opting for the composition scheme is extended to the last week of June 2020. Further, the last date for making GST payments for the quarter ending March 31, 2020, and for the filing of the GST return for 2019-2020 by the composition dealers will be extended to the last week of June 2020.
- The date for filing GST annual returns for FY 2018-2019, which is normally due on March 31, 2020, is extended to the last week of June 2020.
- The due date for the issuance of notices, notifications, approval orders, sanction orders, filings of appeal, furnishings of return, statements, applications, reports, or any other documents that are subject to a GST compliance time limit expiring between March 20, 2020, and June 29, 2020 shall be extended to June 30, 2020.

Employment law measures

- The Ministry of Labour & Employment, Government of India advised on March 20, 2020, that all public and private organizations are to refrain from terminating the services of their employees or reducing their wages.
- The Ministry of Labour & Employment has extended the deadline for filing the Unified Annual Return for 2019 under eight laws that were filed on the Shram Suvidha Portal to April 30, 2020 (the previous deadline was February 1, 2020). The notification further states that authorities are not to take action against any entity that did not meet the earlier deadline.
- The Employees' State Insurance Corporation (ESIC), through its communication dated March 16, 2020, has extended the dates for filing of ESI contribution and payment. Accordingly, all contributions for the months of February 2020 and March 2020 can be filed and paid up to April 15, 2020 and May 15, 2020, instead of March 15, 2020 and April 15, 2020, respectively.
- The Government of India will contribute the employer contribution (on behalf of companies) and employee contribution (on behalf of employees of those companies) towards the Employee Provident Fund Organization (EPFO) for the next three months for establishments with up to 100 employees meeting certain base salary thresholds.
- All EPFO members (employees) will now be able to withdraw up to 75 percent of their total EPFO fund or an amount equivalent to three months of their salary, whichever is lower. The amount withdrawn from EPFO shall be non-refundable, and the employees do not need to return the same to their EPFO account.

Bankruptcy law measures

Pursuant to the "Announcement with regard to Insolvency and Bankruptcy Code, 2016" (IBC), the following applies:

- The default limit for the initiation of insolvency proceedings under the IBC is raised from INR100,000 (approximately US\$1,300) to INR10 million (approximately US\$130,000) immediately.
- Sections 7, 9 and 10 of the IBC (relating to the initiation of corporate insolvency resolution proceedings) may be suspended for six months, subject to the COVID-19 situation deteriorating further.

As the COVID-19 situation is dynamic, the above guidelines are subject to change. Please contact your DLA Piper relationship partner with any questions or for more information.

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