

Digital Dialogues @ toolbox INDIA Foundation

Legal & Compliance: What you need to know?



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Key takeaways:

1. Compliance and Filing requirements

- The Ministry of Corporate Affairs has been proactive and the organization falling under its regulation can follow the guidelines issued by it from time to time. Other entities can follow up with their respective regulators for any query related to filings or extension in the timeline etc.
 - a. More particularly, companies registered under Section 8 of Companies Act, 2013 or Section 25 of Companies Act, 1956, can conduct their board meetings with an interval of 180 days between two meetings. The Ministry of Corporate Affairs has granted 60 days additional period as a relief for conducting the board meetings.
- However, societies and trusts should seek clarity from their respective State regulators. As always, any queries and, or concerns to be raised with the concerned authorities, must be raised in a manner that becomes part of the documented record that can be utilized for future purposes, if needed.
- Before the lock down the Ministry of Corporate Affairs vide its general circular no. 12/2020 dated 30 March 2020 introduced the Companies Fresh Start Scheme, 2020 (**Scheme**) and has identified 66 e-forms which can be filed by the defaulting companies to make good the non-compliances in respect of the said forms. The timeline for availing of the Scheme is 30 September 2020, i.e. the forms should be filled and duly submitted by that date, with requisite filing fees paid. The Scheme is clear that no adverse consequence will follow.
- As far as concerns timelines for filing tax returns one should start and, or, continue to prepare the financial statements, audit etc. Track the latest updates on timelines and flexibility available and seek advice from respective auditors.

2. FCRA, Section 12A and 80G of Income Tax Act, 1961 (Act)

- In the past there has been no relaxation on the timeline for filing of Foreign Contribution (Regulation) Act, 2010 (**FCRA**) approval or its annual filing. This should not be anticipated.
- If an email notification is received from FCRA regarding Covid 19 steps and action, reply immediately with necessary actions. Entities which have not received any notification, may log on to the FCRA portal and provide the information on the Covid 19 steps, if asked for. It could be possible that upon login and while trying to fill up the information on FCRA portal one might get 'not applicable' notification therefore clarifying that the said compliance is not applicable to your entity. Such notification is important for the record.
- The funds received under FCRA are to be used only for the purposes permitted. Auditors will strictly scrutinize the manner and purpose of utilization of the funds received and hence the auditors can track and will call out deviation from the objects, if any. This applies in the ordinary course and the lock down does not create an exception.

Adherence to Constitutional Documents

- The object(s) of an organization forms the validity of the registrations and any deviations from the objects will lead to actions by the regulator against such organisations.
- An entity cannot act contrary to its constitutional documents. If amending the objects, ensure all regulators relevant to your NPO are notified and, or, their prior consent is sought as appropriate.
- The application form for re-registration under Section 12A and 80G should reflect the work undertaken by the organization *per* its objects which would enable the organization to seek appropriate registration as well as the merits of Section 12A and 80G of the Act.
- The renewal process of the said registration under Section 12A and 80G will likely be an in-depth scrutiny and not a mere formality. 'New' objects should be included in the application for re-registration only if those 'new' objects are part of the constitutional documents (i.e. MOA, Trust Deed etc.) prior to the application being filed i.e. the constitutional documents are appropriately and lawfully amended to reflect those new objects.
- The Income Tax Act is clear that a NPO may carry on a revenue generating 'business' and continue to avail of Section 12A and 80G benefits if that NPO fulfils the prescribed conditions which include the requirements that the business is within the scheme of

the larger objects of the NPO and that the revenue generated from the business is less than 20% of the total revenue. Note that the relevant conditions are rigorously tested.

3. Covid 19 related issues

- Conflicting information on deferment of rent, layoff, curtailment of wages etc. has been interpreted and reported by the media and the same should be ignored, unless confirmed with a lawyer or a rightful authority.
- An individual can seek deferral of rent payment in case of inability to make payments, however, the same should be done on an interpersonal basis. It is important then to note that deferral is not exemption but only a delay in payment and there will still subsist an obligation to make the payment. This will help to prevent the cash flow, however, the same will be a debt that is owed.
- Ministry of Home Affairs and Ministry of Labour, Government of India and along with various departments of the State governments have issued circulars and, or, advisories stating not to terminate the workforce and, or, curtail wages of the employees during the lockdown period. During the lockdown one should not affect any change to the terms and conditions of employment.
- If any actions with respect to the workforce and, or, employees of the organisations are to be taken after the lockdown is alleviated such actions must be taken in compliance with the law.

4. Corporate Social Responsibility

- The amendments proposed to the provisions of corporate social responsibility under the Companies Act, 2013 permits Section 8 companies to undertake CSR activities for a company. Accordingly, the existing societies and trusts are in jeopardy due to the following reasons:
 - a. Donations will qualify as CSR only if the receiving entity is a Section 8 company (companies incorporated under Section 25 of the erstwhile Companies Act, 1956 are also eligible); and
 - b. Even in instances when other entities will receive the funding, it will no longer be included in the CSRs' mandatory contribution of 2% of the average net profit *per* Section 198 of Companies Act, 2013.

Digital Dialogues @ toolbox INDIA is a virtual round table facilitated by toolbox INDIA Foundation on topics of interest and relevance curated for NPOs operating in India.

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