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**NOTE ON CIRCULARS ISSUED BY MINISTRY OF CORPORATE AFFAIRS AND SECURITIES EXCHANGE BOARD OF INDIA ON CLARIFICATION IN RELATION TO RIGHTS ISSUE BY LISTED COMPANIES DUE TO COVID-19**

As we are aware that, there is full lockdown in the country due to COVID-19, therefore, Companies are facing difficulties while complying some requirements of law in relation to Rights Issue. Keeping in view the same, Ministry of Corporate Affairs (MCA) and Securities Exchange Board of India (SEBI) has issued circulars for providing relaxation to Companies. Now, in this note, we have covered the circulars issued by SEBI on 6<sup>th</sup> May, 2020 and MCA on 11<sup>th</sup> May, 2020 in relation to Rights Issue by Listed Companies.

**Reference:**

1. SEBI Circular SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020;
2. MCA General Circular No. 21/2020 dated May 11, 2020;
3. Companies Act, 2013;and
4. SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018

**SEBI Circular SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020**

In view of the impact of the COVID-19 pandemic and the lockdown measures undertaken by Central and State Governments, based on representations, SEBI has issued Circular SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020 (hereinafter referred as “the Circular”) to grant the one time relaxations from strict enforcement of certain regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereafter “ICDR Regulations”) pertaining to Rights Issue opening upto July 31, 2020.

SEBI vide this circular has provided relaxation from following regulations of ICDR Regulation to Listed Companies for the Rights Issues opening **upto July 31, 2020:**

<b>Regulation</b>	<b>Provision</b>	<b>Relaxation</b>
77(2): Service of abridged letter of offer and application form for right issue	The abridged letter of offer, along with application form, shall be dispatched through registered post or speed post or by courier service or by electronic transmission to all the existing shareholders at	Service of the abridged letter of offer, application form and other issue material to shareholders may be undertaken by electronic transmission as already provided under Regulation 77(2) of the ICDR Regulation.



	<p>least three days before the date of opening of the issue.</p>	<p>Failure to adhere to modes of dispatch through registered post or speed post or courier services due to prevailing Covid-19 related conditions will not be treated as non-compliance during the said period.</p> <p>Further, Listed Company has also comply the following additional requirements:</p> <ul style="list-style-type: none"> <li>a) the issuers shall publish the letter of offer, abridged letter of offer and application forms on the websites of the company, registrar, stock exchanges and the lead manager(s) to the rights issue.</li> <li>b) the issuer company along with lead manager(s) shall undertake all adequate steps to reach out its shareholders through other means such as ordinary post or SMS or audio-visual advertisement on television or digital advertisement, etc</li> </ul>
<p>84(1): Issue related advertisements</p>	<p>The issuer shall issue an advertisement in at least one <b>English national daily newspaper</b> with wide circulation, one <b>Hindi national daily newspaper</b> with wide circulation and <b>one regional language</b> daily newspaper with wide circulation, at the place where registered office of the issuer is situated and also give <b>an intimation to the stock exchanges for dissemination</b> on their <b>websites</b>, at least two days before the date of opening of the issue,</p>	<p>Issuer Company is required to following additional requirements in relation to issue related advertisements:</p> <ul style="list-style-type: none"> <li>a) Issue related advertisements shall contain additional details as regards the manner in which the shareholders who have not been served notice electronically may apply in addition to the contents prescribed in Regulation 84(1)</li> <li>b) The issuer may have the flexibility to publish the dispatch advertisement in additional newspapers,</li> </ul>



	disclosing the date of completion of dispatch of abridged letter of offer and the application form and other details as mentioned in Regulation 84(1).	<p>over and above those newspapers as required in Regulation 84.</p> <p>c) The advertisement should also be made available on the website of the Issuer, Registrar, Lead Managers, and Stock Exchanges</p> <p>d) The Issuer shall make use of advertisements in television channels, radio, internet etc. in the form of crawlers/tickers, to disseminate information relating to the application process.</p>
76: ASBA (Applications Supported by Blocked Amount) Facility	<p>An applicant to the <b>Rights Issue shall do so only through the ASBA facility</b>, which facility shall be provided by the issuer in the manner specified by the Board.</p> <p>Provided that payment through any other electronic banking mode shall be permitted in respect of an application made for any reserved portion outside the issue period.</p>	<p>The issuer shall along with Lead Manager(s) to the issue, the registrar, and other recognized intermediaries [as deemed fit by issuer and lead manager(s)] <b>institute an Optional Mechanism (non-cash mode only)</b> to accept the applications of the shareholders subject to ensuring that no third party payments shall be allowed in respect of any application.</p>
SEBI Circular SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated January 22, 2020 regarding streamlining the process of Rights Issue	<p>SEBI introduced Dematerialized Rights Entitlements (REs). This provides physical shareholders are required to provide their Demat Account details to Issuer/Registrar to the Issue for credit of REs not later than two working days prior to issue closing date, such that credit of REs in their Demat Account takes place at least one day before issue closing date.</p>	<p>In case the physical shareholders who have not been able to open a Demat Account or are unable to communicate their Demat details, in terms of SEBI Circular dated January 22, 2020, to the issuer/ registrar for credit of REs within specified time, such physical shareholders may be allowed to submit their application subject to following conditions:</p> <p>(a) Issuer along with lead manager(s) and other recognized intermediary shall institute a mechanism to allow physical shareholders to apply in the rights issue. Issuer along</p>



		<p>with lead manager(s) shall ensure to take adequate steps to communicate such a mechanism to physical shareholders before the opening of the issue.</p> <p>(b) Such shareholder shall not be eligible to renounce their rights entitlements.</p> <p>(c) Such physical shareholders shall receive shares, in respect of their application, only in demat mode. The lead managers may also be guided by Para 10 of the Form A Schedule V of the ICDR Regulations which states that:-</p> <p>Following disclosures have been made in the draft offer document/ draft letter of offer:</p> <ol style="list-style-type: none"><li>1. An undertaking from the issuer that at any given time, there shall be only one denomination for the equity shares of the issuer , excluding SR equity shares (Equity shares having superior voting rights), where an issuer has outstanding SR equity shares; and</li><li>2. An undertaking from the issuer that it shall comply with all disclosure and accounting norms specified by the Board.</li></ol>
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**Additional Clarification:**

- 1) In respect of mechanisms at point (iii) and (iv) above, the issuer along with Lead Manager(s) shall ensure the following:
  - (a) The mechanism(s) shall only be an additional option and not a replacement of the existing process. As far as possible, attempts will be made to adhere to the existing prescribed framework.



- (b) The mechanism(s) shall be transparent, robust and have adequate checks and balances. It should aim at facilitating subscription in an efficient manner without imposing any additional costs on investors. The issuer along with lead manager(s), and registrar shall satisfy themselves about the transparency, fairness and integrity of such mechanism.
  - (c) An FAQ, online dedicated investor helpdesk, and helpline shall be created by the issuer company along with lead manager(s) to guide investors in gaining familiarity with the application process and resolve difficulties faced by investors on priority basis.
  - (d) The issuer along with lead manager(s), registrar, and other recognized intermediaries (as incorporated in the mechanism) shall be responsible for all investor complaints.
- 2) In respect of all offer documents filed until July 31, 2020, it has been decided to grant the following relaxations:
- (i) Authentication/ certification/ Undertaking(s) in respect of offer documents, may be done using digital signature certifications.
  - (ii) The issuer along with lead manager(s) shall provide procedure for inspection of material documents electronically.

#### **MCA General Circular No. 21/2020 dated May 11, 2020**

As per Section 62(1)(a) read with Section 62(2) of the Companies Act, 2013 (hereinafter referred as “the Act”) states that the Notice as per Section 62(1)(a) i.e., for Right Issue, shall be dispatched through Registered Post or through Electronic Mode or Courier or any other mode having proof of delivery to all the existing shareholders at least three days before opening of the issue.

However, due to current scenario is not practically possible for the Companies to dispatch notice through postal services or Courier, by considering this, SEBI had issued Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020 (As stated above) and Keeping in consideration the SEBI Circular, MCA has also issued General Circular No. 21/2020 dated May 11, 2020 for providing clarification on dispatch of notice under Section 62(2) of Companies Act, 2013 by listed companies for right issues opening upto July 31, 2020.

As per the Circular, **for the Rights Issues opening upto July 31, 2020**, in case of Listed Companies, which comply with the aforementioned SEBI Circular dated May 06, 2020, inability to dispatch of notice under Section 62(2) of the Companies Act, 2013 through registered post or speed post or courier would not be viewed as violation of Section 62(2) of the Act.

#### **Conclusion**

After considering both the Circular we can conclude that MCA General Circular No. 21/2020 dated May 11, 2020 is applicable for those Listed Companies which complying with the SEBI Circular dated May 06, 2020 and whose Rights Issue are opening upto July 31, 2020.

Inability to dispatch of notice through registered post or speed post or courier under Section 62(2) of Companies Act, 2013 and SEBI (ICDR) Regulations, 2018 would not take as violation of any of such Provisions and Regulations.

#### **Disclaimer**

This is note is as per understanding and interpretation of author. It is advisable to seek professional and legal advices before proceeding with this note. Firm or author will not be liable for any loss caused due to this note.