

CLIENT UPDATE

March 2020

EXECUTIVE SUMMARY

GENERAL CIRCULAR 1/2020 ISSUED BY THE MINISTRY OF CORPORATE AFFAIRS

The Ministry of Corporate Affairs (“MCA”) issued the General Circular No. 1/2020 dated 2nd March 2020 which provides a clarification on prosecutions filed or internal adjudication proceedings initiated against Independent Directors or Non-Executive Directors (not being promoters or key managerial personnel).

DISCLAIMER: No person should rely on the contents of this document without first obtaining advice from a qualified professional. This document is contributed on the understanding that the Firm, its employees and consultants are not responsible for the results of actions taken on the basis of information in this document, nor for any error in or omission from this document. Further, the Firm, its employees and consultants, expressly disclaim all and any liability and responsibility to any person who reads this document in respect of anything, and of the consequences of anything done or omitted to be done by such person in reliance, whether wholly or partially upon the whole or any part of this document.

For Private Circulation Only
© Juris Legal & Financial Services

2020

GENERAL CIRCULAR NO. 1/2020

The Ministry of Corporate Affairs issued the General Circular No. 1/2020 dated 2nd March 2020. The key highlights of the Circular are as follows:

- **Liability for defaults in absence of Key Managerial Personnel:** Ordinarily, Whole-Time Directors and Key Managerial Personnel (“KMP”) would be liable for defaults committed by a company. In their absence, such directors who have given their consent for incurring liability in terms of e-form GNL-3 would be liable. However, in certain cases the penal provisions of the Companies Act, 2013 (“Act”) hold a specific director, officer, or any other person liable for the default. In such cases action should be initiated only against such director, officer, or person as the case may be.
- **Liability of Independent Directors or Non-Executive Directors:** In view of Section 149(12) of the Act, Independent Directors (“IDs”) and Non-Executive Directors (“NEDs”) (being non-promoter and non-KMP) should not be arrayed in any civil or criminal proceedings under the Act, unless the commission or omission of such acts by the company had occurred with their knowledge, attributable through Board processes, and with their consent or connivance or where they had not acted diligently.
- **Nature of default:** Filing of information/records with the registry, maintenance of statutory registers, minutes of the meetings, or compliance with orders issued by statutory authorities are not the responsibility of the IDs or the NEDs, unless a specific requirement is provided in the Act or in such orders, as the case may be.
- **Presentation of documents:** Certain documents may be sought to ascertain the involvement of the concerned officers of the company. If the lapses are attributable to the decisions taken by the Board, civil or criminal proceedings should not be unnecessarily initiated against the IDs or the NEDs unless sufficient evidence exists to the contrary.
- **Inspection of records:** To ascertain whether a particular director or KMP was serving in the company on the date of the default, the records available in the office of the Registrar, including e-forms DIR-11 or DIR-12, along with the copies of the annual returns or financial statements should also be examined.
- **Sanction from the Ministry:** In case of doubt with regard to the liability of any person, for proceedings required to be initiated by the Registrar, guidance may be sought from the MCA. Consequently, any such proceeding must be initiated after due sanction from the Ministry.

For any assistance in filing the abovementioned forms and complying with the requirements under the Companies Act, you may email us at delhi@jurislegal.org or call us on +91 11 4359 3370.