



FIRESIDE CHAT SERIES

From the desks of Jayant Bakshi and Asawari Kapur



IMPACT ON TIMELINES UNDER THE POSH LAWS DURING COVID-19 CRISIS

Part 2

A: How should one conduct meetings/ investigations now? We may breach the timelines under POSH if we wait for the lock down to end.

J: In wake of the nationwide lock down, most of us are now working from home. This may result in a significant issue for some employers who received complaints of sexual harassment prior to the lock down and are in the process of conducting an inquiry or have received complaints during this lock down and need to urgently initiate an inquiry. The choices one has in such a situation:

- (a) Defer the investigations and be non-compliant under the POSH Act with regard to the timelines provided; or
- (b) Conduct such meetings/ investigations via video-conferencing – though there is no specific provision under the POSH Act on this matter

Let us briefly analyse each option. Under **option (a)**, the employer may take a plea that considering the nation-wide lock down and the strict instructions to work from home, the Internal Committee ('IC') was not in a position to conduct such investigations. Hence, at least for the period of the lock down, the timelines (under the POSH laws) should be deemed to be extended, where an investigation was underway. This argument should derive some strength from Apex Court's own order of indefinitely extending the 'period of limitation' on filing petitions, applications, suits, appeals, and other proceedings at courts and tribunals across the country in light of the present circumstances caused by the Covid-19 pandemic. Whether or not the regulatory authorities would consider this argument favorably, would be seen in times to come. **Option (b)** is to continue the investigations and conduct meetings using video-conferencing ["VC"] facilities. Typically, companies today are using facilities such as Cisco or Zoom for their 'work from home' requirements. Thus, even in case of such POSH meeting/ investigations, the IC can avail these VC facilities.

While the POSH laws are silent on this aspect, employers can always argue that such VC facilities were used (i) to safeguard compliance with the POSH laws during the lock down on account of the Covid-19 pandemic (ii) to ensure that the matter is not kept in abeyance and action is taken on-time (iii) without causing any injury to the rights of either the Complainant or the Respondent. Further, the Hon'ble Supreme Court has also allowed the use of VC facilities (in its circular dated 23.03.2020) as well as alternatives such as Skype, Facetime or WhatsApp to ensure that the process of seeking justice is not obviated. The Ministry of Corporate Affairs ["MCA"] has shown leniency and allowed companies to hold meetings of their Board, even for certain restricted matters through VC or other audio-visual means.

J: Which option do you recommend?

A: We would advise our clients to go with option (b). We also recommend employers/ IC to follow, in principle, the guidelines issued by the MCA in case of holding board meetings via VC, as mentioned under section 173(2) of Companies Act, 2013, read with Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014. While these guidelines are not applicable in case of POSH investigations/ meeting, they demonstrate the best practices which can be followed when conducting meetings via VC.