KPMG

Accounting and Auditing Update

Issue no. 58/2021

May 2021

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Foreword

The Indian capital market has undergone a significant change over the recent years. From erstwhile promoter led companies to new age companies including technology and start-ups with no identifiable promoters, necessitated a need to revisit some of the existing provisions, most importantly those relating to promoter and promoter group companies. Therefore, the Securities and Exchange Board of India (SEBI) constituted a subgroup to review the regulatory framework relating to promoters and promoter group. Basis the recommendations of the subgroup, SEBI has issued a consultation paper and has, *inter alia*, sought views on the need to shift the concept of promoter and promoter group to 'person in control' or 'controlling shareholders' and 'persons acting in concert'. Amongst other, the recommendations also seek to rationalise the definition of promoter group and proposed reduction in lock-in period in respect of minimum promoter's contribution and specified securities held by persons other than promoters. In this edition of Accounting and Auditing Update (AAU), we aim to summarise the proposals issued by SEBI in its consultation paper.

With a view to facilitate enhanced disclosures and transparency in operations by companies in India, the Ministry of Corporate Affairs (MCA) has issued a slew of amendments to the Schedule III to the Companies Act, 2013 (2013 Act) relating to presentation and disclosures in the financial statements. The amendments are largely driven by the reporting requirements of the new auditor's report, Companies (Auditor's Report) Order, 2020 (CARO 2020) effective for companies from financial years commencing on or after 1 April 2021. Additionally, as part of the amendments, companies are required to disclose details relating to crypto and virtual currency, if traded in the notes to the statement of profit and loss. The amendments have also brought much needed clarity on presentation of lease obligations of a lessee in the financial statements. Our article on the topic aims to provide an overview of the changes made in Schedule III to the 2013 Act.

Further, to bring clarity in the application of recent amendments relating to the treatment of unspent amount of Corporate Social Responsibility (CSR) under the 2013 Act, the Institute of Chartered Accountants of India (ICAI) has issued a guidance in the form of Frequently Asked Question (FAQ). As per the guidance, a company would be required to recognise a liability for the unspent CSR amount as at the end of the financial year in accordance with the provisions of Ind AS 37, *Provisions, Contingent Liabilities and Contingent Assets*. Additionally, companies have been permitted to set-off the amount contributed to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) on 31 March 2020 over and above the minimum amount required to be spent for financial year 2019-20 against the amount earmarked for CSR for financial year 2020-21 subject to certification by the CFO and the statutory auditor of the company. Our regulatory updates section provides an overview of these and other financial reporting updatesin India.

We would be delighted to receive feedback/ suggestions from you on the topics we should cover in the forthcoming editions of AAU.

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CHAPTER 1

Key revisions to Schedule III to the Companies Act, 2013

This article aims to:
Provide an overview of the recent changes introduced to the Schedule III to the Companies Act, 2013.

Introduction

Schedule III to the Companies Act, 2013 (2013 Act) provides general instructions for presentation of financial statements of a company under both Accounting Standards (AS) and Indian Accounting Standards (Ind AS). Schedule III has three parts and they are as follows:

- **Division I:** Applicable to companies whose financial statements are required to comply with Companies AS Rules, 2006 (for companies following AS)
- **Division II:** Applicable to companies whose financial statements are required to comply with Companies Ind AS Rules, 2015 (for companies following Ind AS other than NBFCs)
- **Division III:** Applicable only to NBFCs[1] whose financial statements are required to comply with Companies Ind AS Rules, 2015.

1. Non-Banking Financial Company (NBFC) means a NBFC as defined in Section 45-I(f) of the Reserve Bank of India Act, 1934 and includes housing finance companies, merchant banking companies, micro finance companies, mutual benefit companies, venture capital fund companies, stock broker or sub-broker companies, nidhi companies, chit companies, securitisation and reconstruction companies, mortgage guarantee companies, pension fund companies, asset management companies and core investment companies.

Overview of the amendments

On 24 March 2021, the Ministry of Corporate Affairs (MCA) amended Schedule III to the 2013 Act. The amendment enhances the disclosures required for the preparation of the financial statements.

The amendments to Schedule III are applicable from 1 April 2021.

The following section provides an overview of the changes made to the respective divisions of the Schedule III to the 2013 Act.

Key changes applicable to Division I, II and III

Balance sheet and related notes section

- **Trade payables:** Disclose trade payables ageing schedule in the following format:

(Amount in INR)

Particulars	Outstanding for following periods from due date of payment*				Total
	Less than 1 year	1-2 years	2-3 years	More than 3 years	
i. MSME**					
ii. Others					
iii. Disputed dues-MSME					
iv. Disputed dues-Others					

*In the absence of due date of payment, above disclosure to be provided from the date of the transaction. Also, unbilled dues should be disclosed separately.
**Micro, Small and Medium Enterprises.

- **Trade receivables:** Disclose trade receivables ageing schedule in the following format:

(Amount in INR)

Particulars	Outstanding for following periods from due date of payment*					Total
	Less than 6 months	6 months-1 year	1-2 years	2-3 years	More than 3 years	
i. Undisputed Trade Receivables-considered good						
ii. Undisputed Trade Receivables-considered doubtful						
iii. Disputed Trade Receivables-considered good						
iv. Disputed Trade Receivables-considered doubtful						

*In the absence of due date of payment, above disclosure to be provided from the date of the transaction. Also, unbilled dues should be disclosed separately.

- **Change due to revaluation:** Disclose details in relation to amount of change due to revaluation for Property Plant and Equipment (PPE) and intangible assets (if change is 10 per cent or more in the aggregate of the net carrying value of each class of PPE/intangible assets).

- **Additional note on share capital:** Disclose 'shareholding of promoters' in the note on share capital in the notes to balance sheet as per following format:

Shares held by promotes at the end of the year				Percentage of change during the year
S. No	Promoter name	No. of shares	Percentage of total shares	
Total				

- **Use of funds:** If a company has not used funds for the specific purpose for which they were borrowed from banks and financial institutions, then details of where they have been used has to be disclosed in the notes to the balance sheet.
- **Regulatory information:** New disclosure requirements under the head additional regulatory information to be provided in the notes to the balance sheet. It relates to:
  - ***Title deeds of immovable property:*** Title deeds of immovable property not held in the name of the company in the prescribed format which, *inter alia*, would include details of title deed held in the name of, held since date, reasons for not being held in the name of the company, etc.
  - ***Valuation by registered valuer:*** Fair value of investment property or revaluation of PPE/ intangible assets (if any) is based on the valuation by a registered valuer as defined per valuation rules.
  - ***Loans and advances:*** Loans and advances granted in the nature of loans to promoters, directors, Key Managerial Personnel (KMPs) and the related parties, repayable on demand or granted without specifying terms in the prescribed format.
  - ***Ageing schedule:*** Ageing schedule for Capital Work in Progress (CWIP)/Intangible Assets Under Development (IAUD) (including whose completion is overdue or has exceeded its cost compared to its original plan) in the prescribed format.
  - ***Benami property:*** Details of benami property held in terms of amount, beneficiaries, reference in the balance sheet, details of proceedings against the company along with status/nature, etc.

- ***Borrowings against security of current assets:*** In case of borrowings from banks or financial institutions on the basis of security of current assets, disclose details relating to quarterly returns and summary of reconciliations.
- ***Wilful defaulter:*** If a company is declared as a wilful defaulter by any bank or financial institution, then disclose the date of declaration as defaulter and details of defaults (amount and nature of defaults).
- ***Scheme of arrangement:*** Disclose the effect of schemes of arrangements, if any, that have been accounted in accordance with the schemes approved by the competent authority and accounting standards and any deviation thereof, to be explained.
- ***Struck-off companies:*** Details of relationship with struck-off companies such as name, nature of transaction, balance outstanding, etc. in a prescribed format.
- ***Layer of companies:*** Reasons for non-compliance with provision related to number of layers of companies under Section 2(87) of the 2013 Act.
- ***Utilisation of borrowed funds and share premium:*** Detailed disclosure where a company has advanced/loaned/invested funds (borrowed funds/share premium/any other sources or kind of funds) to intermediaries with the understanding (in writing or otherwise) that the intermediary would:
  - Directly/indirectly lend or invest in ultimate beneficiaries or
  - Provide any guarantee, security or the like to or on behalf of the ultimate beneficiaries.

  Also, similar disclosure would be required in case of receipt of funds from a funding party.
- ***Registration of charges:*** Disclosure of charges or satisfaction yet to be registered with the Registrar of Companies (ROC) beyond the statutory period along with details and reasons thereof.

Statement of profit and loss

Introduction of additional regulatory information to be provided in the notes to the statement of profit and loss as follows:

- **Undisclosed income:** Provide details of undisclosed income in terms of any transaction not recorded in the books of accounts that has been surrendered or disclosed as income in the tax assessment.
- **Corporate Social Responsibility (CSR):** Details of CSR including amount required to be spent/spent/shortfall/previous years' shortfall/reasons for shortfall/nature of CSR, etc.
- **Virtual currency:** Details of crypto currency or virtual currency, if traded, in terms of profit/loss on transactions, amount of currency held at reporting date, deposits or advances from any person for trading in crypto/virtual currency.

Other key changes

Division I

Balances sheet and related notes section

- **Long-term borrowings:** Disclose 'current maturities of long-term borrowings' under the heading 'short term borrowings schedule'. Earlier it was disclosed under 'other current liabilities' head.
- **Security deposits:** Disclose security deposits under the heading 'other non-current assets'. Earlier security deposits were disclosed as part of 'long-term loans and advances'.
- **Ratios:** Disclose certain ratios in the notes and explain the items included in numerator and denominator of those ratios. Those ratios are:
  i. Current ratio
  ii. Debt service coverage ratio
  iii. Return on equity ratio
  iv. Trade payables turnover ratio
  v. Net capital turnover ratio
  vi. Net profit ratio
  vii. Return on capital employed
  viii. Return on investment.

Division II

Balances sheet and related notes section

- **Long-term borrowings:** Disclose 'current maturities of long-term borrowings' under the heading 'short term borrowings schedule'. Earlier it was disclosed under 'other current liabilities' head.

- **Lease liabilities:** Disclose current and non-current portion of lease liabilities under the head 'current and non-current financial liabilities' on the face of the balance sheet. Earlier this disclosure was under the head 'borrowings' for non-current portion and 'other financial liabilities' for current portion.
- **Other financial assets:** Disclose 'other financial assets' in the notes. This is a new requirement and it will include following line items:
  - Security deposits
  - Bank deposits for more than 12 months maturity
  - Others (to be specified).
- **Ratios:** Disclose certain ratios in the notes and explain the items included in numerator and denominator of those ratios. Those ratios are:
  - Current ratio
  - Debt service coverage ratio
  - Return on equity ratio
  - Trade payables turnover ratio
  - Net capital turnover ratio
  - Net profit ratio
  - Return on capital employed
  - Return on investment.

Statement of changes in equity

- **Equity:** Disclose additional line items in the statement of changes in equity such as:
  a. Changes in equity share capital due to prior period errors and
  b. Restated balance at the beginning of the current reporting period.

  Additionally, the entire disclosure for equity is to be given for prior period as well.
- **Defined benefit plans and financial liabilities:** Schedule III now provides an option to present remeasurement of defined benefit plans and fair value changes relating to own credit risk of financial liabilities designated at Fair Value Through Profit or Loss (FVTPL) as a separate column under 'reserves and surplus'. Earlier this information could be given only as a note.

Division III

Balances sheet and related notes section

- **Ratios:** Disclose certain ratios in the notes and explain the items included in numerator and denominator of those ratios. Those ratios are
  i. Capital to Risk-weighted Assets Ratio (CRAR)
  ii. Tier I CRAR
  iii. Tier II CRAR
  iv. Liquidity coverage ratio.
- **Lease liabilities:** Disclose current and non-current portion of lease liabilities under the head 'current and non-current financial liabilities' on the face of the balance sheet.

Statement of changes in equity

- **Equity:** Disclose additional line items in the statement of changes in equity such as:
  a. Changes in equity share capital due to prior period errors and
  b. Restated balance at the beginning of the current reporting period.

  Additionally, the entire disclosure for other equity is to be given for prior period as well.
- **Defined benefit plans and financial liabilities:** Schedule III now provides an option to present remeasurement of defined benefit plans and fair value changes relating to own credit risk of financial liabilities designated at Fair Value Through Profit or Loss (FVTPL) as a separate column under 'reserves and surplus'. Earlier this information could be given only as a note.

Consider this

The recent amendments to Schedule III mandate enhanced disclosures in the financial statements by a company. The amendments to presentation and disclosure requirements are aimed at enabling the higher level of corporate governance and additional tools with the regulators to ensure closer observation on the financial transactions of a company.

- **Amendments are aligned with the Companies (Auditor's Report) Order, 2020 (CARO 2020):** The amendments to Schedule III are largely driven by requirements relating to CARO 2020. This is an important and imperative step from MCA as several companies in India are in the process of complying with the requirements of CARO 2020 from 1 April 2021. Some of the key requirements aligned with the CARO 2020 clauses are:

  a. Disclosure regarding revaluation of PPE/ intangible assets

  b. Loans or advances granted to promoters, directors, KMPs and the related parties

  c. Disclosure of title deeds of immovable property not held in name of the company

  d. Details of benami property held

  e. Details if a company has not used funds for the specific purpose for which it was borrowed from banks and financial institutions

  f. Specified details such as quarterly returns and summary of reconciliations in case of borrowings being taken from banks or financial institutions on the basis of security of current assets

  g. New disclosures relating to undisclosed income and CSR under the head 'additional information' in the notes to the statement of profit and loss.

- **Amendment relating to disclosure of lease liabilities:** The amended Schedule III requires lease liabilities to be disclosed separately under the head financial liabilities. The amendment removes the anomaly as prior to the amendment Schedule III required finance lease obligations to be disclosed under borrowings. However, Ind AS 116 requires disclosure of lease liabilities separately from other liabilities. The amendment to Schedule III has been introduced in order to maintain uniformity in relation to presentation and disclosure requirement of Ind AS 116.

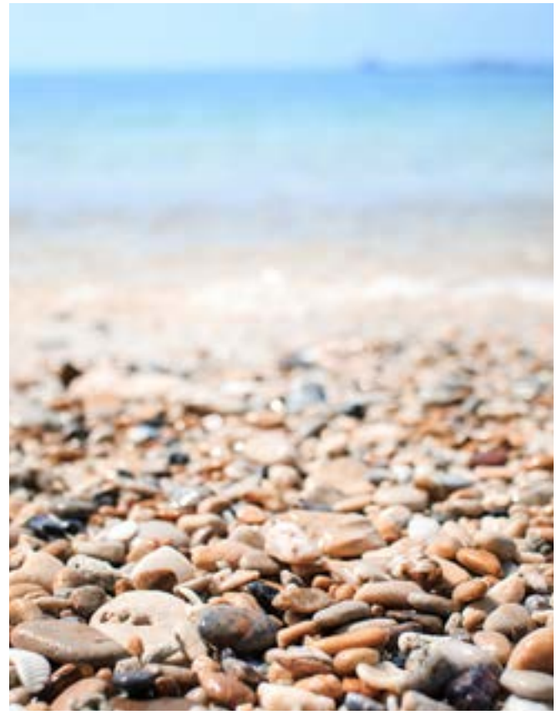
- **Ratios in the board's report:** Schedule V of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) requires disclosure by listed entities in their board's report of various ratios such as inventory turnover ratio, interest coverage ratio, debt equity ratio, net profits ratio, etc. Thus, disclosure of ratios specified under Schedule III would be in addition to the requirements of the Listing Regulations.

  Further, the additional disclosures would also enable an auditor to comment on the solvency status of the company, going concern assessment and its capability of meeting its liabilities existing at the balance sheet date on the basis of the newly introduced financial ratios, ageing of trade receivables/trade payables and expected dates of realisation of financial assets and payment of financial liabilities.

- **Virtual currency:** Introduction of disclosure requirement of crypto or virtual currency is an important step towards regulating digital assets in India and is expected to bring in a lot of transparency in reporting in such direction.

Next steps

The amended Schedule III intends to enhance the transparency in reporting by companies in India. Companies in India should start evaluating and assess the additional lines items to be presented/disclosed in the financial statements.



CHAPTER 2

SEBI reviews regulatory framework of promoter, promoter group and group companies

This article aims to:
Summarise SEBI's proposals on matters relating to promoter and promoter group including rationalisation of definitions and disclosures by group companies under the SEBI ICDR Regulations.

Introduction

The Securities and Exchange Board of India (SEBI) (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) lay down guiding principles for various kinds of issues by a company including public and rights issue. It also provides detailed provisions governing minimum promoter's contribution, lock-in of specified securities held by promoters and disclosure of transactions of the promoters, promoter group and group companies.

In May 2019, Primary Markets Advisory Committee (PMAC) of SEBI had constituted a subgroup to examine the relevance of 'concept of promoter' in the context of Indian securities market. The subgroup held extensive deliberations with various stakeholders and also did a study of various international jurisdictions, where concept of 'controlling shareholder' is used rather than the term 'promoter'.

Based on the recommendations of the subgroup, recently SEBI has issued a consultation paper and proposed amendments to be made under the ICDR Regulations including rationalisation of definition of promoter group and streamlining disclosures of group companies.

It also seeks views on the need to shift the concept of promoter and promoter group to 'person in control' or 'controlling shareholders' and 'persons acting in concert'.

Additionally, SEBI has proposed changes to the provisions relating to lock-in periods for minimum promoter's contribution and other shareholders for public issuance on the main board.

Overview of the proposals

The proposals in the consultation paper relate to the following topics:

- **Rationalisation of definition of 'promoter group':** Currently, Regulation 2(1)(pp) of the ICDR Regulations define promoter group to, *inter alia,* include*:*

  a. The promoter.

  b. An immediate relative of the promoter.

  c. In case promoter is a body corporate then any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold 20 per cent or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds 20 per cent or more of the equity share capital of the issuer and are also acting in concert.

  The present definition of promoter group focusses on capturing holdings by a common group of individuals or persons. However, it has been observed that unrelated companies with common financial investors also get captured in this definition.

  As per SEBI, capturing details of holdings by financial investors may not result in any meaningful information to investors. Rather, it is more relevant to identify and disclose related parties and related party transactions post listing of an entity.

Proposal

SEBI has proposed to do away with the requirement of including entities specified in point (c) above from the definition of promoter group. Accordingly, it proposed to remove point (c) from the definition to give effect to the proposal. The removal is expected to rationalise the disclosure burden and bring it in line with the post listing disclosure requirements.

- **Shift from concept of 'promoter' to concept of 'person in control':** Currently, Regulation 2(1)(oo) of the ICDR Regulations defines 'promoter' to include a person:
  a. Who has been named as such in a draft offer document or offer document or is identified by the issuer in the annual return referred to in Section 92 of the Companies Act, 2013 (2013 Act)
  b. Who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise, or
  c. In accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act.

  SEBI observed following concerns relating to the present concept of 'promoter':

  a. Change in nature of ownership of listed companies: There has been a significant increase in the number of private equity and institutional investors who invest in companies and take up substantial shareholding, and in some cases control. Also, traditional and family run companies with identified promoters are now increasingly open to merger and acquisition opportunities and exits instead of maintaining a 'once a promoter, always a promoter' status.

  The said changes in ownership could lead to situations where the persons with no controlling rights and minority shareholding continue to be classified as a promoter. Such persons may, thereby, have influence over the listed entity disproportionate to their economic interest, which may not be in the interests of all stakeholders.

  b. Increased focus on quality of board and management: The increased focus on quality of board and management has also reduced the relevance of the concept of promoter. Shareholders now look to the board of directors and management to protect their rights and add value, while discharging their duties.

  c. Utility of identification of promoter group: The identification and updation of promoter group is required to be done for each promoter of a listed entity which could become challenging over the time, in particular, for large conglomerates. It could also result in identification of persons who are not involved with the business of the issuer and such information may not be meaningful for investors.

Proposals

To address the above concerns, SEBI has sought views as to whether the existing concept of promoter and promoter group should continue or there is a need to shift to the concept of 'person in control' or 'controlling shareholders' and 'persons acting in concert', respectively. If so, it seeks views on the timeframe and manner for making such a shift.

In addition to ICDR Regulations, the change if notified would necessitate removal of reference to promoters and promoter group and introduction of concept of person in control or controlling shareholders in various other SEBI Regulations such as SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (Takeover Regulations) and SEBI (Prohibition of Insider Trading) Regulations, 2015.

It could also have implications on laws administered by other regulators such as the Ministry of Corporate Affairs (MCA), the Reserve Bank of India (RBI) and the Insurance and Regulatory Development Authority of India (IRDAI).

- **Streamlining the disclosures of 'group companies':** In accordance with Regulation 2(t) of ICDR Regulations, the term 'group companies' should include such companies (other than promoter(s) and subsidiary(ies)) with which the issuer company has had related party transactions, during the period for which financial information is disclosed (as covered under the applicable accounting standards) and also other companies as considered material by the board of the issuer.

  An issuer is required to make certain disclosures in the offer document with respect to five largest listed group companies[1] for the last three years. Some of the key disclosures are as following:

  a. Date of incorporation
  b. Nature of activities
  c. Equity capital
  d. Reserves
  e. Sales
  f. Profit after tax
  g. Earnings per share and diluted earnings per share
  h. Pending litigation involving the group company which has a material impact on the issuer.

1. To be determined on the basis of the market capitalisation one month before the date of filing the offer document and in case of a fast track issue, one month before the reference date.

In case, there are no listed group companies, the financial information has to be given for the five largest unlisted group companies based on turnover.

SEBI observed that financial investors, generally get covered under the definition of group companies on account of investments made and/or dividend paid, etc. despite no other transactions between them and the listed company. Further, entities which are not material also get covered under the present definition. Also, there could be situations where companies may have ceased to be group companies during the last three years, but issuers are required to reach out to such companies and seek their cooperation for providing information.

It is to be further noted that the concept of group companies is not required to be disclosed after listing and there is no reference to this term either in the LODR or the Takeover Regulations. Further, there is a separate requirement to disclose related party transactions in an offer document (including in the financial statements) along with post listing disclosures to be made in accordance with LODR. Accordingly, additional disclosures with regard to group companies might not be required.

Proposals

SEBI has proposed that only names and registered office address of all the group companies should be disclosed in the offer document. All other disclosure requirements like financial information of top five listed/ unlisted group companies, litigation, etc., presently done in the draft red herring prospectus may not be required to be disclosed. However, these disclosures may continue to be made available on the websites of the listed companies.

- **Reduction in lock-in period for minimum promoters' contribution and other shareholders:** Currently, following lock-in period has been prescribed under the ICDR Regulations during which promoters and persons other than promoters cannot transfer specified securities held by them:

  a. *Minimum promoters' contribution*[2]: Lock-in period of **three years** from the date of commencement of commercial production or date of allotment in the initial public offer, whichever is later

  b. *Promoters' holding in excess of minimum promoters' contribution:* Lock-in period of **one year** from the date of allotment in the initial public offer.

  c. *Specified securities held by persons other than promoters:* The entire pre-issue capital held by such persons should be locked-in for a period of **one year** from the date of allotment in the initial public offer.

  As per SEBI, the specified lock-in period of three years for minimum promoters' shareholding was required when companies used to raise public capital for project financing/ greenfield projects. However, in current times, it observed that the companies that are going public are well established with mature businesses, have pre- existing institutional investors like private equity firms, alternate investment funds, etc. and their promoters have demonstrated 'skin in the game' for several years before proposing listing. Further, greenfield financing through initial public offer has also become non-existent.

  Also, in respect of issue size exceeding INR100 crore (excluding the component of offer for sale) an issuer is required to make arrangements for the use of proceeds of the issue to be monitored by a monitoring agency to ensure that the funds mobilised are used for the intended purpose of the objects of the issue.

Proposals

In accordance with above, SEBI has proposed to revise the lock-in period specified under the ICDR Regulations with respect to following:

a. *Minimum promoters' contribution:* If the object of the issue involves offer for sale or financing other than for capital expenditure for a project, then minimum promoters' contribution should be locked-in for a period of **one year** from the date of allotment in the initial public offer. Further, the shares held by promoter(s) would be exempt from lock-in requirements after six months from date of allotment in the IPO, only towards the purpose of achieving compliance with minimum public shareholding norms.

b. *Promoters' holding in excess of minimum promoters' contribution:* Lock-in period of **six months** from the date of allotment in the IPO has been prescribed.

c. *Specified securities held by persons other than promoters:* The entire pre-issue capital held by persons other than the promoters should be locked-in for a period of **six months** from the date of allotment in the IPO.

2. At least 20 per cent of the post-issue capital including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with IRDAI.

Next steps

With the evolving changes in the Indian capital markets, there was a need to revisit some of the existing provisions, most importantly those relating to promoter and promoter group companies. While some of these are aimed at easing restrictions and extent of disclosures related to promoter and promoter group companies, the most fundamental change being proposed is shift from the concept of 'promoter' to 'person in control'.

The proposed reduction in prescribed lock-in period for promoters and other shareholders is expected to be welcomed by the investor community. Further, the proposed rationalisation of disclosures vis-à-vis group companies and promoter group aim to align the current regulations with that of the international practices and ease out the reporting burden being faced by the companies that are in the process of listing. However, these relaxations should be accompanied by a corresponding strengthening of the disclosure requirements around linkages, dependencies and transactions with such entities that are related to the promoter/person in control that are relevant for investors' understanding of a company. This may require a further refinement of the definition of 'related parties'.

Shift in the concept from 'promoter' to 'person in control' seeks to address the recent changes in the organisation structures of companies in India with the extent of promoters' holding in Indian companies showing a decreasing trend. While there is a case for revisiting the concept, the identification of the 'promoter' or 'person in control' still remains relevant in the Indian context considering the extent of promoter holdings. This is evident from the OECD report on 'Ownership structure of Listed Companies in India, 2020'[3] which depicted a downward trend in aggregate shareholdings of promoters in the top 500 listed companies, while still being a very dominant share of holdings (from 58 per cent in 2009 to 50 per cent in 2018). On the other hand, there has been a significant increase in the shareholding of institutional investors in the top 500 listed companies (from approximately 25 per cent in 2009 to 34 per cent in 2018)[3]. There are private equity and other institutional investors that invest in unlisted companies and continue to hold shares post listing, many times being the largest shareholders, having special rights on the listed company, such as the right to nominate directors. On the other hand, many companies these days including new age and technology companies, are non-family owned and/or do not have a distinctly identifiable promoter group and may have a diverse set of financial investors.

The proposed change is also expected to address situations where persons continue to remain promoters of companies even if they don't hold any controlling rights or have minority shareholding subsequently.

Therefore, the concept of 'person in control' needs to strike the right balance in recognising the various classes of dominant shareholders and bringing a framework that is well suited for all, but most importantly one that is relevant and protects the interests of the investors, including public shareholders. Further, as SEBI seeks to bring in the concept of 'person in control', it would need to provide guidance on what constitutes 'control' in the context of defining 'persons in control', clearly recognising that a majority shareholding may not be required to be considered as a 'person in control'. In this context, SEBI has identified that it would need to harmonise the definitions of control and persons in control under its regulations e.g., LODR, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 2015. As an extension, SEBI should also discuss the interplay between definition of control vis-a-vis the concept and definition of control in Ind AS and the Companies Act, 2013.

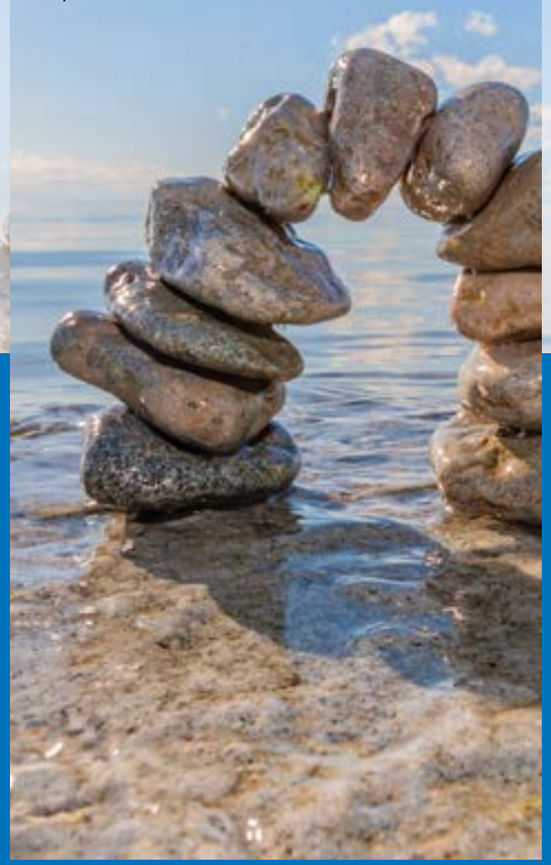
Comments on the proposals have been invited up to 10 June 2021. Companies should take cognisance of these proposals as once notified, there would be significant shift in their present processes, in particular those relating to classification of promoter and promoter group and resultant disclosures to be made. Consequent changes are also likely to be made in other SEBI regulations including LODR and Takeover Regulations. Companies should watch out for development in this area.

(Source: SEBI consultation paper on 'Review of the regulatory framework of promoter, promoter group and group companies as per Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018' dated 11 May 2021)

3. Report on 'Ownership structure of listed companies in India, issued by Organisation for Economic Co-operation and Development (OECD) on 6 July 2020

CHAPTER 3

Regulatory updates



Eligibility of CSR funds for creating health infrastructure and oxygen generation to combat COVID-19

The Ministry of Corporate Affairs (MCA) through a circular dated 5 May 2021 has clarified that spending of funds earmarked for Corporate Social Responsibility (CSR) for certain activities would be considered as eligible CSR activities under Schedule VII of the Companies Act, 2013 (2013 Act). The following are the activities that have been included in the eligible CSR activities list:

a. Creating health infrastructure for COVID-19 care

b. Establishment of medical oxygen generation and storage plants

c. Manufacturing and supply of oxygen concentrators, ventilators, cylinders and other medical equipment for countering COVID-19 or

d. Other similar activities.

The above activities would fall in item no. (i) and (xii) of the Schedule VII relating to promotion of health care, including preventive health care and disaster management respectively.

Companies may undertake these activities directly by themselves or in collaboration as shared responsibility with other companies, subject to the fulfillment of the Companies (CSR Policy) Rules, 2014 and circulars issued by MCA relating to CSR from time to time.

(Source: MCA general circular no. 09/2021 dated 5 May 2021)

Clarification on unspent CSR amount

Background

MCA through a notification dated 22 January 2021 had issued certain amendments to the provisions of the CSR under the 2013 Act. In accordance with the amendments, a company would be mandatorily required to utilise the unspent amount earmarked for CSR activities, failing which it would be transferred to a fund specified in Schedule VII of the 2013 Act in the following manner:

- **Unspent amount of CSR on ongoing CSR projects:** In case the CSR amount remains unspent pursuant to any ongoing CSR project undertaken by a company as per its CSR policy, then the company should transfer such unspent amount to a special account within a period of 30 days from the end of the Financial Year (FY).

  The company should spend the amount transferred to the unspent CSR account within a period of three FYs from the date of such transfer as per its obligation towards the CSR policy.

  In case it fails to spend the amount within the specified period, it would be required to transfer the same to a fund specified in Schedule VII of the 2013 Act, within a period of 30 days from the date of completion of the third FY.

- **Unspent CSR amount in cases other than ongoing projects:** When there is no ongoing project, the unspent amount should be transferred to a fund specified in Schedule VII of the 2013 Act within a period of six months from the expiry of the FY.

The amendments came into effect from 22 January 2021.

New development

On 10 May 2021, the Institute of Chartered Accountants of India (ICAI) through a Frequently Asked Question (FAQ) has clarified the effect of the above amendments on accounting treatment of amounts to be incurred towards CSR. In accordance with the provisions of Ind AS 37, *Provisions, Contingent Liabilities and Contingent Assets,* the obligating event requiring recognition of CSR expenditure (and a liability, as applicable) occurs as follows:

- During the FY, when carrying on CSR activities (spending/incurring)
- At the end of the FY, to the extent of the unspent amount relating to:
  a. Ongoing projects and
  b. Other than ongoing projects.

Basis above, it has been clarified that:

a. CSR expenditure would be recognised as an expense in the statement of profit and loss as and when such expenditure is incurred on the CSR activities as per the board approved CSR policy and CSR projects during the FY.

b. For the 'unspent amount', a legal obligation arises to transfer to specified unspent CSR account depending upon the fact whether such unspent amount relates to ongoing projects or not. Therefore, liability needs to be recognised for such unspent amount as at the end of the FY as per para 17(a) of Ind AS 37.

Further, as per Ind AS 34, *Interim Financial Statements,* CSR obligation will be recognised based on the principles for recognition of the same in annual financial statements.

The conclusions drawn above will equally apply for companies preparing financial statements as per the Companies (Accounting Standards) Rule, 2006.

(Source: FAQ on 'Accounting for amounts to be incurred towards CSR pursuant to the Companies (CSR Policy) Amendment Rules, 2021' issued by ICAI on 10 May 2021)

Clarification on offsetting excess CSR spent for FY2019-20

Pursuant to an appeal made by the MCA to the Managing Directors (MDs)/Chief Executive Officers (CEOs) of top 1,000 listed companies, certain companies claimed to have contributed CSR funds to the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) over and above their prescribed amount for FY2019-20.

In view of the same MCA through a notification dated 20 May 2021 has provided clarification where a company has contributed any amount to 'PM CARES Fund' on 31 March 2020, which is over and above the minimum amount as prescribed under Section 135(5) of the 2013 Act for FY2019-20, and such excess amount or part thereof is offset against the requirement to spend under Section 135(5) for FY2020-21 in terms of the aforementioned appeal. This set off would not be viewed as a violation subject to the following conditions:

a. The amount offset as such should have factored the unspent CSR amount for previous FYs, if any

b. The Chief Financial Officer (CFO) should certify that the contribution to PM CARES Fund was indeed made on 31 March 2020 in pursuance of the appeal and the same should also be certified by the statutory auditor of the company and

c. The details of such contribution should be disclosed separately in the annual report on CSR as well as in the board's report for FY2020-21 in terms of Section 134(3)(o) of the 2013 Act.

(Source: MCA circular dated 20 May 2021)

Relaxations under the Companies Act, 2013 amid COVID-19

The MCA has issued relaxations from various compliances under the 2013 Act. Those are as follows:

- **Time gap between two board meetings:** Currently, Section 173(1) of the 2013 Act requires every company to hold minimum four meetings of its Board of Directors (BoD) every year with a gap of at least 120 days between two consecutive meetings.

  Relaxation

  MCA has decided to extend the gap between two board meetings by a period of 60 days for the first two quarters of FY2021-22. Accordingly, the gap between two consecutive board meetings may be extended to 180 days during the quarters from 1 April 2021 to 30 June 2021 and 1 July 2021 to September 2021, instead of 120 days as required under Section 173(1) of the 2013 Act.

  (Source: MCA general circular no. 08/2021 dated 3 May 2021)

- **No additional fees in delayed filing of certain forms:** Additional fees would not be levied upto 31 July 2021 for any delayed filing of various forms under the 2013 Act (other than charge related forms) that are due for filing during 1 April 2021 to 31 May 2021.

  (Source: MCA general circular no. 06/2021 dated 3 May 2021)

- **Forms related to creation or modification of charge:** MCA has provided relaxation from filing forms related to creation or modification of charges under the 2013 Act as follows:

  a. *In case the date of creation/modification of charge is before 1 April 2021, but the timeline for filing such form had not expired under Section 77 of the 2013 Act as on 1 April 2021:* The period beginning from 1 April 2021 and ending on 31 May 2021 would be excluded for the purpose of accounting the number of days under Section 77 or Section 78 of the 2013 Act.

  Accordingly, if the form is not filed within such period, the first day after 31 March 2021 would be reckoned as 1 June 2021 for the purpose of counting the number of days within which the form is required to be filed under Section 77 or Section 78 of the 2013 Act.

  b. *In case the date of creation/modification of charge is between 1 April 2021 to 31 May 2021:* The period beginning from the date of creation/modification of charge to 31 May 2021 would be excluded for the purpose of counting of days under Section 77 or Section 78 of the 2013 Act.

  Accordingly, if the form is not filed within such period, the first day after the date of creation/modification of charge would be reckoned as 1 June 2021 for the purpose of counting the number of days within which the form is required to be filed under Section 77 or Section 78 of the 2013 Act.

The relaxation will not apply, in case:

a. The forms i.e. CHG-1 and CHG-9 had already been filed before 3 May 2021 (i.e. the date of issue of this circular)

b. The timeline for filing the form has already expired under Section 77 or Section 78 of the 2013 Act prior to 1 April 2021.

c. The timeline for filing the form expires at a future date, despite exclusion of the time provided above.

d. Filing of Form CHG-4 for satisfaction of charges.

(Source: MCA general circular no. 07/2021 dated 3 May 2021)

Also refer, KPMG in India's First Notes on 'Extension of timelines of filing financial results for listed entities amid COVID-19 and other relaxations' dated 10 May 2021.

SEBI issues relaxations for listed companies amid COVID-19

- **Extension of timeline for filing financial results with the stock exchange(s):** The Securities and Exchange Board of India (SEBI) through its circulars dated 29 April 2021, has extended the timeline for filing financial results by listed companies for the quarter, half-year and year ended 31 March 2021 with the stock exchange(s) as follows:

  a. *Companies with listed specified securities (i.e. equity shares and convertible shares):* Financial results for the quarter/year ended 31 March 2021 can be filed upto 30 June 2021 (earlier 15 May 2021/30 May 2021).

  b. *Companies with listed Non-Convertible Debentures (NCDs)/Non-Convertible Redeemable Preference Share (NCRPS)/ Commercial Papers (CPs)/securitised debt instruments and municipal debt securities:* Financial results for half-year/year ended 31 March 2021 can be filed up to 30 June 2021 (earlier 15 May 2021/30 May 2021).

  Further, listed companies are permitted to use digital signature certifications for authentication/ certification of filings/submissions made to the stock exchanges under the relevant SEBI Regulations/circulars till 31 December 2021.

  For a detailed read, please refer KPMG in India's First Notes on 'Extension of timelines of filing financial results for listed entities amid COVID-19 and other relaxations' dated 10 May 2021.

  (Source: SEBI circular no. SEBI/HO/CFD/CMD1/P/ CIR/2021/556 and circular no. SEBI/HO/DDHS/DDHS_ Div11/P/CIR/2021/557 dated 29 April 2021)

- **Relaxation from compliance to REITs and InvITs:** SEBI has decided to extend the due date for regulatory filings and compliances for Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) for the period ended 31 March 2021 by one month over and above the timelines, prescribed under the SEBI (InvITs) Regulations, 2014 and SEBI (REITs) Regulations, 2014 and circulars issued thereunder.

  (Source: SEBI circular no. SEBI/HO/DDHS/DDHS_Div3/P/CIR/2021/563 dated 14 May 2021)

- **Relaxation in timelines for compliances by debenture trustees:** SEBI has decided to extend the timelines for the following regulatory requirements of the SEBI circular dated 12 November 2020 applicable to debenture trustees for the quarter/half-year/year ended 31 March 2021:

Sr. no.	Regulatory requirements	Extended timeline
1	Submission of reports/certifications to stock exchanges	15 July 2021
2	Following disclosures on website: a. Monitoring of asset cover certificate and quarterly compliance report of the listed entity b. Monitoring of utilisation certificate c. Status of information regarding breach of covenants/terms of the issue, if any action taken by debenture trustee d. Status regarding maintenance of accounts maintained under supervision of debenture trustee	15 July 2021
3	Reporting of regulatory compliance	31 May 2021

(Source: SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2021/561 dated 3 May 2021)

Amendments to LODR

On 5 May 2021, SEBI has issued various amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) with an aim to strengthen corporate governance practices and disclosure requirements, ease compliance burden on listed companies and realign it with recent regulatory developments. The amendments were approved by SEBI in its board meeting dated 25 March 2021.

The key amendments are as follows:

- **Applicability of LODR (Regulation 3):** Regulation 3 deals with applicability requirements of the LODR. The amendment provides that once any of the provisions of the LODR become applicable to a listed entity on the basis of market capitalisation, it would continue to apply to such entities even if they fall below such thresholds.
- **Corporate governance requirements with respect to a subsidiary of a listed entity (Regulation 24):** A listed entity should not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than or **equal to** 50 per cent or cease the exercise of control over the subsidiary without passing a special resolution in its general meeting. Currently, the requirement of passing special resolution is applicable in case the shareholding falls below 50 per cent.
- **Disclosure of events or information (Regulation 30 and Schedule III):** Regulation 30(6) provides that the disclosure of discussion held in a board meeting such as those relating to financial results, dividends, buy-back of securities to stock exchange should be made within 30 minutes from the conclusion of the board meeting.

  Regulation 30(6) and Schedule III have been amended to provide that in case of board meetings being held for more than one day, the financial results should be disclosed within 30 minutes of end of the meeting for the day on which it has been considered.
- **Business Responsibility and Sustainability Report (BRSR) (Regulation 34)**: Currently, top 1,000 listed companies[1] in India are required to furnish a Business Responsibility Report (BRR) to the stock exchanges as a part of their annual reports.

  The amendments have discontinued the requirement of submitting BRR by listed companies after FY2021-22. Accordingly, companies would be required to submit a new report on ESG parameters, namely Business Responsibility and Sustainability Report (BRSR) in the following manner:

  - **Mandatory from FY2022-23:** For top 1,000 listed companies by market capitalisation[1]
  - **Voluntary for FY2021-22:** For top 1,000 listed companies by market capitalisation[1]
  - **Voluntary for other companies:** Listed companies (other than top 1,000) and companies which have listed their specified securities on the Small and Medium Enterprises (SME) exchange may voluntarily submit BRSR in place of BRR effective FY2021-22 onwards.

  Additionally, SEBI through a notification dated 10 May 2021 has prescribed the format of new report, BRSR along with the guidance note to enable companies to interpret the scope of disclosures required to be made in the report.
- **Applicability and role of a Risk Management Committee (RMC) (Regulation 21):** SEBI has issued following amendments relating to the applicability and role of RMC of a listed entity:

  a. *Applicability:* Extension of the requirement of constituting RMC to top 1,000 listed entities on the basis of market capitalisation as at the end of the immediate previous FY (currently applicable to top 500 listed entities).

  b. *Members of RMC:* The RMC should have minimum three members with majority of them being members of the board of directors, **including at least one independent director**. Additionally, in case of a listed entity with outstanding SR equity shares[2], at least two-thirds of the RMC shall comprise independent directors.

  c. *Meeting and quorum of RMC:* The RMC should meet at least twice a year (earlier once a year). The meetings of RMC should be conducted in such a manner that on a continuous basis not more than 180 days should elapse between any two consecutive meetings.

     Further, the quorum for a meeting of the RMC should be either two members or one-third of the members of the committee, whichever is greater, including at least one member of the board of directors in attendance.

  d. *Role of RMC:* The role and responsibility of the RMC has been specified to, *inter alia*, include formulation of a detailed risk management policy and monitoring its implementation, periodic review of such policy, review of the appointment, removal and terms of remuneration of the Chief Risk Officer (if any), etc.

1. Based on market capitalisation calculated as on 31 March of every FY.
2. Equity shares having superior voting rights.

- **Revision of provisions relating to re-classification of promoter/promoter group entities (Regulation 31A):** Currently, Regulation 31A of the LODR permits reclassification of promoters of listed entities as public shareholders in different scenarios, subject to the specified conditions. The reclassification scenarios, *inter alia*, include the following:

  a. When a promoter is replaced by a new promoter

  b. Where a company ceases to have any promoters (i.e. becomes professionally managed).

  Relaxation from this requirement was given by SEBI on a case to case basis.

  SEBI has issued following revisions to the existing provisions of the LODR:

  a. The BoD would be required to analyse the reclassification request immediately in the next board meeting or within three months from the date of receipt of the request from its promoter(s), whichever is earlier. Currently there is no definitive timeline for the BoD to analyse such requests.

  b. The time gap between the date of board meeting and the shareholders' meeting for considering the request of the promoter(s) seeking reclassification has been reduced to a minimum of one month and maximum three months (currently minimum three months and maximum six months).

  c. The requirement of seeking approval of shareholders would not apply in cases where the promoter seeking reclassification and persons related to the promoter(s) seeking reclassification, together holds shareholding of less than one per cent, subject to the promoter not being in control.

  d. Exemption from the procedure for reclassification would be granted in cases where reclassification is pursuant to an open offer or a scheme of arrangement in cases where the intent of the erstwhile promoter(s) to reclassify has been disclosed in the letter of offer or scheme of arrangement. Additionally, the requirement relating to minimum public shareholding requirements would also not be applicable in case of reclassification pursuant to an open offer.

Effective date: The amendments are applicable from the date of their publication in the official gazette i.e. 5 May 2021.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2021/22 dated 5 May 2021 and SEBI circular no. SEBI/HO/CFD/CMD-2/P/CIR/2021/562 dated 10 May 2021)

Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of commercial banks, urban co-operative banks and non-banking finance companies

The Reserve Bank of India (RBI) through its notification dated 27 April 2021, has prescribed guidelines for appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SA) of commercial banks (excluding Regional Rural Banks (RRBs)), Urban Co-operative Banks (UCBs) and Non-Banking Finance Companies (NBFCs) (including Housing Finance Companies) for FY2021-22 and onwards. These guidelines supersede all previous guidelines issued by RBI on the subject.

The key guidelines, *inter alia*, include the following:

- **Prior approval of RBI:** Commercial Banks (excluding RRBs) and UCBs will be required to take prior approval of RBI (Department of Supervision) for appointment/reappointment of SCAs/SAs, on an annual basis.
- **Number of SCAs/SAs:** For entities with asset size of INR15,000 crore and above as at the end of previous year, the statutory audit should be conducted under joint audit of a minimum of two audit firms (partnership firms/Limited Liability Partnerships (LLPs)). All other entities should appoint a minimum of one audit firm (partnership firm/LLP) for conducting statutory audit. It should also be ensured that joint auditors of the entity do not have any common partners and they are not under the same network of audit firms.
- **Independence of auditors:** In case of commercial banks (excluding RRBs) and NBFCs (which are required to constitute an audit committee of the board), the Audit Committee of the Board (ACB)/Local Management Committee (LMC) should monitor and assess the independence of auditors and conflict of interest position in terms of relevant regulatory provisions, standards and best practices. In case of UCBs/remaining NBFCs, the BoD should monitor and assess the independence of the auditors.
- **Professional standards of SCAs/SAs:** The board/ACB/LMC of entities would review the performance of SCAs/SAs on an annual basis. Any serious lapses/negligence in audit responsibilities or conduct issues on part of the SCAs/SAs or any other matter considered as relevant should be reported to RBI within two months from completion of the annual audit. Such reports should be sent with the approval/recommendation of the board/ACB/LMC, with the full details of the audit firm.
- **Tenure and rotation:** Entities will have to appoint the SCAs/SAs for a continuous period of three years, subject to the firms satisfying the eligibility norms each year. An audit firm

would not be eligible for reappointment in the same entity for six years (two tenures) after completion of full or part of one term of the audit tenure. However, audit firms can continue to undertake statutory audit of other entities.

One audit firm can concurrently take up statutory audit of a maximum of four commercial banks (including not more than one Public Sector Bank (PSB) or one All-India Financial Institution (NABARD, SIDBI, NHB, EXIM Bank) or RBI), eight UCBs and eight NBFCs during a particular year, subject to compliance with required eligibility criteria and other conditions for each entity and within overall ceiling prescribed by any other statutes or rules.

- **Statutory audit policy and appointment procedure:** Each entity should formulate a board/LMC approved policy to be hosted on its official website/public domain and formulate necessary procedure thereunder to be followed for appointment of SCAs/SAs.

(Source: RBI notification no. RBI/2021-22/25 dated 27 April 2021)

Corporate governance in banks – Appointment of directors and constitution of committees of the board

Basis a comprehensive review of the framework for governance in the commercial banks, RBI through a notification dated 27 April 2021 had issued certain instructions with regard to the chair and meetings of board, composition of certain committees of the board, appointment of whole-time directors. The instructions would be applicable to all the private sector banks including Small Finance Banks (SFBs) and wholly owned subsidiaries of foreign banks. In respect of State Bank of India (SBI) and nationalised banks, these guidelines would apply to the extent the stipulations are not inconsistent with provisions of specific statutes applicable to these banks or instructions issued under the statutes.

The key instructions are as follows;

- **Chair and meetings of the board:** The Chair of the board should be an independent director. In the absence of the Chair of the board, the meetings of the board should be chaired by an independent director. The quorum for the board meetings should be one-third of the total strength of the board or three directors, whichever is higher. At least half of the directors attending the meetings of the board should be independent directors.
- **Committees of the board:**
  a. *Audit Committee of the Board (ACB):* The ACB should be constituted with only Non-Executive Directors (NEDs). The Chair of the board should not be a member of the ACB. The ACB should meet at least once a quarter with a quorum of three members. At least two-thirds of the members attending the meeting of the ACB should be independent directors.
  b. *Risk Management Committee of the Board (RMCB):* The board shall constitute an RMCB with a majority of NEDs. The RMCB should meet at least once in each quarter with a quorum of three members. At least half of the members attending the meeting of the RMCB should be independent directors of which at least one member should have professional expertise/ qualification in risk management.
  c. *Nomination and Remuneration Committee (NRC):* The board shall constitute a NRC made up of only NEDs. The NRC should meet with a quorum of three members. At least half of the members attending the meeting of the NRC should be independent directors, of which one should be a member of the RMCB.
- **Tenure of MD and CEO and WTDs:** The post of the Managing Director (MD) and Chief Executive Officer (CEO) or Whole-Time Director (WTD) cannot be held by the same incumbent for more than 15 years. An individual may be considered for reappointment only after a minimum gap of three years subject to meeting other conditions. During this three-year cooling period, the individual should not be appointed or associated with the bank or its group entities in any capacity, either directly or indirectly.

Effective date: The instructions come into effect from the date of issue of the circular i.e. 26 April 2021. To enable smooth transition to the revised requirements, banks are permitted to comply with these instructions latest by 1 October 2021.

(Source: RBI notification no. RBI/2021-22/24 dated 26 April 2021)

Relaxations by RBI amid COVID-19

- **Resolution framework 2.0 for COVID-19 related stress of MSME:** RBI has decided to extend the resolution framework (for Micro, Small and Medium Enterprises (MSMEs)) for restructuring existing loans without a downgrade in the asset classification subject to specified conditions which, *inter alia*, includes the following:

  a. The borrower should be classified as a MSME as on 31 March 2021.

  b. The borrowing entity is GST-registered on the date of implementation of the restructuring. However, this condition will not apply to MSMEs that are exempt from GST-registration. This shall be determined on the basis of exemption limit obtaining as on 31 March 2021.

  c. The aggregate exposure, including non-fund based facilities, of all lending institutions to the borrower does not exceed INR25 crore as on 31 March 2021.

  d. The borrower's account was a 'standard asset' as on 31 March 2021.

  e. Upon implementation of the restructuring plan, the lending institutions should keep provision of 10 per cent of the residual debt of the borrower.

  In respect of restructuring plans implemented as above, asset classification of borrowers classified as standard may be retained as such, whereas the accounts which may have slipped into NPA category between 1 April 2021 and date of implementation may be upgraded as 'standard asset', as on the date of implementation of the restructuring plan.

  In respect of accounts of borrowers which were restructured in terms of the MSME restructuring circulars, lending institutions are permitted, as a one-time measure, to review the working capital sanctioned limits and/or drawing power based on a reassessment of the working capital cycle, reduction of margins, etc. without the same being treated as restructuring. The decision with regard to above shall be taken by lending institutions by 30 September 2021.

  The reassessed sanctioned limit/drawing power should be subject to review by the lending institution at least on a half-yearly basis and the renewal/reassessment at least on an annual basis. The annual renewal/reassessment should be expected to suitably modulate the limits as per the then-prevailing business conditions.

  (Source: RBI notification no. RBI/2021-22/32 dated 5 May 2021).

- **Resolution framework 2.0 for COVID-19 related stress of individuals and small businesses:** RBI has issued additional set of measures to address the potential stress to individual borrowers and small businesses amid COVID-19. The key measures are as follows:

  a. Lending institutions are permitted to offer a limited window to individual borrowers and small businesses to implement resolution plans in respect of their credit exposures while classifying the same as standard upon implementation of the resolution plan subject to the specified conditions.

  Following borrowers would be eligible for the window of resolution to be invoked by the lending institutions:

  - Individuals who have availed of personal loans excluding the credit facilities provided by lending institutions to their own personnel/staff.
  - Individuals who have availed of loans and advances for business purposes and to whom the lending institutions have aggregate exposure of not more than INR25 crore as on 31 March 2021.
  - Small businesses, including those engaged in retail and wholesale trade, other than those classified as MSME as on 31 March 2021, and to whom the lending institutions have aggregate exposure of not more than INR25 crore as on 31 March 2021.

  b. The resolution plans implemented under this window may, *inter alia*, include rescheduling of payments, conversion of any interest accrued or to be accrued into another credit facility, revisions in working capital sanctions, granting of moratorium etc. based on an assessment of income streams of the borrower. However, compromise settlements are not permitted as a resolution plan for this purpose.

  c. The moratorium period, if granted, may be for a maximum of two years which should come into force immediately upon implementation of the resolution plan.

  d. The resolution plan may also provide for conversion of a portion of the debt into equity or other marketable, non-convertible debt securities issued by the borrower, wherever applicable.

  e. The resolution plan should be finalised and implemented within 90 days from the date of invocation of the resolution process under this window.

  f. Lending institutions publishing quarterly financial statements should make specified disclosures in their financial statements for the quarters ending 30 September 2021 and 31 December 2021. The said disclosures should also be made by companies publishing only annual financial statements in their annual financial statements.

  (Source: RBI notification no. RBI/2021-22/31 dated 5 May 2021).

CBDT extended timelines for certain filings due to COVID-19

The Central Board of Direct Taxes (CBDT) through its press release dated 20 May 2021 has extended the timelines for various compliances under the Income-tax Act, 1961 (IT Act). Those are as follows:

Particulars	Due date	Revised timeline
Statement of financial transactions for FY2020-21	31 May 2021	30 June 2021
Statement of reportable account for the calendar year 2020	31 May 2021	30 June 2021
Statement of deduction of tax for the last quarter of the FY2020-21	31 May 2021	30 June 2021
Certificate of Tax Deducted at Source (TDS) in Form No 16	15 June 2021	15 July 2021
TDS/TCS book adjustment statement in Form No 24G for the month of May 2021	15 June 2021	30 June 2021
Statement of deduction of tax from contributions paid by the trustees of an approved superannuation fund for the FY2020-21	31 May 2021	30 June 2021
Statement of income paid or credited by an investment fund to its unit holder in Form No 64D for the PY2020-21	15 June 2021	30 June 2021
Statement of income paid or credited by an investment fund to its unit holder in Form No 64C for the PY2020-21	30 June 2021	15 July 2021
Return of income for the Assessment Year (AY) 2021-22	31 July 2021	30 September 2021
Report of audit under any provision of the IT Act for the PY2020-21	30 September 2021	31 October 2021
Report from an accountant by persons entering into international transaction or specified domestic transaction under Section 92E of the IT Act for PY2020-21	31 October 2021	30 November 2021
Return of income for AY2021-22	31 October 2021 30 November 2021	30 November 2021 31 December 2021
Belated/revised return of income for AY2021-22	31 December 2021	31 January 2022

(Source: CBDT press release dated 20 May 2021)

Preparation of financial statements and auditor's report of insurance companies

The Insurance Regulatory and Development Authority of India (IRDAI) through a notification dated 5 May 2021 has issued certain amendments to the IRDAI (Preparation of Financial Statements and Auditor's Report of Insurance Companies) Regulations, 2002. The amendments are aimed to provide the manner in which the premium and unearned premium reserve should be recognised by insurers carrying on general insurance business.

As per the amendments:

- **Premium:** Premium should be recognised as income over the contract period or the period of risk, whichever is appropriate. Premium received in advance is the premium where the period of inception of the risk is outside the accounting period and is to be shown under current liabilities.

  Further, unallocated premium includes premium deposit and premium which has been received but for which risk has not commenced. It is to be shown under current liabilities.

- **Unearned premium reserve:** A reserve for unearned premium should be created as the amount representing that part of the premium written which is attributable to and allocated to the succeeding accounting periods. The reserve should be computed in the following manner:

  a. *Marine hull:* 100 per cent of net written premium during the preceding 12 months

  b. *Other segments:* 50 per cent of net written premium during the preceding 12 months or on the basis of 1/365th method on the unexpired period of the respective policies.

Insurance companies are required to follow the method of provisioning of unearned premium reserve in a consistent manner. Further, any change in the method of provisioning can be done only with the prior approval of IRDAI.

Effective date: The amendments are effective from the first day of FY after notification of the amendments.

(Source: IRDAI notification no F. No. IRDAI/Reg/5/177/2021 dated 5 May 2021)

KPMG in India's IFRS institute

Visit KPMG in India's IFRS institute - a web-based platform, which seeks to act as a wide-ranging site for information and updates on IFRS implementation in India.

The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

First Notes

Extension of timelines of filing of financial results for listed entities amid COVID-19 and other relaxations

10 May 2021

In order to accommodate concerns relating to the outbreak of second wave of the COVID-19 pandemic across India, recently, the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) have granted relaxations to companies from certain provisions of the SEBI (Listing Obligations and Disclosure Requirements), Regulations, 2015 (Listing Regulations) and the Companies Act, 2013 (2013 Act) respectively.

Those relate to the following:

- Extension of timeline of various filings with the stock exchange(s) including timeline for filing of financial results to be submitted by the listed entities for the quarter, half-year and year ended 31 March 2021
- MCA relaxations relating to board meetings and filing of various forms.

This issue of First Notes aims to provide an overview of the relaxations provided by SEBI and MCA.

Voices on Reporting (VOR) – Annual updates publication

On 20 April 2021, KPMG in India released the VOR - Annual updates publication. The publication provides a summary of key updates from the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), the Institute of Chartered Accountants of India (ICAI) and the Reserve Bank of India (RBI) that are expected to be relevant for stakeholders for the year ended 31 March 2021.

To access the publication, please click here.

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