KPMG

# Accounting and Auditing Update

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# Foreword

The Ministry of Corporate Affairs (MCA) has issued a slew of amendments to the provisions of the Companies Act, 2013 (2013 Act) effective for companies from 1 April 2021. The amendments, *inter alia*, require every company that uses an accounting software for maintaining its books of account to use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled. An auditor would also be required to state in its report as to whether the company has used such an accounting software with additional comments on the fact that the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention. Further, as part of the amendments to Schedule III to the 2013 Act, companies are also required to disclose details relating to crypto and virtual currency in the notes to the statement of profit and loss. The regulatory updates section of this edition of Accounting and Auditing Update (AAU) provides an overview of these and other regulatory and financial reporting developments in India.

Under the provisions of the Indian Accounting Standards (Ind AS), contingent liabilities are not recognised, rather such liabilities are disclosed as part of the notes to the financial statements. Recently, the Expert Advisory Committee (the committee) of the Institute of Chartered Accountants of India (ICAI) has issued an opinion which discusses a specific situation of disclosure of a contingent liability in the standalone financial statements of a parent company. In this case, a corporate guarantee has been issued by the parent company to a bank for furnishing performance bank guarantee on behalf of wholly owned subsidiary company towards its performance obligation. Our article on the topic summarises the analysis of the committee and related guidance issued in this regard.

The role of the independent directors is crucial in the overall framework of corporate governance. They are expected to bring a healthy balance between the interests of the promoters and other stakeholders including minority and small shareholders. Accordingly, stringent guidelines have been prescribed under the 2013 Act and the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) vis-à-vis the appointment, roles and responsibilities of independent directors. In order to further strengthen the independence attributes of independent directors and enhance their effectiveness in protection of the interest of the minority shareholders, and other functions, recently, SEBI has issued a consultation paper on review of regulatory provisions related to independent directors on the boards of listed companies. Through the consultation paper, SEBI has proposed various revisions to the regulatory provisions relating to independent directors under the LODR. It also seeks views on the need for review of remuneration of independent directors as prescribed under the 2013 Act and LODR. Our article aims to provide an overview of the proposals made by SEBI in its consultation paper.

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

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CHAPTER 1

# Disclosure of contingent liability in the standalone financial statements

***This article aims to:***
Discuss an EAC opinion on disclosure of a corporate guarantee issued by a parent company on behalf of its wholly owned subsidiary in the standalone financial statements of the parent company.

## Introduction

Under Ind AS 37, *Provisions, Contingent Liabilities and Contingent Assets*, contingent liabilities are defined as liabilities that are not recognised because their existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity. Additionally, such liabilities do not meet the recognition criteria under the standard because either it is not probable that an outflow of resources embodying economic benefits will be required to settle the obligation, or a sufficiently reliable estimate of the amount of the obligation cannot be made. Accordingly, a contingent liability is not recognised. A contingent liability is required to be disclosed, unless the possibility of an outflow of resources embodying economic benefits is remote.

Recently, the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India (ICAI) has issued its opinion[1] on 'Disclosure in standalone financial statements of contingent liability in respect of corporate guarantee issued by the parent company to the bank for furnishing performance bank guarantee on behalf of wholly owned subsidiary company towards its performance obligation'.

## Case study

In this case, a parent company (guarantor) had signed a deed of guarantee in favour of a bank (lender) to make available a Performance Bank Guarantee (PBG) for a prescribed amount and time period on behalf of its wholly owned subsidiary (borrower) towards its performance obligation. This PBG was submitted to the beneficiary and would be encashed by the beneficiary under certain circumstances.

The parent company did not disclose the amount of corporate guarantee as part of contingent liabilities in the notes to the standalone financial statements on the basis that there is no liability either actual or contingent towards non-fulfillment of the minimum work programme as prescribed by the beneficiary of the guarantee, in the books of the subsidiary company (borrower).

The EAC deliberated upon the disclosures that would be required in the standalone financial statements (in the context of Ind AS) of the parent company, of the contingent liability in respect of the corporate guarantee given to the bank.

## Guidance under Ind AS

The EAC pointed out that not all the contingent liabilities are within the scope of Ind AS 37. Thus, while the corporate guarantee issued by the parent company may give rise to a contingent liability, first it had to be examined, whether any other Ind AS covers the same before considering the applicability of Ind AS 37. Thus, the EAC examined whether the corporate guarantee given by the parent company is a financial guarantee as defined in Ind AS 109, *Financial Instruments*.

### Financial guarantee

Ind AS 109 defines a financial guarantee contract as *'a contract that requires the issuer to make specified payment to reimburse the holder for a loss it incurs because a specified debtor fails to make payment when due in accordance with the original or modified terms of a* ***debt instrument.****'* The term debt instrument is neither defined in Ind AS 109 nor in Ind AS 32, *Financial Instruments: Presentation.* However, EAC is of the view that the term implies a contractual right to receive cash arising on account of a debtor-creditor relationship. Under the terms of the corporate guarantee, the parent company guarantees that it will pay the prescribed amount specified in the PBG in order to reimburse the bank for a loss it incurs because of encashment of the PBG.

1. EAC Compendium of Opinions - Volume XXXVIII - Query number 3

The EAC is, therefore, of the view that this arrangement complies with the debtor-creditor relationship between the subsidiary and the bank. Under the terms of the corporate guarantee, the parent company guarantees that it will pay 'guaranteed obligations' specified therein in order to reimburse the bank for the loss it incurs because of encashment of the PBG by the beneficiary due to non-performance by the subsidiary of its contractual obligations to the beneficiary. Therefore, the corporate guarantee issued by the parent company to the bank meets the definition of a financial guarantee and falls within the scope of Ind AS 109 and not Ind AS 37. As per Division II of Schedule III to the Companies Act, 2013, financial guarantees should not be disclosed under the head *'Contingent liabilities and Commitments'* in the notes to the balance sheet.

The EAC also noted that the company has neither previously nor on transition to Ind AS asserted explicitly that it regards financial guarantee contracts as insurance contracts and uses accounting that is applicable to insurance contracts.

## Conclusion

Based on the given analysis, EAC is of the view that the requirements of Ind AS 109 and Ind AS 107, *Financial Instruments: Disclosures*, to the extent relevant should be met for the purpose of measurement and disclosure of the financial guarantee respectively. Ind AS 107 requires disclosure of maximum exposure of the financial guarantee to credit risk, which is the maximum amount the entity could have to pay if the guarantee is called on, which may be significantly greater than the amount recognised as a liability.

The company, if so desires, may give reference of such disclosures under the head 'Contingent Liabilities and Commitments' for better understanding of the users of the financial statements.

CHAPTER 2

# SEBI reviews regulatory provisions related to independent directors

***This article aims to:***
Summarise SEBI's proposals on matters relating to independent directors including their appointment, removal and remuneration in its consultation paper.

## Introduction

The role of independent directors is crucial in the overall framework of corporate governance. Independent directors are expected to bring objectivity into the functioning of the board of directors and improve its effectiveness by providing independent judgement on the board's deliberations especially on issues of strategy, performance, risk management, resources, key appointments and standards of conduct along with providing an objective view in the evaluation of the performance of board and management. More importantly, they are expected to bring a healthy balance between the interests of the promoters and other stakeholders including minority and small shareholders. The Companies Act, 2013 (2013 Act) and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) took note of this fact and accordingly prescribed stringent guidelines relating to the appointment, roles and responsibilities of independent directors.

To further strengthen the independence of independent directors and enhance their effectiveness in protection of the interest of the minority shareholders, and other functions, recently, SEBI has issued a consultation paper on review of regulatory provisions related to independent directors on the boards of listed companies. The consultation paper seeks comments/inputs on the proposed revisions to be made in the regulatory provisions relating to independent directors under the LODR with a focus on areas of appointment and role of independent directors.

Additionally, SEBI seeks views on the need for review of remuneration of independent directors as prescribed under the current provisions of the 2013 Act and LODR.

## Overview of the proposals

The proposals made by SEBI in its consultation paper relates to the following:

- **Eligibility of independent directors:** Currently, LODR prescribes a cooling-off period for a person to be eligible to be appointed as an independent director of a listed company. As per the prescribed provisions, a person can be appointed as an independent director, if the person, *inter alia:*

  a. Neither himself/herself, nor his/her relative(s) holds/has held the position of a Key Managerial Personnel (KMP) or is/has been an employee of the listed company, its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he/she is proposed to be appointed.

  b. Has/had no material pecuniary relationship with the listed company, its holding, subsidiary or associate company, their promoters, or directors, during the two immediately preceding financial years or during the current financial year.

According to SEBI the cooling-off period is not uniform and there is a need to harmonise the same. Also, to establish the independence of a person, it is important that KMPs or employees of companies forming part of the promoter group and relatives of such KMPs should also be excluded from acting as independent directors.

***Proposals***

It has been proposed that KMPs or employees of promoter group companies cannot be appointed as independent directors in the company, unless there has been a cooling-off period of three years. This restriction shall also extend to relatives of such KMPs for the same period.

Additionally, cooling-off period in case of material pecuniary relationship (point (b) above) has also been proposed for three years.

- **Appointment and reappointment of independent directors**: In accordance with the current provisions, the Nomination and Remuneration Committee (NRC) recommends a person to be appointed as an independent director who is then appointed by the board of directors. Further, the appointment of independent director(s) has to be approved at the meeting of the shareholders through an ordinary resolution (special resolution in case of reappointment).

  As per SEBI, the current process of appointment of independent directors could be influenced by the promoters which may hinder the independence of independent directors and undermine their ability to differ from the promoter, especially in cases where the interests of promoter and of minority shareholders are not aligned. Further, there is a need for minority shareholders to have greater say in the appointment/re-appointment process of independent directors.

  ***Proposal***

  It is proposed that the appointment and reappointment of independent directors shall be subject to 'dual approval', taken through a single voting process and which meets following two thresholds:

  i. Approval of shareholders by an ordinary resolution in case of appointment and special resolution in case of reappointment and

  ii. Approval by 'majority of the minority[1]' (simple majority) shareholders.

  If either of the above-mentioned approval thresholds are not met, the person would fail to get appointed/reappointed as an independent director. In such a case, the listed company may either:

  a. Propose a new candidate for appointment/ reappointment or

  b. Propose the same person as an independent director for a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such an approval for appointment/ reappointment shall be through a special resolution. The notice to shareholders will include reasons for proposing the same person despite not getting approval of the shareholders in the first vote.

- **Removal of independent directors:** Currently, an independent director can be removed through a simple majority in the first term and through a special resolution in case of second term, after giving him/her a reasonable opportunity to be heard.

  ***Proposal***

  Basis the rationale laid down for appointment and reappointment of independent directors, it has been proposed that removal of independent directors shall also be subject to 'dual approval', taken through a single voting process and which meets following two thresholds:

  i. Approval of shareholders by an ordinary resolution in case of removal in the first term and special resolution in case of removal in the second term and

  ii. Approval by 'majority of the minority[3]' (simple majority) shareholders.

  If either of the above-mentioned approval thresholds are not met, then the removal of such an independent director may again be proposed through a second vote of all shareholders (without a separate requirement of approval by 'majority of the minority'), after a cooling-off period of 90 days but within a period of 120 days. Such an approval for removal shall be through a special resolution. The notice to shareholders will include reasons for proposing the removal again despite not getting approval of the shareholders in the first vote.

- **Prior approval of shareholders for appointment of an independent director:** Currently, companies appoint independent directors as additional directors subject to approval of the shareholders at the next general meeting. Similarly, in case of vacancy of an independent director due to resignation or removal, the current provisions of the 2013 Act provide a time-period of up to three months to appoint another director. Therefore, there can be a significant time gap between appointment of an independent director and approval of shareholders.

  ***Proposal***

  SEBI has proposed that independent directors shall be appointed on the board of directors only with prior approval of the shareholders at a general meeting.

  In case, a casual vacancy arises due to resignation/removal/death/failure to get reappointed, the approval of shareholders should be taken within a time period of three months.

- **Resignation of an independent director:** In case an independent director resigns, then listed companies are required to disclose the detailed reasons for the resignation as given by the independent director along with a confirmation from the independent director that there is no other material reason for resignation other than those already provided. Such disclosures should be provided by the listed company to the stock exchange(s) within seven days from the date of the resignation of an independent director.

  ***Proposals***

  To further strengthen the disclosures around resignation of independent directors, SEBI has proposed that the entire resignation letter of an independent director shall be disclosed along with a list of his/her present directorships and membership in board committees.

  If an independent director resigns from the board of a company stating reasons such as pre-occupation, other commitments or personal reasons, then there will be a mandatory cooling-off period of one year before the independent director can join board of another company.

  Similarly, SEBI has proposed a cooling off period of one year before the independent director can transition from an independent director to a whole-time director in a company.

- **Composition of an audit committee:** Currently, every listed company is required to constitute an audit committee with at least three directors as its members. Further, the composition of an audit committee should be as follows:

  a. *In case of a listed company with outstanding SR equity shares*[2] : The audit committee shall comprise of only independent directors.

  b. *In case of other listed companies*: Two-thirds of the members of audit committee shall be independent directors.

  An audit committee is entrusted with specific responsibilities, including review of financial statements, scrutinising inter-corporate loans and investments and valuation of undertakings and assets of the listed company. Prior approval of an audit committee is also mandatory for related party transactions entered into by a listed company.

  ***Proposal***

  It has been proposed that an audit committee shall comprise of two-third independent directors and one-third Non-Executive Directors (NEDs) who are not related to the promoter, including nominee directors, if any.

- **Enhanced role of NRC:** As per the current provisions, the board of directors of a listed company should constitute the NRC in the following manner:

  a. The committee shall comprise of at least three directors

  b. All directors of the committee shall be non-executive directors and

  c. At least 50 per cent of the directors shall be independent directors. In case of a listed entity with outstanding SR equity shares, two-thirds of the NRC shall comprise of independent directors.

  The committee is required to:

  a. Formulate the criteria for determining qualifications, positive attributes and independence of a director

  b. Identify persons who are qualified to become directors in accordance with the criteria laid down, and recommend to the board of directors for their appointment and removal

  c. Assess whether to extend or continue the term of appointment of the independent directors, on the basis of the report of performance evaluation of independent directors.

  Though NRC is required to lay down the criteria of qualifications and attributes for directors, SEBI observed that there is a lack of transparency in the process followed by NRC. Accordingly, there is a need to prescribe disclosures regarding the process followed by NRC for selection of candidates for the post of independent directors.

  ***Proposals***

  As per the proposals, NRC is required to perform the following while selecting a candidate for the role of an independent director:

  a. Evaluate the balance of skills, knowledge and experience on the board. For the purpose of the evaluation, a description shall be prepared of the role and capabilities required for a particular appointment.

     The person who is recommended to the board of directors for appointment as an independent director should have the capabilities identified in this description.

  b. The committee may use services of external agencies, consider candidates from a wide range of backgrounds, having due regard to diversity and consider the time commitments of the appointees.

  c. The notice for appointment of director to be sent to the shareholders shall, *inter alia*, include skills and capabilities required for

2. Equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer.

the appointment of the independent director and how the proposed individual meets the requirement of the role.

Further, SEBI proposed to modify the composition of the NRC to include two-third of independent directors in place of majority of independent directors.

- **Review of remuneration:** In accordance with the relevant provisions of the 2013 Act, independent directors are not entitled to any remuneration other than fees for attending meetings of the board or committee, reimbursement of expenses for participation in the board and other meetings and profit related commission as may be approved by the members. Stock options (ESOPs) are specifically prohibited to be issued to them under the 2013 Act as well as under LODR.

  There have been various concerns relating to payment of remuneration to the independent directors. On one hand, it is being argued that large remuneration may compromise the independence of independent directors, while on the other, it is believed that lesser compensation may not attract competent independent directors on the boards of the listed companies.

  Also, there is a view that remuneration to independent directors should be on the basis of their value and time-commitments to the company, without linking the same to the profits of the company. This would lead to the independent directors getting a fixed fee, without having any stake in the long-term growth of the company. The other view is that linking remuneration to profit or performance linked commission ensures that independent directors have 'skin-in-the-game'.

***Proposal***

To address the given concerns, SEBI has sought views as to whether there is a need for reviewing the remuneration structure for independent directors. If so, it further seeks views on:

a. Whether ESOPs with a long vesting period of five years, be permitted for independent directors, in place of profit linked commission and

b. What should be the maximum limit of remuneration through ESOPs.

As any modification in the existing remuneration structure of independent directors will require changes to the 2013 Act, SEBI would make appropriate recommendations to the Ministry of Corporate Affairs (MCA) based on the comments received and further analysis of the same.

## Next steps

The proposals aim to broaden the eligibility criteria for independent directors, the process of appointment/re-appointment and removal of independent directors and seeks to enhance transparency in the nomination and resignation of independent directors with enhanced disclosures.

Comments on the proposals have been invited up to 1 April 2021. Companies should take cognisance of the proposals as once made effective there could be a significant shift in their processes, in particular those relating to appointment, reappointment and removal of an independent director. Companies should watch out for the development in this area.

It is also important to note that the MCA has recently notified certain amendments under the 2013 Act which permit a company with no profits or inadequate profits to pay remuneration to non-executive directors including independent directors (termed as 'other directors') in accordance with the provisions of Schedule V of the 2013 Act. Schedule V prescribe the maximum limit of remuneration payable to other directors. SEBI may consider the notified provisions under the 2013 Act while finalising the proposals relating to remuneration of independent directors.

(Source: SEBI consultation paper on 'Review of Regulatory Provisions Related to Independent Directors' issued on 1 March 2021)

CHAPTER 3

# Regulatory updates

## Remuneration to non-executive directors and independent directors in case of no profit or inadequate profits

Currently, in case of no profits or inadequate profits, a company is not allowed to pay remuneration (other than sitting fee) to its directors, including managing director, whole-time director or manager, except as provided under Schedule V[1] of the Companies Act, 2013 (2013 Act) *(Section 197(3) of the 2013 Act)*.

The Companies (Amendment) Act, 2020 introduced amendments to Section 149 and 197 of the 2013 Act and permitted remuneration to non-executive directors, including independent directors, in case of inadequacy of profits similar to executive directors. The amendments have been made effective from 18 March 2021.

In accordance with the amendments, if in any financial year, a company has no profit, or its profits are inadequate, then:

- An independent director may receive remuneration, exclusive of fees payable under Section 197(5), in accordance with the provisions of Schedule V of the 2013 Act *(Section 149(9) of the 2013 Act)*.
- The company should not pay to its directors, including **any managing director, whole-time director,** manager or any other non-executive director, including an independent director, by way of remuneration any sum exclusive of any fees payable to directors under Section 197(5) hereunder except in accordance with provisions of Schedule V *(197(3) of the 2013 Act)*.

*Maximum permissible remuneration to non-executive directors and independent directors*

Consequent to the notification of the amendments relating to remuneration of non-executive directors and independent directors under the Companies (Amendment) Act, 2020, the Ministry of Corporate Affairs (MCA) has also issued amendments to Schedule V of the 2013 Act (Part II – Remuneration). The amendments include reference of **other directors i.e. non-executive director or an independent director** in Schedule V.

Basis amendments, managerial remuneration (including other directors) may be paid in the following manner:

A. **Managerial personnel not functioning in a professional capacity:** If in any financial year during the currency of tenure of a managerial person, **or other director**, a company has no profits or its profits are inadequate, then it may pay remuneration to the managerial person or other director not exceeding the limits given below:

| Where the effective capital is | Limit of yearly remuneration payable shall not exceed (in INR) in case of a managerial person | Limit of yearly remuneration payable shall not exceed (in INR) in case of other director |
|---|---|---|
| Negative or less than INR5 crore | INR60 lakh | **INR12 lakh** |
| INR5 crore and above but less than INR100 crore | INR84 lakh | **INR17 lakh** |
| INR100 crore and above but less than INR250 crore | INR120 lakh | **INR24 lakh** |
| INR250 crore and above | INR120 lakh plus 0.01 per cent of the effective capital in excess of INR250 crore. | **INR24 lakh plus 0.01 per cent of the effective capital in excess of INR250 crore.** |

Remuneration in excess of above limits may be paid, if a special resolution has been passed by the shareholders.

1. Part II of Schedule V prescribe managerial remuneration to be paid by a company in case of profits, no profits or inadequate profits.

**B. Managerial personnel functioning in a professional capacity:** If a managerial person **or other director** is functioning in a professional capacity and possesses graduate level qualification with an expertise and specialised knowledge in the field in which the company operates, then remuneration as per item (A) above may be paid, if such managerial person **or other director** at any time during the last two years before or on or after the date of appointment does not have:

a. Any interest in the capital of the company[2], its holding company or any of its subsidiaries directly or indirectly or through any other statutory structures

b. Any direct or indirect interest or related to the directors, promoters of the company or its holding company or any of its subsidiaries.

*Remuneration in excess of specified limits*

A company may pay remuneration to a managerial person **or other director** in excess of the maximum permissible amounts provided for companies with no profits or inadequate profits (A and B above) subject to specified conditions, in the following circumstances:

- Excess remuneration has been paid by any other company.
  - Such other company is either a foreign company or has got the approval of its shareholders in general meeting to make such payment.
  - The other company treats this amount as managerial remuneration for the purpose of Section 197 and
  - The total remuneration payable by such other company to its managerial personnel is within permissible limits under Section 197 of the 2013 Act.
- Newly incorporated company for a period of seven years from the date of its incorporation
- Sick company for whom a scheme of revival or rehabilitation has been ordered by the Board for Industrial and Financial Reconstruction (BIFR), for a period of five years from the date of sanction of scheme of revival
- Company in relation to which a resolution plan has been approved by the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 for a period of five years from the date of such approval, it may pay any remuneration to its managerial persons **or other directors**
- Remuneration has been fixed by the BIFR or the NCLT.

*(Emphasis added to highlight the changes)*

(Source: MCA notification no. 1255(E) and notification no. 1256(E) dated 18 March 2021)

## Notification of two sections of the Companies (Amendment) Act, 2020

The MCA has notified two sections of the Companies (Amendment) Act, 2020 with effect from 24 March 2021. The notified amendments relate to the following:

- **Penalty for contravention with unpaid dividend norms (Section 124):** Section 124 of the 2013 Act specifies the manner in which the unpaid/unclaimed dividend, if any should be treated by a company. As per the prescribed provisions, a company is, *inter alia*, required to transfer the total amount of dividend which remains unpaid or unclaimed within 30 days from the date of the declaration to any shareholder (entitled to a payment of the dividend), to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account. The unpaid/unclaimed dividend amount should be transferred to the Unpaid Dividend Account within seven days from the date of expiry of the said period of 30 days.

  Further, any amount transferred to the Unpaid Dividend Account which remains unspent/ unclaimed for a period of seven years from the date of such transfer should be transferred by the company to the Investor Education and Protection Fund along with the interest accrued, if any.

  *Amendment*

  In case of contravention with the provisions of Section 124 of the 2013 Act, the amendments prescribe following penalties (in place of fines) for the:

  a. *Company in default:* The company would be liable to a penalty of INR1 lakh. In case of continuing failure, a further penalty of INR500 for each day after the first during which such failure continues, subject to a maximum of INR10 lakh would be levied. (*Earlier, punishable with a minimum fine of INR5 lakh which may extend to INR25 lakh)*

  b. *Officer of the company in default:* Every officer in default would be liable to a penalty of INR25,000. In case of continuing failure, a further penalty of INR100 for each day after the first during which such failure continues, subject to a maximum of INR2 lakh would be levied. *(Earlier, punishable with a minimum fine of INR1 lakh which may extend to INR5 lakh).*

- **Penalty for contravention by a registered valuer (Section 247):** Section 247 of the 2013 Act governs the provisions relating to valuation by registered valuers under the 2013 Act. The registered valuer has been entrusted with various significant responsibilities under the 2013 Act. Those are as follows:

  a. Making an impartial, true and fair valuation of assets

2. Any employee of a company holding shares of the company not exceeding 0.5 per cent of its paid-up share capital under any scheme formulated for allotment of shares to such employees including Employees Stock Option Plan (ESOP) or by way of qualification shall be deemed to be a person not having any interest in the capital of the company.

b. Exercise due diligence while performing the functions as valuer

c. Conduct valuation in accordance with the prescribed Rules

d. Not to undertake valuation of any assets in which he/she has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his/her appointment as valuer or three years after the valuation of assets was conducted by him/her.

*Amendment*

As per the amendments, if a registered valuer contravenes with the provisions of Section 247 of the 2013 Act or the rules made thereunder, then such a valuer will be liable to a penalty of INR50,000 *(earlier punishable with minimum fine of INR25,000 and maximum fine of INR1 lakh).*

(Source: MCA notification no. S.O. 1303(E) dated 24 March 2021)

## Amendments relating to maintenance of books of account and auditor's report under the Companies Act, 2013

The MCA through a notification dated 24 March 2021 has issued certain amendments to the provisions of the Companies (Accounts Rules), 2014 (Accounts Rules) and the Companies Audit and Auditor) Rules, 2014 (Audit Rules). Those are as follows:

- **Manner of books of account to be kept in electronic mode (Rule 3 of Account Rules):** Currently, a company may keep its books of account or other relevant papers in electronic mode in accordance with the manner prescribed under the Account Rules.

  As per the amendments to the Accounts Rules, every company which uses an accounting software for maintaining its books of account, shall use only such accounting software which has a feature of recording audit trail of each and every transaction, creating an edit log of each change made in books of account along with the date when such changes were made and ensuring that the audit trail cannot be disabled. The requirement is effective for the financial year commencing on or after 1 April 2021.

- **Additional disclosures in the board's report (Rule 8 of Accounts Rules):** The amendments require disclosure of following additional matters in the board's report of a company effective from 1 April 2021:

  a. The details of application made or any proceeding pending under the Insolvency and Bankruptcy Code, 2016 during the year along with their status as at the end of the financial year

  b. The details of difference between amount of the valuation done at the time of one-time settlement and the valuation done while taking loan from the banks or financial institutions along with the reasons thereof.

- **Additional matters to be reported in the auditor's report (Rule 11 of Audit Rules):** An auditor is required to include its views and comments on the following additional matters in the auditor's report with effect from 1 April 2021:

  a. The management has represented that to the best of its knowledge and belief, other than as disclosed in the notes to the accounts:

     i. No funds have been advanced or loaned or invested (either from borrowed funds, share premium or any other sources/ kind of funds) by the company to/in any other person(s) or entity(ies), including foreign entities (intermediaries), with the understanding (recorded in writing or otherwise) that the intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company (ultimate beneficiaries) or provide any guarantee, security or the like on behalf of the ultimate beneficiaries.

     ii. No funds have been received by the company from any person(s) or entity(ies), including foreign entities (funding parties), with the understanding (recorded in writing or otherwise) that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the funding party (ultimate beneficiaries) or provide any guarantee, security or the like on behalf of the ultimate beneficiaries.

  b. Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to its notice that has caused an auditor to believe that the representations under points (i) and (ii) above contain any material misstatement.

  c. The dividend declared or paid during the year by the company is in compliance with Section 123 of the 2013 Act.

  d. The company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility. Further, it has been operated throughout the year for all transactions recorded in the software, the audit trail feature has not been tampered with and the audit trail has been preserved by the company as per the statutory requirements for record retention.

(Source: MCA notification no. G.S.R. 205(E) and notification no. G.S.R. 206(E) dated 24 March 2021)

## MCA issued amendments to Schedule III to the Companies Act, 2013

The MCA through a notification dated 24 March 2021 has issued certain amendments to Schedule III to the 2013 Act. Key amendments are as follows:

### Division I: For companies whose financial statements are required to comply with Companies (Accounting Standards) Rules, 2006

*Balance sheet*

- Disclose 'shareholding of promoters' in the specified format in the notes to the balance sheet.
- Disclosure for trade payables/trade receivables to include trade payables/trade receivables ageing schedule in the specified format.
- Reference of 'tangible assets' has been replaced with 'property, plant and equipment'.
- Specific disclosures to be made under the head 'additional regulatory requirement' such as those relating to:
  a. Title deeds of immovable property not held in name of the company
  b. Loans or advances granted to promoters, directors, KMPs and the related parties
  c. Details of benami property held
  d. Compliance with approved schemes of arrangements.

### Division II: For companies whose financial statements are required to comply with Companies (Indian Accounting Standards) Rules, 2015

*Balance sheet*

- Lease liabilities to be disclosed separately under the head 'financial liabilities' (current/non-current liabilities as the case may be) under 'equity and liabilities' section on the face of the balance sheet.
- Additional disclosures to be made 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.
- Disclose 'shareholding of promoters' in the specified format in the notes to the balance sheet.
- If a company has not used funds for the specific purpose for which it was borrowed from banks and financial institutions, then details of where it has been used have to be disclosed in the notes to the balance sheet.
- Specific disclosures to be made under the head 'additional regulatory requirement' such as those relating to:
  a. Title deeds of immovable property not held in name of the company
  b. Loans or advances granted to promoters, directors, KMPs and the related parties
  c. Details of benami property held
  d. Compliance with approved schemes of arrangements
  e. Relationship with struck-off companies
  f. Compliance with number of layer of companies.

*Statement of profit and loss*

- Additional disclosures relating to undisclosed income, Corporate Social Responsibility (CSR) and crypto or virtual currency specified under the head 'additional information' in the notes to the statement of profit and loss.

Certain amendments have also been made to Division III of Schedule III (for Non-Banking Financial Companies (NBFCs) whose financial statements are required to comply with Companies (Indian Accounting Standards) Rules, 2015).

**Effective date:** The amendments are effective from 1 April 2021.

(Source: MCA notification dated 24 March 2021)

## Notification of amendments relating to annual return

The MCA made certain amendments to the provisions relating to annual return under the 2013 Act through the Companies (Amendment) Act, 2017. In accordance with the amendments, a company is not required to disclose the following particulars in its annual return:

a. Its indebtedness and
b. Details in respect of shares held by or on behalf of the foreign institutional investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them.

Additionally, the amendments provided that the CG may prescribe abridged form of annual return for one-person company, small company and such other class or classes of companies as may be prescribed.

These amendments have been made effective from 5 March 2021.

### Format of annual return

Consequent to the notification of the amendments, MCA has issued certain amendments to the Companies (Management and Administration) Rules, 2014. The amendments prescribe the format of abridged annual return for one-person company and small companies in Form No. MGT-7A effective from financial year 2020-21.

It also provided revised format of Form No. MGT – 7 (Annual return for companies other than one-person company and small company).

(Source: MCA notification no. S.O. 1066(E) and notification no. G.S.R. 159(E) dated 5 March 2021)

## Meetings of unitholders of InvITs and REITs through VC or OAVM facility

The Securities and Exchange Board of India (SEBI) through a notification dated 26 February 2021 has further extended the relaxation relating to conduct of meetings of unitholders by the Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs) through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) as under:

- *Annual meetings of unitholders which becomes due in the calendar year 2021:* Up to 31 December 2021 (earlier allowed up to 31 December 2020).
- *Meetings other than annual meeting of unitholders:* Up to 30 June 2021 (earlier allowed up to 31 December 2020).

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2021/21 dated 26 February 2021)

## ICAI publications

### Educational material on Ind AS 105, *Non-current Assets Held for Sale and Discontinued Operations*

Recently, the Institute of Chartered Accountants of India (ICAI) has issued an educational material on Ind AS 105, *Non-Current Assets Held for Sale and Discontinued Operations* which aims to provide guidance on the application and implementation of the standard including accounting and recognition of non-current assets or disposal groups held for sale and presentation and disclosure of discontinued operations in the form of Frequently Asked Questions (FAQs). It also highlights major differences between Ind AS 105 and AS 24, *Discontinued Operations/* IFRS 5, *Non-Current Assets Held for Sale and Discontinued Operations*.

(Source: Educational Material on Ind AS 105 issued by ICAI on 25 February 2021)

### Study on compliance of financial reporting requirements (Ind AS Framework)

The Financial Reporting Review Board (FRRB) of ICAI has issued a publication which highlights the instances of common non-compliances in financial reporting requirements under various applicable statues such as Indian Accounting Standards (Ind AS), Standards on Auditing, Companies (Auditor's Report) Order, 2016 (CARO 2016) and Schedule III to the 2013 Act as observed by FRRB during the review proceedings.

(Source: Study on Compliance of Financial Reporting requirements (Ind AS Framework) issued by ICAI in February 2021)

### Provisions relating to director simplicitor/ independent director vis-à-vis ICAI's members in practice

Recently, the Ethical Standards Board of ICAI has issued a booklet relating to director simplicitor/independent director vis-à-vis members in practice. The booklet aims to provide useful insights pertaining to the relevant scope of work of a Chartered Accountant (CA) in practice as per the provisions of the 2013 Act, the Chartered Accountants Act, 1949 and Code of Ethics of ICAI which is essential while discharging duties as an independent director or director simplicitor in a company.

(Source: Provisions relating to director simplicitor/ independent director issued by ICAI in March 2021)

### Guidance note on audit of banks (2021 edition)

Recently, ICAI has issued a revised guidance note on audit of banks. The revised edition incorporates the impact of the various circulars of Reserve Bank of India (RBI) as well as certain important advisories, pronouncements of the ICAI which would be relevant to bank audits for the financial year ending 31 March 2021.

(Source: Guidance Note on Audit of Banks (2021 edition) issued by ICAI on 20 March 2021)

### Technical guide on revised formats of Long Form Audit Report

In September 2020, RBI has issued the revised formats of Long Form Audit Report (LFAR) which would be applicable for audits of financial year 2020-21 and onwards. The revised formats of LFAR have made several significant changes including many new reporting requirements as compared to the earlier formats of LFAR.

Accordingly, the Auditing and Assurance Standards Board of ICAI has issued a technical guide to provide appropriate guidance to auditors of banks on the revised formats of LFAR.

The technical guide is not a substitute for the guidance note on audit of banks 2021 edition and should be used in conjunction with the guidance note.

(Source: Technical guide on revised formats of Long Form Audit Report issued by ICAI on 22 March 2021)

### Technical guide on audit of IFC in case of public sector banks

RBI through its communication to public sector banks in March 2020 (followed by communication in May 2020) has made reporting on Internal Financial Controls (IFC) in public sector banks mandatory for statutory auditors from the financial year 2020-21 onwards.

Accordingly, ICAI has issued a technical guide on audit of Internal Financial Controls (IFC) which provides additional guidance in relation to certain specific matters that may arise in an audit of IFC in case of public sector banks. The technical guide should be used in conjunction with ICAI's guidance note on audit of IFC over financial reporting while carrying out audit of IFC in case of public sector banks.

(Source: Technical Guide on Audit of Internal Financial Controls in case of Public Sector Banks issued by ICAI on 19 March 2021)

### Technical guide on GST audit

The Goods and Service Tax (GST) and Indirect Taxes Committee of the ICAI has issued a revised technical guide on GST audit. The technical guide provides an insight into the kind of details to be reported in the various tables of Form GSTR-9C (Reconciliation statement) and other related aspects. The guide seeks to cover/address the issues that may arise while conducting the GST audit.

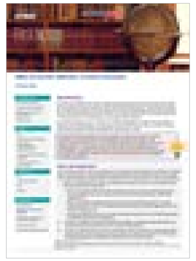
(Source: Technical Guide on GST Audit issued by ICAI in January 2021)

## 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



### MCA revised the definition of listed companies

**8 March 2021**

Certain amendments have been made to the Companies Act, 2013 (2013 Act) through the Companies (Amendment) Act, 2020 (2020 Amendment Act). Among those amendments that are aimed at improving the ease of doing business, is an amendment to the definition of a listed company under Section 2(52) of the 2013 Act. The amended definition empowers the Central Government (in consultation with the Securities and Exchange Board of India (SEBI)) to exclude, certain listed companies and private companies with the intention of getting listed certain class of its securities, from the category of 'listed companies'.

On 19 February 2021, MCA amended the Companies (Specification of definitions details) Rules, 2014 (Rules). The amendment inserts new Rule 2A with effect from 1 April 2021. This rule excludes specified class of companies from the definition of listed companies.

This issue of First Notes provides an overview of the recently amended rules.


## Voices on Reporting (VOR) – Quarterly updates publication

On 18 January 2021, KPMG in India released the VOR - Quarterly 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 quarter ended 31 December 2020.

To access the publication, please click here.

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