Voices on Reporting

Quarterly updates publication

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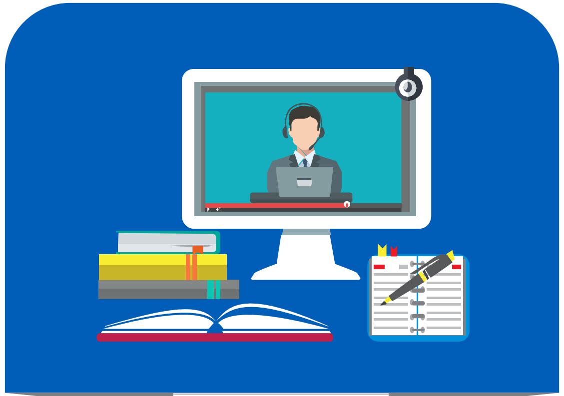


Updates relating to SEBI Regulations

Updates relating to the Companies Act, 2013

COVID-19 relaxations

Other updates

In this publication, we have summarised important updates relating to the quarter ended 30 September 2021 from the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI), the Institute of Chartered Accountants of India (ICAI) and the Reserve Bank of India (RBI).

Listing Regulations

SEBI through its notifications made certain amendments to the provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) with regard to issuers of non-convertible securities. The key amendments relate to the following:

1. SEBI mandates additional compliances for issuers of non-convertible securities

On 7 September 2021, SEBI issued amendments to the Listing Regulations through the SEBI (Listing Obligations and Disclosure Requirements) Fifth Amendment Regulations, 2021 (amendments) with a view to improve transparency and enhance the robustness of the corporate bond market.

Overview of the amendments introduced by SEBI

SEBI requires the provisions of the Listing Regulations to be applicable to the issuers of Non-Convertible Securities (NCS) on the basis of the principal outstanding as on 31 March 2021 of listed non-convertible debt securities. Therefore, applicability of the amendments to issuers of NCS can be bifurcated as follows:

Issuers of non-convertible securities

High Value Debt Listed Entities (HVDLE)

- Companies that have an outstanding value of listed non-convertible debt securities of INR500 crore and above*
- Provisions applicable
  Chapter IV: Regulations 15 – 27** (corporate governance provisions)
  Chapter V: Other reporting and disclosure requirements applicable to issuers of NCS

Other issuers of non-convertible securities

- Companies that have an outstanding value of listed non-convertible debt securities which is less than INR500 crore* and hold other listed non-convertible securities#
- Provisions applicable
  Chapter V: Other reporting and disclosure requirements applicable to issuers of NCS

* Threshold limit for compliance will be computed basis principal outstanding of listed debt securities as on 31 March 2021

** Provisions of these regulations will continue to apply to listed entities even if they fall below the threshold for HVDLE

Other listed NCS include non-convertible redeemable preference shares, perpetual non-cumulative preference shares, perpetual debt instruments and any other securities specified by SEBI

1. SEBI mandates additional compliances for issuers of non-convertible securities

I. Corporate governance provisions applicable to HVDLEs

- **Applicability**: The corporate governance provisions will now be applicable to:

  a. HVDLEs[1]

  b. Listed entities that meet the threshold for HVDLEs during the course of the year would be required to comply with these provisions within six months from the date they become HVDLEs.

- **Timeline:** These provisions would be applicable to a HVDLEs on a 'comply or explain' basis until 31 March 2023 and on a mandatory basis thereafter.

  Key requirements of Listing regulations that have been extended to HVDLEs are as below:

  - Compliance with composition of board of directors e.g. appointment of woman director, minimum number of directors, etc. **(Regulation 17)**
  - Establishing committees of the Board e.g. Audit committee, Nomination and remuneration committee, Risk Management Committees, Stakeholders Relationship Committee and formulation of Vigil mechanism **(Regulation 18-22)**
  - Related Party Transactions (RPTs) approval process including submission of RPTs disclosures along with its standalone financial results for the half year to Stock Exchange (SE) **(Regulation 23)**
  - Compliance with corporate governance requirements with respect to subsidiary **(Regulation 24)**
  - Secretarial audit and secretarial compliance report **(Regulation 24A)**
  - Undertake Directors & Officers (D&O) insurance for all its Independent Directors (IDs) **(Regulation 25)**
  - Obligations with respect to IDs **(Regulation 25 read with regulation 16)**

II. Financial reporting (applicable to all issuers of NCS including HVDLEs)

a. **Timelines for submission of financial results:** Amended regulation 52 of the Listing Regulations requires that a listed entity which has listed its NCS to submit its financial results in the following manner: To submit unaudited or audited **quarterly and year to date standalone** financial results on a **quarterly basis**, within 45 days from the end of the **quarter, other than last quarter**, to the recognised stock exchange(s). For the last quarter, the standalone and consolidated financial results are required to be submitted within 60 days from end of the quarter.

b. The listed entity should also submit as part of its standalone or consolidated financial results for the half year, by way of a note, a statement of assets and liabilities and statement of cash flows as at the end of the half year.

1. The Board of the Manager of the Real Estate Investment Trust (REIT) and Board of Investment Manager of the Infrastructure Investment Trust (InvIT) should ensure compliance with the corporate governance provisions

1. SEBI mandates additional compliances for issuers of non-convertible securities

Period	Before amendment	After amendment
Quarter 1	No requirement to disclose financial results	Submit audited/un-audited financial results with LRR* within 45 days of end of quarter
Quarter 2/half-year	Submit audited/un-audited half yearly financial results with LRR* within 45 days from end of half year	Submit audited/un-audited financial results# with LRR* within 45 days of end of quarter Statement of assets and liabilities and statement of cash flows as at the end of the half year
Quarter 3	No requirement to disclose financial results	Submit audited/un-audited financial results# with LRR* within 45 days of end of quarter
Quarter 4/annual results	Option 1: Un-audited half yearly financial results with LRR* within 45 days from end of half year and Submit audited results as soon as they are approved by BoD Option 2: Submit annual audited financial results within 60 days from end of financial year (advance intimation to be given to stock exchange)	Submit annual audited standalone and consolidated financial results within 60 days from end of financial year along with audit report

* Limited Review Report (LRR) to be issued by the statutory auditor (in case of entities required to be audited by CAG, the LRR will be issued by any practicing chartered accountant)

\# Quarterly and year-to-date financial results.

\## In case of entities required to be audited by the Comptroller and Auditor General of India (CAG), this audit report will be issued by an auditor appointed by CAG. Subsequently, CAG will conduct audit of the financial results and these will be submitted to the stock exchange within nine months from the end of the financial year.

\###SEBI through a circular dated 5 October 2021, has prescribed a revised format for filing of quarterly financial information.

1. SEBI mandates additional compliances for issuers of non-convertible securities

- **Additional ratios to be disclosed along with financial results**: Certain additional ratios are required to be provided by a listed entity while submitting quarterly/annual financial results under Regulation 52 of the Listing Regulations. Those additional ratios are as follows:

  a. Current ratio

  b. Long term debt to working capital ratio

  c. Bad debts to account receivable ratio

  d. Current liability ratio

  e. Total debts to total assets ratio

  f. Debtors turnover

  g. Inventory turnover

  h. Operating margin (%)

  i. Net profit margin (%)

  j. Sector-specific equivalent ratios, as applicable.

- **Format for financial reporting**

  SEBI vide circular number SEBI/HO/DDHS/CIR/2021/0000000637 dated 5 October 2021 has provided a revised format for filing of quarterly financial information by issuers of NCS.

  The circular has provided formats for:

  - Standalone financial results required to be filed with stock exchange on a quarterly basis
  - Standalone and consolidated financial results required to be filed with stock exchange on an annual basis
  - Statement of assets and liabilities to be submitted to stock exchange on a half-yearly basis
  - Statement of cash flows to be submitted to stock exchange on a half yearly basis
  - Format for financial results to be published in newspapers

  SEBI has clarified the following with regard to the comparatives to be provided in the financial results:

  - **Quarterly financial results:** Where the entity does not have corresponding quarterly financial results for the four quarters ended September 2020, December 2020, March 2021 and June 2021, the column on corresponding figures for such quarters would not be applicable
  - **Half yearly financial results**: Where the entity does not have corresponding statement of assets and liabilities or the corresponding cash flow statement for the half year ended September 2020, the column on corresponding figures will not be applicable

III. Additional disclosures to stock exchanges, debenture trustees and on the website

SEBI requires a number of disclosures and certain disclosures have to be given simultaneously to the stock exchanges, debenture trustees and a company's website.

- Price sensitive information to be informed not later than 24 hours from the date of occurrence of the event or receipt of information.

  All price sensitive events/information to be hosted on the entity's website for a minimum period of five years and thereafter as per the archival policy.

- Disclosure of outcome of board meeting within 30 minutes of the closure of the meeting for decision in relation to fund raising proposed to be undertaken by way of NCS or financial results.
- A copy of the annual report along with notice of AGM sent to shareholders, not later than the date of commencement of dispatch to shareholders
- Additional event-based disclosures need to be provided and some of such events are as follows:
  - Fraud/defaults by listed entity or its promoter/KMP/director/employees or arrest of KMP or promoter
  - Change in directors, Key Managerial Personnel (KMP) or Auditor
  - Detailed reasons for resignation of an auditor, one-time settlement with a bank, winding- up petitions filed by any party, etc.

1. SEBI mandates additional compliances for issuers of non-convertible securities

IV. Intimations to stock exchanges regarding status of obligations on NCS

Companies also need to intimate to the stock exchanges about the status of obligations on NCS in the following manner:

- Within five working days prior to the beginning of the quarter, provide details for all NCS for which Interest/ Dividend/Principal (Obligations) is payable during the quarter. (Regulation 57)
- Submit a certificate within seven working days from the end of the quarter regarding status of payment of obligations which were due during the quarter. Additionally, provide details of all unpaid interest/principal obligations in relation to NCS at the end of the quarter.
- Submit a certificate within one working day of the due date regarding the status of the payment of interest/dividend/principal on NCS.

V. Intimation to Stock Exchange (SE) prior to the board meeting

Prior intimation of at least two working days before board meeting should be given to the SE for matters such as publishing financial results (quarterly/annual), alteration in the form or nature of NCS/rights of holders, alteration in the date of the interest/dividend/redemption payment of NCS, fund raising by way of issuance of NCS, any other matter affecting the rights or interests of holders of NCS.

VI. Additional disclosure on website

In addition to the disclosures discussed above, certain new disclosures are required on the website and they are as follows:

- Composition of the various committees of the Board of Directors,
- Any change in the content of website should be updated within two working days.
- Terms and conditions of appointment of independent directors
- Details of establishment of vigil mechanism//whistle blower policy
- Policy for determining 'material subsidiaries'.

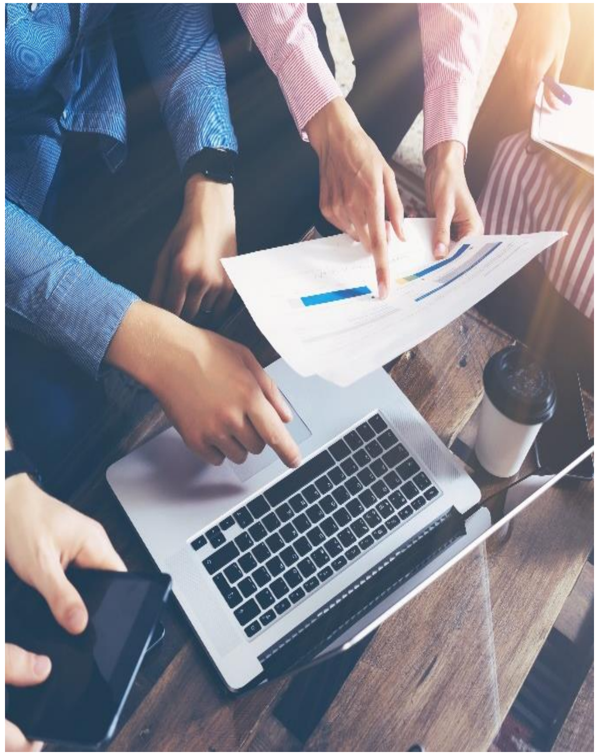
Effective date: Provisions of Regulation 15 to 27 of Chapter IV of the Listing Regulations will be applicable to HVDLE on a 'comply or explain' basis until 31 March 2023 and on a mandatory basis thereafter. All other amendments to Listing Regulations are effective from the date of their publication in the official gazette i.e. 8 September 2021.

1. SEBI mandates additional compliances for issuers of non-convertible securities

Key takeaways

- **Alignment of certain compliances with equity listed companies**: Through the new regulations, SEBI has raised the bar on disclosures and compliances for issuers of NCS, thereby virtually bringing them on par with the compliances required for equity listed companies, and in some cases the compliances are more stringent. The motivation behind these amendments seems to be the fact that the regulators are no longer differentiating between debt and equity per se and are focussing on public money at large. Also with effect from FY 20, SEBI compulsorily required large borrowers to meet 25 per cent of their incremental borrowings from the bond markets . While some issuers of debt securities may privately place their securities, others will tap the market at large. It would thus be imperative for security holders to have transparent and prompt information at their disposal at all times. Thus, the incremental disclosures and compliances come as a welcome step for many of the security holders.
- **Date of determining a HVDLE**: A company shall be considered a HVDLE if it has an outstanding value of listed non-convertible debt securities of INR 500 crore and above. This threshold limit for compliance should be computed basis outstanding value of listed debt securities as on 31 March 2021, and would continue to apply even if the listed entities fall below the specified threshold post 31 March 2021. Entities need to adopt the corporate governance provisions on a 'comply or explain' basis and should aim to achieve full compliance by 31 March 2023. Thus, entities that were identified as HVDLEs based on the threshold limit as on 31 March 2021 will need to mandatorily adopt the provisions of the amendments with effect from 1 April 2023, irrespective of the fact that they do not meet the specified threshold on 31 March 2023.
- **Stricter compliances for entities that are both equity listed and are issuers of NCS**: SEBI vide the amendments, has made some of the provisions applicable to issuers of NCS more stringent as compared to the provisions currently applicable to equity listed entities. This includes disclosures of ratios along with financial results, or timelines for submission of disclosures pertaining to related party transactions, and other provisions. Entities that are equity listed and also are issuers of NCS would need to comply with the stricter of the two requirements.

(**Source:** SEBI notification no. SEBI/LAD-NRO/GN/2021/47 dated 7 September 2021 and SEBI circular no. SEBI/HO/DDHS/CIR/2021/0000000637 dated 5 October 2021)



2. Amendments to provisions relating to Independent Directors (IDs)

SEBI through a notification dated 3 August 2021 made certain amendments to the Listing Regulations. These amendments will be applicable to all listed companies (however, requirement to procure D&O insurance for IDs is applicable to top 1,000 equity listed companies) effective 1 January 2022. Some key amendments are as follows:

- **Eligibility criteria:**

  a. **Cooling-off period for IDs with pecuniary relationship**: SEBI has extended the cooling-off period for a material pecuniary relationship between an ID and the related entities to three years (earlier two years).

  b. **Pecuniary relationships of relatives of IDs**: SEBI has specified thresholds for the pecuniary relationship of relatives of the ID with the listed entity, its holding, subsidiary, or associate company, or their promoter or directors.

  c. **Restriction on being a KMP in a company belonging to the promoter group:** IDs and their relatives cannot hold position as a Key Managerial Personnel (KMP) or be an employee in any company belonging to promoter group of a listed entity (in addition to listed entity, its holding, subsidiary or associate company as per existing requirements) for three immediately preceding financial years.

  The restriction under this clause would apply to a relative only with respect to a holding position as KMP. Therefore, in case a relative who is an employee but not KMP then this restriction will not apply for his/her employment.

- **Appointment, re-appointment and resignation of IDs:**

  a. **Special resolution for appointment, re-appointment and removal of IDs:** Appointment, re-appointment or removal of an ID of a listed entity would be subject to the approval of the shareholders by way of a special resolution.

  Further, listed entities should ensure that approval of shareholders for appointment of a person on the board of directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

  b. **Transparency in the appointment process:** Nomination and Remuneration Committee (NRC) is required to perform the following steps while selecting a candidate for the role of an ID.

     i. Evaluate the balance of skills, knowledge and experience of the board of directors and on the basis of such evaluation, prepare a description of the role and capabilities required of an ID. The person recommended to the board of directors for appointment as an ID should have the capabilities identified in such description.

     ii. For the purpose of identifying suitable candidates, NRC may use the services of an external agency, if required, consider candidates from a wide range of backgrounds, with due regard to diversity, and consider the time commitments of the candidates.

     iii. The notice for appointment of a director to be sent to the shareholders should, *inter alia,* include skills and capabilities required for appointment of the ID and how the proposed person meets the requirement of the role.

  c. **Timelines for filling vacancy and approval of IDs appointed by board of directors:** Vacancy of an ID, as a result of resignation or removal from the board of directors to be filled within three months from the date of such vacancy (Before the amendment, the Listing Regulations required appointment of the ID at the earliest but not later than the of immediate next meeting of the board of directors or three months from the date of such vacancy, whichever is later).

  d. **Cooling off period for appointment as an executive director:** IDs who have resigned from the listed entity can be appointed as an executive or a whole-time director on the board of the related entities or any company belonging to the promoter group only if a period of one year has elapsed from the date of resignation of the ID.

2. Amendments to provisions relating to Independent Directors (IDs)

e. **Resignation of IDs**: In addition to the current requirements, listed entities are now required to provide the letter of resignation of the resigning ID to the stock exchanges. Further, the names of the listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any, should also be disclosed.

- **Composition of an audit committee**: Currently, listed entities are required to constitute a qualified and an independent audit committee subject to the prescribed conditions which, *inter alia,* include a requirement to appoint two-third of the members of audit committee as IDs. In case of a listed entity with outstanding SR equity shares, the audit committee should only comprise of IDs.

  The amendment has clarified that at least two-third of the members of audit committee should be IDs. The requirements related to listed entity with outstanding SR equity shares remains unchanged post the amendment.

- **Composition of Nomination and Remuneration Committee (NRC)**:

  The amendment has modified the composition requirement of NRC. As per the amendment, at least two thirds of the directors of the NRC should be IDs.

- **Related Party Transactions (RPTs):** All RPTs are required to be approved by only IDs on the audit committee.

- **D&O insurance**: Top 1,000 listed entities by market capitalisation are required to undertake D&O insurance for all their IDs.

Key takeaway

The amendments in the Listing Regulations require significant changes in the composition of the committees of the board, including the audit committee and the NRC. Companies would need to appoint new IDs and would need to consider an action plan to comply with this requirement by 1 January 2022.

(**Source:** SEBI notification no. SEBI/LAD-NRO/GN/2021/35 dated 3 August 2021 and KPMG in India's First Note dated 8 September 2021 on SEBI amends provisions related to independent directors)

3. Changes to the provisions on Related Party Transactions (RPTs):

SEBI in its board meeting dated 28 September 2021 has, *inter alia*, considered and approved amendments to the Listing Regulations on RPTs. Some important changes to RPTs would be application in a phased manner as explained below:

I. **Definition of related party:** The definition of related party would include:

a. All persons or entities forming part of a promoter or a promoter group irrespective of their shareholding

b. Any person/entity holding equity shares in the listed entity, as below, either directly or on a beneficial interest basis at any time during the immediately preceding FY:

i. To the extent of 20 per cent or more (effective 1 April 2022)

ii. To the extent of 10 per cent or more (effective 1 April 2023).

II. **Definition of RPT:** The definition of RPT shall include transactions between:

a. The listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand (effective 1 April 2022)

b. The listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries (effective1 April 2023).

III. **Approval of shareholders for material RPTs:** Prior approval of the shareholders of the listed entity shall be required for material RPTs with a threshold of lower of INR1,000 crore or 10 per cent of the consolidated annual turnover of the listed entity (effective 1 April 2022).

IV. **Approval of the audit committee:** Approval of the audit committee shall be required for:

a. All RPTs and subsequent material modifications as defined by the audit committee (effective 1 April 2022)

b. RPTs where subsidiary is a party, but listed entity is not a party subject to threshold of:

i. 10 per cent of the consolidated turnover of the listed entity (effective 1 April 2022),

ii. 10 per cent of the standalone turnover of the subsidiary (effective 1 April 2023).

V. **Additional disclosures:** Enhanced disclosure of information related to RPTs to be:

– Placed before the audit committee

– Provided in the notice to the shareholders for material RPTs, and

– Provided to the stock exchanges

These disclosures would need to be provided every six months in the format specified by SEBI with the following timelines:

1. Within 15 days from the date of publication of financial statements (effective 1 April 2022)

2. Simultaneously with the financials (effective 1 April 2023).

Effective date: The amendments shall come into force with effect from 1 April 2022 unless otherwise specified above.

Key takeaways

- The coverage of RPTs has been extended to include the transactions between the consolidated group entities. Consequently, a company's management, its board including audit committee and independent directors need to look deeper into transactions that traditionally would not have been classified as RPTs taking into account the end beneficiary of the transactions.
- The threshold of 10 per cent of the standalone turnover of subsidiary could be fairly low in comparison to consolidated turnover. This is likely to increase the number of transactions to be approved by an audit committee .

(**Source:** SEBI press release PR No.28/2021 dated 28 September 2021)

ICDR Regulations

4. SEBI amends the definition of a promoter group and reduces lock-in period, etc.

On 13 August 2021, SEBI issued certain amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations). The key changes are as follows:

- **Revised definition of a '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 amendment omitted the requirement of including entities specified in point (c) above from the definition of the promoter group.

  Additionally, SEBI through a circular dated 13 August 2021 has issued revised format of 'Statement showing shareholding pattern of the promoter and promoter group'. As per the revised format, all listed entities will be required to provide such shareholding, segregated into promoter(s) and promoter group.

- **Reduction in lock-in period amendments:**
  a. *Minimum promoters' contribution:* Lock-in period of minimum promoters' contribution has been reduced from three years to 18 months from the date of allotment in an IPO.

     However, in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilised for capital expenditure[2], then the lock-in period shall be three years from the date of allotment in an IPO.
  b. *Promoters' holding in excess of minimum promoters' contribution:* Lock-in period of promoters' holding in excess of minimum promoters' contribution has also been reduced from one year to six months from the date of allotment in an IPO.

     However, in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilised for capital expenditure2, then the lock-in period shall be one year from the date of allotment in an IPO.
  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 six months (earlier one year) from the date of allotment in an IPO.

- **Streamlining disclosures of 'group companies'**: As per the amendments, following disclosures are not required to be provided by an issuer in respect of group companies in the offer document:
  a. Refusal of listing of any securities of the issuer during last 10 years by any of the stock exchanges in India or abroad.
  b. Failure of the issuer to meet the listing requirements of any stock exchange in India or abroad and the details of penalty, if any, including suspension of trading, imposed by such stock exchanges.
  c. Existence of a large number of pending investor grievances.

2. Capital expenditure shall include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc

4. SEBI amends the definition of a promoter group and reduces lock-in period, etc.

Further, only names and registered office addresses of all the group companies would be disclosed in the offer document. Also, certain information based on the audited statements in respect of top five group companies (based on market capitalisation for listed/based on turnover in case of unlisted) for the preceding three years shall be hosted on the website of the respective group company (listed/ unlisted). The information to be provided is as follows:

a. Reserves (excluding revaluation reserve)

b. Sales

c. Profit after tax

d. Earnings per share

e. Diluted earnings per share and

f. Net asset value.

The offer document should refer the website where the details of the group companies would be available.

Effective date: The amendments are effective from the date of its publication in the official gazette i.e. 13 August 2021.

(**Source**: SEBI notification no. SEBI/LAD-NRO/GN/2021/45 dated 13 August 2021)

Other SEBI Regulations

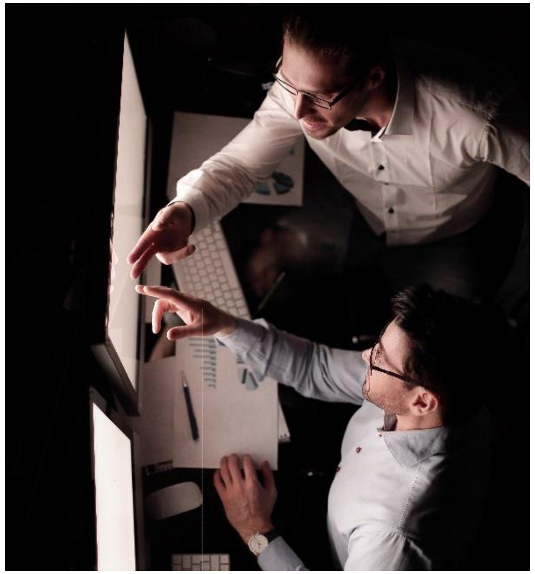
5. SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

SEBI through a notification dated 13 August 2021, notified the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (SBEB) and consolidated SEBI (Issue of Sweat Equity) Regulations 2002 with SEBI (Share Based Employee Benefits) Regulations 2014.

An overview of the key changes are as follow:

- **Applicability:** The SBEB is applicable to below mentioned schemes:
  - Employee stock option schemes
  - Employee stock purchase schemes
  - Stock appreciation rights schemes
  - General employee benefits schemes
  - Retirement benefit schemes
  - Sweat equity shares
- **Definition of the term 'employee'**: The amendment provides two definitions of the term employee – one for sweat equity shares and other for rest of the schemes. For schemes other than sweat equity shares, the amendment has expanded the definition of an employee to include an employee as designated by the company who are exclusively working for the company in India or outside India. Further, an employee would include employees of group company and associate company in India and outside India and of the company. Additionally, a director, whether a whole time director or not including non-executive director who is not a promoter or a member of the promoter group is also included in the definition of the term 'employee'. However, the term employee would exclude ID and a director who, either himself or through his relative or through any body corporate, directly or indirectly, holds more than 10 per cent of the outstanding equity shares of the company.

  Under sweat equity scheme an employee would mean (i) an employee of the company working in India or abroad or (ii) a director of the company whether a whole time director or not.
- **Applicability to equity listed companies**: Regulation 1(4) of the SBEB explicitly states that the provisions of the concerned regulations shall apply to a company whose equity shares are listed on a recognised stock exchange in India.
- **Equity-settled Stock Appreciation Rights (SARs):** The new regulations cover only equity-settled SARs and does not include any scheme which does not, directly or indirectly, involve dealing in or subscribing to or purchasing, securities of the company.
- **Flexibility to change the mode of implementation of a scheme**: As per SBEB, companies are allowed to change the mode of implementation of the schemes via trust route or direct route and vice versa. This is subject to certain conditions such as the prevailing circumstances should warrant such a change, prior approval of the shareholders by a special resolution for implementing such a change, and that such a change is not prejudicial to the interest of the employees.



5. SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021

- **Role of compensation committee with respect to buy-back of options**: Part B to the Schedule-I of the SBEB introduces the requirement that the compensation committee would prescribe the procedure for buy back of securities issued under SBEB scheme. Additionally, a company may opt to designate NRC to act as its compensation committee.
- **Alignment of compliances of sweat equity shares with the 2013 Act and ICDR Regulations**: Regulation 30 of the SBEB provides guidance for issuance of sweat equity shares. These are in accordance with Section 54 of the 2013 Act. Sweat equity shares can be issued to employees for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

  Additionally, it prescribes the maximum quantum of sweat equity shares that can be issued as follows:

  - Upto 15 per cent of existing paid-up equity share capital in the first year
  - Total quantum of sweat equity shares issued by a company shall not exceed 25 per cent of paid-up share capital at any time.

  For companies listed under Innovators Growth Platform (IGP) the threshold is as follows:

  - Upto 15 per cent of the paid-up equity share capital in a financial year subject to an overall limit not exceeding 50 per cent of total paid-up equity share capital of the company up to 10 years from the date of its incorporation or registration.
- **Compliance of share-based schemes with applicable provisions to be certified by a secretarial auditor**: Regulation 13 of the SBEB expressly states that the board of directors are required to obtain a compliance certificate on an annual basis from secretarial auditors of the company. The words 'secretarial auditors' has been added in order to clear the ambiguity.
- **Additional disclosures in the explanatory statement for general meeting**: The explanatory statement to the notice and the resolution proposed to be passed for the schemes in general meeting should *inter alia*, contain information such as:
  - Brief description of the scheme
  - Total number of options, SARs, shares or benefits, to be offered and granted
  - Exercise period/offer period and process of exercise/acceptance of offer
  - Period of lock-in
  - Whether the scheme(s) involves new issue of shares by the company or secondary acquisition by the trust or both, etc.

Effective date: The regulations are effective from the date of publication in the Official Gazette i.e. 13 August 2021.

Key takeaways

- The SBEB have increased the ambit of the term 'employee' enabling flexibility to the companies to cover many more employees under the schemes offered for their benefit. Further, the new regulations have permitted the designated employees of group companies to be qualified for the purpose of SBEB schemes including employees of associate companies.
- A company is now permitted to switch between the administration of a employee benefits scheme i.e. from direct route to trust or vice versa. This move would eliminate the difficulties faced by the companies in deciding whether a scheme is to be implemented through a trust or otherwise.
- Companies should take note of the amended provisions for implementation of such schemes post 13 August 2021.

(**Source:** SEBI notification no. No. SEBI/LAD-NRO/GN/2021/40 dated 13 August 2021)

6. Prohibition of Insider Trading Regulations

- **Amendment to informant mechanism:**

  SEBI through a notification dated 5 August 2021 has issued certain amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Prohibition of Insider Trading Regulations). The amendments mainly relate to informant reward under the Prohibition of Insider Trading Regulations.

  In accordance with the informant mechanism, SEBI may declare an informant eligible for reward and intimate the informant or his/her legal representative to file an application for claiming such reward. The amount of reward shall be 10 per cent of the monetary sanctions and shall not exceed INR1 crore.

  The amendments have increased the maximum amount of reward to INR10 crore. Additionally, as per the amendments:

  a. If the total reward payable is less than or equal to INR1 crore, SEBI may grant the said reward upon the issuance of the final order.

  b. In case the total reward payable is more than INR1 crore, SEBI may grant an interim reward not exceeding INR1 crore upon the issuance of the final order by SEBI and the remaining reward amount shall be paid only upon collection or recovery of the monetary sanctions amounting to at least twice the balance reward amount payable.

  An illustrative table of the reward payable has also been given in the notification.

  Effective date: The amendments are effective from the date of its publication in the official gazette i.e. 5 August 2021.

  (**Source:** SEBI notification no. SEBI/LAD-NRO/GN/2021/37 dated 5 August 2021)

- **Automation of continual disclosures:**

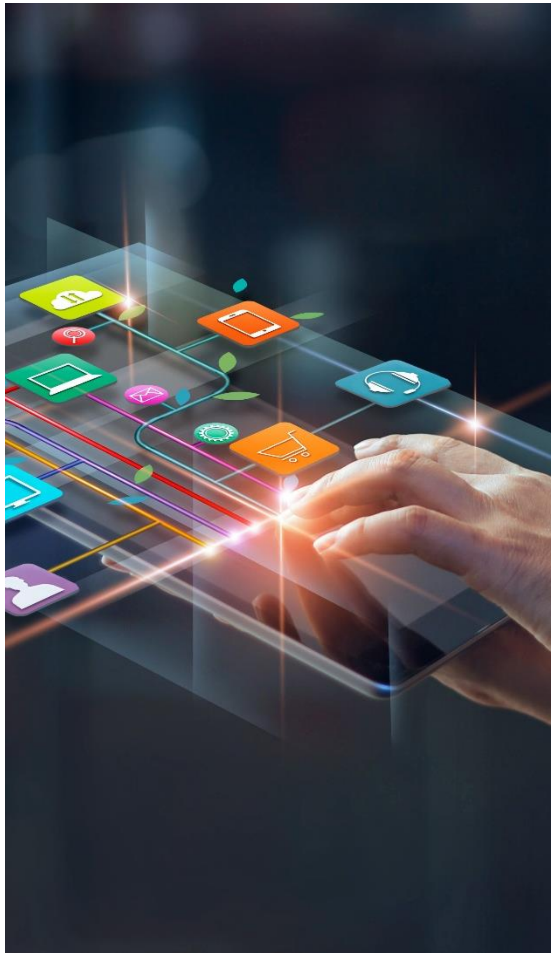
  SEBI through a circular dated 9 September 2020 had decided to implement System Driven Disclosures (SDD) for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of company (referred to as entities) under Regulation 7(2) of the Prohibition of Insider Trading Regulations.

  Under the SDD framework, listed companies are required to provide the information including Permanent Account Number (PAN) of their promoters, designated person(s) and director(s) to the designated depository in the format and manner prescribed by the depositories. Any subsequent change in the details of the entities, need to be updated by a listed company on the same day.

  Stock exchanges and depositories have confirmed to SEBI that they have implemented SDD in line with the circular dated 9 September 2020 and the same is operational from 1 April 2021.

  SEBI through a circular dated 13 August 2021 has clarified that manual filing of disclosures as required under Regulation 7(2)(a) and (b) of the Prohibition of Insider Trading Regulations is no longer mandatory for listed companies who have complied with the requirements of SEBI circular dated 9 September 2020.

  (**Source:** SEBI circular no. SEBI/HO/ISD/ISD/CIR/P/2021/617 dated 13 August 2021)



7. SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021

On 9 August 2021, SEBI notified SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations). NCS Regulations merge the following two erstwhile regulations relating to issuance and listing of debt securities and Non-Convertible Redeemable Preference Shares (NCRPS):

- SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (ILDS Regulations)
- SEBI (Issue and Listing of NCRPS) Regulations, 2013 (NCRPS Regulations).

NCS Regulations aim to harmonise with the provisions of the 2013 Act and maintain consistency with the Listing Regulations, SEBI (Debenture Trustees) Regulations, 1993 (DT Regulations) and circulars issued thereunder. Further, NCS Regulations also include certain provisions issued through circulars under ILDS Regulations and NCRPS Regulations.

Key features of the NCS Regulations are as follows:

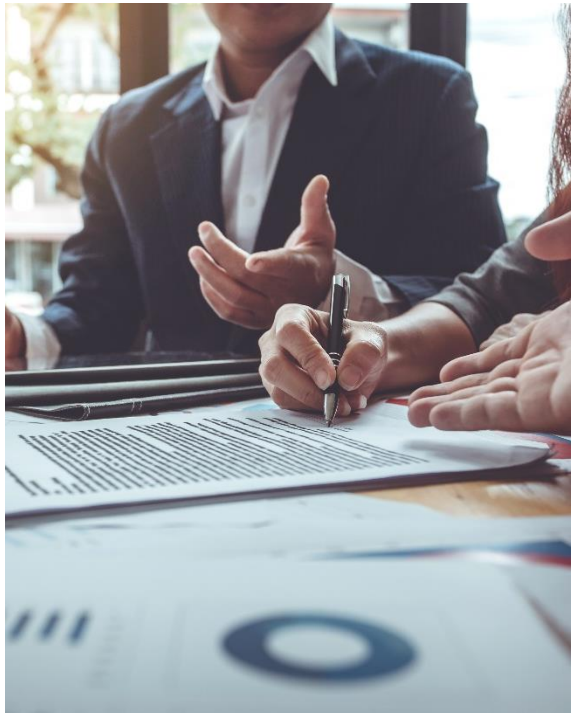
- *Disclosure of parameters for identification of risk factors:* The NCS Regulations have introduced comprehensive parameters to provide for identification of risk factors such as risks intrinsic to the issuer, security, other risk factors which may have an impact on the issue, security, etc. in line with the ICDR Regulations.
- *Minimum subscription of 75 per cent for public issue of debt securities and NCRPS:* The NCS Regulations has introduced a requirement of minimum subscription of 75 per cent for public issue of debt securities and NCRPS.
- *Applicability of the Electronic Book Provider (EBP) platform:* EBP platform has been made mandatory for issuance of eligible securities proposed to be listed amounting to INR100 crore or above in a financial year.
- *Harmonisation of provisions on creation of charges with the 2013 Act:* The creation of charge on the assets and properties of the issuer under the NCS Regulations has been aligned with the provisions of the 2013 Act.
- *Format of application for public issue of NCRPS:* The NCS Regulations introduce a format of application form for public issue of NCRPS in line with the format existing for an issue of debt securities.

Further, on 10 August 2021, SEBI issued an operational circular which provides a chapter-wise framework for the issuance, listing and trading of NCS, securitised debt instruments, security receipts, municipal debt securities or commercial paper. Some of the key guidance relates to:

- Application process in case of public issues of securities and timelines for listing
- Additional disclosures by a Non-Banking Finance Company (NBFC), Housing Finance Company or public financial institution
- Standardisation of timelines for listing of securities issued on a private placement basis
- Green debt securities
- Operational framework for transactions in defaulted debt securities post maturity date/redemption date
- Fund raising by issuance of debt securities by large corporate.

Effective date: The NCS Regulations and provisions of the circular are effective from 16 August 2021.

(**Source:** SEBI notification no. SEBI/LAD-NRO/GN/2021/39 dated 9 August 2021 and circular no. SEBI/HO/DDHS/P/CIR/2021/613 dated 10 August 2021)



8. MCA issues FAQs on CSR provisions

On 25 August 2021, MCA has issued certain clarifications in the form of Frequently Asked Questions (FAQs) on Corporate Social Responsibility (CSR). The recent FAQs supersede the erstwhile FAQs and clarifications issued by MCA relating to CSR[3]. Some key issues relating to CSR in light of the new clarifications issued by MCA are as follows:

CSR Expenditure	
Administrative overheads	As per the CSR Rules, the board of directors of an eligible CSR company are required to ensure that the administrative overheads shall not exceed five per cent of total CSR expenditure of the company for the FY. Administrative overheads have been defined as the expenses incurred by a company for 'general management and administration' of CSR functions in the company. It should not include the expenses directly incurred for the designing, implementation, monitoring and evaluation of a particular CSR project or programme. For instance, salary and training for the employees working in the CSR division of a company, stationery cost, travelling expenses, etc. may be categorised as administrative overheads. However, salary of school teachers or other staff, etc. for education-related CSR projects shall be covered under education project cost. Additionally, expenses incurred by implementing agencies on the management of CSR activities shall not amount to administrative overheads and cannot be claimed by a company.
Surplus from CSR activities and its utilisation	Any surplus arising out of the CSR activities should not form part of the business profit of a company and should be ploughed back into the same project or should be transferred to the unspent CSR Account and spent in pursuance of CSR policy and annual action plan of the company. It can also transfer the surplus amount to a fund specified in Schedule VII to the 2013 Act within a period of six months of the expiry of the FY. The FAQs define surplus as an income generated from the spend on CSR activities, e.g., interest income earned by the implementing agency on funds provided under CSR, revenue received from the CSR projects, disposal/sale of materials used in CSR projects, and other similar income sources. It further, clarifies that the surplus arising out of CSR activities should be utilised only for CSR purposes.
Contribution to corpus of any entity	Earlier, CSR expenditure covered all expenditure including contribution to corpus, or on projects or programmes relating to CSR activities approved by the BoD on the recommendation of its CSR committee. As per the amended provisions dated 22 January 2021 and clarified by the MCA in the FAQ, contribution to corpus of any entity is not an admissible CSR expenditure.

3. FAQs issued vide general circular no. 21/2014 dated 18 June 2014, general circular no. 36/2014 dated 17 September 2014, general circular no. 01/2016 dated 12 January 2016, general circular no. 05/2016 dated 16 May 2016, clarification issued vide letter dated 25 January 2018 and general circular no. 06/2018 dated 28th May 2018

8. MCA issues FAQs on CSR provisions

CSR Expenditure	
Creation/acquisition of a capital asset	CSR amount may be spent by a company for creation or acquisition of a capital asset, which should be held subject to specified conditions[4]. It has been clarified that expenses relating to transfer of a capital asset such as stamp duty and registration fees, will qualify as admissible CSR expenditure in the year of such transfer.
Set-off of excess CSR amount	The MCA clarified that the provision is applicable from 22 January 2021 and has a prospective effect. Accordingly, carry forward would not be allowed for the excess amount spent, if any, in FYs prior to FY2020-21. Also, in case a company cannot take the benefit of set-off of excess amount spent in the previous FY because of non-applicability of CSR provisions, the excess amount will lapse at the end of immediately succeeding three FYs. For instance, a company had spent an excess CSR amount of INR2 crore in FY2020-21 and sets-off INR50 lakh in FY2021-22. However, from FY2022-23, the company is no longer subject to CSR provisions under Section 135(1) of the 2013 Act. In such a case, the company may continue to retain the remaining excess CSR amount of INR1.50 crore up to FY2023-24 and thereafter the same shall lapse.
Local area preference for CSR spend	A company is required to give preference to local areas and the areas around where it operates for spending the amount earmarked for CSR activities in accordance with the first proviso to Section 135(5) of the 2013 Act. MCA observed that there are challenges in determination of local area in particularly with the advent of Information and Communication Technology (ICT) and emergence of new age businesses like e-commerce companies, process-outsourcing companies, and aggregator companies. Therefore, MCA clarified that the preference to local area in the 2013 Act is only directory and not mandatory in nature and companies need to balance local area preference with national priorities.
CSR expenditure in kind	The BoD of every company shall ensure that it spends amount earmarked for CSR. Therefore, CSR contribution cannot be in kind and monetised.
Contribution to any other fund not specified in Schedule VII	The 2013 Act does not recognise any contribution to any other fund, which is not specifically mentioned in Schedule VII, as an admissible CSR expenditure. Additionally, CSR should not be interpreted as a source of financing the resource gaps in government schemes. Accordingly, CSR funds cannot be utilised to fund government schemes. However, the BOD of the eligible company may undertake similar activities independently subject to fulfilment of CSR Rules.

4. The capital asset should be held by:
   - A company established under Section 8 of the 2013 Act, or a registered public trust or registered society with charitable objects and CSR registration number
   - Beneficiaries of the said CSR project, in the form of self-help groups collectives, entities
   - A public authority (as defined in Section 2(h) of the Rights to Information Act, 2005.

8. MCA issues FAQs on CSR provisions

CSR Expenditure	
CSR activities for benefits of employees	Any activity benefitting employees of a company is an ineligible CSR activity in accordance with Rule 2(1)(d)(iv) of the CSR Rules. In this regard, the FAQs further clarified that any activity designed exclusively for the benefit of employees should be considered as an 'activity benefitting employees' and will not qualify as permissible CSR expenditure. However, any activity which is not designed to benefit employees solely, but for public at large, and if the employees and their family members are incidental beneficiaries, then, such an activity would not be considered as an 'activity benefitting employees'. Thus, it will qualify as an eligible CSR activity.
Sponsorship activities deriving marketing benefits for a company's products or services	Activities supported by the companies on sponsorship basis for deriving marketing benefits for its products or services are ineligible CSR activities in terms of Rule 2(1)(d)(v) of the CSR Rules. MCA further clarified that the intent of CSR is to encourage companies to undertake the activities in a project or programme mode rather than as a one-off event. Accordingly, companies should not use CSR purely as a marketing or brand building tool for their business, however, brand building as a collateral benefit does not vitiate the spirit of CSR.
CSR implementation	
Eligible implementation agencies	As per the clarifications, a company may undertake CSR activities, *inter alia,* through eligible implementation agencies. Three types of entities i.e. a company established under Section 8 of the 2013 Act, a registered public trust, or a registered society are required to have income-tax registration under Section 12A as well as Section 80G of the IT Act to act as implementing agency, except for any entities established by CG or State Government. An international organisation cannot act as an implementing agency. A company can engage international organisations for the limited purposes of designing, monitoring, and evaluation of the CSR projects or programmes, or for capacity building of personnel of the company involved in CSR activities.
Mandatory registration of implementation agencies	Pursuant to the amendments to the CSR Rules dated 22 January 2021, every eligible entity that intends to undertake any CSR activity should register itself with the CG by filing the Form CSR-1 electronically with the Registrar of Companies (ROC) with effect from 1 April 2021. In this regard, MCA clarified that any ongoing project which has been approved between 22 January 2021 and 31 March 2021 may be carried out by an implementing agency which is not registered on MCA21 portal. However, the unregistered implementing agency is required to register on MCA21 portal before undertaking any new project after 1 April 2021.

8. MCA issues FAQs on CSR provisions

CSR implementation	
Disbursal of funds to implementation agencies	The MCA clarified that mere disbursal of funds for implementation of a project to the implementation agency does not amount to spending unless the implementing agency utilises the whole amount. The CSR committee and BoD should ensure that CSR fund to be disbursed to implementing agencies, partially or wholly, in such a manner so that they can be utilised by them during the FY.
Ongoing projects	
Definition of an ongoing projects	The project should have commenced within the FY. The intent is to include a project which has an identifiable commencement and completion dates. After the completion of any ongoing project, the BoD of the company are free to design any other project related to operation and maintenance of such completed projects in a manner as may be deemed fit on a case-to-case basis. An ongoing project would 'commence' when a company has either issued the work order pertaining to the project or awarded the contract for execution of the project. Under no circumstances, the time period of an ongoing project should extended beyond its permissible limit (i.e. three FYs excluding the FY in which it is commenced).
Ongoing project of previous FY	The provisions relating to ongoing projects have come into effect from 22 January 2021, i.e., from FY2020-21 onwards. Therefore, an ongoing project initiated by a company in any previous FY (e.g., in FY2019-20) cannot be classified as an ongoing project under Section 135(6) of the 2013 Act.
Implementation of an ongoing project through an implementation agency	Once the BoD of the company approve a project as an ongoing project, then it can choose to implement the project either itself, or through any of the eligible implementing agencies.
Usage of funds in another project	As per the clarification, the budget outlay dedicated for one project can be used against another project. While doing so, the BoD and the CSR committee should appropriately record the alteration in the target spending and modify the same in accordance with the actuals.

8. MCA issues FAQs on CSR provisions

Unspent CSR amount	
Clarifications regarding unspent CSR amount	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. As per the clarification, companies are not permitted to spend the unspent CSR amount on any CSR activity during the intervening period of six months after the end of the FY. A company is not required to open a separate 'unspent CSR account' for each ongoing project but is required to open for each FY to transfer the unspent amount with respect to ongoing project(s) of that FY. The unspent CSR account cannot be used by a company as collaterals or creating a charge or any other business activity. It can be used only for meeting the expenses of ongoing projects, and not for other general purposes of the company.
Impact assessment	
Clarifications in relation to impact assessment	Following points have be clarified by FAQs: **Applicability**: The company is required to undertake impact assessment of the CSR projects completed on or after 22 January 2021. However, as a good practice the BoD may undertake impact assessment of completed projects of previous FYs (i.e. prior to FY2020-21). **Project-wise assessment**: Impact assessment should be carried out project-wise only in cases where both the above conditions are fulfilled. In other cases, it can be taken up by the company on a voluntary basis. **Expenditure on impact assessment**: A company undertaking impact assessment may book the expenditure towards CSR for that FY not exceeding five per cent of the total CSR expenditure for that FY or INR50 lakh, whichever is less. Expenditure incurred on impact assessment is over and above the specified administrative overheads of five per cent. **Collaborative CSR implementation:** In case two or more companies choose to collaborate for the implementation of a CSR project, then the impact assessment carried out by one company for the common project may be shared with the other companies for the purpose of disclosure to the BoD and in the annual report on CSR. The sharing of the cost of impact assessment may be decided by the collaborating companies subject to the maximum limit specified for impact assessment (i.e. five per cent of the total CSR expenditure for that FY or INR50 lakh, whichever is less).

8. MCA issues FAQs on CSR provisions

Key takeaway

The MCA clarifications addresses various important issues, in particular those notified recently relating to eligible CSR activities, determination of an ongoing project, impact assessment, treatment of unspent CSR amount and eligibility of implementation agency. These are expected to streamline the implementation of the CSR provisions by companies in India.

(**Source**: MCA general circular no. 14/2021 dated 25 August 2021)

9. MCA issues clarification on spending of CSR funds for COVID-19 vaccination

The MCA through a circular dated 30 July 2021 has clarified that spending funds earmarked for CSR on COVID-19 vaccination for persons other than employees and their families, is an eligible CSR activity under the provisions of the 2013 Act. This will be covered under item no. (i) relating to promotion of health care including preventing health care and item no. (xii) relating to disaster management of Schedule VII to the 2013 Act.

Companies may undertake the activity subject to the fulfilment of requirements of the CSR Rules and circulars related to CSR issued by MCA from time to time.

(**Source:** MCA general circular no. 13/2021 dated 30 July 2021)

10. Exemption from provisions relating to foreign companies

MCA through a notification dated 5 August 2021 has exempted certain companies from compliance with the provisions of Sections 387 to 392 (both inclusive) under Chapter XXII of the 2013 Act in so far as they relate to the offering of subscription in the securities, requirements related to the prospectus, and all matters incidental thereto in the International Financial Services Centres (IFSC) set up under Section 18 of the Special Economic Zones Act, 2005 (SEZ Act). The exempted companies would be:

a. Foreign companies

b. Companies incorporated or to be incorporated outside India, whether the company has or has not established, or when formed may or may not establish, a place of business in India.

Related amendment has been made to the definition of a foreign company. Currently, Section 2(42) of the 2013 Act defines a 'foreign company' as any company or body corporate incorporated outside India which:

a. Has a place of business in India whether by itself or through an agent, physically or through an electronic mode and

b. Conducts any business activity in India in any other manner.

The term 'electronic mode' has been further defined under the Companies (Specification of Definitions Details) Rules, 2014 and the Companies (Registration of Foreign Companies) Rules, 2014. It means carrying out electronically based activities (whether main server is installed in India or not) including, but not limited to specified transactions which, *inter alia,* include offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India.

MCA through notifications dated 5 August 2021 has clarified that electronic based offering of securities, subscription thereof or listing of securities in the IFSC set up under Section 18 of the SEZ Act shall not be construed as an 'electronic mode' for the purpose of Section 2(42) of the 2013 Act.

Effective date: The provisions are effective from the date of their publication in the official gazette i.e. 5 August 2021.

(Source: M538CA notification no. S.O. 3156(E), G.S.R. (E) and G.S.R. 539(E) dated 5 August 2021)

11. Provisions relating to databank of IDs

- **Annual report on capacity building of IDs:**

  MCA through a notification dated 19 August 2021 has issued an amendment to the Companies (Creation and Maintenance of databank of Independent Directors) Rules, 2019 (Databank Rules) which inserted a new provision in the Databank Rules. In accordance with the newly inserted provision, the Indian Institute of Corporate Affairs (institute) will send an annual report on the capacity building of an independent director within 60 days from the end of every financial year to the following:

  a. Every individual whose name is included in the databank and

  b. Every company in which such individual is appointed as an independent director.

  The format of annual report has been enclosed in the notification. The format requires the institute to report on e-learning models, training programmes and workshops/events that have been attended by the independent directors registered with the institute during the financial year and total participation till date.

  Effective date: The amendment is effective from the date of its publication in the official gazette i.e. 19 August 2021.

  (**Source:** MCA notification no. G.S.R.580 (E) dated 19 August 2021)

- **Persons exempt from online proficiency self-assessment test**

  Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014 requires every individual whose name is included in the databank of independent directors to pass an online proficiency self-assessment test conducted by the institute within a period of two years from the date of inclusion of his/her name in the databank, failing which his/her name would be removed from the databank. However, certain individuals are exempt from the online proficiency self-assessment test.

  Those, *inter alia*, include persons who have served for a total period of three years or more as on date of inclusion of name in databank as a director or above in the MCA, the Ministry of Finance, Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises with experience in handling the matters relating to corporate laws or securities laws or economic laws.

  MCA through a notification dated 19 August 2021 has amended Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2021. As per the amendments, following persons are exempt from passing the online proficiency self-assessment test conducted by the institute:

  a. Individuals who have served for a total period of three years or more as on date of inclusion of name in databank in the pay scale of director or **equivalent** or above in **any Ministry or Department of the CG or any State Government**, with experience in handling:

     i. **The matters relating to commerce, corporate affairs, finance, industry or public enterprises or**

     ii. **The affairs related to government companies or statutory corporations set up under an Act of Parliament or any State Act and carrying on commercial activities.**

     (*Emphasis added to highlight the changes*)

  b. Individuals, who are or have been, for at least 10 years (newly inserted):

     i. An advocate of a court

     ii. In practice as a chartered accountant

     iii. In practice as a cost accountant or

     iv. In practice as a company secretary.

  Effective date: The amendments are effective from the date of its publication in the official gazette i.e. 19 August 2021.

  (**Source:** MCA notification no. G.S.R.579(E) dated 19 August 2021)

12. Relaxations for companies amid COVID-19 outbreak

During the quarter ended 30 September 2021, regulators in India such as the MCA, SEBI and RBI have provided a number of relaxations/exemptions to companies in relation to various regulatory requirements. Some important relaxations have been listed below:

MCA

- **Extension of time for holding Annual General Meeting (AGM) for the financial year ended 31 March 2021**

  As per the provisions of Section 96(1) of the 2013 Act, every company (other than a one person company) is required to hold an Annual General Meeting (AGM) within a period of six months from the date of closing of the Financial Year (FY). Further, the Registrar of Companies (ROC) may, for any special reason, extend the time within which any AGM (other than the first AGM) should be held, by a period not exceeding three months.

  Relaxation

  The MCA through an order dated 23 September 2021 has advised the ROC to extend the time for holding an AGM for the FY ended 31 March 2021 by two months from the due date by which an AGM is required to be held under the 2013 Act. Accordingly, the AGM for the FY ended 31 March 2021 can be held up to 30 November 2021 (due date 30 September 2021).

  (**Source:** MCA office memorandum dated 23 September 2021)

- **Relaxation in filing of cost audit report to the board of directors**

  Currently, Rule 6(5) of the Companies (Cost Records and Audit) Rules, 2014 (Cost Audit Rules) requires a cost auditor to forward a duly signed cost audit report to the Board of Directors (BoD) of the company within a period of 180 days from the closure of the FY to which the report relates to. The BoD shall consider and examine such a report, particularly any reservation or qualification contained therein. Further, the company is required to furnish the report to the CG in Form CRA-4 within 30 days from the date of its receipt along with full information and explanation on every reservation or qualification contained therein.

  Relaxation

  MCA through a circular dated 27 September 2021 has provided relaxation in furnishing the cost audit report for FY2020-21 by the cost auditor to the BoD. Accordingly, if the cost audit report for FY2020-21 has been submitted by the cost auditor to the BoD by 31 October 2021, then it will not be considered as a violation of the provisions of the Rule 6(5) of the Cost Audit Rules. Consequently, the cost audit report for the FY ended 31 March 2021 shall be filed in e-form CRA-4 within 30 days from the date of receipt of the copy of the cost audit report by the company.

  In case a company has got extension of time for holding AGM under Section 96(1) of the 2013 Act, then e-form CRA-4 may be filed within resultant extended period of filing financial statements under Section 137 of the 2013 Act.

  (**Source:** MCA general circular no. 15/2021 dated 27 September 2021)

12. Relaxations for companies amid COVID-19 outbreak

SEBI

- **Relaxation in timelines for compliance with regulatory requirements by Debenture Trustees due to COVID-19:**

  SEBI through its circular dated 20 July 2021 has further extended the timelines for compliance with the following regulatory requirements of the SEBI circular dated 12 November 2020 by debenture trustees for the quarter/half-year/year ending 31 March 2021:

Regulatory requirements of SEBI circular dated 12 November 2020	Current timeline	Extended timeline
Submission of reports/certifications to stock exchanges		
Net worth certificate of guarantor (secured by way of personal guarantee)	15 July 2021	31 October 2021
Financials/value of guarantor prepared on basis of audited financial statement etc. of the guarantor (secured by way of corporate guarantee)	15 July 2021	31 October 2021
Valuation report and title search report for the immovable/movable assets, as applicable	15 July 2021	31 October 2021

RBI

- **Resolution framework for COVID-19-Related stress financial parameters - revised timelines for compliance**

  In August 2020, RBI had issued a resolution framework for COVID-19 related stress (the framework) to mitigate the impact of the pandemic on the ultimate borrowers. In accordance with the framework, corporate borrowers were required to maintain certain ratios by 31 March 2022. The ratios were specified by the expert committee formed under the resolution framework, and consisted of following key operational ratios namely:

  a. Total debt/EBITDA[5]

  b. Current ratio

  c. Debt Service Coverage Ratio (DSCR)

  d. Average Debt Service Coverage Ratio (ADSCR) and

  e. Total Outside Liabilities/Adjusted Tangible Net Worth (TOL/ATNW) representing the debt-equity mix of the borrower post implementation of the resolution plan.

  In view of the resurgence of the COVID-19 pandemic in 2021 and recognising the difficulties it may pose for the borrowers in meeting the operational parameters, RBI has decided to defer the target date for meeting the specified thresholds in respect of the four operational parameters, viz. Total Debt/EBIDTA, Current Ratio, DSCR and ADSCR, to 1 October 2022.

  The target date for achieving the ratio TOL/ATNW shall remain unchanged as on 31 March 2022.

  (**Source:** RBI notification no. RBI/2021-22/80 dated 6 August 2021)

5. Earnings Before Interest, Tax, Depreciation and Amortisation

12. Relaxations for companies amid COVID-19 outbreak

CBDT

The CBDT through a circular dated 9 September 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
Return of income for Assessment Year (AY) 2021-22 #	31 July 2021	31 December 2021
Report of audit under any provision of the IT Act for Previous Year (PY) 2020-21	30 September 2021	15 January 2022
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	31 January 2022
Return of income for AY2021-22*	31October/ 30 November 2021	15 February 2022/ 28 February 2022
Belated/revised return of income for AY2021-22	31 December 2021	31 March 2022

(Source: CBDT circular no. 17/2021 dated 9 September 2021)

Assessees not subject to audit under section 139(1) of the IT Act

* Assessees subject to audit/Transfer Pricing Report under section 139(1) of the IT Act

RBI updates

13. RBI issued updates in the master directions on presentation and disclosures of financial statements by banks

On 30 August 2021, RBI issued the RBI (Financial Statements-Presentation and Disclosures) Directions, 2021 (Master Directions), which incorporates all the guidelines, instructions and directives issued by RBI to banks. This will enable banks to have all current instructions on presentation and disclosure in financial statements at one place for reference. Key features of the Master Directions are as follows:

- **Applicability**: The Master Directions are applicable to all commercial banks[6] and Urban Co-operative Banks (UCBs). The Master Directions came into force from 30 August 2021[7].
- **Updates in the master directions**: With regard to the preparation of standalone and consolidated financial statements, the Master Directions clarify the following:
  a. The format of the balance sheet and profit and loss account for the banks will be prescribed by the provisions of the Banking Regulation Act, 1949.
  b. Commercial banks shall ensure strict compliance with the Accounting Standards (AS) notified under the Companies (Accounting Standards) Rules, 2006 , as amended from time to time, subject to directions or guidelines issued by RBI. UCBs shall be guided by announcements of the ICAI regarding applicability[8] of AS.
  c. While preparing the Consolidated Financial Statements (CFS), where different entities in a group are governed by different accounting norms laid down by the concerned regulator, the balance sheet size may be used to determine the dominant activity and accounting norms specified by its regulator may be used for the consolidation of similar transactions and events[9].
- **Other updates**: Apart from consolidating various instructions and guidelines at one place, the Master Directions have also updated some of the requirements or added new disclosure and reporting requirements. A summary of the updates that have been prescribed in the Master Directions has been given below[10].
  i. **Reserves and surplus**: In its erstwhile requirements, RBI required all reserves to be disclosed separately under the head, 'Reserves and Surplus'. The Master Directions now require Reserves and Surplus to be bifurcated under the following sub-heads:
     a. Statutory reserves
     b. Capital reserves
     c. Share premium
     d. Revenue and other reserves
     e. Balance in profit and loss account.

  Therefore, all revenue reserves such as Investment Reserve Account and Investment Fluctuation Reserve (which were earlier disclosed separately under reserves and surplus) would now be disclosed under 'Revenue and Other Reserves'.

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6. All commercial banks include foreign banks, Local Area Banks (LABs), Small Finance Banks (SFBs), Payment Banks (PBs), corresponding new banks, Regional Rural Banks (RRBs) and State Bank of India.
7. The Master Directions state 'from the date these are placed on the official website of the RBI.
8. As per prevailing announcements, co-operative banks are classified as Level I enterprises. Level I enterprises are required to comply with all accounting standards.
9. Where banking is the dominant activity, accounting norms applicable to a bank shall be used for consolidation purposes in respect of like transactions and other events in similar circumstances
10. With the issue of the Master Directions, the instructions and guidelines contained in circulars issued by RBI stand repealed.

13. RBI issued updates in the master directions on presentation and disclosures of financial statements by banks

ii. **Disclosure of regulatory capital**: RBI had prescribed the format for disclosure of regulatory capital for banks. As per the format, banks are required to provide particulars of Tier 1 capital, Tier 2 capital and other applicable ratios.

RBI now requires commercial banks to disclose the Leverage Ratio as one of the ratios, while providing the disclosures on regulatory capital, where the same is applicable.

iii. **Investments**: Banks were earlier required to categorise investments into Held to Maturity (HTM), Available for Sale (AFS) and Held for Trading (HFT) and bifurcate their investments into – investments in India and investments outside India.

As per the revised disclosure for investments, banks will now be required to provide details of the 'composition of investment portfolio' in the following manner[11];

a. For each category of investment, additional disclosure will be provided as under:

Whether investments have been made in:

– Government securities
– Other approved securities
– Shares
– Debentures and bonds
– Subsidiaries and/or joint ventures, and
– Others (to be specified).

b. This disclosure will be provided for investments in India as well as investments outside India.

iv. **Investment Fluctuation Reserve:** RBI has added a new requirement to disclose the closing balance of the Investment Fluctuation Reserve as a percentage of closing balance of investments in AFS and HFT/current category.

v. **Additional disclosures in asset quality:** Earlier, banks were required to classify their advances and provisions held into standard and Non-Performing Assets (NPA). Additionally, they were required to, *inter alia,* disclose details of provisions (floating and non-floating provisions) held and certain ratios i.e., the net NPA to net advances ratio and the provision coverage ratio. In the disclosures pertaining to asset quality, banks are now required to disclose an additional ratio of gross NPA to gross advances.

vi. **Disclosures relating to securitisation**: RBI has prescribed a format wherein banks are required to provide details of the securitised assets and the Special Purpose Vehicles (SPVs) sponsored by them. These disclosures, *inter alia,* include the number of SPVs sponsored by banks, total number and amount of securitised assets as per SPV's books, total exposure retained by banks to comply with Minimum Retention Requirement (MRR) as on balance sheet date, amount of exposures to securitised transactions other than MRR. RBI now requires banks to provide the following additional disclosures with regard to securitisation of assets:

a. Sale consideration received by the bank for the securitised assets and gain/loss on sale on account of securitisation

b. Form and quantum (outstanding value) of services provided by way of credit enhancement, liquidity support, post-securitisation servicing, etc.

11. Further reiterated by Reserve Bank of India (Classification, Valuation and Operation of Investment Portfolio of Commercial Banks) Directions, 2021

13. RBI issued updates in the master directions on presentation and disclosures of financial statements by banks

vii. **Business ratios**: RBI requires banks to disclose certain business ratios, such as:

a. Interest income and non-interest income as a percentage to works fund[12]

b. Operating profit as a percentage to works fund

c. Return on assets

d. Business (deposits plus advances) per employee

e. Profit per employee

In addition to the aforementioned business ratios, banks are now required to disclose:

- Cost of deposits, and
- Net interest margin.

viii. **Marketing and distribution fees**: As part of their 'other disclosures', banks are now required to disclose the details of fees/remuneration received in respect of the marketing and distribution function (excluding bancassurance business) undertaken by them.

ix. **Implementation of Ind AS**: RBI requires banks to provide an additional disclosure regarding the strategy that would be adopted by them for Ind AS implementation, including the progress made by them in this regard. These disclosures will be provided until the bank implements Ind AS.

x. **Interim financial reporting for commercial banks**: The RBI has prescribed half yearly review of accounts for all commercial banks, irrespective of whether such banks are listed or not in the format prescribed by the Department of Supervision, Reserve Bank of India (or National Bank for Agriculture and Rural Development for RRBs).

xi. **Payment of DICGC premium**: RBI now requires banks to provide disclosures on payment of Deposit Insurance and Credit Guarantee Corporation (DICGC) premium and arrears in payment of the said premium for the current year and the previous year.

(**Source:** RBI notification no. RBI/DOR/2021-22/83 dated 30 August 2021)

12. Works fund is to be reckoned as average of total assets (excluding accumulated losses, if any) as reported to RBI in Form X for commercial banks and Form IX for UCBs, during the 12 months of the financial year.

14. RBI clarification on compensation of a bank's whole-time director/CEO/material risk takers and control function staff

On 4 November 2019, RBI had issued updated guidelines on compensation of Whole-Time Directors (WTD)/Chief Executive Officers (CEOs)/material risk takers and control function staff (directors and officers) of banks (the guidelines). As per the guidelines, banks were permitted to compensate their directors and officers by way of a fixed pay and a variable pay. The variable pay could be in the form of share-linked instruments or a mix of cash and share-linked instruments.

Paragraph 2.1.2(f) of the guidelines require share-linked instruments to be fair valued on the date of grant by the bank using Black-Scholes model. The fair value thus arrived at should be recognised as expense beginning with the accounting period for which approval has been granted.

The RBI observed that the banks were not recognising grant of the share-linked compensation as an expense in their books of account concurrently.

Therefore, RBI has clarified through a notification dated 30 August 2021 by adding the following paragraph in the extant instructions contained in paragraph 2.1.2(f) of the guidelines:

'The fair value thus arrived at should be recognised as an expense beginning with the accounting period for which approval has been granted'.

Banks are required to ensure compliance with said instructions for all share-linked instruments granted after the accounting period ending 31 March 2021.

(**Source:** RBI notification no. RBI/2021-22/95 dated 30 August 2021)

15. RBI has issued a notification and press release on the road map for the LIBOR transition

In August 2020, the RBI had requested banks to frame a board-approved plan, outlining an assessment of exposures linked to the London Interbank Offered Rate (LIBOR) and the steps to be taken to address risks arising from the cessation of LIBOR, including preparation for the adoption of the Alternative Reference Rates (ARR). On 8 July 2021, RBI has issued certain guidelines for LIBOR transition as follows:

- Banks/financial institutions are encouraged to cease and also encourage their customers to cease entering into new financial contracts that reference LIBOR as a benchmark and instead use any widely accepted ARR as soon as practicable and in any case by 31 December 2021.
- Banks/financial institutions are urged to incorporate robust fallback clauses in all financial contracts that reference LIBOR and the maturity of which is after the announced cessation date of the respective LIBOR settings.
- Banks are encouraged to cease using the Mumbai Interbank Forward Outright Rate (MIFOR) which references the LIBOR as soon as practicable and in any case by 31 December 2021.
- Banks may trade in MIFOR after 31 December 2021 only for certain specific purposes such as transactions executed to support risk management activities such as hedging, required participation in central counterparty procedures (including transactions for hedging the consequent MIFOR exposure), market-making in support of client activities or novation of MIFOR transactions in respect of transactions executed on or before 31 December 2021.
- Banks/financial institutions must undertake a comprehensive review of all direct and indirect LIBOR exposures and put in place a framework to mitigate risks arising from such exposures on account of transitional issues including valuation and contractual clauses.

(**Source:** RBI notification no. RBI/2021-22/69 dated 8 July 2021)

16. Restructuring of derivative contracts due to LIBOR transition

On 13 October 2008, RBI issued Prudential Norms for Off-balance Sheet Exposures of Banks which, *inter alia,* specified that where a derivative contract is restructured, the mark-to-market value of the contract on the date of restructuring should be cash settled. For this purpose, any change in any of the parameters of the original derivative contract would be treated as a restructuring.

RBI through a notification dated 6 August 2021 has clarified that change in the terms of a derivative contract on account of change in reference rate necessitated due to transition from LIBOR to an alternative reference rate would not be treated as restructuring of the derivative contract provided all other parameters of the original contract remain unchanged.

(**Source:** RBI notification no. RBI/2021-22/81 dated 6 August 2021)

17. Regulatory restrictions on loans and advances by banks

RBI through its master circular dated 1 July 2015 has issued guidelines on statutory and other restrictions on loans and advances by banks.

On 23 July 2021, RBI has issued certain amendments to the regulatory restrictions contained in the master circular relating to loans and advances by banks. In accordance with the amendments, unless sanctioned by the board of directors/management committee, banks should not grant loans and advances aggregating INR5 crore and above (earlier INR25 lakh) to:

a. Any relative other than spouse and minor/dependent children of their own chairmen/managing directors or other directors

b. Any relative other than spouse and minor/dependent children of the chairman/managing director or other directors of other banks (including directors of scheduled co-operative banks, directors of subsidiaries/trustees of mutual funds/venture capital funds)

c. Any firm in which any of the relatives other than spouse and minor/dependent children as mentioned in (a) and (b) above is interested as a partner or guarantor and

d. Any company in which any of the relatives other than spouse and minor/dependent children as mentioned in (a) and (b) above is interested as a major shareholder or as a director or as a guarantor or is in control.

(RBI notification no. RBI/2021-22/72 dated 23 July 2021)

18. Update to master direction for HFCs - Revised criteria for notification of HFC as a financial institution

RBI, through a notification dated 17 February 2021 had issued Master Directions-NBFC-Housing Finance Company (HFC) (Reserve Bank) Directions, 2021 (Master Directions) which included guidelines on asset classification and provisioning requirements for HFCs along with matters to be included in the auditor's report of HFCs.

Paragraph 105 of the Master Directions specified certain criteria for notification of HFCs as 'financial institution' under Section 2(1)(m)(iv) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

On 17 June 2021, the Government of India through a notification has provided that a HFC registered under Section 29A(5) of the National Housing Bank Act, 1987 with assets worth INR100 crore and above would be considered as a 'financial institution' under Section 2(1)(m)(iv) of the SARFAESI Act.

Consequently, RBI through a notification dated 25 August 2021 has withdrawn the criteria prescribed for notification of HFCs under paragraph 105 of the Master Direction with immediate effect.

(**Source:** RBI notification no. RBI/2021-22/91 dated 25 August 2021)

ICAI publications

EACs issued by ICAI during the quarter ended 30 September 2021

Topic	Month
Accounting treatment of expenditure incurred for configuration design study of integrated refinery cum petrochemical project (Ind AS)	July 2021
Measurement of residual value of Property, Plant and Equipment/Intangible Assets as a percentage to 'Original Cost' as mentioned in the 2013 Act vis-à-vis 'Deemed Cost' referred to in Ind AS 101 (Ind AS)	August 2021
Presentation of change in non-current asset in Cash Flow Statement (Ind AS)	September 2021

(**Source:** The Chartered Accountant – ICAI Journal for the July 2021, August 2021 and September 2021)

Our publications

Accounting and Auditing Update: Issue no. 62 – September 2021

In this edition of Accounting and Auditing Update (AAU), we cast our lens on some of the key points for assessing public company readiness following Special Purpose Acquisition Companies (SPAC) route relevant for the closing of the transaction and life beyond as a public company.

Recently, the Government of India (GoI) approved the Production Linked Incentive (PLI) scheme for automobile and auto component industry (auto sector). The scheme is expected to overcome the cost disabilities of the auto industry for manufacture of advanced automotive technology products in India. Companies opting for the PLI scheme may need to evaluate the financial reporting implications of the scheme, for instance, increased investment in property, plant and equipment and consequent capitalisation, accounting of the incentive as government grant and increased research and development expenditure, etc. Our article provides an overview of the PLI scheme and the expected financial reporting impacts for the company opting for the scheme.

The publication also provides an overview of regulatory and financial reporting developments in India.

First Notes
SEBI amends provisions related to Independent Directors (IDs)

The Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements), Regulations, 2015 (Listing Regulations) lays down provisions for transparency and fair disclosures by all Indian listed companies. Amendments to the Listing Regulations have been made from time to time to reinforce compliances and protect the interest of investors.

On 29 June 2021, SEBI, in its board meeting approved some of proposals pertaining to IDs mentioned in the consultation paper. These decisions come into effect though SEBI's notification dated 3 August 2021 which amended the Listing Regulations pertaining to regulatory provisions related to IDs. The amendments mainly pertain to the following areas:

- Eligibility of IDs
- Appointment, reappointment and resignation of IDs
- Committees of the board
- Related party transactions
- Directors and Officers insurance (D&O insurance) for IDs

These amendments will be applicable to all listed companies (however, requirement to procure D&O insurance for IDs is applicable to top 1,000 listed companies) effective 1 January 2022.

This issue of First Notes aims to provide an overview of the key amendments made by SEBI in the Listing Regulations relating to IDs.

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