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Voices on Reporting

Quarterly updates

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Contents

In this newsletter, we aim to summarise important topics relevant to the quarter ended 31 December 2017 from the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI) and the Institute of Chartered Accountants of India (ICAI).

Updates relating to the Companies Act, 2013

Companies (Amendment) Act, 2017 received Presidential assent

Background

The Companies Law Committee (CLC) had submitted its recommendations to the government on changes to be made to the Companies Act, 2013 (2013 Act) on 1 February 2016. Based on the recommendations of the CLC, on 16 March 2016, the government proposed the Companies (Amendment) Bill, 2016 on issues arising on account of implementation of the 2013 Act in order to amend the 2013 Act. However, the Companies (Amendment) Bill, 2016 was not approved by the Parliament in 2016. Therefore, it was presented again in 2017 as the Companies (Amendment) Bill, 2017.

On 27 July 2017, Lok Sabha passed the Companies (Amendment) Bill, 2017.

New development

After much deliberation, on 19 December 2017, Rajya Sabha passed the Companies (Amendment) Bill, 2017 and on 3 January 2018, the Companies (Amendment) Act, 2017 (Amendment Act, 2017) received the assent of the President of India.

The Amendment Act, 2017 makes significant changes to the 2013 Act which are aimed at ease of doing business, better corporate governance and enforcement of stringent penal provisions for defaulting companies.

The table below provides an overview of the key changes introduced in the respective sections of the 2013 Act:

Particulars	Overview of the Amendment Act, 2017
Definitions	The Amendment Act, 2017 has accepted the recommendations of the CLC and modified the definitions of the following terms: • **Significant influence:** In the revised definition of an 'associate company', significant influence means control of at least 20 per cent of the **total voting power** (earlier total share capital), **or control of or participation in** business decisions under an agreement. (Section 2(6)) • **Joint venture:** Currently, the term 'joint venture' has not been specifically defined in the 2013 Act and the definition of an associate company included the term 'joint venture'. The Amendment Act, 2017 defines 'joint venture' as a 'joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement'. The definition is in accordance with Indian Accounting Standard (Ind AS) 28, *Investments in Associates and Joint Ventures*. (Section 2(6)) • **Holding company:** An explanation has been added to the definition which states that a holding company would include 'any body corporate'. (Section 2(46)) • **Subsidiary:** The term 'total share capital' (i.e. paid-up equity share capital and convertible preference share capital) would be replaced by the term 'total voting power'as the basis for deciding holding/subsidiary relationship. (Section 2(87)) • **Key Managerial Personnel (KMP):** The definition of a KMP would include 'an officer (not more than one level below the directors) who is in whole-time employment and designated as KMP by the Board of Directors (BoD)'. (Section 2(51))

Particulars	Overview of the Amendment Act, 2017 (cont.)
Definitions (cont.)	• **Financial Year (FY):** In addition to a holding/subsidiary company, an associate company of a company incorporated outside India could also make an application to the National Company Law Tribunal (NCLT) for a different FY. (Section 2(41)) • **Interested director:** Definition of an interested director has been removed. (Section 2(49)) • **Net worth:** While computing net worth, the debit or credit balance of statement of profit and loss would also be added along with paid-up share capital and all reserves created out of the profits and securities premium account. (Section 2(57)) • **Related party:** The definition of a related party would include an investing company or its venturer. (Section 2(76)) • **Small company:** The maximum threshold for paid-up share capital of a small company has been increased from INR5 crore to INR10 crore and for turnover has been increased from INR20 crore to INR100 crore. (Section 2(85)) • **Turnover:** It would refer to **gross amount of revenue recognised in the statement of profit and loss** (earlier the definition referred to an aggregate value of the realisation of amount) from the sale, supply, or distribution of goods or on account of services rendered, or both, by a company during a FY. (Section 2(91)) *(Emphasis added to highlight the changes)*
Incorporation of companies	**Members to be severally liable in certain cases:** The Amendment Act, 2017 has added a new sub-section after Section 3 (formation of company). The new sub-section provides that if at any time: • The number of members of a company falls below the required limit (i.e. below seven in case of a public company and two in case of a private company) and • The company continues to carry on the business for more than six months then every member of the company that is involved in the business during those six months and continues to carry it on post six months being aware of the default would be liable for the payment of the whole debts of the company contracted during that time and may also be sued. (Section 3A)
	Registered office of a company: The Amendment Act, 2017 clarifies that a company is allowed to have a registered office within 30 days (earlier within 15 days) from its incorporation. Additionally, notice of any change in the situation of the registered office could also be intimated to the Registrar of Companies (ROC) within 30 days from the change (earlier within 15 days). (Section 12)
	Authentication of documents: According to the Amendment Act, 2017, a document or proceeding requiring authentication by a company or contracts made by or on behalf of the company could also be signed by an employee of the company duly authorised by the Board (earlier only Key Managerial Personnel (KMP) or an officer of the company could be authorised). (Section 21)
Prospectus and allotment of securities	**Matters to be stated in prospectus:** The Amendment Act, 2017 empowers SEBI to prescribe the contents of a prospectus. Accordingly, a public company is not required to provide certain details in the prospectus (as given in clause (a), (b) and (d) of Section 26(1) of the 2013 Act) such as names and addresses of its registered office, dates of the opening and closing of the issue, its capital structure, and auditor's report on the company's profits/losses and assets and liabilities. (Section 26)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Prospectus and allotment of securities (cont.)	**Civil liability for misstatement in prospectus:** Currently, in case a person subscribes for securities of a company or act on any statement included in the prospectus which is misleading and as a consequence, such person has sustained any loss or damage, then, following persons would, *inter alia,* be held liable: • Director of a company at the time of issue of prospectus/consented to be named in the prospectus as a director • An expert referred under Section 26(5) of the 2013 Act (i.e. who is not engaged/ interested in the formation/promotion of the company, has given his/her consent to the issue of the prospectus and has not withdrawn such consent before the delivery of a copy of the prospectus to the ROC for registration. Additionally, a statement to that effect has been included in the prospectus). However, a person would not be held liable if he/she proves that: • He/she withdrew his/her consent to become a director before the issue of prospectus or • The prospectus was issued without his/her knowledge; reasonable public notice was issued on becoming aware of the issue. The Amendment Act, 2017 adds a new provision which states that a person would not be held liable with respect to misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, subject to the following: • The person had reasonable ground to believe that the person (expert) making the statement was competent to make it and • The said person (expert) had given the consent required by Section 26(5) to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder. (Section 35)
Private placement	**Issue of shares on private placement:** The Amendment Act, 2017 simplifies the private placement process and specifies that private placement could be made only to a select group of persons identified by the BoD. (Section 42)
Share capital and debentures	**Prohibition on issue of shares at discount:** The Amendment Act, 2017 allows a company to issue a share at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines/directions/regulations specified by the Reserve Bank of India (RBI) under the RBI Act, 1934 or the Banking (Regulation) Act, 1949. (Section 53)
Acceptance of deposits by companies	**Prohibition on acceptance of deposits from public:** The Amendment Act, 2017 changes the requirement for maintaining a deposit repayment reserve account in a scheduled bank to 20 per cent of the amount of deposits maturing during the following FY (earlier the requirement was 15 per cent of the amount of deposits maturing during the FY and the FY next following). Further, the requirement to provide a deposit insurance in respect of the amount of deposits accepted by the company has been dispensed with. Additionally, companies which have made good on a default committed in the past would be allowed to accept deposits after five years from the date of the default remediation. (Section 73)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Acceptance of deposits by companies (cont.)	**Repayment of deposits:** The timeline for repayment of deposits accepted by the company before the commencement of the 2013 Act has been modified. Accordingly, the Amendment Act, 2017 clarifies that the amount of deposits accepted by a company before the commencement of the 2013 Act could be repaid within three years from the date of commencement of the 2013 Act (earlier the time period was one year) or before the expiry of the period for which the deposits were accepted (earlier it was the date on which such payments are due), whichever is earlier. Additionally, renewal of any such deposits would take place as per the provisions of Chapter V of the 2013 Act and related Rules. (Section 74)
	Punishment for contravention of provisions relating to acceptance of deposits: In case of contravention with the provisions of the sections relating to acceptance of deposits (Section 73 or 76), the company would be punishable with a minimum fine of INR1 crore **or twice the amount of deposit accepted, whichever is lower** (earlier the fine was INR1 crore) (Section 76A) *(Emphasis added to highlight the change)*
Management and administration	**Declaration of beneficial interest in any share:** Section 89 of the 2013 Act currently requires that every person who holds or acquires beneficial interest in share of a company should make a declaration to the company regarding the particulars of such interest including nature of interest. The term 'beneficial interest' was not defined in the 2013 Act. The Amendment Act, 2017 clarifies that the *'beneficial interest in a share'* would include, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to: a. Exercise or cause to be exercised any or all of the rights attached to such share or b. Receive or participate in any dividend or other distribution in respect of such share. (Section 89 and 90) Additionally, a new Section 90 (Register of significant beneficial owners in a company) has been inserted which, *inter alia,* prescribe that a register of beneficial owners should be maintained by a company and filed with the ROC. (Section 90)
	Annual return: Every company is required to prepare an annual return containing the particulars as they stood on the close of the FY. One of the particulars to be disclosed in the annual return is the *indebtedness* of the company. The Amendment Act, 2017 clarifies that a company is not required to state its indebtedness in the annual return. Additionally, details relating to Foreign Institutional Investors (FII) such as their names, countries of incorporation, percentage of shareholding, etc. have also been omitted. Every company should place a copy of the annual return on its website with web link to be disclosed in the board's report. Additionally, the CG may prescribe an abridged form of annual return for one person company, small company and other class of classes of companies as may be prescribed. (Section 92)
	Return in case of change in promoters' stake: Section 93 that required filing of return in case of change in promoters' stake by a listed company has been omitted. (Section 93)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Management and administration (cont.)	**Annual General Meeting (AGM):** The Amendment Act, 2017 has permitted an unlisted company to hold its AGM at any place in India provided consent has been given by all the members in writing or by electronic mode in advance. For other companies, AGM is required to be held at the registered office of the company or some other place where the registered office is situated. (Section 96)
	Extraordinary General Meeting (EGM): Currently, the 2013 Act does not specify a place where an EGM of a company (other than by requisition) should be held. The Amendment Act, 2017 clarifies that an EGM of a company (other than its wholly-owned subsidiary incorporated outside India) should be held at a place within India. (Section 100)
	Postal ballot: The Amendment Act, 2017 clarifies that any item of business required to be transacted by means of a postal ballot would be allowed to be transacted through electronic voting at the general meeting. (Section 110)
Declaration and payment of dividend	The Amendment Act, 2017 clarifies that while computing profits of the company for declaration and payment of dividend, any amount representing unrealised gains, notional gains or revaluation of assets and any changes in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair values should be excluded. In case of inadequacy/absence of the profits, companies proposing to declare dividend, can declare it out of the accumulated profits earned by it in PYs and transferred by it to the *free* reserves (earlier the 2013 Act made a mention of 'reserves'). Further, interim dividend could be declared out of the profits generated by the company in a FY till the quarter preceding the date of its declaration and can be declared at any time till the date of the AGM. (Section 123)
Accounts of companies	**Consolidated Financial Statement (CFS):** Following changes have been made with respect to preparation of CFS by a company: • Only a listed company with a subsidiary(ies) should place separate audited accounts in respect of each of its subsidiary on its website (earlier the requirement was for all companies). • For foreign subsidiary(ies) of the Indian holding company, separate audited accounts of such foreign subsidiary(ies) is not required to be placed on its website. Instead, the holding company should place CFS of the foreign subsidiary(ies) as per the laws of the country in which they have been incorporated on its website. • In case the foreign subsidiary is not required to get its financial statements audited under the laws of the country of its incorporation, then the holding company can place such unaudited financial statements on its website (along with a translated copy of the financial statements (in case they are in language other than English)). • Every company is required to provide a copy of separate audited/unaudited financial statements as prepared in respect of each of its subsidiary to any member who asks for it. (Section 136)
	Copy of financial statement to be filed with the ROC: Currently under the 2013 Act, every company with a subsidiary(ies) is required to file with ROC accounts of its foreign subsidiary(ies). The Amendment Act, 2017 clarifies that if the accounts of foreign subsidiary(ies) are not required to be audited, then Indian holding company should file unaudited financial statements. (Section 137)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Accounts of companies (cont.)	**Re-opening of accounts:** The Amendment Act, 2017 clarifies that re-opening of accounts would be limited to eight FYs. However, the CG could direct for re-opening of accounts for a period longer than eight FYs. (Section 130)
	Constitution of NFRA: According to the Amendment Act, 2017, a person aggrieved by the orders of National Financial Reporting Authority (NFRA) can refer an appeal before the Appellate Tribunal (earlier Appellate Authority) in the manner as may be prescribed. (Section 132)[1]
	Financial statement, board's report, etc.: The Amendment Act, 2017 clarifies that the disclosures made in the financial statements are to be referred in the board's report in order to avoid duplications. (Section 134)
	CSR: Following changes have been made to the provisions relating to Corporate Social Responsibility (CSR): • For determining the threshold of the specified net worth, turnover, or net profit to constitute a CSR committee, the words 'any FY' have been replaced by the words 'immediately preceding FY'. • Composition of the CSR committee for 'companies not required to appoint independent directors' has been changed to 'two or more directors'. • An explanation has been inserted which provides powers to the MCA to prescribe any exclusions from the net profit calculated in accordance with the provisions of Section 198 of the 2013 Act. • Section 135(3)(a) has been modified to refer to 'in areas or subjects specified in Schedule VII to the 2013 Act' within which CSR activities could be undertaken by a eligible company. Now companies have a discretion to spend the CSR amount in the areas other than their local area of business or industry. (Section 135)
Audit and auditors	**Appointment and resignation of an auditor:** The requirement relating to ratification of auditors by the members of the company at every AGM has been removed by the Amendment Act, 2017. (Section 139) If an auditor fails to file within a period of 30 days from the date of his/her resignation a statement, indicating the reasons and other facts as may be relevant with regard to his resignation, then such an auditor would be punishable with a minimum fine of INR50,000 or his/her remuneration, whichever is lower (earlier minimum fine was only INR50,000). (Section 140)
	Disqualification of an auditor: The Amendment Act, 2017 clarifies that any person who provides directly or indirectly any service as given in Section 144* of the 2013 Act to the company, its holding company or to its subsidiary is ineligible to be appointed as an auditor of the company. (Section 141) *(*Services under Section 144 includes:* • *Accounting and book keeping services* • *Internal audit* • *Actuarial services* • *Investment advisory and investment banking service* • *Rendering of outsourced financial services* • *Management services and* • *Any other kind of services.)*

1. Section 132 of the 2013 Act has not yet been notified by the MCA.

Particulars	Overview of the Amendment Act, 2017 (cont.)
Audit and auditors (cont.)	**Powers and duties of auditors and auditing standards:** The Amendment Act, 2017 clarifies that an auditor of a holding company would have a right of access to the records of all its associates in addition to its subsidiaries for the purpose of consolidation of its financial statements with that of its subsidiaries and associates. Additionally, the Amendment Act, 2017 clarifies that an auditor would report on Internal Financial Control (IFC) with regard to financial statements. Earlier the 2013 Act did not clarify that IFC would be with regard to financial statements. (Section 143)
Appointment and qualifications of directors	**Resident director:** The requirement for a director to be resident in India would be met if he stays in India for a total period of 182 days or more during the FY (earlier the 2013 Act referred to previous calendar year and now changed to FY). However, in case of a newly incorporated company the above requirement would apply proportionately at the end of the FY in which a company has been incorporated. (Section 149)
	Independent director: Following changes have been introduced with respect to provisions of an independent director: • Pecuniary relationship will not include the remuneration received by an independent director and any amount from a transaction which does not exceed 10 per cent of his/her total income (or such amount as may be prescribed). • Section 149(6)(d) has been amended with respect to the scope of restriction on a 'pecuniary relationship or transaction' entered by a relative and has been made more specific by clearly categorising the types of transactions. For example, holding of any security of/interest in the company, indebted to the company, etc. • Currently, an individual is restricted from being appointed as an independent director in case he/she or his/her relative is a KMP or an employee of the company or its holding, subsidiary or associate company during any of the preceding three FYs. As per the Amendment Act, 2017, this restriction would not apply if a relative of an independent director is employed during the preceding three FYs. (Section 149)
	Application for allotment of Director Identification Number (DIN): Currently, every individual intending to be appointed as a director is required to make an application to the CG for allotment of DIN. Now the Amendment Act, 2017 provides that the CG may prescribe 'any identification number' which should be treated as DIN and in case an individual holds or acquires such a number, then no application is required to be made by him/her. (Section 153)
	Right of persons other than retiring directors to stand for directorship: Currently, a person other than a retiring director is eligible for appointment as a director at any general meeting provided such a person has given a notice of his candidature and deposited the prescribed amount with the company. This amount would be refunded on his/her appointment as a director or if he/she gets 25 per cent of total valid votes. Now the Amendment Act, 2017 clarifies that deposit of an amount is not required in case of appointment of: • An independent director • Director recommended by the Nomination and Remuneration Committee (NRC) or • Director recommended by the BoD of the company (in case company is not required to constitute NRC). (Section 160)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Appointment and qualifications of directors (cont.)	**Appointment of an additional director, alternate director and nominee director:** Currently under the 2013 Act, a person holding alternate directorship for any other director in the company is prohibited from appointment as an alternate director in the absence of another director. The Amendment Act, 2017 clarifies that in addition to the above mentioned person, a person holding directorship in the same company is also prohibited to be appointed as an alternate director during the absence of another director. (Section 161)
	Casual vacancy: If the office of any director appointed by the company in general meeting is vacated before the term of office expires in the normal course, the resulting casual vacancy could be filled by the BoD at its meeting. This provision has been made applicable to every company provided such an appointment gets approval in the immediate next general meeting (earlier this provision was applicable only to a public company). (Section 161)
	Disqualifications for appointment of a director: Currently, a director of a company which has defaulted on certain requirements is not eligible to be reappointed as a director of that company or appointed in another company for a period of five years from the date of the failure. Those defaults are as follows: • Not filed financial statements or annual returns for any continuous period of three FYs or • Failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or pay any dividend declared for a continuous period of one year. The Amendment Act, 2017 has provided that in case a person has been appointed as a director of the company which has defaulted on above grounds, then such a director should not incur the disqualification for a period of six months from the date of his/her appointment. Additionally, a director would be disqualified if he/she has been convicted by a court for any offence, on the order of the Tribunal and convicted in the matter of Related Party Transactions (RPTs), even if an appeal or petition has been filed against the order of conviction or disqualification. (Section 164)
	Number of directorships: Currently, no person is permitted to hold office as a director including alternate directorship, in more than 20 companies at the same time and of which the maximum number of public companies in which a person can be appointed as a director could be up to 10. The Amendment Act, 2017 clarifies that the directorship in a dormant company should be excluded while determining the threshold of 20 companies. (Section 165)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Appointment and qualifications of directors (cont.)	**Vacation of office:** Section 167 of the 2013 Act specifically provides that the office of a director should become vacant in case he/she incurs disqualifications specified in Section 164 of the 2013 Act or becomes disqualified by an order of a court or the Tribunal. However, the Amendment Act, 2017 clarifies that in case a director gets disqualified on grounds of Section 164(2) of the 2013 Act (i.e. non-filing of financial statements or failure to repay dues), then the office of the director would become vacant in all the companies other than the company which is in default under Section 164(2). Additionally, the Amendment Act, 2017 has provided a relaxation and provided that a director would not be required to vacate his/her office in respect of disqualification by an order of a court or the Tribunal or conviction for any offence in the following events: a. For 30 days from the date of conviction or order of disqualification b. Where an appeal or petition is preferred within 30 days as aforesaid against the conviction resulting in sentence or order, until expiry of seven days from the date on which such appeal or petition is disposed of or c. Where any further appeal or petition is preferred against order or sentence within seven days, until such further appeal or petition is disposed of. Earlier the 2013 Act was stringent and required that the office should be vacated by the director even if he/she has filed an appeal against the order of such court. (Section 167)
	Resignation of a director: The Amendment Act, 2017 clarifies that a director is not mandatorily required to forward a copy of his/her resignation along with detailed reasons to the ROC (earlier under the 2013 Act, a director was mandatorily required to submit the details of his/her resignation to the ROC). (Section 168)
Meetings of board and its powers	**Meetings of board:** Currently, the CG has been empowered to specify matters which should not be dealt in a meeting through video conferencing or other audio visual means. The Amendment Act, 2017 clarifies that in case the quorum for a meeting is met through physical presence of directors, then any other director may participate through video conferencing or other audio visual means and discuss the matters specified by the CG. (Section 173)
	Audit Committee: According to the Amendment Act, 2017, the BoD of every listed **public** company (earlier the 2013 Act referred to every listed company) and such other class or classes of companies, as may be prescribed should constitute an audit committee. Further, the Amendment Act, 2017 clarifies that the existing requirement for the audit committee to pre-approve all RPTs subject to the approval of the BoD or shareholders as required by Section 188 would continue. For transactions that are not covered under Section 188, the audit committee could give recommendations to the BoD, in case it does not approve the transaction. Additionally, a transaction (involving an amount up to INR1 crore) is voidable at the option of the audit committee if it has been entered without its approval and has not been ratified subsequently by it. RPTs between a holding company and its wholly-owned subsidiary that do not require board's approval under Section 188, would not require approval of the audit committee. (Section 177) *(Emphasis added to highlight the change)*

Particulars	Overview of the Amendment Act, 2017 (cont.)
Meetings of board and its powers (cont.)	**Nomination and Remuneration Committee (NRC):** Following changes have been made to the provisions relating to NRC: • Every listed **public** company (earlier the 2013 Act referred to every listed company) and a company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 is required to constitute a NRC. • NRC is required to specify the methodology for the effective evaluation of the performance of the individual directors, committees of the board and the board as a whole which should be carried out by the board, by the NRC or by an independent external agency and should review its implementation and compliance. • Additionally, companies could place their remuneration policy on their website, if any, and should disclose only the salient features of the policy, the changes, if any along with the web address of the policy in the board's report. (Section 178) *(Emphasis added to highlight the change)*
	Loan to directors, etc.: The Amendment Act, 2017 allows companies to give a loan to any person in whom the director is interested, subject to prior approval by a special resolution in a general meeting and loans should be utilised by the borrowing company for its principal business activities. Additionally, revised definition of 'any person in whom the director is interested' has also been specified in the Amendment Act, 2017. (Section 185)
	Loan and investment by company: Currently, under the 2013 Act, a company could give loan/guarantee or provide any security in connection with the loan to any person/ other body corporate that exceeds 60 per cent of its paid-up share capital, free reserves and securities premium account or 100 per cent of its free reserves and securities premium account, whichever is more, only if a special resolution is passed. The Amendment Act, 2017 clarifies that a company is allowed to give loan to its employees in excess of the specified limits (i.e. 60 per cent of its paid-up share capital, free reserves and securities premium account or 100 per cent of its free reserves and securities premium account, whichever is higher) without passing a special resolution. Additionally, definition of an investment company has been modified to provide that a company would be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its: a. Assets in the form of investment in shares, debentures or other securities constitute not less than 50 per cent of its total assets, or b. Its income derived from investment business constitutes not less than 50 per cent as a proportion of its gross income. (Section 186)
	RPTs: Currently, no member of the company (except private company) is allowed to vote on a resolution to approve any contract or arrangement which could be entered into by the company, if such member is a related party. The Amendment Act, 2017 clarifies that this restriction will not be applicable to a company in which 90 per cent or more members are relatives of promoters or are related parties. (Section 188)
	Prohibition on forward dealing and insider trading: The provisions relating to forward dealing and insider trading have been omitted from the 2013 Act. (Section 194, 195)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Appointment and remuneration of managerial personnel	**Managerial Remuneration (MR):** Currently, total MR payable by a public company should not exceed 11 per cent of the net profits of the company for that FY. The limits could be exceeded with the approval of the shareholders and CG, subject to Schedule V of the 2013 Act. The Amendment Act, 2017 clarifies the following with respect to payment of MR: • The company in a general meeting may authorise the payment of remuneration exceeding 11 per cent of the net profits of the company, subject to Schedule V. The requirement for a government approval has been removed. (First proviso to Section 197(1)) • Approval of the shareholders **by a special resolution** would be required to pay MR in excess of the maximum amount of remuneration prescribed when there are one or more than one Managing Director (MD), Whole-Time Director (WTD) or manager in the company. (Second proviso to Section 197(1)) • In case of no profits or inadequate profits, a company should not pay to its directors, (including any MD or WTD or manager) by way of remuneration any sum (exclusive of any fees payable to directors) except in accordance with the provisions of Schedule V. (The provision of approval of central government approval for payment in excess of Schedule V has been omitted). (Section 197(3)) • In case any director draws or receives remuneration in excess of the specified threshold, then he/she should refund the amount within two years or such lesser period as may be allowed by the company (earlier the 2013 Act did not specify the time period within which sums should be refunded). (Section 197(9)) • Company is not allowed to waive the recovery of any sum refundable unless **approved by the special resolution within two years from the date the sum becomes refundable** (earlier the 2013 Act referred to unless permitted by the CG). (Section 197(10)) • **Additionally, in case a company has defaulted in payment of dues to any bank/public financial institution/non-convertible debenture holders/secured creditor, then prior approval of such bank/public financial institution/non-convertible debenture holders/secured creditor should be obtained before obtaining the approval in the general meeting. (New provision)** • Further, an auditor would be required to make a statement as to whether the remuneration paid by the company to its directors is in accordance with the prescribed provisions. (Section 197). *(Emphasis added to highlight the change)*
	Calculation of profits: The Amendment Act, 2017 clarifies that while calculating net profits of the company for the purpose of determining MR payable, any amount representing unrealised gains, notional gains or revaluation of assets have to be excluded from net profits. Further, the Amendment Act, 2017 clarifies that any amount representing profits by way of premium on shares or debentures of the company, which are issued or sold by an investment company should not be excluded from the net profits. (Section 198)

Particulars	Overview of the Amendment Act, 2017 (cont.)
Inspection, inquiry and investigation	Currently, the CG could appoint one or more inspectors to investigate and report on matters relating to the company, and its membership for the purpose of determining the true persons who are or have been: a. Financially interested in the success or failure, whether real or apparent, of the company, or b. Able to control or to materially influence the policy of the company. The Amendment Act, 2017 clarifies that an inspector could also be appointed for determining the true persons who have or had beneficial interest in the shares of a company or who are or have been beneficial owners or significant beneficial owner of a company. (Section 216)
Companies incorporated outside India	Currently, a foreign company in which not less than 50 per cent of the paid-up share capital (whether equity or preference or partly equity and partly preference) is held by one or more citizens of India or one or more companies/bodies corporate incorporated in India, whether singly or in the aggregate, such a company is required to comply with the provisions of the 2013 Act prescribed for the business carried on by it in India, as if it were a company incorporated in India. The Amendment Act, 2017 clarifies that Sections 380 to 386 (provisions relating to documents to be submitted by foreign company, accounts of foreign company, etc.) and Section 392 (punishment for contravention) and Section 393 (company's failure to comply with provisions of chapter applicable to foreign company not to affect validity of contracts, etc.) would be applicable to all foreign companies. However, the CG may exempt any class of foreign companies from compliance with any of the provisions of Sections 380 to 386 and Sections 392 and 393 of the 2013 Act. (Section 379)
Miscellaneous	**Punishment for fraud:** Currently, under the 2013 Act, any person who is found to be guilty of fraud is punishable with imprisonment for a minimum period of six months and maximum term of 10 years and with fine which should not be less than the amount involved in the fraud but which could extend to three times the amount involved in the fraud. In case of fraud which involves public interest, minimum term of imprisonment is three years. The Amendment Act, 2017 clarifies that frauds which involve an amount of INR10 lakh or more or one per cent of the turnover of the company, whichever is lower, would be considered punishable under Section 447. Further, frauds below these limits which do not involve public interest would be punishable with an imprisonment for a term which could extend to five years or with fine which may extend to INR20 lakh or with both. (Section 447)

(Source: KPMG in India's analysis, 2018 based on the amendments made by the Companies (Amendment) Act, 2017)

Applicability: The Amendment Act, 2017 will come into force on such date as the CG may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of the 2013 Act and any reference in any provision to the commencement of the 2013 Act should be construed as a reference to the coming into force of that provision.

Key takeaways

The Amendment Act, 2017 has revisited certain requirements of the 2013 Act and amended a number of sections of the 2013 Act. Companies should carefully take note of the changes introduced and align their processes wherever required.

Some of the key changes brought in by the Amendment Act, 2017 are as follows:

- **Alignment of definitions:** Some of the fundamental definitions in the 2013 Act were inconsistent with the AS/Ind AS and had effect on number of provisions of the 2013 Act. Some of the important changes to definitions are as follows:
  - *Subsidiary:* The definition of subsidiary in the 2013 Act referred to 'total share capital' i.e. aggregate of the paid-up equity share capital and the convertible preference share capital. Now, the Amendment Act, 2017 has changed the reference to 'total voting power'. In many cases, the total voting power would be with reference to equity share capital. However, if dividend in respect of a class of preference shares has not been paid for a period of two years or more, then such class of preference shareholders would also have right to vote on the resolutions placed before the company.
  - *Associate:* Similar to subsidiary, the definition of associate now does not have reference to 'total share capital' but to 'total voting power and the definition has been aligned with AS/Ind AS.
  - *Joint Venture:* The 2013 Act did not define the term 'joint venture' and made reference to joint venture as an inclusive part in the definition of the term 'associate company'. The Amendment Act, 2017 continues to refer joint venture within the term associate company but also defines joint venture in line with Ind AS 28. However, Ind AS 28 further defines the terms 'joint arrangement' and 'joint control' which are associated with the definition of joint venture. While the Amendment Act, 2017 does not include these definitions, we believe that the intent of the law has been to align the definition of joint venture with Ind AS and therefore, the two associated definitions of joint control and joint arrangement could be read harmoniously with Ind AS.
  - *Holding company:* The amendment has also been made in the definition of a holding company and now includes body corporates within its definition. This change addresses the concern as to whether foreign companies meet the definition of holding companies under the 2013 Act. Thus, several multinational companies will have to report their parent as 'holding company'. This may impact matters such as RPTs.
- **Calculation of net profits for managerial remuneration and interim dividend:** The Amendment Act, 2017 excludes from net profits 'any amount representing unrealised gains, notional gains or revaluation of assets'. This exclusion will have a significant impact on the companies following Ind AS. Ind AS requires certain adjustments e.g. fair value gains or losses on financial instruments measured at Fair Value Through Profit or Loss (FVTPL) in the statement of profit and loss. There could also be adjustment in the 'Other Comprehensive Income' due fair value gains or losses on investments classified as 'Fair Value through Other Comprehensive Income' (FVOCI). The adjustments due to financial instruments at FVOCI do not get recycle through the statement of profit and loss. Therefore, it is not clear whether the fair value losses on financial instrument at FVTPL could be included in the computation of net profits in the year they are realised and also how the impact of fair value changes on financial instruments at FVOCI would be taken into account in the computation of net profits. Additionally, it is important to note that all notional losses and unrealised losses would be included in the computation of net profits of managerial remuneration and interim dividend calculation.

- **Only listed companies to place separate accounts of subsidiaries:** Currently, fourth proviso to Section 136(1) of the 2013 Act requires that every company with a subsidiary(ies) should place separate audited accounts in respect of each of its subsidiaries on its website.

  The Amendment Act, 2017 exempts unlisted companies from the requirement of uploading financial statements of all subsidiaries on the website of the holding company. This change is in line with the recommendation of the CLC.

  Additionally, a listed company with a foreign subsidiary(ies) has also been provided some relief. If the foreign subsidiary of the Indian holding company is required to prepare consolidated financial statements as per the laws of the country of its incorporation, then such a holding company should place those consolidated financial statements of its foreign subsidiary on its website. Additionally, if the foreign subsidiary is not required to get its financial statements audited, then the holding company may place such unaudited financial statements on its website along with a declaration to that effect.

- **Copy of financial statements to be filed with the ROC:** All Indian companies would have to continue to file the separate financial statements of their foreign subsidiaries with ROC. However, the Amendment Act, 2017 now allows companies to file unaudited financial statements of foreign subsidiaries if the law of the incorporation of the foreign subsidiaries does not have a requirement for audit.

- **Transactions outside the scope of pecuniary relationship for an independent director:** The Amendment Act, 2017 specifically excludes the amount of remuneration received by an independent director and any transaction up to 10 per cent of his/her total income from the definition of pecuniary relationship.

  The change is very significant and expands the scope of transactions that an independent director could enter into. However, such transactions should still be monitored by the companies in order to ensure the independence of an independent director at all times.

  Additionally, the Amendment Act, 2017 has modified the scope of restriction on a 'pecuniary relationship or transaction' entered by a relative by clearly categorising them into types of transactions. These restrictions are in relation to holding of a security or interest, indebtedness, providing guarantee or security in connection with the indebtedness of any third person to the company, its holding, subsidiary or associate company. Additionally, the restrictions also scope in any other pecuniary transaction or relationship. The Amendment Act, 2017 aims to provide certain relief by specifying thresholds upto which these restrictions would not apply.

- **Loans allowed to be given to any person in whom director is interested:** Currently, Section 185 of the 2013 Act specifically prohibits a company from providing any loan/guarantee/security to its directors or to any other person in whom the director is interested.

  However, the Amendment Act, 2017 allows a company to give loans/guarantee/security to any person in whom any of its director is interested when two conditions are fulfilled. One, a special resolution has been passed and two, the loan is to be utilised by the borrowing company for its principal business activities.

  This is another significant change made by the Amendment Act, 2017 as it is expected to provide significant relief to the companies as it would expand the avenues for more fund raising among the group companies.

  On the other hand, it would also put onerous responsibility on the management to clearly distinguish the transactions entered into with persons in whom its directors are interested.

- **Vacation of office by a director is not required if a company defaulted in filing financial statements/annual return or repayment of dues:** The Amendment Act, 2017 through a proviso clarified that in case a director gets disqualified on grounds of Section 164(2) of the 2013 Act (i.e. non-filing of financial statements/annual return or failure to repay dues by the company), then the office of the director would not become vacant for the company which is in default under Section 164(2) but he/she will have to vacate office in all other companies where he/she is a director.

  It appears that the intent of this proviso may be to ensure that the director of a company under such default (of not filing financial statements/annual return or repayment of dues) would continue to remain liable for the affairs of the defaulting company and the office of such director would not become vacant on grounds of such disqualification.

- **Government approval not required for managerial remuneration in excess of specified limits:** Currently, total managerial remuneration payable by a public company should not exceed 11 per cent of the net profits of the company for that FY computed in the specified manner. However, a company with the approval of the shareholders and the CG could authorise the payment of remuneration in excess of the specified limit.

  The Amendment Act, 2017 removed the requirement of a government approval for payment of managerial remuneration in excess of the specified limits. This would ease the procedure with regard to payment of managerial remuneration by companies.

- **Relaxation to defaulting companies for accepting deposits:** Section 73 of the 2013 Act specifies conditions to be fulfilled by companies for accepting deposits from its members. One of the conditions requires that the company should not commit any default in the repayment of deposit (or interest thereon) accepted before or after the commencement of the 2013 Act. Therefore, a company that has defaulted on the repayment of deposits or interest thereon could not accept any deposits in future.

  The Amendment Act, 2017 clarifies that companies which have made good on a default committed in the past would be allowed to accept deposits after five years from the date of the default remediation.

- **Exemption from voting in RPTs:** The relief from the stringent requirements of Section 188 of the 2013 Act to cases where 90 per cent or more members are relatives of promoters or are related parties, would help joint venture companies and closely held public companies.

- **No disclosure duplications:** There are numerous disclosure requirements in the board's report, financial statements, CSR policy, remuneration policy, etc. The clarification provided by the Amendment Act, 2017 regarding disclosures made in the financial statements to be referred in the board's report is expected to reduce the duplications involved in presentation of the both the reports.

- **Multiple private placements possible:** This is likely to boost investments by private equity and other institutional investors in Indian companies.

- **Annual ratification not required for appointment of an auditor:** Currently under the 2013 Act, appointment/continuance of an auditor is subject to annual ratification by the shareholders at the AGM.

  The Amendment Act, 2017 has removed this requirement. Therefore, companies are not required to get the appointment/continuance of an auditor ratified by the shareholders on an annual basis once the auditors have been appointed for five years.

- **Auditor's IFC reporting vs directors' IFC reporting:** For auditors the Amendment Act, 2017 clarifies that IFC is with respect to the financial statements while for directors the responsibility remains unchanged as required by Section 135(5)(e) i.e. both in reference to financial statements and adequacy and effectiveness of IFC in general.

(Source: Companies (Amendment) Act, 2017 dated 3 January 2018 and KPMG in India's First Notes dated 16 January 2018)

MCA notified valuation norms under the 2013 Act

The MCA through its notifications dated 18 October 2017 provided the following:

- Notification of Section 247 of the 2013 Act with effect from 18 October 2017
- Issue of Companies (Registered Valuers and Valuation) Rules, 2017 (Valuation Rules).

Overview of the notified provisions

Section 247 of the 2013 Act

Section 247 of the 2013 Act governs the provisions relating to the valuation by registered valuers under the 2013 Act. It requires that wherever valuation with respect to any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities is required to be made under the provisions of the 2013 Act, it should be valued by a person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised in such manner, on such terms and conditions as may be prescribed. Such a registered valuer should be appointed by the audit committee or by the BoD (in the absence of audit committee) of that company.

Further, various sections of the 2013 Act which require valuation to be conducted by a registered valuer are as follows:

- Section 62(1)(c): Further issue of share capital
- Section 192(2): Restriction on non-cash transactions involving directors
- Section 230(2)(v): Power to compromise or make arrangements with creditors and members
- Section 236(2): Purchase of minority shareholding
- Section 281(1)(a): Submission of report by a company liquidator
- Section 305(2): Declaration of solvency in case of proposal to wind up voluntarily.

Valuation Rules

Key guidance with respect to eligibility and recognition of a registered valuer/registered valuer organisation under the valuation rules is as follows:

- **Eligibility for being a registered valuer:** An individual, partnership entity or a company could practice as a registered valuer if the individual, partnership entity or the company has obtained a certificate of registration from the authority[2] and complied with the prescribed conditions.
- **Eligibility for recognition of a registered valuer organisation:** An organisation could be recognised as a registered valuer organisation for valuation of a *specific asset class or asset classes,* if it is:
  a. Registered under Section 8 of the 2013 Act (Section 25 of the Companies Act, 1956) for the purpose of dealing with the matters relating to regulation of valuers and has in its bye laws, the requirements specified in the Valuation Rules.
  b. A professional institute established by an Act of Parliament enacted for the purpose of regulation of a profession.
- **Compliance with valuation standards:** A registered valuer is required to make valuations as per the valuation standards as may be notified by the CG. Till the time such valuation standards are being notified by CG, the valuations should be performed in accordance with the following:
  a. Internationally accepted valuation standards
  b. Valuation standards adopted by any registered valuers organisation.
- **Cancellation or suspension of certificate of registration or recognition:** The authority could cancel or suspend the registration of a valuer or recognition of a registered valuers organisation in case of violation of the provisions of the 2013 Act, any other law allowing the person to perform valuation, Valuation Rules or any condition of registration or recognition, as the case may be.

Applicability: The Valuation Rules are applicable from the date of their publication in the official gazette i.e. 18 October 2017.

Additionally, MCA through a notification dated 23 October 2017 has delegated the powers and functions vested in the CG under Section 247 of the 2013 Act to the Insolvency and Bankruptcy Board of India, subject to the condition that the CG could revoke such delegation if in its opinion is necessary to do so in the public interest.

2. 'Authority' means an authority specified by the CG under Section 458 of the 2013 Act to perform the functions under these rules.

Key takeaways

Notification of the valuation norms address the key areas of concern such as who would be eligible to be registered as a valuer under the 2013 Act, the procedure for registration, the code of conduct required to be followed and the disciplinary proceedings which could be initiated against the valuer in case of non-compliance.

Some of the areas which requires further consideration are as follows:

- **Eligible registered valuer:** Valuation Rules include a condition that a partnership entity/ company would not be eligible to be a registered valuer if three or all its partners/directors are not registered valuers. This could pose some practical challenges.
- **Valuation standards:** A registered valuer has to make valuations as per the valuation standards as may be notified by CG. Till the time such standards get notified, they have been permitted to adopt internationally accepted methodology and standards adopted by registered valuers organisation.

  However, in practice there is no internationally benchmarked valuation methodology. Therefore, CG should define the valuation standards to be applied by the valuers under the 2013 Act at the earliest so as to ensure consistent valuation approach being followed by all the valuers.

(Source: MCA notifications no. S.O. 3393(E) and no. G.S.R 1316(E) dated 18 October 2017 and notification no. S.O.3401 (E) dated 23 October 2017)

List of disqualified directors

Section 164(2)(a) of the 2013 Act provides that any person who is or has been a director of company which has not filed financial statements or annual returns for a continuous period of three FYs should not be eligible to be reappointed as a director of that company or appointed in other company for a period of five years from the date on which the said company fails to do so.

Recently, MCA hosted a list of disqualified directors under Section 164(2)(a). The list is accessible from the below link:

http://www.mca.gov.in/MinistryV2/disqualifieddirectorslist.html

(Source: MCA.gov.in)

Revision and extension of last date of filing of AOC-4 XBRL e-forms using Ind AS

Companies are required to file Ind AS financial statements for FY2016-17 only in Extensible Business Reporting Language (XBRL) format. To familiarise stakeholders with the new requirements, draft taxonomy for Ind AS has been uploaded since 30 June 2017.

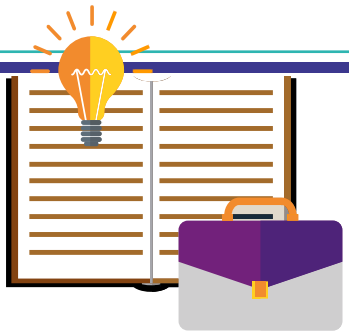
The development of the tools necessary for deployment of the taxonomy for XBRL filing is expected to be completed by 28 February 2018. Accordingly, MCA through its circular (no. 13/2017) dated 26 October 2017 decided to extend the last date for filing of AOC-4 XBRL for the FY2016-17 up to 31 March 2018 without any additional fees.

Additionally, MCA through its notifications dated 6 November 2017 and 7 November 2017 has issued the following:

- Companies (Accounts) Amendment Rules, 2017
- Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017

The amended Rules modify form AOC- 4 (i.e. Form for filling annual return by company) and AOC-4 XBRL (i.e. Form for filing XBRL document in respect of financial statement and other documents with the Registrar).

(Source: MCA general circular no. 13/2017 dated 26 October 2017, notification no. G.S.R. 1372(E) dated 6 November 2017 and notification no. G.S.R. 1371(E) dated 7 November 2017)



Updates relating to Ind AS

ITFG clarifications bulletin 12

The Ind AS Transition Facilitation Group (ITFG) formed by the ICAI issues clarifications' bulletin to provide guidance on issues arising due to applicability and/or implementation of Ind AS. Till date, ITFG has issued 12 bulletins.

In the last quarter, ITFG issued its clarifications bulletin 12 on 23 October 2017 to provide clarifications on 11 application issues relating to Ind AS.

Overview of bulletin 12

Applicability of Ind AS

a. **Applicability of Ind AS to an Indian branch office of a foreign company (Issue 6):** Rule 6 of the Companies (Indian Accounting Standards) Rules, 2015 (Ind AS Rules) requires that an Indian company which is a subsidiary, associate, joint venture and other similar entities of a foreign company should prepare its financial statements in accordance with the Ind AS subject to meeting the criteria specified in the corporate road map.

   The ITFG clarified that a branch office of a foreign company established in India is not a company incorporated under the provisions of the 2013 Act. It is only an establishment/extension of a foreign company in India. Therefore, a branch office of a foreign company is not covered under Rule 6 of the Ind AS Rules and is not required to comply with Ind AS.

Ind AS 101, *First-time Adoption of Indian Accounting Standards*

a. **Adjustments to deemed cost, being the previous Generally Accepted Accounting Principles (GAAP) carrying amount of assets and liabilities (Issue 10):** Paragraph 10 of Ind AS 101 requires that an entity should in its opening Ind AS balance sheet apply the following steps:

   i. Recognise all assets and liabilities whose recognition is required by Ind AS

   ii. Not recognise items as assets or liabilities if Ind AS do not permit such recognition

   iii. Reclassify items that it recognised in accordance with previous GAAP as one type of asset, liability or component of equity, but are a different type of asset, liability or component of equity in accordance with Ind AS

   iv. Apply Ind AS in measuring all recognised assets and liabilities.

   Based on the above, ITFG clarified that except any specific exemption/exception in Ind AS 101, all assets and liabilities are required to be recognised in accordance with the principles of Ind AS 101.

   The ITFG highlighted that there may be certain situations where no exemption/exception has been provided in respect of an item of asset and/or liability. However, application of Ind AS principles to such an item (to which no exemption/exception applies) may have a corresponding impact on another item of asset and/or liability which is measured at its previous GAAP carrying amount at the transition date as permitted by Ind AS 101.

   In such a situation, since the adjustment to assets/liabilities measured are only consequential and arising because of the transition requirements of Ind AS 101, the previous GAAP carrying amount would need to be adjusted only to this extent. Except for this, no further adjustment should be made.

   Previously, ITFG in its bulletin 5 (issue 4 and issue 5) and bulletin 10 (issue 1) had considered and opined on certain specific consequential adjustments to the deemed cost of Property, Plant and Equipment (PPE)/investments.

b. **Adjustment to carrying amount of PPE on account of government grant received prior to transition date (Issue 2):** As per paragraph D5 of Ind AS 101, an entity could elect to measure an item of PPE at the date of transition to Ind AS at its fair value and use that fair value as its deemed cost at that date.

The ITFG considered a situation where an entity adopting Ind AS from FY2016-17 had received a government grant to purchase a fixed asset from the CG during the FY2012-13. The grant received was deducted from the carrying amount of the fixed asset in accordance with the previous GAAP. The entity chose to measure the item of PPE at its fair value and use that as its deemed cost on the date of transition to Ind AS in accordance with paragraph D5 of Ind AS 101. However, as per Ind AS 20 such a grant is required to be accounted as deferred income on the date of transition and deduction of the grant in arriving at the carrying amount of the asset is not permitted.

The ITFG considered whether the entity would be required to adjust the carrying amount of fixed assets as per previous GAAP to reflect accounting treatment of the government grant as per Ind AS 20.

The ITFG considered the guidance provided in paragraph 24 of Ind AS 113, *Fair Value Measurement* with respect to definition of fair value and clarified that the fair value of the asset that would be derived as per Ind AS 113 is the exit price that would be received to sell an asset in an orderly transaction. This is a market-based measurement, not an entity-specific measurement.

Accordingly, it clarified that the fair value of the asset is independent of the government grant received on the asset and no adjustment with regard to the government grant should be made to the fair value of the PPE taken as deemed cost on the date of transition to Ind AS.

However, the company is required to recognise the asset-related government grant outstanding on the transition date as deferred income in accordance with the requirements of Ind AS 20. The resultant adjustment should be made in retained earnings or, if appropriate, another category of equity at the date of transition to Ind AS.

Ind AS 16, *Property, Plant and Equipment*

a. **Application of the revaluation model for PPE (Issue 1):** The ITFG considered a situation where an entity covered under phase II of the Ind AS road map (i.e. Ind AS is applicable from 1 April 2017) has certain immovable properties such as land or building. The issue raised relates to whether such an entity is allowed to use the revaluation model under Ind AS 16 to measure such immovable properties in its first Ind AS financial statements prepared for the period ending 31 March 2018.

As per ITFG, an entity should first evaluate whether the land and building that it holds is an investment property based on Ind AS 40, *Investment Property.*

When the entity concludes that the land and building is:

i. **PPE:** Measure the land or building initially at cost. For subsequent measurement, the entity has an option to choose cost model or revaluation model.

ii. **An investment property:** Only cost model could be used for initial and subsequent measurement.

Another issue raised relates to whether the entity could opt for cost model for some class of PPE and apply revaluation model for other class of PPE in its first Ind AS financial statements prepared for the period ending 31 March 2018.

The ITFG clarified that once the entity adopts the revaluation model, it is required to apply it to the entire class of assets. An entity may elect to apply the revaluation model to a particular class of assets and cost model for another class of assets which are classified as PPE.

Ind AS 103, *Business Combinations*

a. **Determination of acquisition date in a scheme approved by National Company Law Tribunal (NCLT) (Issue 8):** As per the provisions of the 2013 Act (proviso to Section 232(3)), no scheme of arrangement would be sanctioned by the NCLT unless a certificate by the company's auditor has been filed with the NCLT to the effect that the accounting treatment, if any, proposed in the scheme of compromise or arrangement is in conformity with the accounting standards prescribed under Section 133 of the 2013 Act.

The ITFG considered a situation where pursuant to a court scheme, a company is merged with another company with an appointed date approved by NCLT (as 1 April 2016) and the companies would prepare their first Ind AS financial statements for the year ending 31 March 2018. The issue relates to its accounting treatment and whether the merger (with appointed date prior to Ind AS implementation date) would have an impact on the certificate issued by the auditors on compliance of the scheme with Ind AS 103.

The ITFG considered the guidance given in Ind AS 103 and opined that an entity is first required to assess whether the business combination is under common control or not. Accordingly, the following clarifications have been provided by ITFG:

i. **Business combination is under common control:** In such a case, an entity will be required to restate its financial statements as if the business combination had occurred from the beginning of the preceding period in the financial statements.

   If an auditor considers that as per the proposed accounting treatment, the date from which the amalgamation is effected in the books of accounts of the amalgamated company is different from the acquisition date as per Ind AS 103 i.e. the date on which control has been actually transferred, then the auditor should state the same in the certificate to be issued under Section 232(3) of the 2013 Act.

   Additionally, if the NCLT approves the scheme with a different appointed date as compared to the acquisition date as per Ind AS 103, then the appointed date approved by the NCLT would be considered as the acquisition date for business combinations. The company would be required to provide appropriate disclosures and the auditor would need to consider the requirements of relevant auditing standards when issuing its certificate.

ii. **Business combination is not under common control:** In such a case, the date of acquisition is the date from which an acquirer obtains control of the acquiree.

   If an auditor considers that as per the proposed accounting treatment, the date from which the amalgamation is effected in the books of accounts of the amalgamated company is different from the acquisition date as per Ind AS 103 i.e. the date on which control has been actually transferred, then the auditor should state the same in the certificate to be issued under Section 232(3) of the 2013 Act.

   Additionally, if the NCLT approves the scheme with a different appointed date as compared to the acquisition date as per Ind AS 103, then the appointed date approved by the NCLT would be considered as the acquisition date for business combinations. The company would be required to provide appropriate disclosures and the auditor would need to consider the requirements of relevant auditing standards when issuing its certificate.

b. **Retrospective application of Ind AS 109 to financial instruments acquired in past business combinations (Issue 9):** The ITFG considered a situation where a company (company A) covered under phase II of the Ind AS road map acquires another company (company B) in a scheme of amalgamation approved under the provisions of the 2013 Act with effect from 1 April 2015. Company A has elected to apply the option available under paragraph C1 of Ind AS 101 i.e. not to apply Ind AS 103 retrospectively to business combinations that occurred before the date of transition to Ind AS.

   The issue considered by ITFG relates to whether company A would be required to apply Ind AS 109 retrospectively (i.e. from the date of origination of the financial instrument by company B) to financial instruments acquired as part of the business combination.

   Where the entity avails the option not to restate past business combinations (which were entered prior to transition to Ind AS), it considers the carrying amount under previous GAAP of acquired assets and liabilities to be their deemed cost on the date of transition to Ind AS.

   Further, while preparing the opening Ind AS balance sheet, an entity is required to apply the criteria in Ind AS 109 to classify financial instruments on the basis of the facts and circumstances that exist at the date of transition to Ind AS. The resulting classifications are applied retrospectively.

   In this context, ITFG clarified that for financial instruments acquired in a business combination, the fair value or amortised cost (as required by Ind AS 109) should be determined from the date of business combination and not from the date of origination of such financial instrument by the acquiree company. Accordingly, the financial instruments would be measured in the following manner:

   i. **Financial instruments classified as FVTPL/ FVOCI:** Measure them at fair value at the date of transition to Ind AS.

   ii. **Financial instruments classified at amortised cost:** Determine the carrying amount on the transition date based on the carrying amount of the loan at the date of business combination under previous GAAP, by applying the effective interest rate as on that date (determined after considering the amount and timing of expected settlement of such financial instrument).

Ind AS 109, *Financial Instruments*

The ITFG opined on the following two issues with respect to the determination and accounting treatment of financial guarantee contracts:

a. **Assessment of whether a comfort letter is a financial guarantee contract (Issue 3):** The ITFG considered a situation where a parent company has issued a comfort letter to its subsidiary company. The subsidiary company was able to obtain funds from its banker on the basis of such comfort letter. The issue considered is whether the comfort letter could be accounted for as a financial guarantee contract as per Ind AS 109 by the parent company.

   Based on the guidance provided in Ind AS 109, the ITFG clarified that a significant feature of a financial guarantee contract is the contractual obligation to make specified payment in case of default by the credit holder. The contract may not necessarily be called a financial guarantee contract and it may take any name or legal form. However the treatment would be same as that of a financial guarantee contract if a contract legally meets these requirements and falls within the definition in Ind AS 109.

   Therefore, in the given case, the parent company would be required to evaluate whether it is contractually obliged to make good the loss in case the subsidiary company fails to make the payment. If yes, then such comfort letter would be considered to be a financial guarantee contract and would be accounted for in accordance with Ind AS 109.

b. **Accounting treatment of financial guarantee for a loan taken by an associate company (Issue 11):** The ITFG considered a situation where a company (V Ltd.) adopting Ind AS from FY2017-18 has given a financial guarantee for five years against the loan taken by its associate company (S Ltd.) since 1 April 2014. V Ltd. charges 1 per cent guarantee commission from S Ltd.

   The ITFG considered the value at which the financial guarantee contract would be accounted in the opening Ind AS balance sheet of V Ltd.

   It clarified that if the financial guarantee meets the definition of a financial guarantee contract as per Ind AS 109 and the associate company (S Ltd.) pays the parent company (V Ltd.) a guarantee commission, then V Ltd. is required to determine if this commission represents the fair value of the financial guarantee contract. If the premium is equivalent to an amount that S Ltd. would have paid to obtain a similar guarantee in a stand-alone arm's length transaction, then at initial recognition the fair value of the financial guarantee contract is likely to equal the commission received.

   The ITFG also considered the situation wherein the guarantee was invoked as on 31 March 2016 but V Ltd. continued to show it as a contingent liability in its previous GAAP financial statements of 2015 and also 2016 on the basis that the liability would not devolve on it. The issue considered is whether on the Ind AS transition date i.e. 1 April 2016, the impairment and fair value of the financial guarantee need to be calculated.

   The ITFG clarified that the parent company (V Ltd.) should recognise a liability for the amount of premium received and subsequently measure the financial guarantee contract at the higher of the amount of loss allowance determined in accordance with Ind AS 109 and the amount initially recognised less cumulative amount of income recognised in accordance with Ind AS 18. Further, V Ltd. should estimate and recognise the expected loss in accordance with Ind AS 109 at the end of each reporting period.

c. **Accounting for loan and processing fees paid in a refinancing arrangement (Issue 4):** The ITFG considered a situation where a company (PQR Ltd.) adopting Ind AS from FY2017-18 had obtained a loan from bank A in FY2013-14 and paid loan processing fees and commitment charges. The PQR Ltd. availed a fresh loan from bank B in May 2017 as a take-over of facility i.e. the new loan was sanctioned to pay off the old loan taken from bank A. The company paid prepayment premium to bank A to clear the old term loan and paid processing fees to bank B for the new term loan.

   The issue considered was whether the prepayment premium as well as the processing fees would be treated as transaction costs of obtaining the new loan (as per Ind AS 109), in the financial statements of PQR Ltd. prepared in accordance with Ind AS for FY2017-18.

   The ITFG clarified the below mentioned accounting treatment:

   i. Processing fees paid to avail a fresh loan from bank B would be considered as transaction cost in the nature of origination fees for the new loan and would be included while calculating effective interest rate as per Ind AS 109.

ii. Since the original loan was prepaid, the prepayment would result in its extinguishment. According to paragraph 3.3.3 of Ind AS 109, the difference between the carrying amount of the financial liability extinguished and the consideration paid should be recognised in the statement of profit and loss. Further, where modification of terms is accounted for as an extinguishment, any costs or fees incurred are recognised as part of the gain or loss on the extinguishment.

Accordingly in the given case, the prepayment premium should be recognised as part of the gain or loss on extinguishment of the old loan. Further, the unamortised processing fee related to the old loan would also be required to be charged to the statement of profit and loss.

Ind AS 110, *Consolidated Financial Statements*

a. **Treatment of intra-group profit in the Consolidated Financial Statements (CFS) (Issue 5):** The ITFG considered a situation where an associate company (ABC Ltd.) has been accounted under equity method in the CFS of company XYZ Ltd. under previous GAAP. However, due to the principles of defacto control as given under Ind AS 110, ABC Ltd. became a subsidiary of XYZ Ltd. under Ind AS. Before transition to Ind AS, company XYZ Ltd. sold some goods to ABC Ltd. at a profit margin of 10 per cent which is being used by ABC Ltd. for its operation i.e. these goods represent PPE. XYZ Ltd. opted to continue with the carrying value of PPE as per previous GAAP as its deemed cost. This situation required ITFG to consider whether the values appearing in the subsidiary's financial statements (i.e. ABC Ltd.) should be considered as deemed cost without any adjustment.

The issue considered relates to whether such unrealised profits existing in the PPE require elimination at the consolidated level.

The ITFG clarified that while consolidation of the financial statements of ABC Ltd., XYZ Ltd. will first eliminate the intra-group profit of 10 per cent recognised in the separate financial statements of ABC Ltd. and then should apply the deemed cost exemption under paragraph D7AA of Ind AS 101.

Ind AS 20, *Accounting for Government Grants and Disclosure of Government Assistance*

a. **Accounting treatment of government loans at a below-market rate of interest (Issue 7):** The ITFG considered a situation where a company has obtained a below-market rate of interest loan from government for five years, prior to transition to Ind AS. Under previous GAAP, the carrying amount of the loan was INR10,00,000 at the date of transition to Ind AS. The amount repayable would be INR10,05,000 at 1 April 2019 (end date of loan).

The issue considered by ITFG is whether the exemption under paragraph B10 would be available for the date of transition to Ind AS or all the subsequent period until the existing loan is presented i.e. up to 31 March 2019.

The ITFG clarified that a first-time adopter should use its previous GAAP carrying amount of the government loan as the Ind AS carrying amount on the date of transition. It should apply the requirements of Ind AS 20 and Ind AS 109 prospectively to government loans existing at the date of transition to Ind AS, unless the necessary information needed to apply the requirements of Ind AS 109 and Ind AS 20, retrospectively has been obtained at the time of initially accounting for that loan.

Since the company has not applied Ind AS 20 and Ind AS 109 retrospectively to government loans at the date of transition, the corresponding benefit of the government loan being at a below-market rate of interest should not be recognised as a government grant. Therefore, the effective interest rate of the loan should be computed by comparing the carrying amount of the loan at the date of transition with the amount and timing of expected repayment to the government.

Another related issue considered was whether the exemption given under paragraph B10 of Ind AS 101 would apply to deferment of a liability payable to government based on agreement i.e. liability similar to sales tax deferment for 10 years.

The ITFG clarified that in a scheme of deferral of sales tax, the amount of sales tax collected by the company from its customers is retained by the company and is required to be repaid after specified years (10 years in the above mentioned case). This makes such an arrangement similar in nature to an interest-free loan and hence the treatment as mentioned above should also be applied to such balances (of deferred sales tax liabilities) outstanding at the date of transition.

Therefore, in the above case, the company would recognise the government loan at INR10,00,000 at the transition date on applying the exemption. However, for subsequent measurement, it should calculate the effective interest rate on 1 April 2016 (i.e. the transition date).

Key takeaways

The ITFG clarifications are expected to resolve various practical implementation issues faced by companies that report their financial results under Ind AS or are transitioning to Ind AS. Companies should consider these interpretations when preparing their financial information. However, it should be noted that some of the issues require the exercise of judgement based on a consideration of facts and circumstances while analysing each individual situation.

In particular, listed companies that have already transitioned to Ind AS in phase I and which have published their annual financial results for the FY2016-17 may be required to evaluate the impact of such clarifications going forward as well as on their Ind AS financial results for the FY2016-17.

(Source: ICAI-ITFG Clarifications Bulletin 12 dated 23 October 2017 and KPMG in India's IFRS Notes dated 8 November 2017)

Updates relating to SEBI regulations

Report of the SEBI committee on corporate governance

Background

The SEBI constituted a committee on corporate governance (the committee) in June 2017 under the Chairmanship of Mr. Uday Kotak. The objective of this committee was to suggest measures for enhancing the standards of corporate governance of listed entities in India. It consisted of officials from the government, industry, professional bodies, stock exchanges, academicians, lawyers, advisors, etc.

New development

On 5 October 2017, the committee submitted the report on corporate governance (the report) to SEBI.

The report sets out the recommendations of the committee under the following heads:

- Composition and role of the BoD
- Institution of independent directors
- Board committees
- Enhanced monitoring of group entities
- Promoters/controlling shareholders and RPTs
- Disclosures and transparency
- Accounting and audit related matters
- Investor participation in meetings of listed entities
- Governance aspects of public sector enterprise
- Leniency mechanism
- Capacity building in SEBI for enhancing corporate governance in listed entities.

The report also highlighted the rationale and the expected timeline for implementation of such recommendations. Most of the recommendations have been proposed to be applicable from 1 April 2018.

SEBI has subsequently issued the report for public comments. Comment period ended on 4 November 2017.

Overview of the report

This section provides an overview of the key proposals given in the report:

Directors, Board and its committees

- **Quorum:** The quorum for every meeting of the BoD of the listed entity should be one-third of its total strength or three directors, whichever is higher, and should include at least one independent director. These requirements would be subject to the requirements of the 2013 Act. *(To be effective from 1 October 2018)*
- **Attendance at Board meetings:** Directors should attend minimum number of Board meetings over a relevant period i.e. if a director does not attend at least half of the total number of Board meetings held over the relevant period, then his/her continuance on the Board would be subject to ratification by the shareholders at the next annual general meeting (notwithstanding the nature of directorship). *(To be effective from 1 April 2018)*

  Relevant period means a period of two consecutive FYs on a rolling basis, commencing from the FY immediately succeeding the date of appointment. For existing directors, the relevant period would commence from 1 April 2018.
- **Separation of the roles of non-executive chairperson and managing director/Chief Executive Officer (CEO):** Listed entities with public shareholding of 40 per cent or more at the beginning of a FY should ensure that the chairperson of the board of such listed entity would be a non-executive director.

  Additionally, this requirement would continue even if there is any subsequent reduction in public shareholding below 40 per cent. All other listed entities should ensure that the chairperson of the Board would be a non-executive director. *(To be effective from 1 April 2022)*
- **Matrix reporting structure:** The corporate governance report should include a confirmation that the BoD have been responsible for the business and overall affairs of the listed entity in the relevant FY and that the reporting structures of the listed entity, formal and informal, are consistent with the above. *(To be effective from FY ending 31 March 2019)*

- **Role of audit committee:** The audit committee members should review the utilisation of loans and/or advances from/investment by the holding company in the subsidiary exceeding INR100 crore or 10 per cent of the asset size of the subsidiary, whichever is lower. *(To be effective from 1 April 2018)*
- **Wider role of nomination and remuneration committee:** The nomination and remuneration committee should recommend all payments to be made to senior management. *(To be effective from 1 April 2018)*
- **Minimum number of directors:** A minimum of six directors should be appointed on the BoD of any listed entity. *(To be effective from 1 October 2018)*
- **The maximum number of directorships capped:** The maximum number of directorships in listed entities should be reduced to seven (irrespective of whether the person is appointed as an independent director or not).

  This change would be achieved in a staggered manner i.e. the maximum number of listed entity directorships held by a person be brought down to eight by 1 April 2019 and to seven by 1 April 2020.

  Additionally, any person who is serving as a whole-time director/managing director in any listed entity would serve as an independent director in not more than three listed entities. *(To be effective from 1 April 2019/1 April 2020)*
- **Gender diversity:** Every listed entity should appoint at least one independent woman director. *(To be effective from 1 October 2018)*
- **Minimum number of Board meetings:** The BoD should meet at least five times a year, with a maximum time gap of 120 days between any two meetings.

  Additionally, at least once a year, the Board should specifically discuss strategy, budgets, board evaluation, risk management, Environment, Sustainability and Governance (ESG) and succession planning. *(To be effective from 1 April 2018)*
- **Membership and chairpersonship limit:** A director of listed entity should not be a member in more than 10 committees or act as Chairperson of more than five committees across all listed entities in which he is a director. Additionally, for the purpose of determination of limit, chairpersonship and membership of the audit committee, NRC and the Stakeholders Relationship Committee (SRC) should be considered. *(To be effective from 1 April 2018)*
- **Composition of NRC:** A minimum of two-third members of the NRC should be independent directors. *(To be effective from 1 April 2019)*
- **Quorum for committee meetings:** The quorum for a meeting of the NRC and SRC should be either two members or one-third of the members of the committee, whichever is greater, with at least one independent director. *(To be effective from 1 April 2018)*

Institution of independent directors

- **Eligibility criteria for independent directors:** Eligibility criteria for a director to be an independent director would be as follows:

  a. Specifically exclude persons who constitute the 'promoter group' of a listed entity

  b. Require an undertaking from the independent director that such a director is not aware of any circumstance or situation, which exists or may be reasonably anticipated, that could impair or impact his/her ability to discharge his/her duties with objective independent judgements and without any external influence

  c. The Board of the listed entity to take on record the above undertaking after due assessment of the veracity of such undertaking.

  d. Exclude 'Board inter-locks' arising due to common non-independent directors on Boards of listed entities (i.e. a non-independent director of a company on the Board of which any non-independent director of the listed entity is an independent director, cannot be an independent director on the Board of the listed entity).

  Additionally, BoD as part of the Board evaluation process may be required to certify every year that each of its independent directors fulfils the conditions specified in the Listing Regulations and is independent of the management.
- **Lead independent director in companies with non-independent Chairperson:** All listed entities where the Chairperson is not independent to designate an independent director as the lead independent director. The lead independent director should be a member of NRC.
- **Directors and Officers (D&O) insurance for independent directors:** It is recommended to make mandatory for top 500 companies by market capitalisation to undertake D&O insurance for its independent directors, with effect from 1 October 2018. This could be subsequently extended to all listed entities. The BoD of the listed entity could determine the quantum and type of risks covered under such insurance.

- **Minimum number of independent directors:** Every listed entity, irrespective of whether the chairperson is executive or non-executive, would be required to have at least half of its total number of directors as independent directors.

  This requirement has been proposed to be applicable to the top 500 listed companies by market capitalisation by 1 April 2019 and to the rest of listed companies by 1 April 2020.

- **Induction and training of independent directors:** A formal induction should be mandatory for every new independent director appointed to the Board. Additionally, the report recommends a formal training, whether external/internal, especially with respect to governance aspects, for every independent director once every five years.

- **Alternate directors for independent directors:** Appointment of an alternate director for independent directors should not be permitted.

- **Disclosures on resignation of independent directors:** Listed entities should be required to disclose detailed reasons for resignation of independent directors (as provided by such independent directors) along with the notification of their resignation to the stock exchanges, as well as subsequently as part of the corporate governance report. As part of such disclosure, the listed entity should include a confirmation as received from the director that there are no other material reasons other than those set out therein.

- **Casual vacancy of office of independent director:** Any appointment to fill a casual vacancy of office of any independent director should also be approved by the shareholders at the next general meeting.

Accounting and audit related matters

- **Audit qualifications:** Quantification of audit qualifications to be made mandatory, with the exception being only for matters such as going concern or sub-judice matters.

  In such an instance, the management will be required to provide reasons, which will be reviewed by the auditors and need to be reported accordingly.

- **Independent external opinion by auditors:** The Listing Regulations should be amended to provide a clear right to an auditor to independently obtain external opinions from experts.

- **Group audits:** For listed entities in India, the auditor of the holding company should be made responsible for the audit opinion of all material unlisted subsidiaries.

- **Quarterly financial disclosures:** The committee recommends the following in relation to periodic financial disclosures:

  a. **Consolidated financial results:** Disclosure of CFS should be made mandatory for all listed entities on a quarterly basis.

     Stand-alone results should continue to be required to be published.

  b. **Cash flow statement:** Publishing a cash flow statement on a half-yearly basis should be made mandatory for all listed entities.

  c. **Audit/limited review of quarterly financial results:** Financial information of the group, accounting for at least 80 per cent of each of the consolidated revenue, assets and profits, respectively, should have undergone limited review/audit for all listed entities, every quarter.

  d. **Last quarter financial results:** Any material adjustments made in the results of the last quarter which pertain to earlier periods should be disclosed by the listed entity as a note in the financial results.

- **Internal Financial Controls (IFC):** IFC reporting requirements to be made applicable to the entire operations of the group and not just to the Indian operations.

  This should initially be made applicable to the listed entities with net worth of INR1,000 crore and above.

Key takeaway

The recommendations are a welcome step and once implemented will usher in a new era in India's corporate governance landscape. However, implementation of these changes would require major change in company's framework and is expected to bring an additional cost to the company. Therefore, companies will now have to proactively involve with the board for better and effective implementation of the recommendations.

(Source: Report of the Committee on Corporate Governance dated 5 October 2017 issued by SEBI)

Other regulatory updates

The Delhi High Court decision on the constitutional validity of ICDS

The Delhi High Court (HC) in the case of the Chamber of Tax Consultants and Anr dealt with the constitutional validity of the Income Computation and Disclosure Standards (ICDS). The HC held that in order to preserve its constitutionality, Section 145(2) of the Income Tax Act, 1961 (IT Act), as amended, has to be read down to restrict the power of the CG to notify ICDS that do not seek to override binding judicial precedents or provisions of the IT Act.

The power to enact a validation law is an essential legislative power that can be exercised in the context of the IT Act, only by the Parliament and not by the executive. If Section 145(2) is not so read down, then it would be *ultra vires* the IT Act.

The HC dealt with the specific provisions of ICDS which are contrary to or seek to overcome binding judicial precedents and held that such provisions are to be struck down as the same are contrary to the law settled by various decisions of the Supreme Court (SC) and HC and the same are *ultra vires* the IT Act.

Additionally, it provides that to the extent specific ICDS have been struck down as *ultra vires* the IT Act, the impugned notification nos. 87 (issue of revised ICDS) and 88 (amendment in Tax Audit Report) dated 29 September 2016 and circular no. 10/2017 dated 23 March 2017 (FAQs on ICDS) issued by the CBDT have also been held to be *ultra vires* the IT Act and struck down as such.

For a detailed overview of the observation of the HC on each ICDS, please refer to KPMG in India's Tax Flash News on 'The Delhi Court decision on the constitutional validity of ICDS' dated 9 November 2017.

Key takeaways

The Delhi HC attempted to provide relief to the taxpayer by upholding that ICDS which are contrary to the binding decisions of the SC/HC are *ultra vires* the IT Act. Some of the key matters to be considered are as follows:

- **Applicability to taxpayers in Delhi:** Provisions of the ICDS to the extent struck down/read down cannot apply to the assessees within the Delhi jurisdiction.
- **Applicability to other taxpayers:** Decision could be considered equally binding on all jurisdictions (unless there is a contrary HC decision or until overruled by SC).
- **Facts and circumstances:** It would be important to understand the facts and circumstances of each case while applying Delhi HC decision with respect to situations where ICDS are at variance with ITAT rulings, revision of disclosures in tax audit report and income tax return utility.

(Source: Delhi HC order dated 8 November 2017 and KPMG in India's Tax Flash News dated 9 November 2017)

QRB issued its report on audit quality review of top listed and public interest entities in India

The Quality Review Board (QRB) was formed by the CG in 2007 to perform audit quality review function of the top listed and other public interest entities in India.

On 10 November 2017, the QRB issued the 'Report on Audit Quality Review' (2016-17) (the QRB report) which comprise of key findings of 74 reviews completed by the QRB till June 2017. Out of these 74 reviews, 69 reviews pertained to the financial statements (prepared under AS) for the year ended 31 March 2014 and 5 reviews pertained to the financial statements for the year ended 31 March 2015.

The findings in the report relates to compliance with the requirements prescribed under:

- Standards on Auditing (SA)
- Accounting Standards (AS) and
- Other relevant laws and regulations including Schedule III to the 2013 Act.

Key observations of the report

Compliance with AS: Some key learnings from the report with respect to compliance with the requirements of the respective AS are as follows:

AS	Key observations
AS 1, *Disclosure of Accounting Policies*	• Accounting policies not disclosed for: – Amortisation of computer software – Use of estimates – Revenue recognition for services rendered – Impairment of assets and – Provisions, contingent assets and contingent liabilities
AS 2, *Valuation of Inventories*	• Failure to value items of inventory (whose shelf life has expired and stock in process) at lower of cost and Net Realisable Value (NRV)
AS 3, *Cash Flow Statements*	• Incorrect disclosure of cash flows arising from operating, investing and financing activities • Failure to disclose the components of cash and cash equivalents and present reconciliation of the amounts in cash flow statement with equivalent items reporting in the balance sheet • Failure to disclose method of preparation of cash flow statements (i.e. direct or indirect) in the accounting policies followed
AS 11, *The Effects of Changes in Foreign Exchange Rates*	• Income and expenditure items have been converted at the year-end rates instead of average rate
AS 12, *Accounting for Government Grants*	• Accounting policy do not disclose the treatment of grant received against the fixed assets
AS 15, *Employee Benefits*	• Failure to disclose the amount as an expense for defined contribution plan • Failure to disclose information that enables the users of financial statements to evaluate the nature of its defined benefit plans and the financial effects of changes in those plans
AS 18, *Related Party Disclosures*	• Movements in related party balances not equal to year-end balance • Name and value of transactions not mentioned even though transactions were undertaken during the year

AS	Key observations
AS 20, *Earnings Per Share (EPS)*	• Failure to disclose: – Numerator and the denominator used to arrive at the diluted EPS – Reconciliation of the amount used as numerator with the net profit for the period
AS 22, *Accounting for taxes on Income*	• Failure to disclose: – Break-up of Deferred Tax Asset (DTA) (net) – Nature of the evidence supporting the recognition of DTA when long term capital loss exists • Status of availability of virtual certainty of sufficient taxable income has not been reviewed
AS 26, *Intangible Assets*	• Failure to capitalise certain intangible assets • Failure to disclose amortisation period of certain intangible assets in the accounting policy
AS 29, *Provisions, Contingent Liabilities and Contingent Assets*	*Provisions* • Failure to provide an appropriate provision for accrued liabilities made • Failure to disclose timing of outflow, uncertainties about outflows and expected reimbursement of the provisions for liabilities *Contingent liabilities* • Failure to disclose contingent liabilities for disputed tax liabilities • Failure to disclose indication of the uncertainties relating to any outflow and the possibility of any reimbursement in case of contingent liabilities.

(Source: KPMG in India's analysis, 2018 based on the findings in the QRB report)

Compliance with Schedule III to the 2013 Act:
With respect to compliance with Schedule III to the 2013 Act, the QRB report has, *inter alia,* reported following discrepancies:

a. Non-disclosure of rate of interest in case of borrowings (long-term and short-term).

b. No sub-classification of 'other current assets' into secured or unsecured and considered good or doubtful in the audited balance sheet.

c. Audit fees of subsidiaries and joint ventures have been shown under professional fees rather than disclosing them separately under 'audit fees' in the consolidated balance sheet.

d. Debts due from parties beyond six months have been disclosed but not for the debts due for more than six months from the dates these debts have fallen due for payment.

e. Amount of depreciation and amortisation expenses appearing in the statement of profit and loss does not match with the amount mentioned in the fixed assets note.

Also refer to KPMG in India's First Notes on 'QRB issued its report on audit quality review of top listed and public interest entities in India' dated 13 December 2017.

Key takeaway

Companies should carefully consider the review points/issues highlighted by the QRB as these are expected to help in better preparation and presentation of financial statements.

(Source: Report on Audit Quality Review (2016-17) of the Quality Review Board dated 10 November 2017 issued by the QRB and KPMG in India's First Notes dated 13 December 2017)

Expert Advisory Committee (EAC) opinions issued by ICAI during the quarter ended 31 December 2017

Topic	Month
Accounting treatment of expenditure relating to cost of utility diversions, environmental protection, road diversions/restoration/signages, renovation work of drainage system, rehabilitation and resettlement etc. which are compulsorily required to be incurred for construction of Mass Rapid Transit System (MRTS) project	October 2017
EAC opinion under Ind AS: Discounting of deferred debts	November 2017
Charging of pro rata depreciation	December 2017

(Source: ICAI.org and The ICAI Journal: The Chartered Accountant for the months of October 2017 and December 2017)

Glossary

1956 Act	Companies Act, 1956
2013 Act	Companies Act, 2013
Amendment Act, 2017	Companies (Amendment) Act, 2017
AS	Accounting Standard
AY	Assessment Year
CBDT	Central Board of Direct Taxes
CFS	Consolidated Financial Statements
CG	Central Government
CLC	Companies Law Committee
CoR	Certificate of Registration
DTA	Deferred Tax Asset
DTL	Deferred Tax Liability
EAC	Expert Advisory Committee
FAQs	Frequently Asked Questions
FVOCI	Fair Value Through Other Comprehensive Income
FVTPL	Fair Value Through Profit or Loss
GAAP	Generally Accepted Accounting Principles
GN	Guidance Note
HC	High Court
ICAI	The Institute of Chartered Accountants of India
ICDS	Income Computation and Disclosure Standards
IFC	Internal Financial Controls
Ind AS	Indian Accounting Standards
IT Act	Income-tax Act, 1961
ITFG	Ind AS Transition Facilitation Group
MCA	The Ministry of Corporate Affairs
NCLT	National Company Law Tribunal
NRV	Net Realisable Value
PPE	Property, Plant and Equipment
QRB	Quality Review Board
RBI	Reserve Bank of India
RPTs	Related Party Transactions
SC	Supreme Court
SEBI	The Securities and Exchange Board of India

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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.

IFRS Notes

ICAI issues an exposure draft of amendments to Ind AS 20, *Accounting for Government Grants and Disclosure of Government Assistance*

12 January 2018

Background

The Ministry of Corporate Affairs (MCA) notified the Indian Accounting Standards (Ind AS), applicable with effect from 1 April 2016 to Indian entities in a phased manner. The Ind AS are largely converged with International Financial Reporting Standards (IFRS), except for certain areas of differences ('carve-outs') prescribed by the MCA. These carve-outs may be in the nature of a deviation from the IFRS requirements or eliminate an accounting policy choice that exists under IFRS.

Ind AS 20, *Accounting for Government Grants and Disclosure of Government Assistance* specifies the manner of accounting and disclosure of government grants and other forms of government assistance received by entities.

New development

On 5 January 2018, the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI) issued an Exposure Draft (ED) proposing amendments to certain provisions of Ind AS 20.

Comments on the amendments may be submitted to the ASB on or before 24 January 2018.

This issue of IFRS Notes provides an overview of the amendments proposed to Ind AS 20.

Missed an issue of Accounting and Auditing Update or First Notes?

SEBI relaxes norms governing schemes of arrangements by listed entities

18 January 2018

Background

The listed entities that desire to undertake a scheme of arrangement or are involved in a scheme of arrangement need to follow the regulations laid down by the Securities and Exchange Board of India (SEBI). On 10 March 2017, SEBI issued a circular number CFD/DIL3/CIR/2017/21 which laid down a revised regulatory framework for schemes of arrangements by listed entities and relaxation under Rule 19(7) of the Securities Contract (Regulation) Rules, 1957.

New development

The SEBI received representations to improve the existing framework governing schemes of arrangements.

Additionally, SEBI wanted to expedite the processing of draft schemes and prevent misuse of schemes to bypass regulatory requirements. Therefore, on 3 January 2018, SEBI issued a circular number CFD/DIL3/CIR/2018/2 (the circular) to make certain amendments to the circular dated 10 March 2017.

The recent circular is applicable from the date of its issue i.e. 3 January 2018. Some of the key relaxations provided in the circular relate to the following topics:

- Submission of documents to stock exchanges
- Relaxations with respect to locked-in promoter's shares
- Extended time period for listing of specified securities.

In this issue of First Notes, we have provided an overview of the key amendments/relaxations given in the circular.

Accounting and Auditing Update

Issue no. 17| December 2017

Ind AS 115 , *Revenue from Contracts with Customers* introduces a single comprehensive model of accounting for revenue arising from contracts with customers and will supersede the current revenue recognition guidance.

In this edition of the Accounting and Auditing Update (AAU), we focus on technology sector which has a varied range of products and services that could be bundled in many different ways. Therefore, technology sector companies would need to evaluate the impact of Ind AS 115 on revenue recognition, transition and disclosures.

Technological advancement due to data and analytics is helping organisations and auditors to derive benefits and value addition while performing audits, thereby, providing enhanced audit quality. The publication cast lens on key insights and values that are an outcome of the technology driven audit process.

This edition of AAU carries an article on derecognition of loans assigned by Non-Banking Financial Companies (NBFCs) to other lending institutions. Under Ind AS 109, *Financial Instruments* the accounting treatment for loan assets directly assigned or converted into marketable securities could differ from current Indian GAAP.

In continuation with our Companies Act, 2013 series, this edition carries an article on relaxations available to private companies in India from the provisions of the Companies Act, 2013.

The publication also carries an article on decommissioning cost. Ind AS provides detailed guidance on decommissioning costs and the article on this topic discusses important factors that should be considered while recognising these costs.

Our publication also carries a regular synopsis of some recent regulatory updates in India and internationally.

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