Regulatory updates

Notification of certain provisions of the Companies (Amendment) Act, 2017

Background

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 Amendment Act, 2017 would come into force on a date that central government would, by notification in the Official Gazette, appoint. Different dates may be appointed for different provisions of the 2013 Act and any reference in any provision to the commencement of the Companies Act, 2013 (2013 Act) should be construed as a reference to the coming into force of that provision.

New development

The Ministry of Corporate Affairs has issued the following notification for enforcement of certain sections of the Amendment Act, 2017

- Notification dated 23 January 2018 - Section 1 and 4 notified with effect from 26 January 2018
- Notification dated 9 February 2018 - Notified key sections of the Amendment Act, 2017 including the following :
  - Section 32, Declaration of dividend
  - Section 43, Powers and duties of auditors and auditing standards
  - Section 63, Related party transaction

(Source: MCA notification S.O. 351(E). dated 23 January 2018 and S.O. 630 (E). dated 9 February 2018)

The MCA issued amendment to certain rules under the 2013 Act

The MCA issued the following rules to amend the existing rules under the 2013 Act

- The Companies (Incorporation) Amendment Rules, 2018: These rules amended the existing forms under Companies (Incorporation) Rules, 2014 relating to application of reservation of name, one person company and form for Simplified Pro forma for Incorporating Company Electronically (SPICE). The amended rules are applicable from 26 January 2018.
- The Companies (Registration Offices and Fees) Amendment Rules, 2018: These rules amended the existing rules Companies (Registration Offices and Fees) Rules, 2014 to provide revised fee structure for filings to Registrar of Companies (RoC) under Section 403 of the 2013 Act. The amended rules are applicable from 26 January 2018.
- The Companies (Appointment and Qualification of Directors) Amendment Rules, 2018: The amended rules provide that every applicant, who intends to be appointed as director of an existing company shall make an application electronically in Form DIR-3, to the central government for allotment of a Director Identification Number (DIN) along with such fees as provided under the Companies (Registration offices and Fees) Rules, 2014.

  Further it provides that in case the proposed directors do not have an approved DIN, the particulars of maximum three directors should be mentioned in Form No.INC-32 (SPICE) and DIN may be allotted to maximum three proposed directors through Form INC-32 (SPICE).
- Additionally, board resolution proposing his/her appointment as a director in an existing company is required to be attached with Form DIR-3. The amended rules are applicable from 26 January 2018.
- The Companies (Registered Valuers and Valuation) Amendment Rules, 2018: As per the amended rules, persons who are rendering valuation services under the 2013 Act, on the date of commencement of these rules, may continue to render valuation services without a certificate of registration under the Companies (Registered Valuers and Valuation) Rules 2018, upto 30 September 2018. In case any valuation or any part of it has not been completed before 30 September 2018, the valuer will complete such valuation or such part within three months thereafter. The amended rules are applicable from 12 February 2018.
- Companies (Authorised to Register) Amendment Rules, 2018: The amended rules have issued revised Form URC-1 - Application by a company for registration under Section 366 of the 2013 Act which relates to conversion from firm into company and Limited Liability Partnership (LLP) into company. The amended rules are applicable from 19 February 2018.
- Companies (Management and Administration) Amendment Rules, 2018: The amended rules have issued revised Form MGT-6 –Return to the registrar in respect of declaration under Section 89 of the 2013 Act received by the company and Form MGT-15 – Form for filing report on annual general meeting. The amended rules are applicable from date of its publication in Official Gazette.
- Companies (Audit and Auditors) Amendment Rules, 2018: The amended rules have issued revised Form ADT-1- Notice to the RoC by company for appointment of auditor and Form ADT-2 –Application for removal of auditors from his/their office before expiry of term. The amended rules are applicable from 19 February 2018.

(Source: MCA notification G.S.R. 49(E), G.S.R. 48(E), G.S.R. 51(E) dated 22 January 2018 and G.S.R. 155 (E). dated 9 February 2018 and notifications dated 16 February 2018)

Specified government companies exempted from the provisions of AS 22/Ind AS 12 relating to deferred tax asset/liability

Background

Ind AS 12, *Income Taxes,* prescribes the accounting treatment for income taxes. Ind AS 12 requires an entity to consider the temporary differences between the carrying amount of an asset or a liability in the balance sheet and its tax base and accordingly, recognise Deferred Tax Asset (DTA)/Deferred Tax Liability (DTL) in its financial statements.

Under the previous Generally Accepted Accounting Principles (GAAP), AS 22, *Accounting for Taxes on Income,* governs the provisions relating to DTA/DTL.

New development

The MCA through its notification dated 5 February 2018 provides that the provisions of Ind AS 12 or AS 22 relating to DTA/DTL will not be applicable to a government company which meets the given criterion:

- It is a Public Financial Institution (PFI) as defined under Section 2(72)(iv) of the 2013 Act
- It is a Non-Banking Financial Company (NBFC) registered with the Reserve Bank of India (RBI) under Section 45-IA of the RBI Act, 1934 and
- It is engaged in the business of infrastructure finance leasing with not less than 75 per cent of its total revenue being generated from such business with government companies or other entities owned or controlled by the government.

The above mentioned exemption is effective from 1 April 2017 and is available for seven years (i.e. up to 31 March 2024).

(Source: MCA notification No. S.O. 529(E) dated 5 February 2018)

Ind AS Transition Facilitation Group (ITFG) issued clarifications bulletin 14

The ITFG in its meeting considered certain issues received from the members of the Institute of Chartered Accountants of India (ICAI) and issued its clarifications bulletin 14, dated 1 February 2018, to provide clarifications on seven issues in relation to the application of Ind AS.

The ITFG provided clarification on the following issues:

- Capitalisation of processing charges on a loan taken for acquiring/constructing a qualifying asset
- Accounting for restoration cost in case of a leasehold land
- Advance payments received under contract to supply goods and services
- Approval of a scheme of arrangement post balance sheet date
- Accounting for shares held as stock-in-trade
- Accounting for revaluation surplus under Ind AS
- Debt-equity classification of optionally convertible preference shares.

(Source: ITFG's Clarification Bulletin 14 issued by ICAI and KPMG in India's IFRS Note dated 20 February 2018)

ICAI issued SA 720 (Revised)

Recently, ICAI has issued SA 720 (Revised), *The auditor's responsibilities relating to other information* which deals with the auditor's responsibilities relating to other information, whether financial or non-financial information (other than financial statements and the auditor's report thereon), included in an entity's annual report. This standard on auditing is effective for audits of financial statements for periods beginning on or after 1 April 2018.

The objectives of the auditor, having read the other information, are:

- To consider whether there is a material inconsistency between the other information and the financial statements
- To consider whether there is a material inconsistency between the other information and the auditor's knowledge obtained in the audit
- To respond appropriately when the auditor identifies that such material inconsistencies appear to exist, or when the auditor otherwise becomes aware that other information appears to be materially misstated.

The revised SA 720 aims to clarify and increase the auditor's involvement in respect to other information, defined in the standard as financial and non-financial information, other than the audited financial statements, that is included in an entity's annual reports. It also includes new requirements related to auditor reporting on other information which has been included in ISA 720 (Revised), *The Auditor's Responsibilities Relating to Other Information* issued by International Auditing and Assurance Standards Board (IAASB).

Further, the revised standard also provides the examples of amounts or other items that may be included in the other information. Additionally the revised standard includes the illustrations for auditors' reports relating to other information.

(Source: ICAI notification dated 21 January 2018)

ICAI has issued an Exposure Draft of Ind AS 117, *Insurance Contracts*

Background

On 18 May 2017, the International Accounting Standards Board (IASB) issued IFRS 17, *Insurance Contracts,* which is the first international comprehensive standard to provide guidance on accounting for insurance contracts.

IFRS 17 replaces IFRS 4, *Insurance Contracts,* which was in the nature of an interim standard pending the completion of the project on insurance contracts by IASB.

New development

With an aim to keep Ind AS updated with revisions made in IFRS and in order to maintain convergence, similar amendments are required in the Indian context. Accordingly, on 12 February 2017, ICAI issued an exposure draft on Ind AS 117, *Insurance Contracts.*

Ind AS 117 is a comprehensive standard which establishes principles for the recognition, measurement, presentation and disclosure of insurance contracts within the scope of the standard. The objective of Ind AS 117 is to ensure that an entity provides relevant information that faithfully represents those contracts. Ind AS 117 once implemented would replace Ind AS 104, *Insurance Contracts.*

The exposure draft also includes an appendix which sets out the amendments to other Ind AS that are a consequence of issuing Ind AS 117. An entity would apply these amendments when it applies Ind AS 117.

Comments on the ED may be submitted to ICAI by 31 March 2018.

Also refer KPMG IFRG Limited's publication 'First Impressions: IFRS 17, Insurance Contracts'. The First Impressions is intended to help insurers assess the impact of the new standard and prepare for transition. Additionally, it explains the key requirements of IFRS 17 with the use of illustrative examples and features KPMG's insights.

(Source: Exposure Draft ED/Ind AS/2018/03 on Ind AS 117 issued by ICAI and KPMG in India IFRS Notes - The IASB issues IFRS 17, *Insurance Contracts* dated 25 May 2017)

ICAI issued an implementation guide to SA 701

On 18 February 2018, ICAI has issued an implementation guide to SA 701, *Communicating Key Audit Matters in the Independent Auditor's Report.* SA 701 is new standard which is applicable in the case of audit of listed entities and casts a new reporting requirement on auditors of listed entities to communicate key audit matters in their audit reports. Further, SA 701 is also applicable in case of audit of unlisted entities in situations where law or regulation requires communication of key audit matters in the audit report. SA 701 is effective for audits of financial statements for periods beginning on or after 1 April 2018.

With an aim to provide appropriate guidance for the auditors so that they can discharge their reporting responsibilities under the new standard in an effective manner, ICAI has issued an implementation guide on SA 701.

The implementation guide contains detailed guidance on various issues involved in this new reporting requirement and has been written in a question and answer format containing Frequently Asked Questions (FAQs) on SA 701 and responses to those questions. Additionally, the implementation guide provides the illustrative examples of key audit matters.

(Source: Implementation guide issued by ICAI dated 18 February 2018)

IASB has proposed narrow scope amendments to IAS 19 for pension accounting

IAS 19, *Employee Benefits* specifies the accounting for various types of employee benefits, including:

- Benefits provided for services rendered – e.g. pensions, lump-sum payments on retirement, paid absences and profit-sharing arrangements and
- Benefits provided on termination of employment.

IAS 19 specifies how a company should account for a defined benefit plan. When a defined benefit plan is amended, curtailed or settled during a reporting period, the entity needs to update the assumptions about its obligation and fair value of its plan assets to calculate costs related to these changes.

The IASB issued narrow scope amendments to IAS 19 in case of plan amendment, curtailment or settlement which specifies how companies determine pension expenses when changes to a defined benefit pension plan occur.

The amendments require a company to use the updated assumptions from this remeasurement to determine current service cost and net interest for the remainder of the reporting period after the change to the plan. Currently, IAS 19 did not specify how to determine these expenses for the period after the change to the plan. The amendments are expected to provide useful information to users of financial statements by requiring the use of updated assumptions.

The amendments are expected to be effective on or after 1 January 2019.

(Source: IASB notification dated 7 February 2018)