

Regulatory updates



MCA notified sections to Companies (Amendment) Act, 2017

On 13 June 2018, the Ministry of Corporate Affairs (MCA) notified certain sections of the Companies (Amendment) Act, 2017 to be effective from 13 June 2018. The key provisions notified are:

Declaration of beneficial interest in any share: Section 89 of the Companies Act, 2013 (2013 Act) currently requires that every person who holds or acquires beneficial interest in a 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.

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 Registrar of Companies (RoC).

Subsequent to notification of the revised section on declaration of beneficial interest in shares, MCA issued Companies (Significant Beneficial Owners) Rules, 2018. The rules provide the procedure for filing declaration of beneficial interest by the significant owner, for filing of return and maintenance of register by companies on such declaration. Further, the rules provide the forms for filing the aforementioned declaration and return.

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 an electronic mode in advance. (Section 96)

Place of keeping and inspection of registers, returns, etc.: Currently, under 2013 Act, companies can keep the registers or copies of return at a place other than registered office if a special resolution in this regard is passed at AGM and a copy of such resolution is submitted to RoC. The Amendment Act, 2017 exempts companies to give the copy of such special resolution in advance to RoC.

Additionally, a proviso has been inserted which provides the conditions where the copies of a prescribed return and registers would not be available for inspection. (Section 94)

(Source: MCA notification S.O. 2422(E) dated 14 June 2018)

The MCA issued amendment to certain rules under the 2013 Act

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

• The Companies (Management and Administration) Second Amendment Rules, 2018

Currently under the Companies (Management and Administration) Rules, 2014, every listed company is required to file with the RoC, a return in Form No. MGT.10, with respect to changes in the shareholding position of promoters and top 10 shareholders of the company, in each case, representing increase or decrease by two per cent or more of the paid-up share capital of the company. The return has to be filed within 15 days of such change. Now, the amended rules omitted this requirement and accordingly form no. MGT.10 has also been removed from the rules.

Additionally, as per the amendment, any item of business specified under Rule 22(16), required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under Section 108 of the 2013 Act in the prescribed manner.

• The Companies (Appointment and Qualification of Directors) Third Amendment Rules, 2018

The amended Rules have revised the following forms:

- Form no. DIR-3: Application for allotment of director Identification Number before appointment in an existing company or Limited Liability Partnership (LLP)
- Form no. DIR-6: Intimation of change in particulars of a director/designated partner to be given to the central government.

(Source: MCA notifications dated 14 June 2018)

ICAI issued exposure drafts for amendments to Ind AS

The International Accounting Standards Board (IASB) issues amendments to International Financial Reporting Standard (IFRS) as part of its annual improvements process. Annual improvements are part of the IASB's process for maintaining IFRS and contain interpretations that are minor or narrow in scope. Amendments made as part of annual improvement process either clarify the wording in an IFRS or correct relatively minor oversights or conflicts between existing requirements of IFRS.

In order to keep Ind AS updated with the revisions made to IFRS, the Institute of Chartered Accountants of India (ICAI) on 12 June 2018 issued following Exposure Drafts to propose amendments to Ind AS:

Annual Improvements to Ind AS (2018)

Ind AS 103, <i>Business Combinations</i> and Ind AS 111, <i>Joint Arrangements</i>	<p>The amendment to Ind AS 103 proposes to clarify that when an entity obtains control of a business that is a joint operation, then the acquirer would remeasure its previously held interest in that business. Such a transaction would be considered as a business combination achieved in stages and accounted for on that basis.</p> <p>Further, paragraph B33CA is proposed to be added to Ind AS 111 to clarify that if a party that participates in a joint operation, but does not have joint control, obtains joint control over the joint operation (which constitutes a business as defined in Ind AS 103), it would not be required to remeasure its previously held interests in the joint operation.</p>
Ind AS 12, <i>Income Taxes</i>	<p>This amendment proposes to clarify that the income tax consequences of distribution of profits (i.e. dividends), including payments on financial instruments classified as equity, should be recognised when a liability to pay dividend is recognised. The income tax consequences should be recognised in profit or loss, other comprehensive income or equity according to the past transactions or events that generated distributable profits were originally recognised.</p> <p>Also the amendment, by moving the requirement of recognition from paragraph 52B to 57A, aims to clarify that the requirement for recognition applies to all income tax consequences and not only to the situation where there are different tax rates for distributed and undistributed profits as described in paragraph 52A of Ind AS 12.</p>
Ind AS 23, <i>Borrowing Costs</i>	<p>The amendment proposes to clarify that in computing the capitalisation rate for funds borrowed generally, an entity should exclude borrowing costs applicable to borrowings made specifically for obtaining a qualifying asset, only until the asset is ready for its intended use or sale. Borrowing costs related to specific borrowings that remain outstanding after the related qualifying asset is ready for intended use or for sale would subsequently be considered as part of the general borrowing costs of the entity.</p> <p>Transitional provisions: The transitional provision introduced in Ind AS 23 aim to clarify that an entity should apply the amendments to the borrowing costs incurred on or after the date the entity first applies the amendments.</p>

The amendments are expected to be effective on or after 1 April 2019 with early adoption permitted.

Plan Amendment, Curtailment or Settlement, Amendments proposed to Ind AS 19, Employee Benefits related to pension accounting

In line with the amendments to IAS 19, *Employee Benefits*, ICAI issued narrow scope amendments to Ind AS 19 in case of a plan amendment, curtailment or settlement. The amendment specifies how companies should 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, Ind AS 19 does not distinguish between the periods before and after the change in plan for the purpose of determining current service cost and net interest. The amendments are expected to provide useful information to users of financial statements by requiring the use of updated assumptions.

The amendment also proposes that the effect of asset ceiling should be disregarded when calculating gain or loss on settlement of plan, and it must be dealt with separately in other comprehensive income.

The amendments are expected to be effective on or after 1 April 2019 with early adoption permitted.

Prepayment Features with Negative Compensation, Amendments to Ind AS 109, Financial Instruments

The exposure draft proposes an exception to current rule on prepayment for financial assets containing prepayment features with reasonable negative compensation. Such financial assets could be measured at amortised cost or at Fair Value Through Other Comprehensive Income (FVOCI), if they meet the other relevant requirements of Ind AS 109.

To be eligible for the exception, the fair value of the prepayment feature would have to be insignificant on initial recognition of the asset. If this is impracticable to assess based on the facts and circumstances that existed on initial recognition of the asset, then the exception would not be available.

In line with amendments issued to IFRS 9, *Financial Instruments*, the exposure draft also provides that the financial assets prepayable at current fair value would be measured at Fair Value Through Profit and Loss (FVTPL). The same would apply if the prepayment amount includes the fair value cost to terminate a hedging instrument if the amount is inconsistent with the current Ind AS 109 prepayment rules.

The amendments are expected to be effective on or after 1 April 2019 with early adoption permitted.

Long-term interests in associates and joint ventures

An entity's net investment in its associate or joint venture includes investment in ordinary shares and other interests that are accounted using the equity method, and other long-term interests, such as preference shares and long term receivables or loans, the settlement of which is neither planned, nor likely to occur in the foreseeable future. These long term interests are not accounted for in accordance with Ind AS 28, instead, they are governed by the principles of Ind AS 109.

As per para 10 of Ind AS 28, the carrying amount of an entity's investment in its associates and joint ventures increases or decreases (as per equity method) to recognise the entity's share of profit or loss of its investee associates and joint ventures. Paragraph 38 of Ind AS 28 further states that the losses that exceed the entity's investment in ordinary shares are applied to other components of the entity's interest in the associate or joint venture in the reverse order of their superiority.

In this context, exposure draft clarifies that the accounting for losses allocated to long-term interests would involve the dual application of Ind AS 28 and Ind AS 109.

The amendments are expected to be effective retrospectively from 1 April 2019 with early adoption permitted.

Exposure Draft (ED) of amendments to Ind AS 40

The exposure draft proposes to provide entities with a choice for measurement of investment property using either the cost or the fair value model, and bring the requirements of Ind AS 40 in line with that of IAS 40, *Investment Property*. It further incorporates consequential changes that would be brought by application of Ind AS 116, *Leases*. The provisions proposed to be amended are relating to:

- **Choice between cost model and fair value model-** Entities have a choice to measure the investment properties either using a cost model, or a fair value model, and apply that policy to all the investment properties. The ED also specifies the entities and investment properties which are exempted from provision of the above principle.
- **Fair value model -** After initial recognition, entities that choose the fair value model are required to measure all their investment properties/right-of-use assets at fair value, and measure the gain or loss arising from a change in the fair value in the statement of profit and loss for the period in which it arises. Also the ED provides the list of transactions where the above mentioned approach will not be applied.

The amendments are expected to be effective on or after 1 April 2020.

The last date for comments on the exposure drafts issued by ICAI is 11 July 2018.

(Source: Exposure drafts issued by ICAI dated 12 June 2018)

ICAI issued valuation standards

Introduction

Section 247 of the 2013 Act governs the provisions relating to the valuation by registered valuers. On 18 October 2017, MCA notified Section 247 of the 2013 Act and issued Companies (Registered Valuers and Valuation) Rules, 2017, which provide that the central government may constitute a committee to advise on matters and to make recommendations on formulation and laying down of valuation standards and policies for compliance by the companies and registered valuers.

New development

The ICAI through its notification dated 10 June 2018 issued following Indian Valuation Standards (Ind VS):

1. Ind VS 101- Definitions
2. Ind VS 102- Valuation Bases
3. Ind VS 103- Valuation Approaches and Methods
4. Ind VS 201- Scope of Work, Analyses and Evaluation
5. Ind VS 202- Reporting and Documentation
6. Ind VS 301- Business Valuation
7. Ind VS 302- Intangible Assets
8. Ind VS 303- Financial Instruments

The ICAI has issued Ind VS to standardise the principles, practices and procedures followed by registered valuers and other valuation professionals in valuation of assets, liabilities or a business. Additionally the standards provides concepts, principles and procedures considering internationally accepted practices and legal framework and practices prevalent in India.

Further, in respect of valuation engagements under other statutes like Income-tax Act 1961, Securities Exchange Board of India (SEBI), Foreign Exchange Management Act (FEMA) etc., the application of Ind VS would be on recommendatory basis for the members of ICAI.

Effective date: The Ind VS are applicable for the valuation reports issued on or after 1 July 2018. Further, the Ind VS will be effective till Valuation Standards are notified by the central government under Rule 18 of the Companies (Registered Valuers and Valuation) Rules, 2018.

(Source: Ind VS issued by ICAI dated 10 June 2018)

ICAI withdrew the Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable)

In May 2016, ICAI issued a Guidance Note on Accounting for Real Estate Transactions applicable entities to whom Ind AS is applicable. The guidance note is based on principles of Ind AS 11, *Construction Contracts* and Ind AS 18, *Revenue*.

On 28 March 2018, MCA notified Ind AS 115, *Revenue from Contracts with Customers* (which is based on IFRS 15, *Revenue from Contracts with Customers*) as part of the Companies (Indian Accounting Standards) Amendment Rules, 2018. The new standard is effective for accounting periods beginning on or after 1 April 2018, replaces existing revenue recognition standards Ind AS 11, and Ind AS 18. Accordingly, ICAI through its notification dated 1 June 2018 withdraws the Guidance Note on Accounting for Real Estate Transactions (for entities to whom Ind AS is applicable).

(Source: ICAI's notification dated 1 June 2018)

SEBI amends regulations relating to Insolvency and Bankruptcy Code, 2016

In 2016, the Insolvency and Bankruptcy Code, 2016 (the Code) was issued which consolidates and amends the laws relating to reorganisation and insolvency resolution. The key policy charter of the Code is to facilitate the time bound and early assessment of the viability and liquidity of an enterprise.

With an aim to further simplify and facilitate the process of resolution under the Code, SEBI through its notifications dated 31 May 2018 issued amendments to following regulations which are effective from 1 June 2018.

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations)

The amended regulations provide relaxations to a listed entity. Following are the key relaxations:

- The provisions relating to Audit Committee, Nomination and Remuneration Committee, Stakeholders' Relationship Committee and Risk Management Committee would not be applicable during the insolvency resolution process period in respect of a listed entity which is undergoing Corporate Insolvency Resolution Process (CIRP) under the Code.
- The shareholders' approval in case of material related party transactions would not be required for listed companies whose resolution plan has been approved under the Code.
- The provision relating to compliance in case of reclassification of promoter would not apply if the reclassification of existing promoter or promoter group of the listed entity is as per the resolution plan approved under Section 31 of the Code subject to specified conditions.

SEBI (Delisting of Equity Shares) Regulations, 2009 (Delisting Regulations)

Regulation 3 of the Delisting Regulations has been amended to provide an exemption to a listed entity where delisting of equity shares made pursuant to a resolution plan approved under Section 31 of the Code. Additionally, it provides the conditions to be satisfied by a listed entity to avail the exemption.

Regulation 30 of the Delisting Regulations has also been amended to permit application for listing of delisted equity shares by a company which has undergone CIRP under the Code.

SEBI (Substantial Acquisition of Shares and Takeover), Regulations 2011 (Shares and Takeover Regulations)

Regulation 3(2) of the Shares and Takeover Regulations has been amended to permit the acquirer to acquire shares or voting rights beyond the specified permissible limit for non-public shareholding, in case of acquisition pursuant to a resolution plan approved under CIRP.

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (ICDR Regulations)

The amendment to ICDR Regulations clarifies that the provisions of preferential issue of specified securities under Chapter VII of the ICDR Regulations (except the lock-in provisions) would not apply to the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the resolution plan approved under CIRP.

(SEBI notification no. SEBI/LAD-NRO/GN/2018/20, SEBI/LAD-NRO/GN/2018/21, SEBI/LAD-NRO/GN/2018/22, SEBI/LAD-NRO/GN/2018/23 dated 31 May 2018)

SEBI issued guidelines for preferential issue of units by InvITs

Regulation 2(1)(zo) of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) defines a preferential issue. Further, Regulation 14(4) of InvIT Regulations provides that InvITs may raise funds by any subsequent issue of units after an initial offer through preferential allotment, in a manner as specified by SEBI from time to time.

Accordingly, SEBI issued a circular dated 5 June 2018 to provide the detailed guidelines for preferential issue by InvITs. The guidelines provide the manner in which any subsequent issue of units after an initial offer should be made by an InvIT.

The key provisions discussed in the circular are as follows:

- No preferential issue of units by the InvIT has been made in the six months preceding the relevant date.
- Allotment pursuant to preferential issue shall be completed within 12 days
- The units shall be issued only in dematerialised form
- The units in a preferential issue shall be offered and allotted to a minimum of two investors and maximum of 1,000 investors in a financial year
- The preferential issue shall be made at a price not less than the average of the weekly high and low of the closing prices of the units quoted on the stock exchange during the two weeks preceding the relevant date.

The circular provides detailed provisions which is divided under following broad heads:

- Conditions for preferential issue
- Placement document
- Pricing
- Restriction on allotment
- Transferability of units.

(Source: SEBI circular SEBI/HO/DDHS/DDHS/CIR/P/2018/89 dated 5 June 2018)

MCA issued amendment to AS 11

On 18 June 2018, MCA issued Companies (Accounting Standards) Amendment Rules, 2018 to issue amendments to AS 11, *The Effects of Changes in Foreign Exchange Rates*.

Currently, AS 11 provides that in case of disposal of a non-integral foreign operation the cumulative amount of the exchange differences which have been deferred and which relate to that operation should be recognised as an income or as an expense in the same period in which the gain or loss on disposal is recognised. Additionally, AS 11 specifies what would constitute a disposal of interest by an entity in a non-integral foreign operation.

In this regard, MCA amended AS 11 to clarify that the remittance from a non-integral foreign operation by way of repatriation of accumulated profits does not form part of a disposal unless it constitutes return of the investment.

(Source: MCA notification G.S.R. 569(E). dated 18 June 2018)

