Regulatory updates

MCA notified certain sections of Amendment Act, 2017

The Ministry of Corporate Affairs (MCA) through its notification dated 12 September 2018 and 19 September 2018 notified provisions of the Companies (Amendment) Act, 2017 (Amendment Act, 2017). The provisions notified amend certain sections of the Companies Act, 2013 (2013 Act). Following are the key sections amended recently by the Amendment Act, 2017.

Managerial Remuneration (MR) (Section 197): Currently under 2013 Act, total MR payable by a public company should not exceed 11 per cent of the net profits of the company for that financial year. The limits could be exceeded with the approval of the shareholders and central government, 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 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(16))

(Emphasis added to highlight the change)

Further related amendments have also been made to Schedule V to the 2013 Act and Companies (Appointment and Remuneration of Managerial Personnel) Rules. The above mentioned amendments are effective from 12 September 2018.

Calculation of profits for managerial remuneration (Section 198): 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. The above mentioned amendments are effective from 12 September 2018.

Corporate Social Responsibility (CSR) (Section 135): Following changes have been made to the current provisions:

- For determining the threshold of the specified net worth, turnover, or net profit to constitute a CSR committee, the words 'any Financial Year (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 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 an

eligible company. Now companies have a discretion to spend the CSR amount in the areas other than their local area of business or industry.

The MCA also made related amendments to Companies (Corporate Social Responsibility Policy) Rules, 2014 by issuing Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018. The above mentioned amendments are effective from 19 September 2018.

Source: MCA notification S.O. 4823(E)., S.O. 4823(E) Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2018 dated 12 September 2018 and MCA notification dated 19 September 2018 and Companies (Corporate Social Responsibility Policy) Amendment Rules, 2018 dated 19 September 2018

MCA has issued Ind AS amendment rules

Recently, on 20 September 2018, MCA issued the Companies (Ind AS) Second Amendment Rules, 2018 introducing amendments to certain principles of Ind AS 20, *Accounting for Government Grants and Disclosure of Government Assistance.* Ind AS 20 specifies the manner of accounting and disclosure of government grants and other forms of government assistance received by entities

Following are the key changes:

- **Accounting for non-monetary government grants:** The amendments introduce an alternate method for accounting for non-monetary grants under Ind AS 20 i.e. they permit an entity to record both the asset and the grant at a nominal amount rather than at fair value. This accounting policy option is in accordance with the guidance in IFRS (International Accounting Standard (IAS) 20, *Accounting for Government Grants and Disclosure of Government Assistance).*
- **Presentation of grants related to assets:** In addition to the above manner of presentation of the government grants related to assets, Ind AS 20 will now have another method of presentation of such grants. It permits the amount of grant to be deducted while calculating the carrying amount of the asset. Additionally, the grant would be recognised in the statement of profit and loss over the useful life of a depreciable asset as a reduced depreciation expense.
- **Repayment of government grants:** The amended Ind AS 20 provides that the repayment of grant related to an asset should be recognised by increasing the carrying amount of the related asset, if the grant was previously deducted from the carrying amount of the asset. Additionally, it clarifies that the cumulative additional depreciation which would have been recognised in the profit or loss to date in the absence of the grant should be recognised immediately in the profit or loss
- **Effective date:** The amendments to Ind AS 20 would be made effective for annual periods beginning on or after 1 April 2018.

Source: Companies (Ind AS) Second Amendment Rules, 2018 issued by MCA dated 20 September 2018

(Source: Companies (Ind AS) Second Amendment Rules, 2018 issued by MCA dated 20 September 2018

MCA issues report of the committee to review the offences under the 2013 Act

A Committee was constituted by Government of India in July 2018 to review the existing framework dealing with offences under the 2013 Act and related matters. On 27 August 2018, the committee submitted its final report.

The committee recommended that the existing rigour of the law should continue for serious offences, whereas for lapses that are essentially technical or procedural in nature, may be shifted to in-house adjudication process. No change is suggested in respect of any of the non-compoundable offences. The report aims to strengthen the in-house adjudication process by necessitating a concomitant order for making good the default at the time of levying penalty, to achieve better compliance.

Further, the report endeavours to de-clog the National Company Law Tribunal (NCLT) by recommending certain amendments, which include enlarging the jurisdiction of the regional director with enhanced pecuniary limits for compounding of offences under Section 441 of the 2013 Act. It also suggests that power to vest with the central government to approve the cases relating alteration in the financial year of a company under Section 2(41) of the 2013 Act and for conversion of public companies into private companies.

The Report also contains recommendations on certain matters related to corporate compliance and corporate governance. The key recommendations are as follows:

Independent Directors (ID)

- The sitting fees and expenses incurred, as may be prescribed for participation in the meetings of Board and Committees should not be considered for the purpose of assessing pecuniary relationship of an ID.

- The sum total of pecuniary relationship of an ID with the company, its holding, subsidiary or associate company, or their promoters or directors (excluding sitting fees and expenses incurred for participation) during a year should not exceed 20 per cent of his/her total income. Additionally, out of the total income, professional or any services other than Board-related services rendered by an ID to the company, its holding, subsidiary or associate company, or their promoters or directors should not account for more than 10 per cent of the total income as laid down under Section 149(6)(c).

Disqualification of a director

- A person should be subject to disqualification if he/she accepts directorships exceeding the maximum number of directorships provided in Section 165 of the 2013 Act.

The period to provide comments on Report ended on 24 September 2018.

Source: Report of the committee to review the offences under the Companies Act, 2013 issued by MCA dated 27 August 2018

MCA issued amendments to the Companies (Prospectus and Allotment of Securities) Rules

The MCA through its notification dated 10 September 2018 issued the Companies (Prospectus and Allotment of Securities) Third Amendment Rules, 2018. The amended rules inserted new Rule 9A to the Companies (Prospectus and Allotment of Securities) Rules, 2014. The Rule 9A is relating to issue of securities in dematerialised form by unlisted public companies.

As per the new rule, every unlisted public company should:

a. Issue securities only in dematerialised form and

b. Facilitate dematerialisation of all its existing securities in accordance with the provisions of Depositories Act, 1996 and regulations made thereunder.

Additionally, every holder of securities of an unlisted public company:

a. Who intends to transfer such securities on or after 2 October 2018, should get such securities dematerialised before the transfer.

b. Who subscribes to any securities of an unlisted public company (whether by way of private placement or bonus shares or rights offer) on or after 2 October 2018, should ensure that all his/her existing securities are held in dematerialised form before such subscription.

The amendments to the Rules are effective from 2 October 2018.

Source: MCA's notification dated 10 September 2018

SEBI has issued the revised ICDR Regulations

Earlier this year in May 2018, the Securities Exchange Board of India (SEBI) issued consultation paper 'Review of SEBI Issue of Capital and Disclosure Requirement (ICDR) Regulations, 2009 to propose changes to ICDR Regulations, 2009. The consultation paper was issued based on recommendations of ICDR Committee with an aim to review the structure of the existing Regulations and realign it with various interpretations issued by SEBI and recent regulatory developments such as update to the Companies Act, 2013, adoption of Ind AS, changes to other Regulations, etc.

New development

Recently on 11 September 2018, SEBI has issued ICDR Regulations, 2018 to revise existing regulations ICDR, 2009.

In revised regulations, SEBI has streamlined and consolidated various provisions of the existing ICDR Regulations which are till now scattered under Regulations and various circulars and interpretations issued by SEBI. This would facilitate ease of reference to entities and other persons involved in the public issue.

The ICDR Regulations, 2018 are effective from sixtieth day from the date of its publication in the Official Gazette i.e. 10 November 2018.

Source: SEBI issued ICDR Regulations, 2018 dated 11 September 2018

SEBI has issued (Buy-Back of Securities) Regulations, 2018.

The SEBI on 11 September 2018 issued (Buy-Back of Securities) Regulations, 2018. These regulations would be applicable to buy-back of shares or other specified securities of a company in accordance with the applicable provisions of the Companies Act, 2013.

The regulations provided main conditions and requirements for buy-back of shares and specified securities i.e. the maximum limit of any buy-back should be 25 per cent or less of the aggregate of paid-up capital and free reserves of the company. It also includes employees' stock option or other notified securities. Further, the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back should not be more than twice the paid-up capital and free reserves. All shares or other specified securities for buy-back shall be fully paid-up.

Additionally, the regulation provides methods by which a company may buy-back its shares or other specified securities. It also provides general compliance and filing requirements for buy-back.

These regulations are effective from 11 September 2018.

Source: SEBI notification SEBI/LAD-NRO/GN/2018/32 dated 11 September 2018

Ind AS Transition Facilitation Group (ITFG) issues Clarifications' Bulletin 16

The Ind AS Transition Facilitation Group (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 16 on 5 September 2018 to provide clarifications on following seven application issues relating to Ind AS.

- Accounting of financial guarantee
  - Financial guarantee by a subsidiary for a loan taken by its parent
  - Financial guarantee by a parent for a loan taken by its subsidiary and repaid early
- Treatment of income tax related interest and penalties under Ind AS vis-à-vis IFRS
- Modification of debt
- Classification of units of money-market mutual funds as cash equivalents
- Business combination under common control
- Treatment of common infrastructure facilities under a lease arrangement.

Source: ITFG 16 issued by ICAI dated 5 September 2108

ICAI clarifies applicability of disclosure norms relating to Specified Bank Notes (SBNs)

The MCA introduced a disclosure for Specified Bank Notes (SBNs) in the notes to account to balance sheet on 30 March 2017 following demonetisation.

Therefore, Schedule III of the 2013 Act was amended.[1] According to the amendment every company is required to disclose, in the notes to account to balance sheet, the details of SBNs[2] held and transacted during the period from 8 November 2016 to 30 December 2016 in the following format:

	SBNs	Other denomination notes	Total
Closing cash in hand as on 8 November 2016			
(+) Permitted receipts			
(-) Permitted payments			
(-) Amount deposited in banks			
Closing cash in hand as on 30 December 2016			

Additionally, the auditor's report had to include the auditor's views and comments on the following matter:

- Whether the company had provided requisite disclosures in its financial statements as to holdings as well as dealings in SBNs during the period from 8 November 2016 to 30 December 2016 and if so, whether these are in accordance with the books of accounts maintained by the company (Rule 11(d) of the Companies (Audit and Auditors) Amendment Rules, 2017).

The revised disclosures (as given above) have been made applicable to financial statements/auditor's report issued after 30 March 2017 and which include the period from 8 November 2016 to 30 December 2016.

1. MCA notification no. G.S.R. 307(E) dated 30 March 2017.
2. For the purpose of this disclosure, the term 'SBN' should have the same meaning as provided in the notification S.O. 3407(E) of the Ministry of Finance, dated 8 November 2016. The notification defines SBN as 'bank notes of denominations of the existing series of the value of INR500 and INR1,000'.

New development

On 1 September 2018, the Institute of Chartered Accountants of India (ICAI) through an announcement clarified that the above disclosure requirements relating to SBNs (in the notes to account as well as in the auditor's report) are not applicable for the Financial Year (FY) 2017-18 and subsequent years. Accordingly, consequent disclosures may be given in the financial statements/ auditor's reports.

The announcement is on the basis of the decision taken by the Corporate Laws and Corporate Governance Committee of ICAI (the committee) at its forty-first meeting held on 6 June 2018. The committee considered that the disclosure requirement was event specific. Additionally, the required disclosures were for the period falling under FY2016-17 (i.e. 8 November 2016 to 30 December 2016), therefore, these were relevant for FY2016-17 only.

Source: ICAI notification dated 1 September and KPMG in India's First Notes dated 4 September 2018

ICAI issued exposure drafts on SAE 3410 Assurance Engagements on Greenhouse Gas Statements

The ICAI issued exposure draft on the Standard on Assurance Engagements (SAE) 3410, *Assurance Engagements on Greenhouse Gas Statements.* This SAE is proposed to apply to assurance procedures performed with respect to the Greenhouse Gas (GHG) statement other than when the GHG statement is a relatively minor part of the overall information subject to assurance. The Guidance Note on Reports or Certificates for Special Purposes (or another SAE dealing with a specific underlying subject matter) would apply to assurance procedures performed with respect to the remainder of the information covered by the practitioner's conclusion.

The objective of SAE 3410 is to obtain either limited or reasonable assurance, as applicable, about whether the GHG statement is free from material misstatement, whether due to fraud or error. GHG statements are assured to enhance the reliability of the emissions information being reported on. As the demand for companies to disclose their emissions information increases, public confidence in assured greenhouse gas statements is expected to become significant.

The SAE 3410 engagement adopts a risk-based approach, regardless of whether it is a reasonable or limited assurance engagement. For all engagements performed under SAE 3410, the practitioner:

- Obtains an understanding of the entity and its environment, including the entity's internal control
- Identifies and assesses the risk of material misstatement in the GHG Statement
- Performs procedures to address the identified risks and
- Reports in accordance with the practitioner's findings.

The SAE 3410 does not mandate the circumstances in which a reasonable or limited assurance engagement is undertaken; this will be determined by law or regulation, or the reason for the engagement.

The exposure SAE 3410 is based on International Standard on Assurance Engagements (ISAE) 3410, *Assurance Engagements on Greenhouse Gas Statements* issued by International Auditing and Assurance Standards Board (IAASB) in June 2012. The ISAE 3410 is applicable to assurance reports covering periods ending on or after 30 September 2013.

The exposure draft issued by ICAI is open for comments upto 22 October 2018.

Source: Exposure Draft of SAE 3410 issued by ICAI dated 6 September 2018 and At a Glance – SAE 3410 issued by IAASB in June 2012

ICAI issued Implementation Guide to SA 610 (Revised)

Recently, ICAI has issued the Implementation Guide to Standard on Auditing (SA) 610 (Revised), Using the Work of Internal Auditors. The aim of the Implementation Guide is to provide solutions to various practical problems faced by auditors in implementing this SA in real life audit situations.

Source: Implementation Guide to SA 610 (Revised) issued by ICAI dated 27 August 2018

The CBDT notifies amendments to income tax rules

The Central Board of Direct Taxes (CBDT) through its notification no. 42/2018 notified Rule 11UAB of the Income-tax Rules, 1962 and amended Rule 11U related to meaning of expressions used in determination of fair market value.

The Rule 11U(b) provides that the balance sheet of a company covered under Rule 11UA(2) should be drawn up:

- Either on the valuation date and be audited by the statutory auditor of the company, or
- The balance sheet should be drawn up as on a date immediately preceding the valuation date, and should be approved and adopted in the annual general meeting of the shareholders of the company.

For other companies (not covered under Rule 11UA(2)), the balance sheet of the company should be drawn up on the valuation date, and be audited by the statutory auditor of the company.

The CBDT has amended the definition of the balance sheet for companies not covered under Rule 11UA(2) as under:

- In relation to an Indian company, the balance sheet of such company (including the notes annexed thereto and forming part of the accounts) should be drawn up on the valuation date and be audited by the auditor of the company appointed under the laws relating to companies in force; and
- In relation to a company, not being an Indian company, the balance sheet of the company (including the notes annexed thereto and forming part of the accounts) should be drawn up on the valuation date and be audited by the auditor of the company, if any, appointed under the laws in force of the country in which the company is registered or incorporated.

Additionally, CBDT has introduced a new rule, Rule 11UAB, Determination of fair market value for inventory. The Rule 11UAB provides that for the purposes of computation of income chargeable to tax under 'Profits and Gains of Business or Profession' within Section 28 of the Income-tax Act, 1961, the fair market value of the inventory:

- Being an immovable property, being land or building or both, shall be the value adopted or assessed or assessable by any authority of the Central Government or a State Government for the purpose of payment of stamp duty in respect of such immovable property on the date on which the inventory is converted into, or treated, as a capital asset;
- Jewellery, archaeological collections, drawings, paintings, sculptures, any work of art, shares or securities referred to in Rule 11UA, the value should be determined in the manner provided in Rule 11UA(1) and for this purpose the reference to the valuation date in the Rule 11U and Rule 11UA would be the date on which the inventory is converted into, or treated, as a capital asset;
- Being the property, other than those specified in clause (i) and clause (ii) above, the price that such property would ordinarily fetch on sale in the open market on the date on which the inventory is converted into, or treated, as a capital asset.

Source: The CBDT notification no. 42/2018 dated 30 August 2018