In this publication, we have summarised important updates relevant to the quarter ended 31 December 2018 from the Ministry of Corporate Affairs (MCA), the Securities and Exchange Board of India (SEBI) and the Institute of Chartered Accountants of India (ICAI).
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ITFG issues Clarifications’ Bulletin 17

The Ind AS Transition Facilitation Group (ITFG) in its meeting considered certain issues received from the members of the ICAI, and issued its Clarifications’ Bulletin 17 on 19 December 2018 to provide clarifications on 11 application issues relating to Indian Accounting Standards (Ind AS).

Some of the key clarifications provided in ITFG Bulletin 17 are as follows:

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

- Amendments to Ind AS 20 (Issue 1): The ITFG considered an issue where a government company X Ltd. received land in the year 2008 to construct and operate a Mass Rapid Transit System (MRTS) in a metropolitan city. The land was received free of cost subject to compliance with the specified terms and conditions. The land was recorded at a nominal value of INR1 as per applicable AS 12, Accounting for Government Grants.

As per recent amendments to Ind AS 20, an entity can either present the non-monetary asset and grant at fair value or record both asset and grant at a nominal amount.

The issue considered relates to the accounting treatment of such a land in the financial statements of X Ltd. in accordance with Ind AS 20.

Clarification

The ITFG considered two scenarios in order to clarify the accounting treatment for the amount at which such a land would be recorded in financial statements of X Ltd. in accordance with Ind AS 20. The two scenarios are:

Scenario 1: X Ltd. is a first-time adopter of Ind AS and its first Ind AS reporting period is Financial Year (FY) 2018-19

As per Ind AS 101, First-time Adoption of Indian Accounting Standards, a first-time adopter of Ind AS is required to:

- Prepare and present an opening Ind AS balance sheet at the date of transition to Ind AS.
- Use the same accounting policies in its opening Ind AS balance sheet and throughout all periods presented in its first Ind AS financial statements. Those accounting policies would comply with each Ind AS effective at the end of its first Ind AS reporting period.

There is no mandatory/voluntary exemption from retrospective application of Ind AS 20 under Ind AS 101. Accordingly, X Ltd. would be required to apply the amended Ind AS 20 retrospectively for all periods presented in its financial statements for FY2018-19 (including in preparing its opening Ind AS balance sheet as at 1 April 2017).

**Scenario 2: X Ltd. is not a first-time adopter of Ind AS and FY2018-19 is its second (or third) reporting period under Ind AS**

Ind AS 8, Accounting Policies, Changes in Accounting Estimates and Errors requires an entity to mandatorily change an accounting policy only if the change:
- Is required by an Ind AS or
- Results in the financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on the entity’s financial position, financial performance or cash flows.

Amendment to Ind AS 20 provides X Ltd., an accounting policy choice between recognising the grant and the asset initially either at fair value or at a nominal amount. Therefore, X Ltd. is not required to change the accounting policy relating to the grant as applied by it in preparing its financial statements for the previous FY.

X Ltd. could make a voluntary change in accounting policy only if such a change results in its financial statements providing reliable and more relevant information about the effects of transactions, other events or conditions on its financial position, financial performance or cash flows.

- **Treatment of export benefits under a scheme of the Government of India (Issue 3):**
  
  The ITFG considered a situation where MNC Ltd. (a registered unit in Special Economic Zone (SEZ)) received benefits from the government in the form of exemption from payment of taxes and duties on import/export of goods subject to fulfilment of certain conditions.

  The issue considered relates to whether the benefit received by MNC Ltd. is a government grant or a government assistance other than government grant under Ind AS 20. Also, if it is a government grant, then whether it would be accounted as a grant related to asset or grant related to income.

  **Clarification**

  The benefit of exemption from payment of taxes and duties levied by the government is a government grant to be accounted as per the provisions of Ind AS 20.

  MNC Ltd. should exercise judgement and carefully examine the facts, objective and conditions attached to the scheme to determine whether the grant is related to an ‘asset’ or to ‘income’. Also ascertain the purpose of the grant and costs that are intended to be compensated for.

  MNC Ltd. should recognise the grant as below (as per the provisions of Ind AS 20):

  - **Export of goods is a primary condition:** If the grant is received to compensate the import cost of assets, and is subject to export obligations, then the recognition of the grant would be linked to fulfilment of the associated export obligations and would be treated as grants related to income (to be presented as ‘other income’ or deducted from related expenses in the statement of profit and loss).
- **Export of goods is a secondary condition:**
  If the grant is received to compensate the import cost of the asset, and it can be reasonably concluded that conditions relating to export of goods are subsidiary conditions, then such grant would be recognised as grant related to assets (to be presented as ‘deferred income’ over the life of the underlying asset).

**Ind AS 32, Financial Instruments: Presentation**

- **Optionally convertible preference shares with discretionary dividend and an embedded call option (Issue 9):** The ITFG considered a situation where an entity K issued 12 per cent, five year, optionally convertible preference shares with discretionary non-cumulative dividend, at par in its functional currency. As per the terms of issue:
  a) The holder of the preference shares had an option to convert them into fixed number of equity shares at the end of five years
  b) If the conversion option was not exercised, the preference shares would be redeemed at par
  c) Throughout the five year period, the holder had an option to put the preference shares back to entity K at its par amount.

The issue considered relates to the accounting treatment of such preference shares in the financial statements of entity K.

**Clarification**

As per the terms of issue and guidance in Ind AS 32, the economic effect of issuing the preference shares was substantially the same as issuing simultaneously a debt instrument with early settlement provision and warrants to purchase ordinary shares. Therefore, the components of the preference shares would be required to be classified and presented separately.

Generally, in a compound financial instrument, equity component is computed by deducting fair value of the liability component from the fair value of the entire financial instrument.

- **Issue of rights offer (Issue 10):** The ITFG considered an issue where an entity X, with INR as its functional currency had two classes of non-puttable equity shares - Class A and Class B. Post the date of transition to Ind AS, entity X made a rights offer to all holders of Class B equity shares. The terms of the right offer were:
  a) For each equity share of Class B held, the shareholder is entitled to subscribe to 100 equity shares of Class A.
  b) The rights offer price was fixed at:
     i. INR60 per Class A share for Indian shareholders, and
     ii. USD1 per Class A share for overseas shareholders
  c) The rights offer was valid for six months.

The issue considered relates to the perspective of entity X, the rights offer to Class B shareholders to acquire Class A shares was an equity instrument or a (derivative) financial liability.

**Clarification**

As per Ind AS 32, a ‘financial liability’ is any liability that is a derivative that would or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity’s own equity instruments.
For this purpose, rights, options or warrants to acquire a fixed number of the entity’s own equity instruments for a fixed amount of any currency are equity instruments if the entity offers the rights, options or warrants pro-rata to all of its existing owners of the same class of its own non-derivative equity instruments.

Accordingly, the terms of the rights issue have been evaluated as follows:

- The rights offer is for acquiring a fixed number of the entity’s own equity instruments i.e. for each equity share of Class B held, the shareholder was entitled to subscribe to 100 equity shares of Class A

- The exercise price of the right is a fixed amount i.e. INR60 per share for Indian shareholders and USD1 per share for overseas shareholders

- Entity X had made the rights offer to all the existing shareholders of Class B equity shares pro-rata to their holding of Class B equity shares.

Since all the conditions for equity classification are met in the given case, the rights offer to Class B shareholders to acquire Class A shares would be classified as an equity instrument.

**Preference shares issued in foreign currency (Issue 11):** The ITFG considered an issue where an entity Y, with INR as its functional currency, issued preference shares with three years term denominated in a foreign currency to an overseas investor. At the end of three years, entity Y had an option to either redeem each preference share at USD10 or get it converted into three equity shares of entity Y.

The issue considered relates to whether entity Y should classify the equity conversion option forming part of terms of issue of preference shares as an equity instrument or a (derivative) financial liability.

**Clarification**

As per Ind AS 32, a derivative would be classified as a financial liability if it will or may be settled other than by the exchange of a fixed amount of cash or another financial asset for a fixed number of the entity’s own equity instruments. The term ‘fixed amount of cash’ referred to an amount of cash fixed in the functional currency of the reporting entity.

An amount fixed in a foreign currency has the potential to vary in terms of functional currency of the reporting entity due to exchange rate fluctuations, therefore, it does not represent a ‘fixed amount of cash’.

As an exception, Ind AS 32 regards an equity conversion option embedded in a convertible bond denominated in a foreign currency to acquire a fixed number of the entity’s own equity instruments to be an equity instrument if the exercise price was fixed in any currency (i.e. functional or foreign currency).

The above exception cannot be extended to equity conversion options embedded in other types of financial instruments denominated in a foreign currency such as preference shares. Therefore, in the given case, the equity conversion option forming part of terms of issue of preference shares would be a (derivative) financial liability of entity Y.

**Ind AS 109, Financial Instruments**

- **Inclusion of DDT on preference shares in EIR (Issue 2):** An entity ABC Ltd. had issued cumulative redeemable preference shares carrying a fixed rate of dividend per annum. The preference shares are redeemable at a specified premium at the end of eight years from the date of their issue.

  On the basis of terms and conditions of issue, ABC Ltd. determined that the preference shares would qualify for classification as a financial liability in their entirety under Ind AS 32.
Recognition of dividend income from a debt instrument (Issue 4):

In Bulletin 8 (issue 9), ITFG clarified that recognition of income (from an investment in a financial instrument) would depend on the classification of the instrument (as at Fair Value Through Profit and Loss (FVTPL), at amortised cost, or at Fair Value through Other Comprehensive Income (FVOCI)) as determined in accordance with the requirements of Ind AS 109.

In Bulletin 17, it further clarified that, to be classified as amortised cost or FVOCI, a financial asset must meet the following two conditions:

a) Business model test
b) Contractual cash flow characteristic test (SPPI test).

In case of redeemable preference shares (with legal form of income as dividend), to assess if SPPI test is met, an entity would need to evaluate whether the dividend is discretionary or non-discretionary. A preference share with a discretionary dividend feature cannot be said to represent a basic lending arrangement. Hence, such a preference share fails the SPPI test and, therefore, be classified as at amortised cost or FVOCI. Such preference share would be classified at FVTPL. The entity would be required to give disclosures for its accounting policy as per Ind AS 107, Financial Instruments: Disclosures.

Clarification

As per Ind AS 32, if a financial instrument is classified as a financial liability in its entirety, the ‘dividend’ thereon is in the nature of interest and is accordingly, charged to the statement of profit and loss.

Ind AS 109 provides that when applying the EIR method, an entity generally amortises any fees, points paid or received, transaction costs and other premiums or discounts that are included in the calculation of EIR over the expected life of the financial instrument.

Guidance Note on Division II - Ind AS Schedule III to the 2013 Act and Frequently Asked Questions (FAQs) issued by the ICAI provides the following guidance:

– Dividend on preferences shares (whether redeemable or convertible) is of the nature of ‘interest expense’, only where there is no discretion of the issuer over the payment of such dividends. In such a case, the portion of dividend as determined by applying the EIR method should be presented as ‘interest expense’ under ‘finance cost’. The corresponding DDT on such portion of non-discretionary dividends should also be presented in the statement of profit and loss under ‘interest expense’.

– Presentation of DDT paid on the dividends should be consistent with the presentation of the transaction that creates those income tax consequences. Therefore, DDT should be charged to profit or loss, if the dividend itself is charged to profit or loss.

In the given case, the preference shares have been classified as a liability in their entirety and dividend thereon is therefore, considered to be in the nature of interest.

The related DDT should be regarded as part of interest cost and should form part of EIR calculation.
Ind AS 24, Related Party Disclosures

- **Disclosures related to RPTs (Issue 6):** The ITFG considered a situation where an entity S Ltd., (a wholly-owned subsidiary of P Ltd.), is the sole distributor of electricity to consumers in a specified geographical area. A manufacturing facility of P Ltd. was located in the same geographical area. Consequently P Ltd. is also a consumer of electricity supplied by S Ltd.

The issue considered relates to whether the above transaction is required to be disclosed as a Related Party Transaction (RPT) as per Ind AS 24 in the financial statements of S Ltd.

**Clarification**

As per Ind AS 24, each parent, subsidiary and fellow subsidiary in a ‘group’ is related to the other members of the group. Therefore, P Ltd. is a related party of S Ltd. from the perspective of financial statements of S Ltd.

There is a dual relationship between S Ltd. and P Ltd. i.e.:

a) Supplier and consumer and

b) Subsidiary and holding (which is a relationship covered within the related party relationships to which the disclosure requirements of Ind AS 24 would apply).

Further, Ind AS 24 does not exempt an entity from disclosing RPTs merely because they have been carried out at an arm’s length basis. Accordingly, supply of electricity by S Ltd. to P Ltd. is a RPT that attracts the disclosure requirements contained in Ind AS 24.

**Key takeaway**

The ITFG clarifications are expected to resolve various practical implementation issues faced by companies transitioning to Ind AS. The companies should consider the interpretations provided by the ITFG in their implementation efforts. However, it should be noted that some of the issues would require consideration of facts and circumstances and the exercise of judgement while analysing each individual situation.

(Source: ICAI-ITFG clarifications' bulletin 17 dated 19 December 2018)

**Amendments to Schedule III to the Companies Act, 2013**

Schedule III to the Companies Act, 2013 (2013 Act) provides general instructions for presentation of financial statements of a company under both Accounting Standards (AS) and Ind AS. The Schedule III has three parts and they are as follows:

- Division I is applicable to a company whose financial statements are prepared in accordance with AS
- Division II is applicable to a company whose financial statements are prepared in accordance with Ind AS (other than Non-Banking Financial Companies (NBFCs))
- Division III is applicable only to NBFCs which are required to prepare financial statements in accordance with Ind AS.
The table below provides a summary of the changes made to Division I, II and inclusion of Division III on 11 October 2018:

<table>
<thead>
<tr>
<th>Division</th>
<th>Summary of changes</th>
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<tbody>
<tr>
<td>Division I</td>
<td>• Minor changes in reference of ‘fixed assets’ and ‘securities premium reserve’ in the balance sheet.</td>
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<tr>
<td>Division II</td>
<td>• New disclosures introduced in relation to ‘trade payables’ towards Micro, Small and Medium Enterprises (MSMEs) in the balance sheet and the related notes.</td>
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<td>• New categories introduced for classification of ‘trade receivables’ and ‘loans receivables’ in the notes to the balance sheet.</td>
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<td></td>
<td>• Description of purpose of each reserve included within ‘other equity’ to be provided in the notes to the statement of changes in equity.</td>
</tr>
<tr>
<td>Division III</td>
<td>• It provides the general instructions for presentation of financial statements of an NBFC that is required to comply with Ind AS.</td>
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<td>• In the balance sheet:</td>
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<td></td>
<td>– Items presented to be classified as ‘financial’ and ‘non-financial’.</td>
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<td>– NBFCs have been permitted to avail the option of presenting assets and liabilities in the order of liquidity, as provided by Ind AS 1, <em>Presentation of Financial Statements</em>.</td>
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<td>– It requires specific disclosure of derivative financial instruments and subordinated liabilities on the face of the balance sheet.</td>
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<td>• In the statement of profit and loss:</td>
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<td>– Items comprising ‘revenue from operations’ and ‘other comprehensive income’ have to be disclosed on the face of the statement of profit and loss.</td>
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<td></td>
<td>– An NBFC should disclose a note for any item of ‘other income’ or ‘other expenditure’ which exceeds 1 per cent of the total income, in addition to the consideration of materiality.</td>
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<td>• In the statement of changes in equity:</td>
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<td>– NBFCs are specifically required to disclose the statutory reserves as part of ‘other equity’ in the statement of changes in equity.</td>
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<td></td>
<td>– Additionally, a separate disclosure is required for the conditions or restrictions for distribution attached to statutory reserves.</td>
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(Source: KPMG in India’s analysis, 2018 based on the amendments to Schedule III to the 2013 Act and KPMG in India’s IFRS Notes dated 26 October 2018)
Applicability of formats for presentation of financial statements

On 22 November 2018, the National Stock Exchange Ltd. (NSE) and BSE Ltd. (BSE) issued a clarification on behalf of SEBI regarding the applicability of formats for presentation of financial results by listed entities. As per the clarification:

- **For the quarter ended 31 December 2018:** Existing formats should be followed by listed entities. However, listed entities have the option to present the financial results in the revised format, in addition to pre-revised formats prescribed under Schedule III to the 2013 Act.

- **For the quarter/year ending 31 March 2019:** Formats prescribed in amended Schedule III to the 2013 Act should be followed by listed entities.

**Key takeaway**

The clarification from NSE and BSE puts to rest the ambiguity surrounding the applicability date for filing of financial results with stock exchanges specifically in case of the NBFCs which are required to adopt Ind AS in a phased manner for accounting periods beginning on or after 1 April 2018 (with comparatives for the periods ending on or after 31 March 2018).

Thus, for the purpose of financial results for the quarter ended 31 December 2018, all listed entities would need to submit the financial results and the past information, in the existing format of Schedule III (prior to amendment notified on 11 October 2018).

Updates relating to the Companies Act, 2013

MCA further amended the 2013 Act through an ordinance

On 2 November 2018, the Ministry of Law and Justice issued the Companies (Amendment) Ordinance, 2018 (ordinance) and amended the 2013 Act based on the recommendations of the committee formed to review the existing framework dealing with the offences under the 2013 Act.

The key amendments are as follows:

- **Revised eligibility criteria for appointment of a director**: A person would not be eligible to be appointed as a director of a company if he/she holds office as a director (including any alternate directorship) in more than 20 companies at the same time (of which directorship in public companies should not exceed 10).

- **Revised penalty for fraud**: Frauds which involve an amount of INR10 lakh or more or one per cent of the turnover of the company, whichever is lower, and do not involve public interest, then in addition to imprisonment, any person guilty of such fraud would be punishable with a fine of INR50 lakh (earlier INR20 lakh).

- **Penalty for repeated defaults**: The ordinance has inserted a new sub-section to Section 454 i.e. Section 454A which provides penalty for repeated defaults.

As per Section 454A, if a company, an officer or any other person having subjected to penalty for default under any provisions of the 2013 Act, commits such default again within a period of three years from the date of order imposing such penalty passed by the adjudicating officer or the regional director, then such person would be liable for the second or subsequent defaults for an amount equal to twice the amount of penalty provided for such default under the relevant provisions of the 2013 Act.

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1. The committee was formed on 13 July 2018 under the chairmanship of Mr. Injeti Srinivas, Secretary, Ministry of Corporate Affairs (MCA).
• **Replacement of fine with penalty:** Certain amendments to the penal provisions have replaced fines with penalties. Some of the key situations where fines have been replaced with penalties are as follows:
  a) Failure to file an annual return within the stipulated period
  b) Failure to file copy of financial statements with the Registrar of Companies (ROC)
  c) Non-compliance with the provisions relating to appointment of directors and intimation of Director Identification Number (DIN)
  d) Non-compliance with the norm relating to maximum number of directorships
  e) Non-compliance with the provisions relating to appointment of Key Managerial Personnel (KMP).

• **Powers given to CG:** The Central Government (CG) (earlier the Tribunal) has been entrusted with the power to approve changes to the Financial Year (FY) of a company/body corporate and changes to the articles of a company pursuant to conversion of public companies into private companies.

The changes brought by the ordinance have been introduced in the Lok Sabha as the Companies (Amendment) Bill, 2018 on 20 December 2018.

For a detailed overview of the amendments made by the ordinance, please refer to KPMG in India’s First Notes on ‘MCA further amends Companies Act, 2013 through an ordinance’ dated 28 November 2018.

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**Key takeaways**

- The amendments made by the ordinance seek to promote ease of doing business along with better corporate governance.
- Companies should take cognisance of the amendments and ensure compliance so as to avoid any consequential penal provisions.

(Source: The Companies (Amendment) Ordinance, 2018 dated 2 November 2018 issued by the Ministry of Law and Justice, Companies (Amendment) Bill, 2018 dated 20 December 2018 and KPMG in India’s First Notes dated 28 November 2018)

**MCA notified constitution of National Financial Reporting Authority (NFRA)**

The MCA has notified the constitution of NFRA with effect from 1 October 2018. Further, it also notified the following:

- Provisions of the 2013 Act relating to NFRA (effective from 24 October 2018)
- NFRA Rules, 2018 (effective from 14 November 2018).

Key provisions of the 2013 Act and NFRA Rules notified are as follows:

- **Companies governed by NFRA:** Following entities will come under the purview of NFRA:
  a) Companies whose securities are listed on any stock exchange in India or outside India
  b) Unlisted public companies with paid-up capital of not less than INR500 crore, turnover of not less than INR1,000 crore or with outstanding loans, debentures and deposits of not less than INR500 crore as on the 31 March immediately preceding FY
c) Insurance companies, banking companies, companies engaged in the generation or supply of electricity, companies governed by any special act or body corporates incorporated in accordance with the provisions of the 2013 Act

d) Any body corporate/company/person/any class of body corporates, companies or persons on a reference made by NFRA by the CG in public interest and

e) A body corporate incorporated or registered outside India, which is a subsidiary or an associate company of any company or body corporate incorporate or registered in India as referred to in clauses (a) to (d) above, if the income or net worth of such subsidiary or associate company exceeds 20 per cent of the consolidated income or net worth of such company or body corporate, as the case may be.

An entity would continue to be governed by the NFRA for a period of three years after it ceases to be listed or its paid-up capital/tturnover/aggregate of loans, debentures and deposits falls below the prescribed limit.

Additionally, following would be required to furnish the details of their auditors to the NFRA:

a) Every existing body corporate, other than a company, governed by NFRA Rules, 2018: Within 30 days from the date of deployment of Form NFRA-1 on the MCA/NFRA website.

b) Body corporates which are not companies within the meaning of the 2013 Act, but are formed in India and are governed under the NFRA Rules, 2018: Within 30 days from the date of deployment of Form NFRA-1 on the MCA/NFRA website.

c) A body corporate specified under clause (e) above.

• Functions and duties of NFRA: The NFRA has been formed with the intent to protect the public interest and the interests of investors, creditors and others associated with the companies or body corporates governed by the NFRA Rules. Additionally, NFRA Rules provide that NFRA would exercise an effective oversight of accounting functions performed by the companies and bodies corporate and auditing functions performed by auditors. The key functions and duties are as following:

a) Maintain details of particulars of auditors appointed in the companies and body corporates

b) Recommend both accounting and auditing standards for approval by the CG

c) Monitor and enforce compliance with both accounting and auditing standards

d) Oversee the quality of service of the professions associated with ensuring compliance with such standards and suggest measures for improvement in the quality of service

e) Promote awareness in relation to the compliance of both accounting and auditing standards

f) Co-operate with national and international organisations of independent audit regulators in establishing and overseeing adherence to both accounting and auditing standards

g) Perform such other functions and duties as may be necessary or incidental to the above functions and duties.

• Annual return: Auditors of the companies and body corporates are required to file a return with the NFRA on or before 30 April every year in a form to be specified by the CG.
Powers to investigate: NFRA has been empowered with wide powers of investigation into any matter of professional or other misconduct under the 2013 Act on a reference made to it by the CG. It may also decide to undertake investigation into any matter on the basis of its compliance or oversight activities.

Further, it has been empowered to undertake *suo motu* investigation into any matter of professional or other misconduct, after recording reasons in writing for this purpose.

If during investigation, it has evidence to believe that an entity has not complied with the requirements under the 2013 Act or Rules which involve or may involve fraud of INR1 crore or more then it would need to report its findings to the CG.

On the commencement of NFRA Rules, the action in respect of cases of professional or other misconduct against auditors of companies would be initiated by NFRA and no other institute or body would initiate any such proceedings against such auditors. Further, no other institute or body would initiate or continue any proceedings in such matters of misconduct where the NFRA has initiated investigation under NFRA Rules.

However, the action in respect of cases of professional or other misconduct against auditors of companies or bodies corporate other than those that are referred to in the Rules would continue to be proceeded with the ICAI as per the provisions of the Chartered Accountants Act, 1949 and regulations made thereunder.

Punishment in case of non-compliance: The punishment for contravention of Rules for the company, every officer of the company who is in default, auditor or such other person would be in accordance with the provisions of Section 450 of the 2013 Act.

Section 450 lays down punishment in cases where no specific punishment has been provided under other specific provisions of the 2013 Act. It provides punishment with a fine which may extend to INR10,000 and where the contravention is a continuing one, with a further fine which may extend to INR1,000 for every day after the first day during which the contravention continues.

Additionally, NFRA has the same powers as are vested in a Civil Court for discovery/production of information, summoning, inspections, examination of witnesses or documents.

Where professional or other misconduct is proved, NFRA has powers to make order for:

a) Imposing of penalty (minimum INR1 lakh to maximum of five times of the fee received, in case of individuals)

b) Imposing of penalty (minimum INR10 lakh to maximum 10 times of the fee received in case of a firm), or

c) Debar the auditor (member or the firm for minimum 6 months to maximum 10 years) from engaging itself from practice as member of the ICAI.

The penal provisions would also apply to the firm and not just the individual partner.

For a detailed overview of the notified provisions relating to NFRA, please refer to KPMG in India’s First Notes on ‘NFRA Rules notified’ dated 13 December 2018.

Key takeaway

Companies should carefully consider the notified provisions relating to NFRA and ensure compliance with the requirements to submit information about their auditors within the specified timelines.

(Source: MCA notification no. S.O. 5099(E) dated 1 October 2018, notification no. S.O. 5385(E) dated 24 October 2018 and general circular no. 12/2018 dated 13 December 2018 and KPMG in India’s First Notes dated 13 December 2018)
Updates relating to SEBI

Disclosure of reasons for delay in submission of financial results by listed entities

Currently, Regulation 33(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2018 (Listing Regulations) prescribes the following timelines for submission of financial results with the stock exchange by an equity listed entity:

- **Quarterly and year to-date separate and consolidated financial results:** Within 45 days of the end of each quarter, other than the last quarter.
- **Annual separate and consolidated financial results along with the last quarter results:** Within 60 days from the end of the FY.

On 19 November 2018, SEBI issued a circular which provides that if any listed entity does not submit its financial results within the timelines specified in Regulation 33 of the Listing Regulations, then such a listed entity would be required to disclose detailed reasons for such delay to the stock exchanges within one working day of the due date of submission for the results.

However, if the decision to delay the results was taken by the listed entity prior to the due date of submission of financial results, then it should disclose detailed reasons for such delay within one working day of such decision.

The provisions of the circular have been made effective from 19 November 2018.

Key takeaway

In addition to penalty on delay of submission of the financial results, a listed entity would need to disclose the reasons for the delay to the stock exchange within one working day of the due date of submission of financial results.

However, in case a decision to delay the results has been taken prior to the due date of submission of results, then reasons for delay are to be disclosed within one working day from the date of such decision.

(Source: SEBI circular no. CIR/CFD/CMD-1/142/2018 dated 19 November 2018 and KPMG in India’s IFRS Notes dated 7 December 2018)
SEBI issues amendments to the Listing Regulations - reclassification of promoters and additional disclosure in an annual report

Currently, Regulation 31A of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) permits reclassification of promoters of listed entities as public shareholders in different scenarios, subject to the specified conditions.

The Kotak Committee on Corporate Governance in its report to SEBI provided certain recommendations which were aimed towards rationalising the existing norms pertaining to professionally managed entities and to introduce a new requirement which could enable one of the multiple promoters to get reclassified as a public shareholder. However, as several concerns were raised on the recommendations, SEBI decided to revamp the existing provisions governing reclassification of promoters/classification of entities as professionally managed.

Accordingly, on 16 November 2018, SEBI issued amendments to the Listing Regulations which, inter alia, provide revised norms relating to reclassification of promoters/public and additional disclosure in an annual report.

The amendments are effective from 16 November 2018.

Overview of key amendments

Revised norms relating to reclassification of promoters

- Uniform conditions for reclassification: Currently, Regulation 31A of the Listing Regulations specifies certain conditions for reclassification of promoters of a listed entity as public shareholders in different scenarios including:

  a) When a new promoter replaces the previous promoter subsequent to an open offer or in any other manner

  b) Where an entity becomes professionally managed and does not have any identifiable promoters.

Amendment

The amendments provide a single set of conditions which would be applicable to all situations of reclassification of promoter/person belonging to the promoter group as public.

These conditions are as follows:

a) Compliant promoter(s) seeking reclassification4/persons related to the promoter(s) seeking reclassification5. The promoter(s) and persons related to the promoter(s) seeking reclassification as public should not:

  i. Hold together, more than 10 per cent of the total voting rights in the listed entity

  ii. Exercise control (directly or indirectly) over the affairs of the listed entity

  iii. Have any special rights with respect to the listed entity through formal or informal arrangements including through any shareholder agreements

  iv. Be represented on the Board of Directors (BoD) (including by way of a nominee director) of the listed entity

  v. Act as a KMP in the listed entity

  vi. Be a willful defaulter as per the Reserve Bank of India (RBI) guidelines

  vii. Be a fugitive economic offender.

b) Subsequent compliance: Once reclassified as public, the promoter(s) seeking reclassification is required to ensure compliance with the conditions specified in point (i), (ii) and (iii) above at all times from the date of such reclassification. Further, it should be in compliance with the conditions specified in point (iv) and (v) above for a minimum period of three years from the date of reclassification.

If the promoter(s) fails to comply with them, then he/she would be automatically reclassified as promoter/persons belonging to the promoter group, as the case may be.

References:


3. SEBI memorandum issued in April 2018.

4. ‘Promoter(s) seeking reclassification’ means all such promoters/persons belonging to the promoter group seeking reclassification of status as public.

5. ‘Persons related to the promoter(s) seeking reclassification’ means such persons with respect to that promoter(s) seeking reclassification who fall under Regulation 2(1)(pp)(ii), (iii) and (iv) of the ICDR Regulations, 2018.

6. ‘Fugitive economic offender’ means an individual who is declared a fugitive economic offender under Section 12 of the Fugitive Economic Offenders Act, 2018.
c) **Compliant listed entities:** A listed entity is required to comply with the following conditions to be eligible to apply for reclassification:

i. It is in compliance with the minimum public shareholding requirement as required under Regulation 38 of the Listing Regulations

ii. Its shares have not been suspended from trading by the stock exchanges

iii. It does not have any outstanding dues to SEBI, the stock exchanges or the depositories.

d) **Application for reclassification:** The amendments specifically provide that the status of any person as a promoter or public would be permitted by the stock exchanges only upon receipt of an application from the **listed entity** (earlier an application could be made either by the listed entity or concerned shareholder). The amendments provide a detailed procedure for making the application.

- **Listed entities with no promoters:** A listed entity would be considered as a 'listed entity with no promoters' if due to reclassification or otherwise, the entity does not have any promoter. No additional conditions have been prescribed for classification of such entities unlike the present regulation.

- **Disclosure of material events:** The amendments specify disclosures of certain events as material events to the stock exchanges. The disclosures are to be made within 24-hour from the occurrence of such events. Such disclosures, *inter alia*, includes receipt of request for reclassification from the promoter seeking reclassification and submission of application for reclassification to the stock exchanges.

- **Applicability of reclassification provisions in case of transfer of shares by way of transmission/succession/inheritance/gift:**

  a) The recipient of such shares would be classified as a promoter/person belonging to the promoter group immediately on such event

  b) In case the recipient (currently classified as a promoter/person belonging to the promoter group) subsequently proposes to seek reclassification of status as public, it could do so, subject to compliance with the conditions specified above (refer section ‘uniform conditions for reclassification’)

  c) In case of death of a promoter/person belonging to the promoter group, such person would automatically cease to be included as a promoter/person belonging to the promoter group.

**Additional disclosure in an annual report**

The amendments to the Listing Regulations require that every listed entity should disclose the following in relation to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in the corporate governance section (‘other disclosures’) of the annual report:

a) Number of complaints filed during the FY

b) Number of complaints disposed of during the FY

c) Number of complaints pending as on end of the FY.

*For a detailed overview of the amendments made to the Listing Regulations, please refer to KPMG in India’s First Notes on ‘SEBI issues amendments to the Listing Regulations - reclassification of promoters and additional disclosure in an annual report’ dated 20 December 2018.*
Listed entities should carefully consider the revised requirements, in particular the revised norms relating to reclassification of promoters, as they are expected to necessitate a relook of an entity’s present process of reclassification.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2018/47 dated 16 November 2018 and KPMG in India’s First Notes dated 20 December 2018)

Framework for fund raising by issuance of debt securities by large entities

Background

The Government of India in the Union Budget of FY2018-19, made the following announcement:

‘SEBI will also consider mandating, beginning with large corporates, to meet about one-fourth of their financing needs from the debt market.’

Accordingly, on 20 July 2018, SEBI published a consultation paper with draft framework for enhanced market borrowings by large corporates.

New development

On 26 November 2018, SEBI issued a circular and provided a framework comprising detailed guidelines for raising of funds by issuing debt securities.

Key requirements prescribed are as follows:

• **Minimum borrowings from debt securities:**
  All listed entities (except scheduled commercial banks) classified as ‘large corporates’ are mandatorily required to raise at least 25 per cent of their incremental borrowings\(^7\) during a FY (subsequent to the FY in which it is identified as a large corporate) by issuing debt securities\(^8\).

  - **Large corporate:** A listed entity would be classified as a large corporate if it meets all of the following:
    a) Its specified securities\(^9\), debt securities or non-convertible redeemable preference share are listed on a recognised stock exchange(s) in terms of Listing Regulations
    b) It has an outstanding long-term borrowing\(^10\) of INR100 crore or above and
    c) It has a credit rating of ‘AA and above’. The credit rating should be of the unsupported bank borrowing or plain vanilla bonds of an entity which have no structuring/support built in. Where an issuer has multiple ratings from multiple rating agencies, highest of such rating should be considered for the purpose of applicability of this framework.

• **Disclosures by a large corporate to the stock exchange(s):** A listed entity identified as a large corporate would be required to make following disclosures to the stock exchanges where its securities are listed:
  a) Disclosure of the fact that it has been identified as a large corporate in the specified format within 30 days from the beginning of the FY and
  b) Details of the incremental borrowings done during a FY in the specified format within 45 days of the end of the FY.

The above mentioned disclosures are to be certified by a company secretary and the Chief Financial Officer (CFO) of the large corporate. Additionally, such disclosures would form part of the audited annual financial results of the listed entity.

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7. ‘Incremental borrowings’ means any borrowing done during a particular FY, of original maturity of more than one year, irrespective of whether such borrowing is for refinancing/repayment of existing debt or otherwise and should exclude External Commercial Borrowings (ECBs) and inter-corporate borrowings between a parent and subsidiary(ies).


9. ‘Specified securities’ means ‘equity shares’ and ‘convertible securities’.

10. ‘Outstanding long-term borrowings’ means any outstanding borrowing with original maturity of more than one year and should exclude ECBs and inter-corporate borrowings between a parent and subsidiary(ies).
• **Effective date:** For the entities following April-March as their FY, the framework has been made applicable from 1 April 2019 and for the entities which follow calendar year as their FY, the framework has been made applicable from 1 January 2020.

Accordingly, the circular specifies the timeline for meeting the incremental borrowing norms for the following years:

- **For FY2020 and 2021:** The requirement of meeting the incremental borrowing norms would be applicable on an annual basis. A listed entity identified as a large corporate as on 31 March 2019/31 March 2020 would need to comply with the requirement by 31 March 2020 and 31 March 2021.

  In case of shortfall in borrowing, an explanation is to be provided to the stock exchange(s).

- **From FY2022:** The requirement of mandatory incremental borrowing to be met over a contiguous block of two years. Accordingly, a listed entity identified as a large corporate on the last day of FY ‘T-1’ would need to fulfill the incremental borrowing requirement for FY ‘T’, over FY ‘T’ and FY ‘T+1’.

  In case of shortfall at the end of two years, monetary penalty/fine of 0.2 per cent of the shortfall in the borrowed amount would be levied.

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**Disclosure of commodity risks by listed entities**

**Background**

Currently, every equity listed entity is required to disclose the commodity price risk and commodity hedging activities under the corporate governance report section of the annual report.

The SEBI committee on corporate governance recommended the following in its report:

- The listed entities should disclose the risk management activities during the year, including their commodity hedging positions in a more transparent, detailed and uniform manner for easy understanding and appreciation by shareholders.
- For the consistent implementation of the requirements of the Listing Regulations regarding disclosure of commodity risks and other hedging activities by listed entities, a detailed format along with the periodicity of disclosures should be outlined by SEBI. The disclosures should depict the commodity risks that listed entities face, how these are managed and also the policy for hedging commodity risk, etc. followed by the listed entity.

The SEBI accepted the recommendations in its meeting held on 28 March 2018 and decided to implement them separately through a circular.

**New development**

On 15 November 2018, SEBI through its circular, issued the format of disclosures to be made regarding commodity risks by listed entities. As per the format, a listed entity is required to disclose the following:

a) Risk management policy with respect to commodities including through hedging

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(Source: SEBI circular no. SEBI/HO/DDHS/CIR/P/2018/144 dated 26 November 2018)
b) Exposure of the listed entity to commodity and commodity risks faced by the entity throughout the year in the manner prescribed

c) Commodity risks faced by the listed entity during the year and how they have been managed.

The above disclosures pertaining to exposure and commodity risks would apply only for those commodities where the exposure of the listed entity in a particular commodity is material. Materiality in such cases should be as per the materiality policy approved by the board of directors of the listed entity.

The provisions of the circular are applicable from 15 November 2018.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2018/000000141 dated 15 November 2018)

Disclosure of significant beneficial ownership in the shareholding pattern

Background

Regulation 31 of the Listing Regulations requires every equity listed entity to submit a statement to the stock exchanges which should depict the holding of securities and shareholding pattern separately for each class of securities of the listed entity in the format specified by SEBI.

Accordingly, SEBI through its circular dated 30 November 2015 specified certain formats for disclosures to be made by a listed entity relating to specified securities held by it. These are as follows:

a) Summary statement showing holding of specified securities of the listed entity

b) Statement showing holding of specified securities of the promoter and promoter group

c) Statement showing holding of specified securities of the public shareholders and

d) Statement showing holding of specified securities of the non-promoter- non-public shareholder.

New Development

On 7 December 2018, SEBI issued a circular and provided a format for disclosure of significant beneficial ownership in the shareholding pattern by a listed entity. This disclosure would be applicable from quarter ending 31 March 2019.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2018/0000000149 dated 7 December 2018)
Internal auditor not to undertake GST audit

ICAI through an announcement dated 28 September 2018 clarified that an internal auditor of an entity cannot undertake Goods and Service Tax (GST) audit (under the Central Goods and Service Act, 2017) of the same entity.

(Source: ICAI announcement dated 28 September 2018)
ICAI publications issued during the quarter ended 31 December 2018

<table>
<thead>
<tr>
<th>Publications</th>
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<td><strong>Implementation guide</strong></td>
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| Resignation/ withdrawal from an engagement to perform audit of financial statements | • The guide provides guidance on various aspects of auditors’ resignation like circumstances leading to withdrawal/resignation, procedure to be followed by auditors in case of resignation, auditor’s responsibilities and professional obligations to be complied with by auditors.  
• The guide is applicable to audits of all listed entities. In case of audits of banks, insurance companies and other corporate entities, the guidance given in this guide should be also followed, as applicable. |
| SA 230, Audit Documentation (Revised 2018) | • The guide is in the form of FAQs and provide practical implementation guidance on the standard.  
• It also contains a checklist of documentation requirements. |
| **Technical guides** | |
| Technical guide on annual return and GST audit | • The guide covers the areas that are related to the basic principles, policies and special issues pertaining to conduct of a GST audit, drawing up reconciliation statement in Form GSTR-9C and certifying, assisting in filing Form GSTR-9.  
• The guide contains clause by clause analysis of Form GSTR-9, 9A and 9C. |
| Technical guide on the functioning of audit committee and its review checklist | • The guide is a comprehensive and self-contained reference document for the guidance of audit committee on its functions, roles, duties and ensuring effectiveness.  
• The guide also provides a checklist for review of the audit committee. |
| **Other publications** | |
| Bare law on GST and draft rule(s) | • The publication comprises the provisions of the GST law and the draft rules. |
| Summary of the provisions of the Companies (Amendment) Ordinance, 2018 | • The publication provides a summary of the amendments made to the 2013 Act by the Companies (Amendment) Ordinance, 2018.  
• It also highlights the expected implications of the amendments. |
| FAQs on Form GSTR 9 and Form 9C | • The FAQ provides guidance in understanding the requirements of Form GSTR 9 - Annual Return and Form 9C - Reconciliation statement to be filed with the annual return under Central/State GST Act, 2017. |

(Source: ICAI.org)
Expert Advisory Committee (EAC) opinions issued by ICAI during the quarter ended December 2018

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<td>Provision for un-cashable portion of half pay leave as per AS 15/Ind AS 19</td>
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<td>Treatment of disputed amount (principal and interest) in respect of cases pending before various regulatory authorities (under Ind AS)</td>
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(Source: The Chartered Accountant - ICAI journal for the months of October 2018, November 2018 and December 2018)
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<td>SEBI</td>
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**KPMG in India’s IFRS institute**

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.

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**IFRS Notes**

**Clarification on applicability date of formats for financial results and intimation of reasons for delay in submission of financial results**

7 December 2018

This issue of IFRS Notes provides insights on clarification issued by the National Stock Exchange of India Limited (NSE) and the BSE Limited (BSE) regarding applicability date of the notification on amendments to Schedule III (issued on 11 October 2018).

Additionally, the IFRS Notes highlights SEBI’s requirement regarding intimation of reasons for delay in submission of financial results.

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**First Notes**

**SEBI proposes norms for direct listing of equity shares within and outside India**

22 December 2018

On 12 June 2018, the Securities and Exchange Board of India (SEBI) formed an ‘Expert committee for listing of equity shares of companies incorporated in India on foreign stock exchanges and of companies incorporated outside India on Indian stock exchanges’ (the committee). On 4 December 2018, SEBI released the report of the committee with a proposed framework for such direct listing. This issue of First Notes aims to provide an overview of the key recommendations made by the committee with respect to direct listing of equity shares in Indian and foreign stock exchanges.

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**Accounting and Auditing Update**

**Issue no. 29 | December 2018**

In this edition of the Accounting and Auditing Update (AAU), we have included an article which illustrates sector-wise areas that could be potential key audit matters.

Continuing with our sector series on impact of Ind AS 115, Revenue from Contracts with Customers, we cover the transport, logistics and leisure sector. Our article highlights the key areas where more judgement and estimation would be required with the help of practical examples.

Banks may advance loans with prepayment clauses. Ind AS 109, Financial Instruments provides guidance on classification of financial assets as at amortised cost, Fair Value Through Other Comprehensive Income (FVOCI) and Fair Value Through Profit and Loss (FVTPL). An article on this topic demonstrates the assessment and classification of financial assets with prepayment features with the help of an illustrative.

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