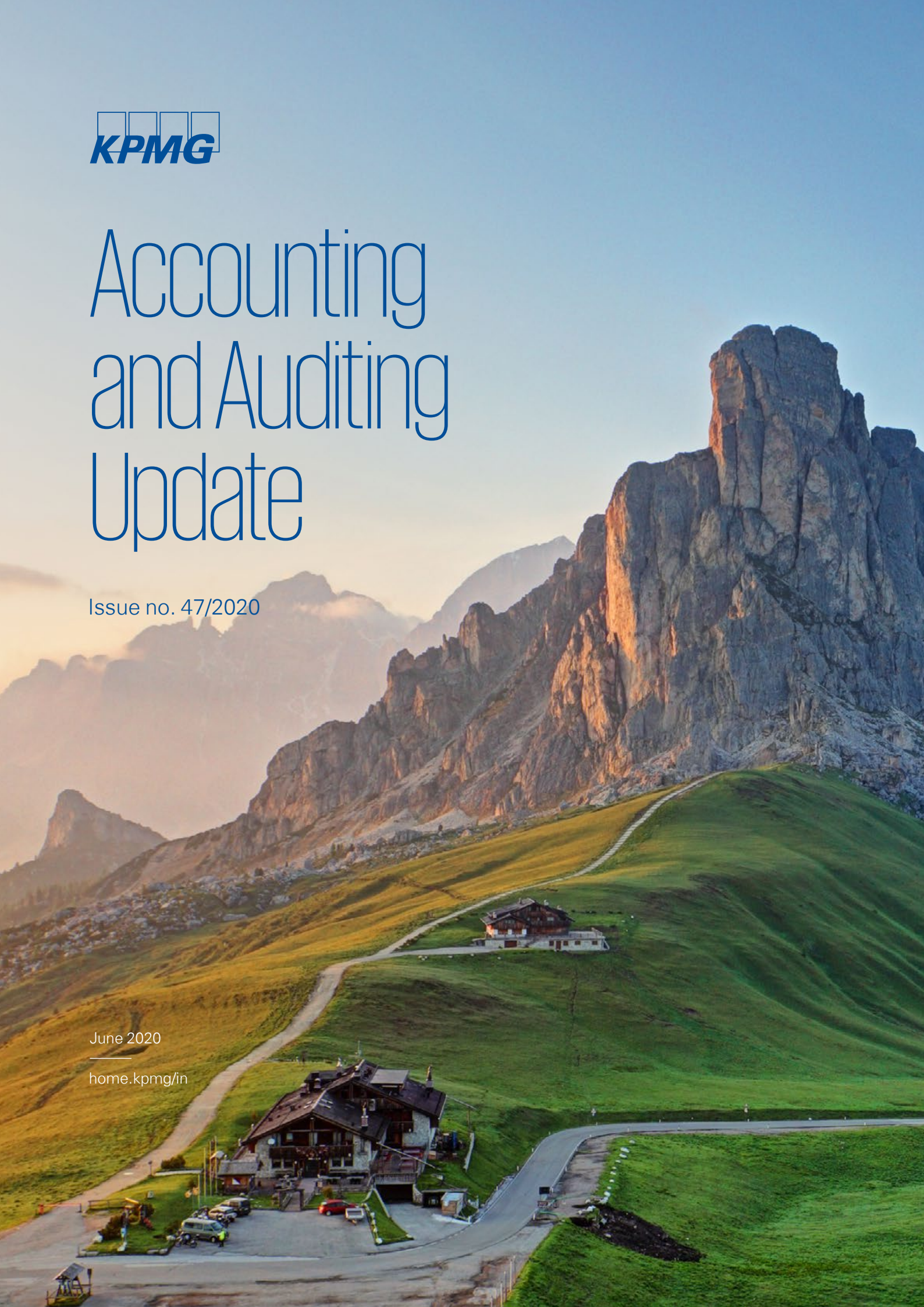

KPMG

Accounting and Auditing Update

Issue no. 47/2020

June 2020

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Editorial

As the impact of the pandemic (COVID-19) continues to evolve, it presents significant challenges for the companies across sectors. Stringent preventive and restrictive measures to contain the pandemic have led to supply chain disruption, reduction in demand for goods, non-availability of personnel, reduced sales and profits, to name a few. In the wake of uncertainty being posed by the pandemic, it becomes imperative for companies to provide timely and adequate information to investors and various stakeholders about the impact of COVID-19 on their business operations, performance, financial position and future prospects. These disclosures could form part of the company's financial statements, board's report, management's discussion and analysis section of the annual report and disclosures to stock exchange(s) as part of material events. Various regulators in the form of advisories/guidance have also urged companies to communicate all information available about the impact of the pandemic on the company along with management responses including measures taken to mitigate them in a cogent manner. In this edition of Accounting and Auditing Update (AAU), we cast our lens on some of the key areas to be considered by companies while disclosing the impact of the pandemic within or outside financial statements.

While COVID-19 has affected almost all the major sectors of Indian economy to varying effect, banks, Non-Banking Financial Companies (NBFCs), Housing Finance Companies (HFCs) have been significantly impacted especially in terms of their exposure to almost all major sectors of the Indian economy. To mitigate the burden of debt servicing brought by disruptions on account of COVID-19 and to ensure continuity of viable business, the Reserve Bank of India (RBI) has introduced regulatory and development measures including moratorium on term loans/deferment of interest on working capital loans and related relaxations in asset classification and provisioning norms for those operating in financial services sector. We have analysed the financial results of 12 companies (eight NBFCs and four HFCs) for the year ended 31 March 2020 listed on the National Stock Exchange (NSE). Our article on the topic provides the impact of COVID-19 on the Expected Credit Loss (ECL) provision recognised by these companies.

Assessment of an onerous contract may require companies to evaluate the elements of costs that should be considered unavoidable. Recently, the Expert Advisory Committee (the committee) of the Institute of Chartered Accountants of India (ICAI) through its opinion has provided guidance on determination of unavoidable costs for the purpose of onerous contract. In our article, we aim to highlight the key elements of costs that need to be considered while accounting for onerous contracts as provided by the committee in its opinion.

As is the case each month, we have also included a regular round-up of some recent regulatory updates in India.

We would be delighted to receive feedback/suggestions from you on the topics we should cover in the forthcoming editions of AAU.

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Disclosures by companies amid COVID-19

This article aims to:

Highlight the key areas to be considered while disclosing COVID-19 related impact by companies.

Introduction

Apart from the huge health crisis, the pandemic (COVID-19) has posed significant business disruptions for almost all companies across sectors in India. Stringent preventive and restrictive measures to contain the pandemic have led to supply chain disruption, reduction in demand for goods, non-availability of personnel, reduced sales and profits, to name a few. As the situation continues to evolve, it becomes all the more imperative for companies to provide timely and adequate information to investors and various stakeholders about the impact of COVID-19 on their business operations, performance, financial position and future prospects.

These disclosures could form part of the financial statements accompanied with notes (quarterly/half-yearly/annual), board's report, management's discussion and analysis section of the annual report and disclosures to stock exchange(s) as part of material events.

Recently, the Securities and Exchange Board of India (SEBI) has also, as part of its advisory encouraged listed companies to evaluate and communicate all information available about the impact of the pandemic (both qualitative and quantitative) on the company and its operations in a cogent manner. This should at a minimum include:

- Details of impact of COVID-19 on a listed company's:
  - Capital and financial resources
  - Liquidity position
  - Internal financial reporting and control
  - Ability to service debt and other financing arrangements
- Steps taken to ensure smooth functioning of operations and
- Estimation of the future impact of COVID-19 on its operations.

Though the impact would vary from company to company and in the unprecedented times such as now, endeavour should be to update the information so provided as and when there are material developments.

Recently, the International Organisation of Securities Commissions (IOSCO)[1] has also issued a statement on importance of disclosure about COVID-19. With the statement, IOSCO encouraged timely and high-quality information complete with transparent and entity-specific disclosures, including information about the impact of COVID-19 on the issuer's operating performance, financial position, liquidity, and future prospects.

IOSCO also pointed out that companies should not limit disclosures to boilerplate discussion on COVID-19 itself, but to explain; (i) how COVID-19 impacted and/or is expected to impact the financial performance, financial position and cash flows of the company, (ii) how the strategy and targets of the companies have been modified to address the effects of COVID-19 and (iii) measures taken to address and mitigate the impacts of the pandemic on the company.

In this article, we aim to summarise some of the key areas to be considered by companies while disclosing the impact of the pandemic within or outside financial statements.

Assessment of impact of the pandemic

Given the current economic situation, most of the companies are likely to be impacted by the pandemic in one way or the other. However, the extent of impact cannot be predicted with great accuracy as various factors are involved that are beyond a company's control and knowledge and impact would vary sector to sector. Disclosure about the effects of the pandemic along with how management is responding to them would be critical and based on specific facts and circumstances of a company. At a minimum, this would involve assessment and disclosure relating to:

- **Risk factors:** Evaluate specific risks faced on account of COVID-19 and assess the need to revisit the risks identified and disclosed previously. These could relate to business risks, financial risks, technology risk, etc.
- **Liquidity and capital resources:** To address the pandemic, many companies would have taken steps to strengthen their liquidity in the form of increase in borrowings, reduction in dividend, etc. Details relating to these measures along with their impact in short and medium term should be adequately reported. In case of material liquidity deficiency, address the concern along with how management expects to overcome them over an estimated period.

  In case a company intends to raise its capital resources through issue of equity or debt, relevant details relating to the terms and nature of issue should be disclosed.

1. IOSCO is a leading international policy forum for securities regulators and is recognised as the global standard setter for securities regulation.

- **Key performance metrics:** Assess the impact of the pandemic on existing key performance metrics and ascertain the need to establish and report new indicators to depict the current situation.
- **Impact on assets and liabilities:** There is likely to be a significant change in the value of assets and liabilities to be reported in the financial statements on account of COVID-19. For instance, reduction in estimated selling price may affect inventory valuation, change in useful life of assets, increase in allowances for losses, etc.
- **Non-GAAP measures:** Non-GAAP measures could prove to be useful if they provide additional information relating to the financial condition and operating results of a company. Due to the pandemic, companies might be contemplating to adjust the non-GAAP measures or to depict the impact. A proper explanation to the adjustment would be warranted if related to COVID-19. For instance, categorising impairment of an asset due to COVID-19 may not be appropriate in case indicators of impairment existed even before COVID-19.
- **Internal Control over Financial Reporting (ICOFR):** It is also important to assess and reflect the effect of changes/new controls on internal control over financial reporting, if any that have arisen due to the pandemic. For instance, adequacy of controls to enable remote workforces.

Impact on financial statements

Significant judgements and estimates

Determination of impact of COVID-19 on business operations and resultant financial impact to be reported in the financial statements would involve significant management judgement and estimation. Due to the uncertainty posed by the pandemic, presentation of relevant information in the financial statements which might get change after it is made available publicly is quite challenging. Therefore, companies should make use of best available information while making such estimates and judgements considering the effects of COVID-19, significant government measures being undertaken to address it and other relevant factors such as industry outlook.

Some of the key areas which might involve significant judgements and estimates and thus necessitate detailed disclosures could relate to the following:

- Going concern assessment including management's basis of conclusion in case of no material uncertainty
- Fair value measurement
- Impairment assessment in particular relating to goodwill and other non-financial assets
- Recognition of provisions including assessment of onerous contracts
- Measurement of Expected Credit Losses (ECL) incorporating reasonable and supportable forward-looking information
- Subsequent events including categorisation as adjusting or non-adjusting events.

Material items

Indian Accounting Standard (Ind AS) 1, *Presentation of Financial Statements,* requires financial statements to disclose all 'material' items, i.e. the items if they could, individually or collectively, influence the economic decisions that users make on the basis of financial statements. Accordingly, companies would need to determine whether the financial reporting impacts of COVID-19 such as those relating to impairment loss, loss due to write-down of inventory, restructuring of business activities, etc. are material in size and nature or combination of both. If these items are identified to be material, then companies should disclose their nature and amount separately.

Disclosure in interim reporting

Interim financial reports typically focus on changes since the last annual financial statements. However, preparing interim financial statements for the year 2020-21 is likely to involve more than the usual update since the last annual financial statements. Specific disclosures that are significant to an understanding of the changes in financial position and performance of the entity since the end of the last annual reporting period should be provided. These would, *inter alia,* include disclosure of:

- Changes in significant judgements and assumptions as well as areas of estimation uncertainty
- Disclosures of the impact of the COVID-19 outbreak on the interim financial position, performance and cash flows
- Any loan default or breach of a loan agreement that has not been remedied on or before the end of the reporting period
- Transfers between levels of the fair value hierarchy used in measuring the fair value of financial instruments

- Changes in the classification of financial assets as a result of a change in the purpose or use of those assets
- Reversals of any provisions
- Changes in the business or economic circumstances that affect the fair value of the company's financial assets and financial liabilities
- Government measures in the form of loans or grants, if availed and accounting for the same.

Relaxations in filings

The deadlines of statutory filings and compliances have been extended by almost all regulators in India to address the challenges faced by corporates amid COVID-19. For instance, SEBI has extended the timelines for filing of financial results by listed companies up to 31 July 2020 for the quarter/half-year/year ended 31 March 2020. These are expected to provide sufficient time to the companies to assess the impact of the pandemic and provide appropriate disclosures. In case of extended delays, if any, companies should make sure to provide the rationale for the delay and expected time by when it will file the report for better information.

Others

International guidance

Internationally, the European Securities and Markets Authority (ESMA) has issued a statement on 'Implications of the COVID-19 outbreak on the half-yearly financial reports'. The statement seeks to promote transparency and consistent application of European requirements for the information provided in the half-yearly reports under the current circumstances related to the COVID-19 outbreak. With the statement, ESMA has encouraged issuers to disclose information relating to the significant impacts of the COVID-19 outbreak as part of the explanations of the amounts presented and recognised in the statement of profit and loss in a single note as part of the notes to the financial statements.

Similarly, U.S. Securities and Exchange Commission (SEC) has issued a guidance on COVID-19 related disclosures to be considered by companies. As per SEC, depending on a company's particular circumstances, it should consider whether it may need to revisit, refresh, or update previous disclosure to the extent that the information becomes materially inaccurate.

Companies should not provide selective disclosures but rather be sure they disclose the relevant information broadly to investors.

Companies should also refrain from trading prior to dissemination of material non-public information. For instance, if a company becomes aware of a material risk related to COVID-19, then its directors and officers, and other corporate insiders who are aware of these matters should refrain from trading in the company's securities until such information is disclosed to the public.

As far as listed companies in India are concerned, SEBI also prohibits an insider from trading in securities when in possession of Unpublished Price Sensitive information (UPSI).

Role of audit committee

Audit committees also have an important role to play in monitoring management's response to the new events and risks on account of COVID-19. They should consider and review the management's assertions used to assess the impact of the pandemic and ensure that the identified risks, uncertainties and judgments have been adequately disclosed.

Impact on audit and auditor's report

The risks and uncertainties associated with COVID-19 and resultant management responses corroborated with disclosures in financial statements would also be an area of assessment by the auditor of the company. In these unprecedented times, the additional information in the auditor's report would be relied heavily upon by the investors while making investment decisions. These may be reported in the form of Key Audit Matter (KAM) or through an emphasis of matter paragraph highlighting significant doubt in the financial statements.

(Source: IOSCO statement dated 29 May 2020, SEC guidance on COVID-19 dated 25 March 2020 and 23 June 2020 and ESMA statement dated 20 May 2020)

2. Application of ECL model in context to COVID-19 for the financial services sector

This article aims to:

Highlight the impact of COVID-19 on the ECL provision recognised by NBFCs and HFCs.

Background

The coronavirus (COVID-19) pandemic has raised global concerns regarding the health and safety of people, it has disrupted financial markets and created a challenging operating environment. While this environment has affected almost all major sectors of Indian economy to varying effect, banks, Non-Banking Financial Companies (NBFCs), Housing Finance Companies (HFCs) (collectively referred to as 'lending institutions') have been significantly impacted especially in terms of their exposure to almost all major sectors of the Indian economy.

In order to mitigate the burden of debt servicing brought by disruptions on account of COVID-19 and to ensure continuity of viable business, the Reserve Bank of India (RBI) has introduced regulatory and development measures. These measures amongst other matters included specific relaxations in relation to moratorium on term loans/ deferment of interest on working capital loans and asset classification as well.

The measures referred to above were introduced by RBI vide announcements dated 27 March 2020, 17 April 2020 and 23 May 2020.

Key elements of the measures in relation to moratorium and asset classification are as follows:

a. All lending institutions initially permitted to grant a moratorium of three months from 1 March 2020 to 31 May 2020 (vide 27 March 2020 announcement) and thereafter permitted to grant moratorium for an additional period of three months up to 31 August 2020. This covered payments of instalments of principal/interest components, bullet repayments and Equated Monthly Instalments (EMIs) pertaining to term loans, as well as credit card dues.

b. The moratorium referred to above covered eligible borrowers as determined by the policy approved by the respective lending institutions' board of directors having payments falling due between 1 March 2020 and 31 August 2020.

c. In the cases where a customer opts for a moratorium, the repayment schedules and residual tenor for all such loans to be shifted across the board by three months (or the period of moratorium availed) after the moratorium period. However, interest may continue to accrue on the outstanding portion of the loans during the moratorium period.

d. For all accounts classified as standard as on 29 February 2020, even if overdue, the moratorium period to be excluded by lending institutions from the number of days past-due for the purpose of asset classification under the IRAC[1] norms. Accordingly, asset classification would remain standstill for the stipulated period.

e. Similar relaxations in terms of moratorium and asset classification introduced in relation to interest on certain working capital facilities.

f. Additional provision of 10 per cent to be recognised in relation to accounts (in default but standard) to which moratorium is offered and asset classification benefit is also extended. The additional provision is permitted to be phased over two quarters (not less than five per cent during quarter ended 31 March 2020 and not less than five per cent during quarter ended 30 June 2020).

Application of Ind AS

Financial statements of companies incorporated in India (which are either listed or whose net worth is in excess of INR250 crore) are required to be prepared in accordance with requirements of Indian Accounting Standards (Ind AS). While NBFCs and HFCs are required to apply Ind AS while preparing their financial statements; banks and insurance companies are not covered under Ind AS requirement. Financial statements of banks are prepared in accordance with Indian Generally Accepted Accounting Principles (Indian GAAP) which also in the case of banks includes relevant notifications, circulars and other guidelines issued by the RBI from time to time.

Accordingly, RBI specified that while the requirements relating to asset classification and additional provisions are applicable to banks; NBFCs and HFCs which were covered by the requirements of Ind AS would continue to be guided by the guidelines duly approved by their respective Boards and as per advisories issued by the Institute of Chartered Accountants of India (ICAI) for recognition of impairment.

The ICAI on 10 April 2020 issued specific guidance in relation to impact of COVID-19 on financial reporting in so far as it relates to estimation of impairment loss for financial instruments under the Expected Credit Loss (ECL) approach including considerations which apply in relation to loan moratorium offered based on the RBI announcements referred to above.

1. Income Recognition and Asset Classification

Key elements of the guidance are as follows:

a. **No bright lines:** Ind AS 109, *Financial Instruments* being a principles-based standard does not require a mechanistic application of the requirements of ECL. Accordingly, the standard suggests certain rebuttable presumptions instead of setting bright lines.

b. **Significant Increase in Credit Risk (SICR):** Classification of financial instruments in Stage 2 requires evaluation of SICR based on likelihood of risk of default over the entire expected life of the financial instrument and not just over the next 12 months.

c. **Regulatory support measures:** Prudential regulatory support measures such as temporary repayment moratoriums to provide relief from the impact of COVID-19 should not be applied mechanistically to reclassify the financial instrument into Stage 2 requiring lifetime expected credit losses.

   One of the guiding factors to retain these financial instruments in their existing category is whether the instruments where moratorium was granted were regular with no signs of credit deterioration at the time of granting moratoriums and whether these financial instruments are expected to remain regular during the relief period and thereafter.

d. **Adjustments to ECL model:** In addition, given that entities may find it difficult to incorporate all reasonable and supportable information while measuring the ECL in credit risk measurement models, entities may consider post model overlays or adjustments to its impairment models.

Accordingly, based on the above guidance, for the quarter ended 31 March 2020 and consequently for the year ended 31 March 2020, NBFCs and HFCs were expected to recognise additional ECL provisions after considering the guidance referred to above.

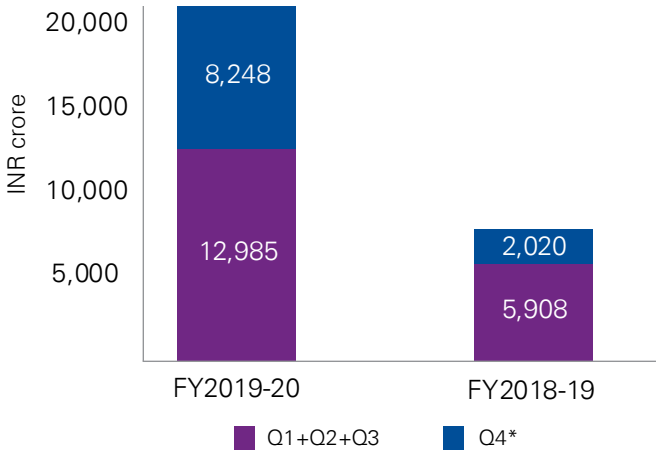
Such additional provisions would especially be relevant for exposure to categories of customers (based on sector, sources of income, etc.) which were adversely affected by the COVID-19 much more than the other categories. It is, therefore, pertinent to note that the process of determining such categories of customers and quantum of additional provisions or nature of adjustments to existing ECL models would be highly judgemental and would differ from company to company.

We have prepared an analysis based on the financial results published by 12 companies which includes eight NBFCs and four HFCs (collectively referred to as 'covered companies') in accordance with the Securities and Exchange Board (Listing Obligations and Disclosure Requirements) Regulations (Listing Regulations).

Of the 12 covered companies, four companies had debt securities listed on the stock exchanges while the remaining eight companies had equity securities listed on the stock exchange. Accordingly, in case of debt listed companies information for the quarter ended 31 March 2020 would not be available (as debt listed companies are only required to publish their results every six months).

The following chart shows ECL comparison for the covered companies.

Chart 1: ECL provision recognised by the covered companies



(Source: KPMG in India's analysis, 2020 basis financial results of covered companies for the year ended 31 March 2020)

**For debt listed companies, Q4 represents relevant figures for the half-year ended 31 March 2020.*

The ECL charge for the covered companies for the year ended 31 March 2020 (comprising of provision for impairment and bad debts written off) aggregated INR21,233 crore as compared to a charge of INR7,928 crore for the year ended 31 March 2019. This represented approximately 1.8 per cent of the loans outstanding as of 31 March 2020 and 0.7 per cent of the loans outstanding as of 31 March 2019 respectively.

Of the total charge of INR21,233 crore for the year ended 31 March 2020 for the covered companies, approximately INR8,248 crore reflected the total charge for the covered companies for the quarter ended 31 March 2020 (in case of debt listed entities relevant figures for the half-year ended 31 March 2020 have been considered).

Disclosures of additional provisions on account of COVID-19 have not been specifically made by all the covered companies. This may be on account of the fact that where adjustments to models are made to reflect higher provisions on account of COVID-19, the amount of additional provision may not be separately quantifiable.

Of the 12 covered companies, seven companies have disclosed the quantum of additional provision recognised in the quarter ended 31 March 2020 on account of COVID-19. The aggregate additional provision recognised on account of COVID-19 by these seven companies approximated INR4,088 crore. The total ECL charge for the quarter ended 31 March 2020 for these seven companies was INR5,855 crore (in case of debt listed companies relevant figures for the half-year ended 31 March 2020 have been considered).

Conclusion

COVID-19 pandemic has impacted companies and individuals across the country and across the sectors as well. This has had a consequential impact on the quality of the exposure of banks and NBFCs/HFCs. While the RBI has prescribed for banks an additional provision to be provided for in cases where the customer opts for moratorium and classification benefit is availed, NBFCs and HFCs have determined the provision in accordance with the requirements of ECL. The provision charge in the quarter and year ended 31 March 2020 has significantly increased as compared to corresponding previous year figures. Additional provision on account of COVID-19 wherever disclosed appear to be contributing a significant portion of the charge for quarter ended 31 March 2020. Companies would have to track events during the current year closely to determine whether the assumptions and expectations applied for determining the provision as of 31 March 2020 are valid or whether they require a significant revision during the year ended 31 March 2021.

3. Onerous contracts

This article aims to:
Explain the elements of cost that are considered unavoidable while accounting for onerous contracts.

Under Ind AS 37, *Provisions, Contingent Liabilities and Contingent Assets*, an 'onerous contract' is one in which the unavoidable costs of meeting the obligations under the contract exceed the economic benefits expected to be received under the contract. It is important to note that a contract on unfavourable terms is not necessarily onerous. In certain cases, a contract may not be performing as well as anticipated. In those cases such contracts may not be onerous unless the costs of fulfilling the obligations under the contract exceed the benefits to be derived.

Recently, the Expert Advisory Committee (EAC) of the Institute of Chartered Accountants of India issued its opinion[1] on 'Accounting for provision to be created for onerous contract'.

Accounting under Ind AS

In assessing whether a contract is onerous, it is necessary to consider:

- The unavoidable costs of meeting the contractual obligations, which is the lower of the net costs of fulfilling the contract and the cost of terminating it; and
- The economic benefits expected to be received.

In determining the costs of fulfilling a contract, an entity considers the payments due in the period in which the contract cannot be cancelled. If there is an option to cancel the contract and pay a penalty, then the entity also considers the present value of the amount to be paid on cancellation of the contract, and measures the contract at the lowest net cost to exit.

Unavoidable costs of meeting the contractual obligations

Only unavoidable costs directly associated with meeting the entity's obligations to deliver the goods or services under the contract should be considered in determining whether the contract is onerous and in measuring any resulting provision. Accordingly, the unavoidable costs of meeting the obligations under the contract are only costs that:

- Are directly variable with the contract and therefore, incremental to the performance of the contract
- Do not include allocated or shared costs that will be incurred regardless of whether the entity fulfils the contract; and
- Cannot be avoided by the entity's future actions.

The issue raised to the EAC relates to elements of costs to be considered while recognition of provision in respect of onerous contract.

In EAC's opinion the expression 'unavoidable costs' means the costs that cannot be avoided due to existence of a contract. These are the costs that directly relate to the contract for example:

- Direct labour
- Direct material
- Allocations of costs that relate directly to contract activities, etc.

The querist in this case had not considered administrative overheads, finance charges, research and development expenses, sales overhead and head quarter expenditure while creating provision for onerous contract. The EAC is of the view that generally such costs do not relate directly to a contract and therefore, should not be considered while creating provision for the onerous contract.

It pointed out that since Ind AS 37 requires to provide for all the costs to fulfil the obligations under the contract, the Committee is of the view that in a contract to supply a product, the costs should include all costs till supply of the product including the cost of supplying the product.

Cost of terminating a contract

The EAC also pointed out that as per the requirements of Ind AS 37, any compensation or penalties arising from failure to fulfil the onerous contract is to be compared with the cost of fulfilling such contract to determine the least net cost of exiting from the contract.

In the given case, it was highlighted that it would be difficult for the querist to determine the compensation/penalty payable for failure to fulfil the contract. However, the EAC pointed that the same should be determined/estimated on a reasonable basis considering the contract terms so as to determine whether the contract is onerous or not and in case the contract is onerous, to determine the amount of provision to be provided for such onerous contract.

Considerations

- Assessment of an onerous contract should be made based on the contract as a whole rather than on an item-by-item basis or on a performance obligation-by-performance obligation basis.
- If a contract can be terminated without incurring a penalty, then it is not onerous.
- Before a separate provision for an onerous contract is recognised, an entity recognises any impairment loss that has occurred on assets dedicated to the contract.

1. The ICAI Journal, June 2019

4 Regulatory updates

Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013

Background

Currently, Section 77 of the Companies Act, 2013 (2013 Act) requires every company creating a charge within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge with the Registrar of Companies (ROC) within 30 days of the date of creation or modification of charge along with the prescribed fee.

In case a company fails to register the charge within the period of 30 days, then as per Section 78 of the 2013 Act, the person in whose favour the charge is created may apply to the ROC for registration of the charge along with the instrument created for the charge within the overall timelines for filing of required form under Section 77 of the 2013 Act.

New development

The Ministry of Corporate Affairs (MCA) through a circular dated 17 June 2020 introduced 'Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013' (the scheme) for the purpose of condoning the delay in filing certain forms related to creation/modification of charges.

Key features of the scheme are as follows:

- **Forms covered:** The scheme is applicable in respect of filing of Form No. CHG-1 and Form No. CHG-9 by a company or a charge holder.
- **Permissible delay:** As per the scheme:

  a. *In case the date of creation/ modification of charge is before 1 March 2020, but the timeline for filing such form had not expired under Section 77 of the 2013 Act as on 1 March 2020:* The period beginning from 1 March 2020 and ending on 30 September 2020 would be excluded for the purpose of counting the number of days under Section 77 or Section 78 of the 2013 Act.

  Accordingly, if the form is not filed within such period, the first day after 29 February 2020 would be reckoned as 1 October 2020 for the purpose of counting the number of days within which the form is required to be filed under Section 77 or Section 78 of the 2013 Act.

  b. *In case the date of creation/ modification of charge is between 1 March 2020 to 30 September 2020:* The period beginning from the date of creation/modification of charge to 30 September 2020 would be excluded for the purpose of counting of days under Section 77 or Section 78 of the 2013 Act.

  Accordingly, if the form is not filed within this period, the first day after the date of creation/ modification of charge would be reckoned as 1 October 2020 for the purpose of counting the number of days within which the form is required to be filed under Section 77 or Section 78 of the 2013 Act.

- **Ineligibility:** The scheme will not apply, in case:

  a. The forms i.e. CHG-1and CHG-9 had already been filed before 17 June 2020 (i.e. the date of issue of this circular).

  b. The timeline for filing the form has already expired under Section 77 or Section 78 of the 2013 Act prior to 1 March 2020.

  c. The timeline for filing the form expires at a future date, despite exclusion of the time provided above.

  d. Filing of Form CHG-4 for satisfaction of charges.

(Source: MCA general circular no.23/2020 dated 17 June 2020)

Relaxations under the Companies Act, 2013

- **Conduct of board meetings through VC:** Board meetings to discuss the matters specified in Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 (i.e. those relating to approval of financial statements, board's report, prospectus, etc.) can be held through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) up to 30 September 2020 (earlier allowed up to 30 June 2020).

  (Source: MCA notification dated 23 June 2020)

- **Conduct of EGMs through VC:** The MCA through a circular dated 8 April 2020 allowed companies to hold Extraordinary General Meetings (EGMs) through VC or OAVM with e-voting facility[1], voting through registered e-mails[2] or transact relevant business through postal ballots as per the procedure specified therein, up to 30 June 2020.

  Additionally, MCA through a circular dated 13 April 2020 clarified the manner and mode of issue of notices to the members to facilitate EGMs with e-voting facility or voting through registered e-mails, as the case may be.

  Relaxation

  The MCA through a circular dated 15 June 2020 has extended the timeline for conduct of EGMs by companies through VC/ OAVM or transact items through postal ballot in accordance with the framework provided in the aforesaid circulars up to 30 September 2020.

  (Source: MCA general circular no. 22/2020 dated 15 June 2020)

1. Listed companies and companies with at least 1,000 shareholders are required to provide e-voting facility.
2. For companies which are not required to provide e-voting facility.

- **Creation of deposit repayment reserve:** The MCA through a circular dated 19 June 2020 has further extended the timeline for compliance with the requirement of creating deposit repayment reserve of 20 per cent of deposits maturing during the financial year 2020-21 as required under Section 73(2) of the 2013 Act up to 30 September 2020 (earlier to be complied up to 30 June 2020).

  Additionally, the requirement to invest or deposit at least 15 per cent of the amount of debentures maturing in specified methods of investments or deposits as prescribed under Rule 18 of the Companies (Share Capital and Debentures) Rules, 2014 can be complied up to 30 September 2020 (earlier to be complied by 30 June 2020).

  (Source: MCA general circular no. 24/2020 dated 19 June 2020)

- **Enrolment in the data bank of independent directors:** Every individual who has been appointed as an independent director in a company as on 1 December 2019 can apply online to the Indian Institute of Corporate Affairs (institute) up to 30 September 2020 (earlier up to 30 June 2020) for inclusion of his/her name in the data bank maintained by the institute.

  (Source: MCA notification dated 23 June 2020)

Amendments to Schedule VII to the Companies Act, 2013

The MCA through a notification dated 26 May 2020 has amended Schedule VII to the 2013 Act. As per the amendment, contribution to Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund (PM CARES Fund) is an eligible Corporate Social Responsibility (CSR) activity which can be included by companies in their CSR policies. The notification has been made effective from 28 March 2020.

Additionally, effective 24 June 2020, measures for the benefit of Central Armed Police Forces (CAPF) and Central Para Military Forces (CPMF) veterans, and their dependents including widows would be considered eligible CSR activities.

(Source: MCA notification no. G.S.R. 313(E) dated 26 May 2020 and notification no. G.S.R. 399(E) dated 23 June 2020)

ICAI advisory for companies relating to CSR provisions under the Companies Act, 2013

Background

As per Section 135 of the 2013 Act, a company may undertake CSR activities in the following ways:

- CSR activities itself or
- CSR activities through a third party being trust/society or a company established under Section 8 of the 2013 Act/ Non-Government Organisation (NGO).

New development

The Institute of Chartered Accountants of India (ICAI) through an advisory dated 29 May 2020 advised all companies that undertake CSR activity through a third party/NGO to obtain an Independent Practitioner's Report on utilisation of CSR funds from the auditor/ Chartered Accountant (CA) in practice of the third party/ NGO, to whom the funds are given by the company for implementing CSR activity. The advisory also stipulates the draft format of Independent Practitioner's Report on utilisation of CSR funds.

(Source: ICAI advisory dated 29 May 2020)

SEBI issues further relaxations for listed companies amid COVID-19

Extension of timeline for filing financial results

The Securities and Exchange Board of India (SEBI) through a circular dated 24 June 2020 has further extended the timeline for filing financial results for the quarter/half-year/ financial year ended 31 March 2020 up to 31 July 2020 (earlier up to 30 June 2020). This extension is available to companies with listed equity and debt securities in terms of Regulation 33 and 52 of the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (Listing Regulations).

Additionally, SEBI has extended the timeline for filing of Annual Secretarial Compliance (ASC) report for the year 2019-2020 up to 31 July 2020 (earlier up to 30 June 2020).

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/106 dated 24 June 2020 and SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/109 dated 25 June 2020)

Maximum time gap between two board/audit committee meetings

The board of directors and audit committee of listed companies have been exempted from observing the maximum stipulated time gap between two meetings (i.e. 120 days) for the meetings held or proposed to be held between the period 1 December 2019 and 31 July 2020 (earlier up to 30 June 2020). However, the board of directors/audit committee should ensure that they meet at least four times a year as stipulated under Regulation 17(2) and Regulation 18(2) of the Listing Regulations.

(Source: SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2020/110 dated 26 June 2020)

Fast-track FPO

SEBI through a circular dated 9 June 2020 has granted temporary relaxations to listed companies from the eligibility conditions related to fast-track Further Public Offer (FPO) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations). The key relaxations are as follows:

- **Market capitalisation:** The eligibility requirement of average market capitalisation of public shareholding has been reduced from INR1,000 crore to INR500 crore.
- **Impact of audit qualifications:** The impact of audit qualifications, if any and where quantifiable, on the audited accounts of the issuer in respect of those financial years for which such accounts are disclosed, need to be appropriately disclosed and accounts accordingly restated, in the offer documents.

  For the qualifications wherein impact on the financials cannot be ascertained the same should be disclosed appropriately in the offer documents.
- **Violation of securities law:** It should be ensured that the issuer/promoter/promoter group/director of the issuer has fulfilled the settlement terms or adhered to directions of the settlement order(s) in cases where it has settled any alleged violation of securities laws through the consent or settlement mechanism with SEBI.

These relaxations are applicable to FPOs (other than issuance of warrants) that open on or before 31 March 2021.

The provisions of the circular are effective from 9 June 2020.

(Source: SEBI circular no. SEBI/HO/CFD/CIR/CFD/DIL/85/2020 dated 9 June 2020)

Issuance of debt securities

The companies proposing to make public issue of Non-Convertible Debentures (NCDs)/Non-Convertible Redeemable Preference Share (NCRPS)/Commercial Papers (CPs) are required to submit their latest audited financials which should not be older than six months along with the offer document. However, they are allowed to file unaudited financials with limited review report for the stub period.

Relaxation

SEBI has decided to grant following relaxation in timelines to listed companies who intend to list their NCDs/ NCRPS/ CPs:

Particulars	Available audited financials	Date of issuance	Extended date for issuance
Cut-off date for issuance of NCDs/NCRPS/CPs	As on 30 September 2019	On or before 31 March 2020	On or before 30 June 2020 (earlier 31 May 2020)

The provisions of the circular are effective from 8 June 2020.

(Source: SEBI circular no. SEBI/HO/DDHS/CIR/P/2020/098 dated 8 June 2020)

Amendments to SEBI regulations

ICDR Regulations

- **Reduction in timeline for subsequent issue of QIP:** Currently, Regulation 172(3) of the ICDR Regulations restricts an issuer from making any subsequent Qualified Institutions Placement (QIP) until the expiry of six months from the date of the prior QIP made pursuant to one or more special resolutions.

  SEBI through a notification dated 16 June 2020 has amended the ICDR Regulations and reduced the above timeline of six months to two weeks.

  The amendment is effective from 16 June 2020.
- **Pricing in preferential issue of shares by companies with stressed assets:** Eligible listed companies with stressed assets[3] can determine pricing of their preferential allotments at not less than the average of the weekly high and low of the volume weighted average prices of the related equity shares during the two weeks preceding the relevant date. Eligible listed companies are also required to comply with prescribed conditions which, *inter alia*, includes:
  - The preference issue should be made to a person not part of the promoter/promoter group as on the date of the board meeting to consider the preferential issue.

3. A listed company which satisfies any two out of the following three conditions would be considered as stressed:
   a. Any listed company that has made disclosure of defaults on payment of interest/repayment of principal amount on loans from banks/financial institutions/systemically important non-deposit taking Non-banking financial companies (NBFCs)/deposit taking NBFCs and/or listed or unlisted debt securities and such default is continuing for a period of at least 90 calendar days after occurrence of such default.
   b. Existence of inter-creditor agreement in terms of RBI (Prudential Framework for Resolution of Stressed Assets) Directions 2019 dated 7 June 2019.
   c. Downgrading of credit rating of the financial instruments (listed or unlisted), credit instruments/borrowings (listed or unlisted) of the listed company to 'D'.

- Proposed use of proceeds of such preferential issue should be disclosed. The proceeds should not be used for any repayment of loans taken from promoters/promoter group/group companies.
- Monitoring agency will be appointed for monitoring end-use of the proceeds of such a preferential issue. The proceeds of the issue will also be monitored by the audit committee till its utilisation.

The amendment is effective from 22 June 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/17 dated 16 June 2020 and notification no. SEBI/LAD-NRO /GN/2020/18 dated 22 June 2020)

Takeover Regulations

- **Substantial acquisition of shares or voting rights:** As per Regulation 3(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (Takeover Regulations), an acquirer who together with persons acting in concert with him/her has acquired and holds shares/voting rights in target company entitling them to exercise 25 per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, is not permitted to acquire within any financial year additional shares/voting rights in such target company entitling them to exercise more than five per cent of the voting rights. It is permitted if the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with the Takeover Regulations.

  Amendment

  SEBI through a notification dated 16 June 2020 has amended the Takeover Regulations. As per the amendment, acquisition beyond five per cent but up to 10 per cent of the voting rights in the target company would be permitted for the financial year 2020-21. The relaxation is permitted only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.

  The amendment is effective from 16 June 2020.

- **Preferential issue exempted from open offer:** Allottees of preferential issue in listed companies with stressed assets[3] will be exempted from making an open offer if the acquisition is beyond the prescribed threshold or if the open offer is warranted due to change in control, in terms of Regulation 3(1) and 4 of the Takeover Regulations.

  The amendment is effective from 22 June 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/14 dated 16 June 2020 and notification no. SEBI/LAD-NRO /GN/ 2020/19 dated 22 June 2020)

RBI extended timeline for moratorium on term loans/working capital facility and resolution timelines under prudential framework

Background

The Reserve bank Of India (RBI) through a notification dated 27 March 2020 permitted lending institutions[4] to grant a moratorium of three months on payment of all installments[5] falling due between 1 March 2020 to 31 May 2020.

Additionally, the lending institutions were permitted to defer the recovery of interest applied on cash credit/ overdraft facilities (CC/OD) during the period from 1 March 2020 to 31 May 2020.

New development

The RBI through a notification dated 23 May 2020, extended the above-mentioned moratorium by another three months. Accordingly,

- *In respect of term loans:* Lending institutions are permitted to grant a moratorium from 1 June 2020 to 31 August 2020 on payment of all instalments in respect of term loans (including agricultural term loans, retail and crop loans). Accordingly, the repayment schedule for such loans as also the residual tenor, will be shifted across the board. Interest will continue to accrue on the outstanding portion of the term loans during the moratorium period.
- *In respect of working capital facilities sanctioned in the form of cash credit/overdraft:* Lending institutions are permitted to defer the recovery of interest applied in respect of all such facilities during the period from 1 June 2020 up to 31 August 2020.

  The lending institutions are permitted, at their discretion, to convert the accumulated interest for the deferment period up to 31 August 2020 into a Funded Interest Term Loan (FITL) to be repayable before 31 March 2021.

  Further, as a one-time measure, lending institutions may recalculate the 'drawing power' by reducing the margin up to 31 August 2020. However, in all such cases where such a temporary enhancement in drawing power is considered, the margins are required to be restored to the original levels by 31 March 2021 and/or review the working capital sanctioned limits up to 31 March 2021.

4. Lending institutions includes all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, All-India Financial Institutions, and Non-Banking Financial Companies (NBFCs) (including housing finance companies).

5. Instalments include principal and/or interest components, bullet repayments, Equated Monthly Instalments (EMIs) and credit card dues.

Additionally, RBI has extended the resolution timelines under the Prudential Framework on Resolution of Stressed Assets. Accordingly:

- *In respect of accounts which were within the review period as on 1 March 2020:* The period from 1 March 2020 to 31 August 2020 (earlier 1 March 2020 to 31 May 2020) should be excluded from the calculation of the 30-day timeline for the review period.
- *In respect of accounts where the review period was over, but the 180-day resolution period had not expired as on 1 March 2020:* The timeline for resolution would get extended by 180 days (earlier 90 days) from the date on which the 180-day period was originally set to expire. Consequently, the requirement of making additional provisions as per the prudential framework would be triggered when the extended resolution period expires.

(Source: RBI notification no. RBI/2019-20/244 and notification no. RBI/2019-20/245 dated 23 May 2020)

Revised criteria for classification of MSME

The Ministry of Micro, Small and Medium Enterprises through a notification dated 1 June 2020 has notified the following revised criteria for classification of Micro, Small and Medium Enterprises (MSME):

- **Micro enterprise:** The investment in plant and machinery or equipment does not exceed INR1 crore and turnover does not exceed INR5 crore
- **Small enterprise:** The investment in plant and machinery or equipment does not exceed INR10 crore and turnover does not exceed INR50 crore
- **Medium enterprise:** The investment in plant and machinery or equipment does not exceed INR50 crore and turnover does not exceed INR250 crore.

This notification will come into effect from 1 July 2020.

(Source: Ministry of MSME notification no. S.O. 1702(E) dated 1 June 2020)

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.

First Notes

Guidance on subsequent events owing to COVID-19

17 June 2020

Financial statements of companies may be affected by certain events that occur after the date of the financial statements but before they are approved by the board of directors of the company for issue, commonly referred as 'subsequent events'

Due to coronavirus (COVID-19) pandemic and the uncertainty that it has unleashed, it has become more important than before that management and auditors of companies are vigilant to subsequent events and provide appropriate adjustment or disclosure for these events in order to enhance the quality of financial reporting.

Recently, the Institute of Chartered Accountants of India (ICAI) and the International Accounting and Auditing Standards Board (IAASB) have issued guidance on 'subsequent events' arising on account of COVID-19. The guidance specifies management considerations while assessing events occurring after the date of financial statements along with auditor's responsibilities.

In this issue of First Notes, we cast our lens on the matters relevant for management while evaluating subsequent events arising as a result of the pandemic as highlighted in the guidance.

Voices on Reporting (VOR)

On 24 April 2020, KPMG in India released its VOR – annual update publication for the year ended 31 March 2020. The publication provides a summary of key updates from the Securities and Exchange Board of India, the Ministry of Corporate Affairs, the Institute of Chartered Accountants of India, the Reserve Bank of India and the Ministry of Law and Justice.

To access the publication, please click here.

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