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Regulatory updates



SEBI proposed amendments to the Listing Regulations

On 11 September 2020, the Securities and Exchange Board of India (SEBI) issued a consultation paper on 'Review of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations)' and proposed various amendments to the Listing Regulations. These are aimed to strengthen corporate governance practices and disclosure requirements by listed companies along with harmonising the provisions of the Listing Regulations with that of the Companies Act, 2013 (2013 Act).

Key recommendations envisaged in the consultation paper are as follows:

- **Applicability of provisions basis market capitalisation:** It has been proposed that the provisions of the Listing Regulations which become applicable to listed entities on the basis of market capitalisation criteria will continue to apply to such listed entities even if they fall below such thresholds.
- **Applicability of corporate governance norms:** Currently, certain corporate governance provisions are applicable to listed entities with paid-up equity share capital of more than INR10 crore and net worth of more than INR25 crore as on the last day of the previous financial year.
It has been proposed that provisions of the Listing Regulations will continue to remain applicable to a listed entity irrespective of subsequent changes in equity share capital or net worth of such an entity.
- **Disclosure of financial statements:** Currently, a listed entity is required to disclose to the stock exchange(s) the outcome of board meeting including financial results within 30 minutes of the conclusion of the board meeting.
It has been proposed that the listed entity should disclose the financial results to the stock exchange(s) within 30 minutes of the approval of the board of directors.
- **Dividend distribution policy:** It has been proposed to extend the requirement to formulate and disclose the dividend distribution policy in the annual reports and websites to top 1,000 listed entities by market capitalisation (currently applicable to top 500 listed entities).

- **Quarterly compliance report:** The timeline for filing of a quarterly compliance report on corporate governance as required under Regulation 27(2) of the Listing Regulations with the recognised stock exchange(s) has been proposed to be extended to 21 days from close of the quarter (currently, required to be submitted within 15 days from the close of the quarter).

Comments on the recommendations can be submitted up to 11 October 2020.

(Source: SEBI's consultation paper on 'Review of SEBI (Listing Obligation and Disclosure Requirements) Regulation, 2015' dated 11 September 2020)

SEBI issued system driven disclosures under PIT regulations

Background

Currently, Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) requires a promoter, an employee and a director of a listed company to disclose about the transaction relating to the acquisition or disposal of securities to the company within two trading days, if the value of such transaction exceeds INR10 lakh over any calendar quarter. Also, a listed company is required to notify the particulars of such trading to the stock exchange within two trading days of receipt of the disclosure of such information.

New development

SEBI through a circular dated 9 September 2020 has decided to implement system driven disclosures for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of a company (referred to as 'entities') under Regulation 7(2) of the PIT Regulations.

As per the circular, system driven disclosures under PIT Regulations would pertain to trading in equity shares and equity derivative instruments i.e. futures and options of the listed company (wherever applicable) by the entities. The process for implementation of the system has been specified in the circular.

As per the process, listed companies should provide the information including Permanent Account Number (PAN) of their promoters, designated person(s) and director(s) to the designated depository in a format and manner prescribed by the depositories within 10 days from the date of this circular. Any subsequent update in the details of entities need to be updated by the listed company on the same day.

Further, the system would continue to run parallel with the existing system i.e. entities would continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till 31 March 2021.

(Source: SEBI circular no. SEBI/HO/ISD/ISD/CIR/P/2020/168 dated 9 September 2020)

The Companies (Amendment) Act, 2020 received Presidential assent

On 28 September 2020, the Companies (Amendment) Act, 2020 (Amendment Act, 2020) received the assent of the President of India. The Amendment Act, 2020 make significant amendments to the provisions of the 2013 Act. Some of the key amendments relates to the following:

- **Exclusion of listed companies:** The Amendment Act, 2020 empowers Central Government (CG) to exclude companies issuing specified classes of securities from the definition of a listed company in consultation with SEBI.
- **Direct listing in foreign jurisdictions:** The Amendment Act, 2020 empowers CG to permit certain class of public companies to list their securities on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions as may be prescribed.
- **Financial results by unlisted companies:** The Amendment Act, 2020 empowers CG to require prescribed class of unlisted companies to prepare the financial results of the company on such periodical basis and in such form as may be prescribed. It may also require such companies to obtain approval of

the board of directors and complete audit or limited review of the periodical financial results in such manner as may be prescribed.

- **Corporate Social Responsibility (CSR):** The Amendment Act, 2020 exempts companies with a CSR liability of up to INR50 lakh from the requirement of constituting a CSR committee under the 2013 Act. In such cases, functions of the committee would be discharged by the board of directors of the company. Also, it allows a company which spends an amount in excess of the prescribed amount of two per cent on CSR activities, to set-off excess amount against the requirement to spend for such number of succeeding financial years and in such manner, as may be prescribed.

- **Remuneration to independent directors:** As per the Amendment Act, 2020, if a company has no profits or its profits are inadequate, then an independent director may receive remuneration, exclusive of any fees payable under Section 197(5) of the 2013 Act, in accordance with the provisions of Schedule V of the 2013 Act.

The Amendment Act, 2020 will come into force on such date as the CG may, by notification in the Official Gazette, appoint. Different dates may be appointed for different provisions of the Amendment Act, 2020 and any reference in any such provision to the commencement of the Amendment Act, 2020 shall be construed as a reference to the coming into force of that provision.

(Source: The Companies (Amendment) Act, 2020 issued by the Ministry of Law and Justice on 28 September 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 31 December 2020 (earlier allowed up to 30 September 2020).

(Source: MCA notification no. G.S.R. 590(E) dated 28 September 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 31 December 2020 (earlier up to 30 September 2020) for inclusion of his/her name in the data bank maintained by the institute.

(Source: MCA notification no. G.S.R. 589(E) dated 28 September 2020)

- Conduct of EGMS through VC:** The MCA through a circular dated 28 September 2020 has extended the timeline for conduct of Extraordinary General Meetings (EGMs) by companies through VC/OAVM or transact items through postal ballot in accordance with the framework provided in the circulars dated 8 April 2020, 13 April 2020 and 15 June 2020 up to 31 December 2020.

(Source: MCA general circular no. 33/2020 dated 28 September 2020)

- Companies Fresh Start Scheme, 2020:** The Companies Fresh Start Scheme, 2020 (the scheme) introduced by the MCA in March 2020 permits a defaulting company to file belated documents in the MCA-21 registry which were due for filing on any given date in accordance with the provisions of the scheme. It also provides an opportunity to inactive companies to get their companies declared as 'dormant company' under Section 455 of the 2013 Act by filing a simple application.

The scheme was made applicable from 1 April 2020 up to 30 September 2020.

Relaxation

The MCA has extended the applicability of the scheme up to 31 December 2020.

(Source: MCA general circular no. 30/2020 dated 28 September 2020)



Extension of timeline for holding AGM

As per the provisions of Section 96(1) of the 2013 Act, the Registrar of Companies (ROC) may, for any special reason, extend the time within which any Annual General Meeting (AGM) (other than the first AGM) should be held, by a period not exceeding three months.

Accordingly, the Ministry of Corporate Affairs (MCA) (ROC of various states) have issued an order on 8 September 2020 to extend the time for holding AGM for the financial year ended 31 March 2020 by three months from the due date by which AGM ought to have been held in accordance with the 2013 Act. Further, it has been clarified that the companies are not required to file application in Form GNL-1 for seeking this extension.

Additionally, the extension would cover applications filed in Form GNL-1 for the extension of AGM for the financial year ended 31 March 2020 which are yet to be approved and also applications which were rejected.

(Source: ICAI announcement dated 10 September 2020)

Amendments to the Deposit Rules

The MCA through a notification dated 7 September 2020 has issued certain amendments to the Companies (Acceptance of Deposits) Rules, 2014 (Deposit Rules). As per the amendments, an amount of INR25 lakh or more received by a start-up company by way of convertible note which is convertible into equity shares or repayable **within 10 years** (earlier five years) from the issue date would not be treated as a deposit.

Additionally, a private company which is a start-up for **10 years** (earlier five years) from the date of its incorporation can accept/renew deposits from its members in excess of the specified limits¹.

(Emphasis added to highlight the changes)

The amendments are effective from 7 September 2020.

(Source: MCA notification no. G.S.R 548(E) dated 7 September 2020)

Amendments relating to annual return of a company

The Companies (Amendment) Act, 2017 made certain amendments to the provisions relating to annual return of a company under the 2013 Act. However, these were not notified by the government. On 28 August 2020, MCA notified one of the amendments from the Companies (Amendment) Act, 2017 which requires a company to place a copy of the annual return on its website, if any, and the web link of such annual return to be disclosed in the board's report.

Additionally, MCA has made an amendment to the Companies (Management and Administration) Rules, 2014 effective 28 August 2020. As per the amendment, a company is not required to attach the extract of the annual return with the board's report in Form No. MGT-9, in case the web link of such annual return has been disclosed in the board's report.

(Source: MCA notification no. S.O.2920(E) and G.S.R.538(E) dated 28 August 2020)

Extension of timeline for filing cost audit report

Currently, a cost auditor is required to forward his/her duly signed report to the Board of Directors (BoDs) of the company within a period of 180 days from the closure of the financial year as per the provisions of the Companies (Cost Records and Audit) Rules, 2014 (Cost Audit Rules). Further, the company is required to submit the report to the Central Government within a period of 30 days from the date of receipt of a copy of the cost audit report in Form CRA-4.

Relaxation

The MCA through a circular dated 10 September 2020 has clarified that the submission of the cost audit report for the financial year ended 31 March 2020 by the cost auditor to the BoDs up to 30 November 2020 would not be construed as violation of the provisions of the Cost Audit Rules.

1. Amount of deposits from members together with the amount of other deposits outstanding as on the date of acceptance or renewal of deposits exceeding 35 per cent of the aggregate of the paid-up share capital, free reserves and securities premium account of the company.

Accordingly, the timeline for filing of e-Form CRA-4 for the year ended 31 March 2020 would be 30 days from date of the receipt of copy of the cost audit report. However, if a company has availed extension of time for holding AGM, then e-Form CRA-4 may be filed within the timeline as specified under proviso to Rule 6(6) of the Cost Audit Rules.

(Source: MCA general circular no.29/2020 dated 10 September 2020)

Revision to the Long Form Audit Report (LFAR)

The Reserve Bank of India (RBI) through a notification dated 5 September 2020 has issued revised LFAR formats for Statutory Central Auditors (SCA) and branch auditors along with an additional questionnaire applicable to specialised branches.

The revised LFAR formats are required to be put into operation for the period covering FY2020-21 and onwards. Accordingly, the LFAR format and other instructions issued through the RBI circular² dated 17 April 2002 has been repealed.

With regard to the operational issues relating to submission of LFAR, RBI has advised the following:

- Timely receipt of LFARs from the auditors should be ensured.
- LFAR on the bank should be placed before the Audit Committee of Board (ACB)/Local Advisory Board (LAB) of the bank indicating the action taken or proposed to be taken for rectification of the irregularities, if any, mentioned in the report.
- A copy of each of the LFAR (i.e. for the bank/all Indian offices of foreign bank as a whole) and the relative agenda note together with the board's views or directions should be forwarded to the concerned Senior Supervisory Manager (SSM) in the Department of Supervision, RBI within 60 days of submission of the LFAR by the statutory auditors.

(Source: RBI notification no. RBI/2020-21/33 dated 5 September 2020)

2. Circular no. DBS.CO.PP.BC.11/11.01.005/2001-2002

3. Circular no. RBI/2020-21/16-DOR.No.BPBC/3/21.04.048/2020-21

4. Earnings Before Interest, Tax, Depreciation and Amortisation

Resolution framework for COVID-19-related stress - Financial parameters

Background

The RBI through a notification dated 6 August 2020 had introduced a 'Resolution Framework for COVID-19-related Stress' (the framework) with an aim to mitigate the impact of the COVID-19 pandemic on the ultimate borrowers³.

The framework envisaged constitution of an expert committee by RBI to make recommendations on the required financial parameters with sector specific benchmark ranges for such parameters to be factored in the resolution plans in respect of eligible borrowers. RBI constituted the expert committee under the chairmanship of Mr. K.V. Kamath on 7 August 2020. The Committee was required to submit its recommendations on the financial parameters to the RBI which, in turn, was required to notify the same along with modifications, if any, in 30 days.

On 4 September 2020, the expert committee submitted its recommendations to RBI.

New development

Basis the recommendations of the expert committee, RBI through a circular dated 7 September 2020 has issued key ratios which are mandatorily required to be considered by the lending institutions while finalising the resolution plans in respect of eligible borrowers under the framework.

Those are as follows:

- a. Total Outside Liabilities/Adjusted Tangible Net Worth (TOL/ATNW)
- b. Total debt/EBITDA⁴
- c. Current ratio
- d. Debt service coverage ratio
- e. Average debt service coverage ratio.

The circular also specifies sector-specific thresholds for each of the above key ratios that should be considered by the lending institutions in the resolution assumptions with respect to an eligible borrower.

In addition to the key ratios and the sector-specific thresholds, lending institutions can consider other financial parameters while finalising the resolution assumptions.

Other key requirements relating to financial parameters are as follows:

- The resolution plan should take into account pre-COVID-19 operating and financial performance of the borrower and resultant impact on its operating and financial performance at the time of finalising the resolution plan in order to assess the cashflows in subsequent years, while stipulating appropriate ratios in each case.
- Lending institutions may adopt a graded approach depending on the severity of the impact on the borrowers which may include classification of the impact on borrowers into mild, moderate and severe.
- Lending institutions are expected to ensure compliance to TOL/ATNW agreed as per the resolution plan at the time of implementation itself. In all cases, TOL/ATNW and other key ratios have to be maintained as per the resolution plan by 31 March 2022 and on an ongoing basis thereafter.

(Source: RBI circular no. RBI/2020-21/34 dated 7 September 2020)





Amendment in SLR holdings in HTM category

Currently, banks are permitted to exceed the limit of 25 per cent of the total investments under Held to Maturity (HTM) category subject to the condition that the excess comprises only of Statutory Liquid Ratio (SLR) securities and total SLR securities held under HTM category is not more than 19.5 per cent of Net Demand and Time Liabilities (NDTL) as on the last Friday of the second preceding fortnight.

Amendment

The RBI through a notification dated 1 September 2020 has permitted banks to hold under HTM category, SLR securities acquired on or after 1 September 2020 up to an overall limit of 22 per cent of their NDTL up to 31 March 2021 which should be reviewed thereafter.

(Source: RBI notification no. RBI/2020-21/29 dated 1 September 2020)

ICAI publications

Compendium of Indian Accounting Standards (Year 2020-2021)

The Institute of Chartered Accountants of India (ICAI) has issued a compendium of Indian Accounting Standards (Ind AS) (Volume I and Volume II) which provides a comprehensive literature for all those entities that prepare financial statements under Ind AS. The compendium contains updated Ind AS applicable for accounting period beginning 1 April 2020 including amendments to Ind AS made by MCA on 24 July 2020.

ICAI has also issued related guidance material and a publication which highlights differences between Ind AS and International Financial Reporting Standards (IFRS) along with the rationale for such differences.

(Source: Compendium of Indian Accounting Standards (Ind AS as on 1 April 2020) issued by ICAI on 25 August 2020 and ICAI publication on 'Major differences between Ind AS and IFRS and reason for the differences' issued on 27 August 2020)

Guidance note on report under Section 92E of the Income-Tax Act, 1961

Recently, ICAI has issued a Guidance Note (GN) on report under Section 92E of the Income-Tax Act, 1961 (IT Act) (Revised 2020) relating to transfer pricing. The revised GN incorporates all amendments made up to Finance Act, 2020 and provide an insight into the intricate issues while discharging the reporting requirements under Section 92E of the IT Act.

(Source: '*Guidance Note on Report under section 92E of the Income-Tax Act, 1961*' issued by ICAI on 20 August 2020)

Exposure draft of guidance note on accrual basis of accounting

The ICAI has issued an exposure draft of GN on accrual basis of accounting. The GN highlights the need for accrual basis of accounting and provides guidance in respect thereof. It also provides guidance in respect of transition from cash basis to accrual basis of accounting.

The exposure draft is open for comments up to 18 October 2020.

(Source: *Exposure draft of 'Guidance Note on accrual basis of accounting'* issued by ICAI on 18 September 2020)

IBOR reform – Phase 2 amendments issued by IASB

The IASB has finalised its response to the ongoing reform of Inter-Bank Offered Rates (IBOR) and other interest rate benchmarks and has issued amendments to IFRS 9, *Financial Instruments*, International Accounting Standard (IAS) 39, *Financial Instruments: Recognition and Measurement*, IFRS 7, *Financial Instruments: Disclosures*, IFRS 4, *Insurance Contracts* and IFRS 16, *Leases*.

The amendments focus on the effects on financial statements when a company replaces the old interest rate benchmark with an alternative benchmark rate as a result of the reform.

The amendments in the final phase relate to:

- **Changes to contractual cash flows:** A company will not have to derecognise or adjust the carrying amount of financial instruments for changes required by the reform, but will instead update the effective interest rate to reflect the change to the alternative benchmark rate
- **Hedge accounting:** A company will not have to discontinue its hedge accounting solely because it makes changes required by the reform, if the hedge meets other hedge accounting criteria and
- **Disclosures:** A company will be required to disclose information about new risks arising from the reform and how it manages the transition to alternative benchmark rates.

These amendments are effective for annual reporting periods beginning on or after 1 January 2021 with early adoption permitted.

(Source: *IASB announcement dated 27 August 2020*)

Discussion paper on fraud and going concern in an audit of financial statements

On 15 September 2020, the International Auditing and Assurance Standards Board (IAASB) has issued a discussion paper on '*Fraud and going concern in an audit of financial statements: Exploring the differences between public perceptions about the role of the auditor and the auditor's responsibilities in a financial statement audit*'.

The discussion paper sets out the issues and challenges related to the expectation gap (the difference between what users of the financial statements expect and the financial statements audit) and explores some possible actions that the IAASB could undertake to help narrow the expectation gap.

The discussion paper is open for comments up to 12 January 2021.

(Source: *IAASB announcement dated 15 September 2020*)