



Voices on Reporting

17 February 2016

KPMG.com/in

Welcome

Series of knowledge sharing calls

Covering current and emerging reporting issues

Scheduled towards the end of each month

Look out for our Accounting and Auditing Update, IFRS Notes and First Notes publications



Speakers for the call



Ruchi Rastogi
Executive Director
Assurance
KPMG in India



Nirav Patel
Director
Accounting Advisory Services
KPMG in India



Agenda

- Overview of the report by CLC
- SEBI FAQs



Overview of the report by CLC¹

Overview of the report by CLC

- The Companies Law Committee (CLC) was constituted on 4 June 2015 to examine and to make recommendations on the issues arising out of implementation of the Companies Act, 2013 (2013 Act) and other agencies.
- It submitted its report to the government on 1 February 2016.
- It conducted extensive consultations with stakeholders to prepare this report.
- Amendments to be made to both the 2013 Act and the Rules to the 2013 Act (Rules).
 - Proposed amendments in 78 sections of 2013 Act. Consequential changes are expected to result in about 100 amendments to the 2013 Act.
 - Proposed approximately 50 amendments in the Rules.
- Significant areas in which changes are proposed are: definitions, raising of capital, accounts and audit, corporate governance, managerial remuneration, companies incorporated outside India and offences/penalties.



Definitions

Definitions

Existing requirement under the 2013 Act

CLC's recommendations

Associate company, subsidiary and joint venture

- The term 'total share capital' includes paid-up equity share capital and convertible preference share capital.
- Joint venture is not specifically defined under the 2013 Act. Associate company includes a joint venture company.
- To replace 'total share capital' with 'total voting power' (i.e. equity share capital).
- Revised definition of an 'associate' as 'significant influence means control of at least 20 per cent of the total voting power (as against total share capital), or control of or participation in taking business decisions under an agreement'.
- The term 'joint venture' may be assigned the same meaning as under the Indian Accounting Standard (Ind AS) 28, *Investments in Associates and Joint Ventures*.

Under the SEBI FAQs², the definition of an associate company needs to be examined both under the 2013 Act as well as Accounting Standards (AS). If either of the two are met, such an entity would be classified as an associate company.

Revisions to existing definitions in 2013 Act



Financial year - allow associates and joint ventures of a company incorporated outside India to apply for a different financial year to the National Company Law Tribunal (NCLT).



Holding company - explanation to be added in Section 2(46) so that a company incorporated outside India could be considered as the holding company of another company.



Net worth - to include 'debit or credit balance of the profit and loss account'.



Interim dividend - allow declaration of interim dividend from out of the profits of the current financial year, generated till the date of declaration, including brought forward surplus in the profit and loss account, and the same could be declared any time up to convening of Annual General Meeting (AGM) for the said financial year.



Corporate governance

- Meeting of the board and its powers
- Appointment and remuneration of managerial personnel
- Appointment and qualifications of directors



Meeting of the board and its powers

Meeting of the board and its powers (1/4)

Existing requirement under the 2013 Act

CLC's recommendations

Audit Committee (AC)

- Related Party Transactions (RPTs) under the current requirements of the 2013 Act requires a mandatory approval of the AC, subject to the approval of the board or shareholders as required under Section 188 of the 2013 Act.
- Current requirements of 2013 Act to continue. Additionally, for transactions not covered under Section 188 of the 2013 Act, the AC may give its recommendation to the board in case it is not approving a particular transaction.
- In case a RPT was entered without an AC approval, the AC may ratify the same within three months of such transactions subject to an upper threshold of INR1 crore.
- Section 177 of the 2013 Act to be amended to provide that RPTs between a holding company and its wholly owned subsidiaries that do not require a board approval under Section 188 of the 2013 Act, need not require an approval of the AC.

Under the SEBI Listing Regulations, 2015³, RPTs between holding company and its wholly owned subsidiaries whose accounts are consolidated with such a holding company and placed before the shareholders at the general meeting for approval are exempt from AC approvals.

Meeting of the board and its powers (2/4)

Existing requirement under the 2013 Act

CLC's recommendations

Nomination and Remuneration Committee (NRC)

- | | |
|---|--|
| <ul style="list-style-type: none">• The NRC is required to carry out an evaluation of every director's performance.
• Currently the remuneration policy should be disclosed in the board's report. | <ul style="list-style-type: none">• NRC to prescribe 'a methodology for the evaluation of performance of individual directors, committee(s) of the board and the board as a whole' and the board to carry out performance evaluation as per the methodology approved by the board.
• Companies to be allowed to place the remuneration policy on their websites (if any) and to disclose only the salient features of the policy, along with the web-link in their board's report.
• Increase the threshold for unlisted companies for compliance in context of the requirement for Independent Directors (IDs), audit committees and NRC. |
|---|--|

Meeting of the board and its powers (3/4)

Existing requirement under the 2013 Act

CLC's recommendations

Loans to directors, etc..

- Currently, no company shall advance any loan to any of its directors or to any other person in whom the director is interested.
- Companies may give loans to any other person in whom the director is interested, subject to a prior approval of the company by a special resolution.
- Further, loans extended to persons, including subsidiaries, falling within the restrictive purview of Section 185 should be used by the subsidiary for its principal business activity only, and not for further investment or grant of a loan.
- Interest rate benchmarked to yield on Government of India (GOI) securities.

Loans and investment by company

- Currently investment through not more than two layers of investment companies is allowed.
- CLC recommended to remove the restriction on layers of subsidiaries and investment companies.

Meeting of the board and its powers (4/4)

Existing requirement under the 2013 Act

CLC's recommendations

Related Party Transactions (RTPs)

- 2013 Act requires that 'no member of the company' shall vote on such a special resolution to approve contracts or arrangements which may be entered into by the company, if such member is a related party.
- However, as per a MCA circular dated 17 July 2014, RPT has to be construed with reference only to the contract or arrangement for which the said special resolution is being passed.
- All related parties should be prohibited from voting with reference to any RTP irrespective of the fact whether they are party to the transaction or not. The notification dated 14 July 2014 should be withdrawn as it had been misinterpreted.
- Additionally, related parties in case of joint ventures and closely held public company should be allowed to vote.

Under SEBI FAQ², all material RTPs shall require an approval of the shareholders through a resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party for the particular transaction or not.



Appointment and qualifications of directors

Appointment and qualifications of directors

Existing requirement under the 2013 Act

CLC's recommendations

Independent Director (ID)

- Currently, an ID includes a director who has/had no pecuniary relationship with the company, its holding/subsidiary/associate company/their promoters/directors.
 - A director can be appointed as an ID only if none of his relatives has/had a pecuniary relationship/transaction of a prescribed value with the company/its holding/subsidiary/associate company/ their promoters/directors during the two immediately preceding financial years, or during the current financial year.
 - Currently, an individual is restricted to be appointed as an ID in case his/her relative is a Key Managerial Personnel (KMP)/an employee in the company/its holding/subsidiary/associate company during any of the preceding three years.
- Introduce a test of materiality for the purpose of determining whether pecuniary relationships could impact the independence of an individual for becoming an ID.
 - The scope of a restriction on a 'pecuniary relationship or transaction' entered into by a relative should be made more specific by clearly categorising the types of transactions as provided under Section 141(3)(d).
 - For the preceding years, the restriction should be for relatives holding board or KMP/one level below a board position similar to that contained in Section 141(3)(f).



Appointment and remuneration of managerial personnel

Appointment and remuneration of managerial personnel

Existing requirement under the 2013 Act

CLC's recommendations

Managerial Remuneration (MR)

- Currently MR should be approved by the shareholders.
 - The total MR payable by a public company shall not exceed 11 per cent of the net profits of that company and such limits may be exceeded with the approval of the shareholders and the central government.
- Allow an approval by an ordinary resolution in specified cases and accordingly revise Schedule V of the 2013 Act.
 - Increase the limits of yearly remuneration as prescribed currently.
 - The requirement for a government approval should be omitted and substituted by special resolution of shareholders.
 - Necessary safeguards in the form of additional disclosures, audit, higher penalties, etc. may be prescribed.
 - To include brought forward losses of the years subsequent to the Companies (Amendment) Act, 1960 in the calculation of MR.
 - Requirement of a managerial person to be a resident in India for 12 months prior to appointment to be done away with.



Accounts of companies

Accounts of companies (1/2)

Existing requirement under the 2013 Act

CLC's recommendations

Re-opening of accounts

- No time specified up to which the accounts could be re-opened.
- CLC has recommended that re-opening of accounts should be limited to eight years.

Financial statements, board's report, etc.

- Voluminous disclosures in the board's report make it lengthy and expensive to produce. There were duplications in disclosures with SEBI requirements.
- Disclosures in the board's report to be simplified and duplications with SEBI's disclosure requirements and financial statements should be removed while retaining the informative content for shareholders.

Consolidated Financial Statements (CFS)

- Currently, preparation of CFS in case a company has a subsidiary/joint venture/associate in addition to a standalone financial statement is mandatory.
- A statement showing salient features of the financial statements of subsidiaries are to be attached with the financial statement of a holding company.
- The attachment of standalone financial statements of step down subsidiaries would not be required if:
 - Step down subsidiaries are not statutorily required to prepare separate financials and are also exempted from having audited financial statements, and
 - CFS prepared by the subsidiary is as per the law of the jurisdiction in which they are established, and placed on the website in the statutory format.

Accounts of companies (2/2)

Existing requirement under the 2013 Act

CLC's recommendations

Corporate Social Responsibility (CSR)

- Unlisted companies, private companies, and foreign companies, to have a CSR committee with less than three directors, and without IDs, where they were not required to be appointed.
 - Section 135 provides for determining a threshold of the specified net worth/turnover/net profit to constitute a CSR committee reference made to 'any financial year'.
 - Net profit definition different for the purpose of CSR spending computation under Rule 2(1)(f) and for CSR committee formation under Section 135(1).
- That composition of the CSR committee for 'companies not required to appoint IDs should be prescribed as 'having two or more directors' (as against three directors).
 - To replace 'any financial year' with 'preceding financial year'
 - The inconsistency between Rule 2(1)(f) of the Companies (Corporate Social Responsibility) Rules, 2014 and the provisions of the 2013 Act should be removed by providing prescriptive powers to exclude certain income from net profit in Section 135(1) of the 2013 Act.

No carry forward of the overspent/underspent expenditure



Audit and auditors

Appointment of auditors

Existing requirement under the 2013 Act

CLC's recommendations

Appointment of auditors – annual ratification

- Currently, every company is required to appoint an individual or a firm as an auditor for consecutive period of five years.
- Provided the appointment is ratified at annual general meeting.
- The requirement for annual ratification of appointment/continuance of an auditor should be removed.
- Additionally, if auditors is unwilling to continue then it should be treated as a case of resignation, and the provisions of Section 139(8) for filling up such a casual vacancy arising due to resignation

Disqualification of auditors

- Under the 2013 Act, a person cannot be appointed as an auditor of a company, if he, or his relative, or partner, holds any security, or gives a guarantee, or is indebted to the company for specified amounts, etc.
- CLC has recommended that the definition of the term 'relative' should be suitably modified for determining disqualification of an auditor.

Existing rotation rules to be retained

Powers and duties of auditors

Existing requirement under the 2013 Act

CLC's recommendations

Powers and duties of auditors and auditing standards

- Auditor to report whether the company has an adequate internal financial controls system and the operating effectiveness of such controls.
 - Similar reporting requirement for the auditors for both stand alone and CFS.
 - Auditor of a holding company shall also have the right to access the records of all its subsidiaries in so far as it relates to the consolidation of its financial statements.
- Auditor to report on internal financial controls with regard to financial statements.
 - Rather than the entire reporting requirements of Section 143(3), an auditor to express a true and fair opinion on the CFS and report on the relevant and significant matters concerning subsidiaries/associates requiring attention of shareholders.
 - In addition to the existing provision, an auditor of the holding company is to have a right to access the accounts and records of an associate company as well as a joint venture.



Prospectus and allotment of securities

Prospectus and allotment of securities

Existing requirement under the 2013 Act

CLC's recommendations

Prospectus and allotment of securities

- Currently, detailed disclosures are required in a prospectus.
 - The 2013 Act lays down a framework for private placement of securities.
- The disclosures in the prospectus are to be aligned with SEBI Listing Regulations, 2015. SEBI to prescribe the contents of a prospectus, in consultation with the MCA.
 - The private placement process should be substantially simplified, discontinue with the procedure of a separate offer letter, the company should make valuation details public, details/records of applicants should be kept by the company and filed as part of the return of allotment only, and reduce the number of filings to the Registrar.



Amendment in Rules

Amendment in Rules (1/2)

Companies (Acceptance of Deposit) Rules, 2014

Existing requirement under the 2013 Act

CLC's recommendations

Definition of deposits

Includes:

- Outstanding advances received for supply of goods or services, to be treated as deposits after 365 days.
- Any amount raised by an issue of debentures compulsorily convertible into shares of the company within five years not be treated as deposits.
- Currently deposit amount received from various categories of institutions, banks and lenders.

Exclusion from the definition of deposit:

- Advances received in the ordinary course of business which are outstanding even after 365 days subject to certain conditions.
- Debentures compulsorily convertible into shares of the company within 10 years.
- Additionally, amounts directly received by a company from Alternate Investment Funds, Domestic Venture Capital Funds and Mutual Funds registered with SEBI.
- Unsecured debentures listed as per SEBI regulations.
- Convertible notes, convertible into equity or repayable within five years from the date of issue, if issued to a person with a minimum investment size of INR25 lakh brought in a single tranche.

Amendment in Rules (2/2)

Companies (Share Capital and Debentures) Rules, 2014

Existing requirement under the 2013 Act

CLC's recommendations

Issue of Employee Stock Option Plans (ESOPs)

- | | |
|---|--|
| <ul style="list-style-type: none">• Restriction on issue of ESOPs to promoters or promoter directors. | <ul style="list-style-type: none">• Relax Rule 12 to allow issuance of ESOPs to promoters working as employees/directors/whole-time directors. |
|---|--|

Issue of sweat equity shares

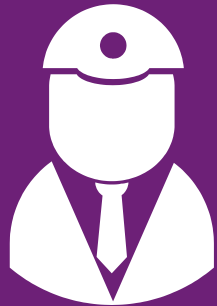
- | | |
|--|---|
| <ul style="list-style-type: none">• Restriction on issue of sweat equity at 25 per cent of paid up equity share capital. | <ul style="list-style-type: none">• The limit on sweat equity to be raised from 25 per cent of paid up equity share capital to 50 per cent of the paid up equity share capital for start-ups. |
|--|---|



Agenda

- Overview of the report by CLC
- **SEBI FAQs²**

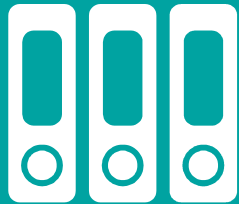
Recent updates on SEBI FAQs on certain provisions of the Listing Regulations, 2015



Corporate governance

- All unlisted subsidiaries (as opposed to only material subsidiaries) to periodically bring to the notice of the board of directors of a listed entity, a statement of all significant transactions/arrangements entered into by the unlisted subsidiary.
- A director of a listed entity can be member of maximum 10 committees and a chairperson of more than five committees of listed entities and unlisted public limited companies put together.

Recent updates on SEBI FAQs on certain provisions of the Listing Regulations, 2015



Other clarifications

- A company having subsidiaries is to prepare two sets of Form A and/or Form B, one for standalone purposes and another for consolidated results based on the respective audit report.
- Requirement for a mandatory reporting on Business Responsibility Report (BRR) in the annual report for 500 listed entities will be effective from 1 April 2016 i.e. form a part of the annual report for financial year 2016-17.
- Entities to disclose on their website details of agreements entered into with media companies/or their associates which are not in the normal course of business.
- ‘Working days’ for the purpose of these regulations means working days of the stock exchange where securities of the entity are listed.

Links to previous recordings of VOR

Month	Topics	Link
April 2014	<ul style="list-style-type: none"> • Companies Act, 2013 – implementation questions • SEBI corporate governance norms • New IFRS standard expected – Revenue from contracts with customers 	Click here
May 2014	<ul style="list-style-type: none"> • Companies Act, 2013 - matters for first board and general meetings • Treatment of mark to market losses on principal only currency swaps – EAC opinion • Deferred tax liability on special reserve created by banks – impact on auditor’s report • ICAI’s road map for adoption of Ind AS 	Click here
June 2014	<ul style="list-style-type: none"> • Revenue from contracts with customers - overview • Companies Act, 2013 – clarifications issued by the Ministry of Corporate Affairs (MCA) 	Click here
July 2014	<ul style="list-style-type: none"> • IFRS convergence – key developments and challenges • Tax accounting standards – implementation challenges • Next steps for companies 	Click here
August 2014	<ul style="list-style-type: none"> • Financial Instruments (2014) – an overview • Related party transactions – the Companies Act, 2013 	Click here
September 2014	<ul style="list-style-type: none"> • Recent amendments in tax audit forms • Key amendments to Clause 49 of the Equity Listing Agreement 	Click here
November 2014	<ul style="list-style-type: none"> • Roadmap for IFRS convergence in India • Exposure draft on Ind AS 101, <i>First-time Adoption of Indian Accounting Standards</i> • Probable benefits and challenges of Ind AS conversion 	Click here

Links to previous recordings of VOR

Month	Topics	Link
January 2015	<ul style="list-style-type: none">• Ind AS implementation road map• Revised drafts on Income Computation and Disclosure Standards (ICDS)• Exposure Draft (ED) on Guidance Note (GN) on Accounting for Derivative Contracts	Click here
February 2015	<ul style="list-style-type: none">• Overview of Income Computation and Disclosure Standards (ICDS)• Significant impact areas of ICDS• Next steps for ICDS implementation	Click here
March 2015	<ul style="list-style-type: none">• Overview of Section 143(12) of the Companies Act, 2013• Persons covered for reporting under Section 143(12) of the Companies Act, 2013• Reporting on frauds in various scenarios	Click here
April 2015	<ul style="list-style-type: none">• Overview of key changes and implementation challenges for companies that adopt ICDS from this year• Overview of the financial reporting and regulatory developments introduced under the Indian GAAP during the year ended 31 March 2015	Click here
May 2015	<ul style="list-style-type: none">• Salient features of Ind AS 16, <i>Property, Plant and Equipment</i> and Ind AS 38, <i>Intangible Assets</i>• Key differences between AS 10, AS 26, Ind AS 16 and Ind AS 38• Key aspects of the application guide issued by the Institute of Chartered Accountants of India (ICAI)	Click here

Links to previous recordings of VOR

Month	Topics	Link
June 2015	<ul style="list-style-type: none">• Overview of Ind AS 103, <i>Business Combinations</i>• Key differences between AS 14 and Ind AS 103• Overview of key amendments introduced by the Companies (Amendment) Act, 2015	Click here
July 2015	<ul style="list-style-type: none">• Overview of Ind AS 110, <i>Consolidated Financial Statements</i> and Ind AS 27, <i>Separate Financial Statements</i>• Key differences between AS 21, <i>Consolidated Financial Statements</i> and Ind AS 110• Overview of key relaxations for private companies from certain provisions of the Companies Act, 2013	Click here
August 2015	<ul style="list-style-type: none">• Overview of Ind AS 28, <i>Investment in Associates and Joint Ventures</i>, Ind AS 111, <i>Joint Arrangements</i> and Ind AS 112, <i>Disclosure of Interests in Other Entities</i>• Key differences between AS 23, <i>Accounting for Investment in Associates in Consolidated Financial Statements</i> and Ind AS 28 and between AS 27, <i>Financial Reporting of Interests in Joint Ventures</i> and Ind AS 111• Overview of key clarifications to IFRS 15, <i>Revenue from Contracts with Customers</i> proposed by the IASB	Click here

Links to previous recordings of VOR

Month	Topics	Link
September 2015	<ul style="list-style-type: none">• Updates related to accounting matters• Updates related to financial reporting matters• Other regulatory updates	Click here
October 2015	<ul style="list-style-type: none">• Overview of Ind AS 32, <i>Financial Instruments, Presentation</i>• Key differences between Indian GAAP and Ind AS 32• Overview of Exposure Drafts on Ind AS 11, <i>Construction Contracts</i> and Ind AS 18, <i>Revenue</i>	Click here
November 2015	<ul style="list-style-type: none">• Overview of Ind AS 109, <i>Financial Instruments</i>• Draft interpretations on IAS 12, <i>Income Taxes</i> and IAS 21, <i>The Effects of Changes in Foreign Exchange Rates</i>	Click here
December 2015	<ul style="list-style-type: none">• Ind AS road map, IFC and ICDS• The SEBI matters• The accounting matters	Click here
January 2016	<ul style="list-style-type: none">• Overview of Ind AS 21, <i>The Effects of Changes in Foreign Exchange Rates</i>• Key regulatory updates.	Click here

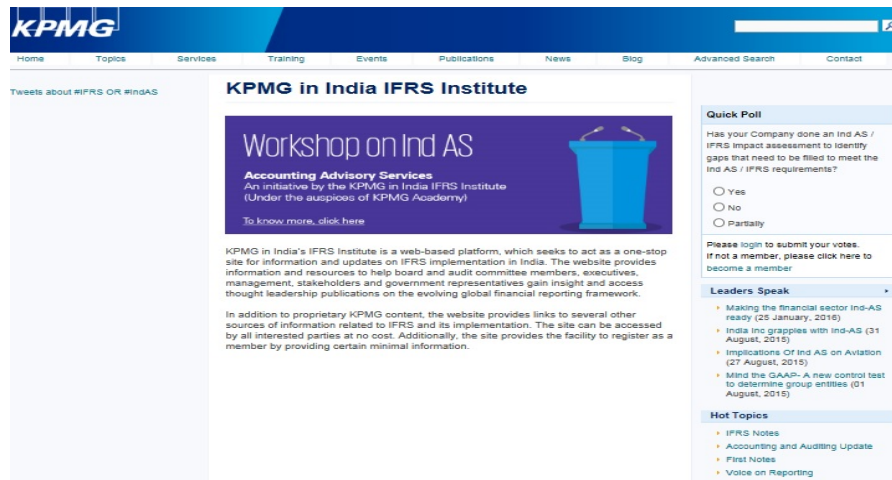


Q&A

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 on the evolving global financial reporting framework.



In addition to proprietary KPMG content, the website provides links to several other sources of information related to IFRS and its implementation. The site can be accessed by all interested parties at no cost. Additionally, the site provides the facility of registering as a member by providing certain minimal information.

To download KPMG content, become registered members of the website by following a few easy steps.

<https://www.in.kpmg.com/IFRS>

You can reach out to us for feedback and questions at:

in-fmkpmgifrsinst@kpmg.com

Sources

1. Report of the Companies Law Committee dated 1 February 2016 and Companies Act, 2013 (2013 Act).
2. Securities and Exchange Board of India (SEBI) - Frequently Asked Questions (FAQs) dated 29 January 2016.
3. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) dated 2 September 2015.

Issue 2016/4



The RBI issues directions to banks on Ind AS implementation

12 February 2016

On 11 February 2016, the Reserve Bank of India (RBI) issued a circular RBI/2015-16/315 requiring scheduled commercial banks to comply with the Indian Accounting Standards (Ind AS) for accounting periods beginning from 1 April 2018 onwards, with comparatives for periods ending on or after 31 March 2018. Ind AS would be applicable to both standalone financial statements and consolidated financial statements. This circular reiterates the timeline for Ind AS implementation by banks that was issued by the Ministry of Corporate Affairs (MCA) in its press release dated 18 January 2016. It also provides further direction on critical issues that banks need to consider in their Ind AS implementation plan.

Our IFRS Notes provides overview of the recent circular.

Topics discussed in AAU and First Notes

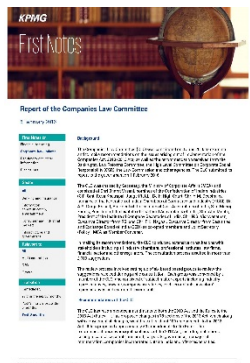
Accounting and Auditing Update (AAU)



Issue no. 5/2016 | Technology

- Impact of the new revenue standard on the technology sector
- Conversation with Mr. Sanjay Puria
- Key elements of business combinations – contingent consideration, intangible assets and goodwill
- Share-based payments - key accounting developments
- Financial Instruments
- Operating segment
- Enhanced responsibilities of the audit committee
- The dilemma of tax exemption for SEZ
- Base Erosion and Profit Shifting
- Will GST address the expectations of technology service exporters?
- Regulatory updates

First Notes



Report of the Companies Law Committee

6 February 2016

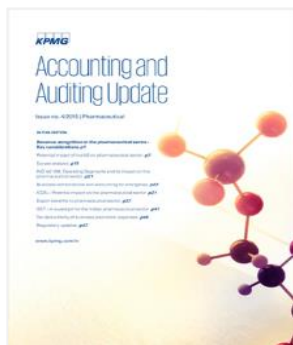
The Companies Law Committee (CLC) was constituted on 4 June 2015 to examine and making recommendations on the issues arising out of implementation of the Companies Act, 2013 (2013 Act) as well as the recommendation received from the Bankruptcy Law Reforms Committee, the High Level Committee on CSR, the Law Commission and other agencies. The CLC submitted its report to the government on 1 February 2016.

In making its recommendations, the CLC conducted extensive consultations with stakeholders and recommended amendments to both the 2013 Act and the Rules to the 2013 Act. It has proposed changes in 78 sections of the 2013 Act, which along with consequential changes, would result in about 100 amendments to the 2013 Act. It has proposed approximately 50 amendments to the Rules.

Our issue of First Notes summarises key recommendations of the CLC.

Others

Missed an issue of Accounting and Auditing Update



Missed an issue of First Notes



Coming up next

February 2016

New issue of:

- Accounting and Auditing Update
- First Notes
- IFRS Notes

Download from www.kpmg.com/in



Thank You

KPMG in India contacts:

Ruchi Rastogi
Executive Director

Assurance

KPMG in India

E-mail: ruchirastogi@kpmg.com

Nirav Patel
Director

Accounting Advisory Services

KPMG in India

E-mail: niravp@kpmg.com

The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

©2016 KPMG, an Indian Registered Partnership and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.

This document is meant for e-communication only.

KPMG.com/in