



## Provisions relating to merger, amalgamation and winding-up, etc. are notified under the Companies Act, 2013

12 December 2016

### First Notes on

Financial reporting

**Corporate law updates**

Regulatory and other information

Disclosures

### Sector

**All**

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

### Relevant to

**All**

Audit committee

CFO

Others

### Transition

**Immediately**

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

### Introduction

On 7 December 2016, the Ministry of Corporate Affairs (MCA) issued a notification, whereby certain sections of the Companies Act, 2013 (2013 Act) were notified to come into force. These sections amongst others, relate to:

- reduction of capital and variations of shareholders' right;
- compromises, arrangements and amalgamations.

In addition to the above, certain winding-up sections were also notified by MCA. The notification states that the aforementioned sections would come into force on 15 December 2016.

MCA has also on 7 December 2016 notified the Companies (Transfer of Pending Proceedings), Rules 2016 (Transfer Rules) and also issued the Companies (Removal of Difficulties) Fourth Order, 2016 (Difficulties Order) to facilitate a smooth transition of the proceedings initiated under the Companies Act, 1956 (1956 Act) and pending before any district court or high courts to the National Company Law Tribunal (NCLT).

In this issue of First Notes, we have discussed key provisions of the sections pertaining to reduction of capital, variations of shareholders' right and compromises, arrangements and amalgamations and the list of pending proceedings which shall be transferred to NCLT.

### Overview of the notifications

#### Sections pertaining to reduction of capital

NCLT to assume jurisdiction of the high courts as the sanctioning authority in relation to capital reduction. Following are some key provisions on reduction of capital under the 2013 Act:

- Companies cannot undertake reduction of capital if the company is in arrears in the repayment of any deposits accepted by it or the interest payable thereon.
- NCLT to give notice of every capital reduction application to the Central Government (CG), Registrar of Companies (ROC), Securities and Exchange Board of India (SEBI) (in case of listed companies) and to the creditors of the company.
- CG and others may make representations within three months from the date of receipt of the notice, and if no representation has been received within the said period, it will be presumed that they have no objection to the reduction of capital.
- Notice to the creditors is now made mandatory in all cases, whether it involves repayment of capital or not.
- The company needs to file a certificate from its auditor to the effect that the accounting treatment for such reduction is in conformity with the prescribed accounting standards.

## Sections pertaining to variation of shareholders' right

Following are the some key provisions on variation of shareholders' right under the 2013 Act:

- Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the consent of not less than three-fourth of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of shares of that class.
- If the variation of rights of one class of shareholders affects the rights of any other class of shareholders, the consent of such other class of shareholders shall also be obtained and provisions relating to variation of rights shall apply to such consent.
- Where the holders of not less than 10 per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the NCLT to have the variation cancelled.

## Sections pertaining to compromises, arrangements and amalgamations

NCLT to assume jurisdiction of the high courts as the sanctioning authority in relation to compromises, arrangements and amalgamations. Following are some key provisions dealing with compromise, arrangements and amalgamations under the 2013 Act:

- All material facts such as the latest financial position of the company, latest auditor's report on the accounts of the company, pendency of any investigation or proceedings against the company, etc. to be disclosed in the affidavit to the NCLT.
- Approval of scheme of arrangement by majority in number representing three-fourth in value of the creditors or members or class thereof present and voting either in person or by proxy or by postal ballot.
- NCLT may dispense with the calling of a meeting of the creditors having at least 90 per cent value agreed and confirmed by way of an affidavit.
- Circulation of a notice convening the meeting widened and requirement of issue of such notice to all concerned statutory and other authorities included.
- Treasury stock, holding the shares in the name of transferee company, prohibited.
- Scheme of arrangement would need to clearly indicate an appointed date from which date the scheme shall be effective.
- Sanction of buy-back, variation of rights, etc. being part of the scheme can be sanctioned only if in compliance with the specific provisions under the 2013 Act.
- Objection to scheme of compromise or arrangement can be made only by:
  - Shareholders holding not less than 10 per cent of the shareholding; or
  - Creditors owning not less than 5 per cent of the total outstanding debt as per the latest audited financial statement.
- Fast track restructuring for merger of two or more small companies or merger between a holding company and its wholly owned subsidiary company, without NCLT approval.
- Provisions for buy-out of minority shareholders by majority shareholders of a company holding 90 per cent or more of the issued equity share capital of the company by virtue of an amalgamation, share exchange, conversion of securities or for any other reason.

## Transfer of pending proceedings

Following matters shall stand transferred to NCLT with effect from 15 December 2016:

- All proceedings under the 1956 Act, including proceedings relating to compromise, arrangements and reconstruction, other than proceedings relating to winding-up and those reserved for orders.
- All petitions relating to winding-up under Section 433(e) of the 1956 Act on the ground of inability to pay its debts pending before a high court, and where the petition has not been served on the respondent (the same shall be disposed of in accordance with Insolvency and Bankruptcy Code, 2016). However, all cases where an opinion has been forwarded by the Board for Industrial and Financial Reconstruction for winding-up of a company to a high court and where no appeal is pending, shall continue to be dealt with by such high court in accordance with the provisions of the 1956 Act.
- All petitions relating to winding-up under Section 433(a) and (f) of the 1956 Act and where the petition has not been served on the respondent.

**Our comments**

Though the much awaited sections of the 2013 Act pertaining to compromise, arrangements and amalgamations are slated to come into effect from 15 December 2016, the final rules for this chapter are yet to be notified. Certain provisions of the notified sections for compromise, arrangements and amalgamations still need clarifications for example; provisions for dispensation of shareholders' meeting as is specified for creditors, whether notice to all sectoral authorities are mandatory, whether vote by way of postal ballot in case of listed companies would be sufficient compliance of Section 230(6) of 2013 Act, etc. The final rules are eagerly awaited in this regard.



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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.



## IFRS Notes: Ind AS Transition Facilitation Group (ITFG) issues Clarifications Bulletin 6

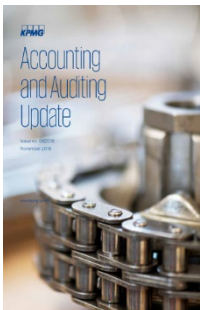
2 December 2016

The Ind AS Transition Facilitation Group (ITFG) of the Institute of Chartered Accountants of India (ICAI) held its sixth meeting and issued its bulletin (Bulletin 6) on 29 November 2016 to provide clarifications on four issues in relation to the application of Ind AS, as considered in its meeting.

This issue of IFRS Notes provides an overview of the issued discussed in Bulletin 5

## Missed an issue of Accounting and Auditing Update or First Notes

Issue no. 4/2016 – November 2016



This month the Accounting and Auditing Update focusses on the emerging new trends and approaches in the field of accounting and auditing. This month's edition includes final article on our Data and Analytics (D&A) series. The article summarises the attributes of future audits and key challenges D&A tools are likely to pose. Our article on spare parts focusses on the new accounting principles and their impact even beyond accounting.

This edition also highlights the guidance on two new concepts in the area of financial instruments accounting: 'derivatives arising from contracts for purchase or sale of non-financial items' and 'expected credit losses model' for assessment of impairment of trade receivables.

We also cast our lens on disclosures required for associates when preparing Consolidated Financial Statements (CFS) with the help of illustrations.

In addition to covering recent regulatory updates, we also discuss the guidance on combined and carve-out financial statements issued by the Institute of Chartered Accountants of India. We furthermore highlight some areas where careful evaluation would be needed while preparing combined and carve-out financial statements.



## RBI modifies guidelines on schemes related to stressed assets\

23 November 2016

On 10 November 2016, RBI through its notifications DBR.No.BP.BC.33/ 21.04.132/2016-17 and DBR.No.BP.BC.34/21.04.132/2016-17, made certain revisions to the guidelines referred above. These changes are aimed at achieving the following:

- i. Harmonisation of stand-still clause as applicable in case of SDR scheme with other guidelines
- ii. Clarification on the deemed Date of Commencement of Commercial Operations (DCCO), and
- iii. Partial modification of certain guidelines based on the experience gained in using these tools in resolving the stressed assets as well as feedback received from stakeholders, and taking into consideration the requirements of the construction sector.

This issue of First Notes provides a synopsis of the significant modifications made by RBI to the schemes related to stressed assets.

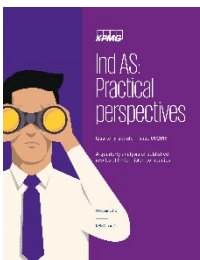
## Ind AS - Practical perspectives

KPMG in India's Ind AS - Practical perspectives through aims to put a finger on the pulse of India Inc's adoption of Ind AS and capture emerging trends and practices.

Our impact assessment is based on Nifty 50 companies which would be the first group of companies to report Ind AS results. The Nifty 50 companies have started reporting their financial results for the quarter ended 30 September 2016.

Out of the companies comprising Nifty 50 index, eight companies are banks, one is Non-Banking Financial Company (NBFC) and two companies follow a different date of transition to Ind AS. Therefore, our analysis would comprise the remaining 39 companies.

This can be accessed on KPMG in India website - '[Ind AS- Practical perspectives' webpage](#)



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