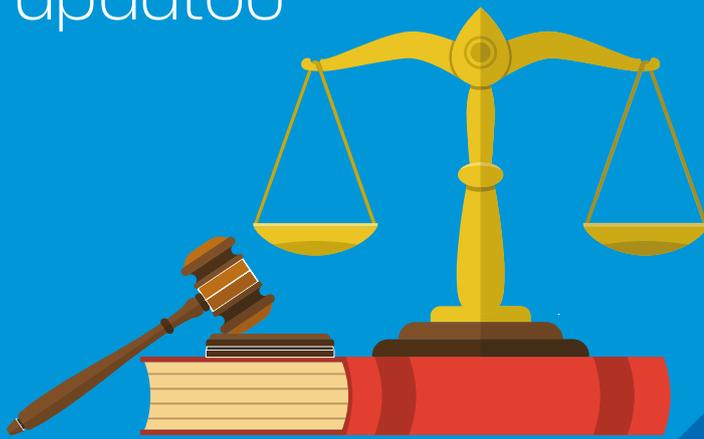


Regulatory updates



Ind AS Transition Facilitation Group (ITFG) issued clarifications' bulletin 12

The ITFG in its meeting considered certain issues received from the members of the Institute of Chartered Accountants of India (ICAI) and issued its clarifications' bulletin 12 on 23 October 2017 to provide clarifications on 11 issues in relation to the application of Ind AS.

The ITFG provided clarification on the following issues relating to the application of Ind AS:

1. Application of the revaluation model for Property, Plant and Equipment (PPE)
2. Adjustment to carrying amount of PPE on account of government grant received prior to transition
3. Accounting treatment of financial guarantees
4. Accounting for loan and processing fees paid in refinancing arrangement
5. Treatment of intra group profit in the consolidated financial statements
6. Application of Ind AS to an Indian branch office of a foreign company
7. Accounting treatment of government loans at a below-market rate of interest
8. Business Combinations
 - Determination of acquisition date in a scheme approved by National Company Law Tribunal
 - Retrospective application of Ind AS 109, *Financial Instruments* to financial instruments acquired in past business combinations
9. Adjustment to deemed cost being the previous GAAP carrying amount of assets and liabilities.

(Source: ITFG's Clarification Bulletin 12 issued by ICAI and KPMG in India's IFRS Note dated 8 November 2017)

ICAI proposed revised definition of internal audit

Background

The term 'internal audit' has not been defined in the Companies Act, 2013 (2013 Act). However, Section 138 of the 2013 Act prescribes class of companies which are required to appoint an internal auditor. An internal auditor could be a Chartered Accountant, a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

The Preface to the Standards on Internal Audit, issued by the Council of the ICAI in 2004, describes internal audit as follows:

'Internal audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity, including the entity's strategic risk management and internal control system.'

New development

The Internal Audit Standards Board of ICAI issued an exposure draft and proposes to revise the definition of internal audit. The proposed revised definition is as follows:

'Internal audit provides independent assurance on effectiveness of internal controls, risk management processes and contributes to enhancing governance for achieving organisational objectives.'

An explanation has also been included as part of the revised definition to provide clarity on the key terms used in the definition. These are as follows:

- **Independence:** Internal audit should be an independent function, achieved through the position, organisation structure and reporting of the internal auditor.

- **Internal controls and risk management:** Internal controls and risk management are an integral part of management function and business operations. An internal auditor is expected to evaluate the design and operating effectiveness of internal controls and risk management processes (including reporting processes) as designed and implemented by the management.
- **Governance:** Governance is a set of relationships between the company and its various stakeholders and provides the structure through which the company's objectives are set, and the constant performance monitoring required to help attain them.
- **Organisational objectives:** Organisational objectives incorporate the interests of all stakeholders and includes compliance with internal policies, procedures and laws and regulations.
- **Advisory role:** At certain times, in addition to providing assurance, the internal auditor may adopt an advisory role to help an organisation achieve its objectives, provided this does not compromise the independence of the internal auditor.

The exposure draft is open for comments up to 25 November 2017.

[\(Source: Exposure draft on proposed revised definition of internal audit issued by ICAI\)](#)

The Delhi High Court decision on the constitutional validity of ICDS

The Delhi High Court in the case of the Chamber of Tax Consultants and Anr dealt with the constitutional validity of the Income Computation and Disclosure Standards (ICDS). The High Court held that in order to preserve its constitutionality, Section 145(2) of the Income-tax Act, 1961 (IT Act), as amended, has to be read down to restrict power of the central government to notify ICDS that do

not seek to override binding judicial precedents or provisions of the IT Act. The power to enact a validation law is an essential legislative power that can be exercised, in the context of the IT Act, only by the Parliament and not by the executive. If Section 145(2) of IT Act as amended is not so read down it would be ultra vires the IT Act.

The High Court dealt with the specific provisions of the ICDS which are contrary to or seek to overcome binding judicial precedents and held that such provisions are to be struck down as the same are contrary to the law settled by the various decisions of the Supreme Court and High Court and the same are ultra vires the IT Act.

[\(Source: Delhi High court order dated 8 October 2017 and KPMG in India's Tax Flash News dated 9 November 2017\)](#)

MCA revised forms AOC-4 and AOC-4 XBRL

The Ministry of Corporate Affairs (MCA), through its notifications dated 7 November 2017 and 6 November 2017, has issued following amendments:

- The Companies (Accounts) Amendment Rules, 2017 and
- The Companies (Filing of Documents and Forms in Extensible Business Reporting Language), Amendment, Rules, 2017.

The amended rules modify form AOC- 4 (i.e. Form for filling annual return by company) and AOC-4 XBRL (i.e. Form for filing XBRL document in respect of financial statements and other documents with the Registrar).

[\(Source: MCA notification G.S.R. 1371\(E\). dated 7 November 2017 and MCA notification G.S.R. 1372\(E\). dated 6 November 2017\)](#)

MCA notified valuation norms

Background

Section 247 of the 2013 Act governs the provisions relating to the valuation by registered valuers under the 2013 Act. It requires that wherever valuation with respect to any property, stocks, shares, debentures, securities or goodwill or any other assets or net worth of a company or its liabilities is required to be made under the provisions of the 2013 Act, it should be valued by a person having such qualifications and experience and registered as a valuer in such a manner, on such terms and conditions as may be prescribed. Such a registered valuer should be appointed by the audit committee or by the Board of Directors (in the absence of audit committee) of that company.

Additionally, MCA on 18 October 2017, notified Section 247 of the

2013 Act and Companies (Registered Valuers and Valuation) Rules, 2017. However, the 2013 Act and Rules did not provide any reference to an organisation to which a valuer should belong.

New development

The MCA, vide order dated 23 October 2017, has issued the Companies (Removal of Difficulties) Second Order, 2017 to provide clarity and removed the difficulty of having no reference to an organisation to which the valuer may belong. The Order is effective from 23 October 2017.

Accordingly, reference to an organisation has been inserted in the Section 247 and now it read as follows 'person having such qualifications and experience, registered as a valuer and being a member of an organisation recognised, in such manner, on such

terms and conditions as may be prescribed'.

Further, MCA, through its notification dated 23 October 2017, has delegated the powers and functions vested in the central government under section 247 of the Act to the Insolvency and Bankruptcy Board of India, subject to revocation when it is necessary to do so in the public interest.

(Source: [MCA order and MCA notification S.O. 3401 \(E\) dated 23 October 2017](#))

List of disqualified directors under section 164(2)(a) of the 2013 Act

The MCA has hosted a list of disqualified directors under section 164(2)(a) of the 2013 Act and is accessible from MCA's website.

(Source: [List of disqualified directors issued by MCA](#))



