



## Chapter 4

# Regulatory updates

## IRDAI defers implementation of Ind AS in the insurance sector

### Background

Indian Accounting Standards (Ind AS) was initially applicable to companies in the insurance sector from accounting periods beginning from 1 April 2018. The Insurance Regulatory and Development Authority of India (IRDAI) through its circular dated 28 June 2017, deferred the implementation of Ind AS by two years i.e. up to 31 March 2020. However, such companies were required to submit proforma Ind AS financial statements on a quarterly basis in the prescribed format to IRDAI.

### New development

The IRDAI through its circular dated 21 January 2020, has further deferred the implementation of Ind AS in the insurance sector until finalisation of

International Financial Reporting Standard (IFRS) 17, *Insurance Contracts* by the International Accounting Standards Board (IASB). Also, the requirement to submit proforma Ind AS financial statements by insurance companies on a quarterly basis to IRDAI has been withdrawn.

*Also read KPMG in India's First Notes on 'IRDAI defers the effective date for implementation of Ind AS in the insurance sector till further notice' dated 24 January 2020.*

(Source: IRDAI circular no. IRDAI/F&A/CIR/ACTS/023/01/2020 dated 21 January 2020)



## SEBI defers the timeline for separation of the roles of non-executive chairperson and MD/CEO by two years

### Background

Section 203 of the Companies Act, 2013 (2013 Act) provides that an individual should not be appointed/reappointed as the chairperson of a company, as well as its Managing Director (MD) or Chief Executive officer (CEO), unless allowed by articles of a company or such a company does not undertake multiple businesses.

Regulation 17(1B) of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) specifies that the chairperson of the board of top 500<sup>1</sup> equity listed entities would be a non-executive director and not be related to the MD or CEO in accordance with the definition of 'relative' as per the 2013 Act. This requirement would not be applicable to listed entities that do not have any identifiable promoters as per the shareholding patterns filed with stock exchanges. This regulation was to be made effective from 1 April 2020.

### New development

SEBI through its notification dated 10 January 2020, deferred the implementation of the above mentioned provision relating to separation of the roles of non-executive chairperson and MD/CEO by two years i.e. 1 April 2022.

*Also refer to KPMG in India's First Notes on 'SEBI defers the timeline for separation of the roles of non-executive chairperson and MD/CEO by two years' dated 17 January 2020.*

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/02 dated 10 January 2020)

## SEBI streamlines right issue process

SEBI through its notification dated 26 December 2019 issued amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) relating to rights issue.

On 22 January 2020, SEBI issued a circular which prescribes detailed procedures to be followed by companies while making rights issue (in its Annexure I).

Key features of the revised process are as follows:

- **Introduction of dematerialised Right Entitlements (REs):** The REs would be credited to the demat account of the eligible shareholders in dematerialised form.
- **Trading of dematerialised REs on stock exchange platform:** The REs should be traded on secondary market platform of stock exchanges with T+2 rolling settlement similar to the equity shares. The trading would begin from the opening of the issue and would be closed at least four days before the closure of the rights issue.
- **Newspaper advertisement:** Regulation 84 of the ICDR Regulations requires the issuer to publish an advertisement in newspapers confirming completion of dispatch of the letter of offer and composite application forms. The amendment now requires an issuer to publish this advertisement at least two days before the date of opening of the issue instead of current requirement of three days. Additionally, now an issuer would give an intimation to the stock exchange(s) for dissemination on their websites.
- **Payment:** Application for a rights issue would be made only through Applications Supported by Blocked Amount (ASBA) facility. Also, withdrawal of an application is not allowed after the issue closing date.

(Source: SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/13 dated 22 January 2020)

## SEBI issues a format on statement of deviation/variation of end use of issue proceeds of NCDs or NCRPs

### Background

Regulation 52 of the Listing Regulations requires listed entities to submit to the stock exchange(s) on a half-yearly basis, a statement of deviation or variation in the use of proceeds of issue from Non-Convertible Debt securities (NCDs) or Non-Convertible Redeemable Preference Shares (NCRPs). However, the Listing Regulations do not prescribe any format for statement of deviation for listed entities which have listed NCDs or NCRPs on the stock exchange(s).

### New development

In order to address this concern, SEBI through its circular dated 17 January 2020 issued a format for statement of deviation in the issue proceeds from NCDs or NCRPs.

1. The top 500 entities would be determined on the basis of market capitalisation, as at the end of the immediate previous FY

The key features of the circular are as follows:

- **Applicability:** The format is applicable to every listed entity which has raised funds through issue of NCDs or NCRPs.
- **Frequency of disclosures:** Disclose the statement of deviation on a half-yearly basis within 45 days of end of half-year until funds are fully utilised or the purpose for which these proceeds were raised has been achieved.
- **Role of the audit committee:** The statement of deviation should be reviewed by the audit committee and after such review, the comments of the audit committee along with the report should be disclosed/ submitted to the stock exchange as part of the format. In cases where the listed entity is not required to form an audit committee under the provisions of the Listing Regulations or the 2013 Act, then such a report should be reviewed by the board of directors.

**Effective date:** The first such submission should be made by the listed entities for the half-year ending 31 March 2020, subsequent submissions would be on half-yearly basis.

(Source: SEBI circular No. SEBI/HO/DDHS/08/2020 dated 17 January 2020)

## Non-compliance with certain provisions of the Listing Regulations

### Background

Regulation 98 of the Listing Regulations, provides that when an entity or any other person thereof contravenes any of the provisions of the Listing Regulations, then in addition to liability under the securities laws, he/she would be liable for the following actions:

- Imposition of fines
- Suspension of trading
- Freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories
- Any other action as may be specified by SEBI.

SEBI through its circular dated 3 May 2018 prescribed a uniform approach to be followed by stock exchange(s) while imposing fines for non-compliances with certain provisions of the Listing Regulations and also provided a standard operating procedure for suspension and revocation of trading of specified securities.

### New development

Pursuant to the amendments to the Listing Regulations and to further streamline the standard operating procedure for dealing with non-compliances, on 22 January 2020, SEBI issued a new circular which supersedes the circular dated 3 May 2018.

As part of the actions to be taken by stock exchange(s), stock exchange(s) are required to review the compliance status of the listed entities and issue notices to the non-compliant listed entities within 30 days from the due date of submission of information.

Non-compliant listed entity is required to ensure that the subject matter of non-compliance which has been identified and indicated by the stock exchange(s) and any subsequent action taken by the stock exchange(s) in this regard should be placed before the board of directors of the entity in its next meeting. Comments made by the board of directors should be informed to the recognised stock exchange(s) for dissemination.

The requirements of the circular are applicable from compliance periods ending on or after 31 March 2020.

(Source: SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated 22 January 2020)

## Companies (Appointment and Remuneration of Managerial Personnel) Amendment Rules, 2020

The Ministry of Corporate Affairs (MCA) through its notification dated 3 January 2020 amended the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 (Managerial Personnel Rules). The amendments relate to the following:

- **Appointment of a Company Secretary (CS):** Currently, Rule 8A of the Managerial Personnel Rules requires **a company (other than a company covered under Rule 8 of the Managerial Personnel Rules) with a paid-up share capital of INR5 crore or more** to appoint a whole-time CS.

*Amendment*

The amendments require **every private company** with a paid-up share capital of **INR10 crore or more** to appoint a whole-time CS.

*(Emphasis added to highlight the change)*

- **Secretarial audit report:** Currently, Section 204(1) of the 2013 Act read with Rule 9 of the Managerial Personnel Rules requires every listed company and a public company with a paid-up share capital of INR50

crore or more, or turnover of INR250 crore or more, to annex a secretarial audit report with its board's report in Form No. MR.3.

#### Amendment

In addition to the above, the amendment to the Managerial Personnel Rules requires every company with outstanding loans or borrowings from banks or public financial institutions of INR100 crore or more to submit a secretarial audit report with its board's report.

An explanation to Rule 9 of the Managerial Personnel Rules has been inserted to clarify that for the purpose of determining the above thresholds, the paid-up share capital, turnover or outstanding loans or borrowings, existing on the last date of latest audited financial statement should be considered.

**Effective date:** The amendments are applicable from Financial Year (FY) commencing on or after 1 April 2020.

(Source: MCA Notification No. G.S.R 13 (E) dated 3 January 2020)

## Educational material on Ind AS 116, Leases

The new standard on leases, Ind AS 116 has been made applicable to companies following Ind AS framework from 1 April 2019. Recently, the Institute of Chartered Accountants of India (ICAI) has issued an educational material on Ind AS 116. The publication aims to provide guidance on implementation of the requirements of the standard with the help of examples. It also covers major differences between Ind AS 116, IFRS 16, *Leases* and Accounting Standard (AS) 19, *Leases*.

(Source: Educational material on Ind AS 116 issued by ICAI in January 2020)

## IASB clarifies requirements for classifying liabilities as current or non-current

On 23 January 2020, the International Accounting Standards Board (IASB) issued narrow-scope amendments to International Accounting Standard (IAS) 1, *Presentation of Financial Statements* to clarify how to classify debt and other liabilities as current or non-current.

The amendments aim to promote consistency in applying the requirements by helping companies determine whether, in the statement of financial position, debt and other liabilities with an uncertain settlement date should be classified as current (due or potentially due to be settled within one year) or non-current. The amendments clarify that the classification of liabilities as current or non-current should be based on rights that are in existence at the end of the reporting period. Further, the classification is unaffected by expectations about whether an entity will exercise its right to defer settlement of a liability.

The amendments clarify, not change, existing requirements, and so are not expected to affect companies' financial statements significantly. However, they could result in companies reclassifying some liabilities from current to non-current, and vice versa; this could affect a company's loan covenants.

The amendments are effective for annual reporting periods beginning on or after 1 January 2022 and are to be applied retrospectively. Earlier application is permitted.

(Source: IASB announcement dated 23 January 2020)

