Chapter 4

Regulatory updates

MCA issues the Companies (Auditor's Report) Order, 2020

Background

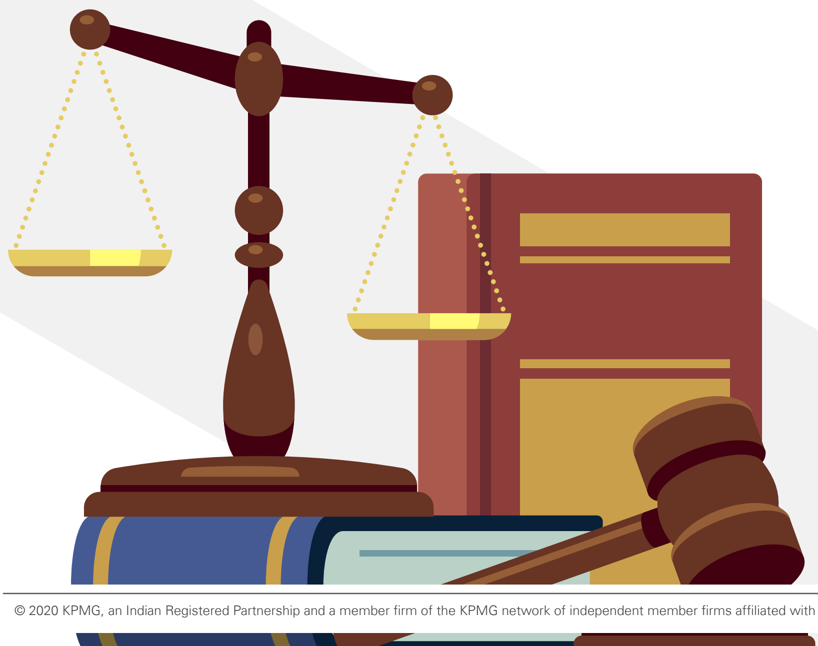
Section 143(11) of the Companies Act, 2013 (2013 Act) provides that the Central Government (CG) may, in consultation with the National Financial Reporting Authority (NFRA) by general or special order direct that the auditor's report of specified class of companies should also include a statement on such matters as may be specified in that order. Accordingly, on 29 March 2016, the Ministry of Corporate Affairs (MCA) issued the Companies (Auditor's Report) Order, 2016 (CARO 2016).

New development

On 25 February 2020, the MCA issues the Companies (Auditor's Report) Order, 2020 (CARO 2020) which supersedes CARO 2016. CARO 2020 will come into force from the date of its publication in the official gazette.

Some of the key features of CARO 2020 are as follows:

- **Applicability:** CARO 2020 will be applicable to every company including a foreign company except the following:
  a. A banking company
  b. An insurance company
  c. A company licensed to operate under Section 8 of the 2013 Act
  d. A one-person company and a small company as defined under the 2013 Act
  e. A private limited company which meets all of the following:
     i. It is not a subsidiary or holding company of a public company
     ii. Its paid-up capital and reserves and surplus do not exceed INR1 crore as on the balance sheet date
     iii. Its total borrowings do not exceed INR1 crore from any bank or financial institution at any point of time during the financial year
     iv. Its total revenue as disclosed in Scheduled III to the 2013 Act (including revenue from discontinuing operations) do not exceed INR10 crore during the financial year as per the financial statements.
- **Amendments to clauses:** Certain modifications made to the existing requirements are as follows:
  — The term 'fixed assets' has been replaced with Property, Plant and Equipment (PPE). New requirement to report whether the company is maintaining proper records showing full particulars of intangible assets.
  — With respect to reporting of whether title deeds of immovable properties are held in the name of the company, all immovable properties are covered except properties where the company is the lessee and the lease agreements are in favour of the lessee. Format for disclosure of properties not held in the name of the company has also been specified.
  — Reporting of material discrepancies in physical verification of inventory has been replaced with reporting of discrepancies of 10 per cent or more in aggregate for each class of inventory.



- **New clauses:** CARO 2020 introduces new reporting requirements for an auditor. Accordingly, an auditor is required to report:
  - Whether the company has been sanctioned working capital limits during any point of time of the year, in excess of INR5 crore in aggregate from banks or financial institutions on the basis of security of current assets. Also, whether the quarterly returns or statements filed by the company with such banks or financial institutions agree with the books of account of the company.
  - Whether the company has revalued its PPE including right-of-use assets and/or intangible assets during the year end. Also specify the amount, if the change is 10 per cent or more in aggregate of the net carrying value of each class of PPE or intangible assets.
  - Whether any transaction not recorded in the books of account have been surrendered or disclosed as income during the year in the tax assessments under the Income-tax Act, 1961. If yes, then whether the previously unrecorded income has been properly recorded in the books of account during the year.
  - Whether funds raised on short-term basis have been utilised for long-term purposes. If yes, the nature and amount to be specified.
  - Whether it has considered the whistle-blower complaints, if any, received during the year.
  - Whether the company has an internal audit system commensurate with the size and nature of its business.

(Source: MCA order dated 25 February 2020)

MCA notifies provisions relating to takeover offer for unlisted companies

Background

Currently, Section 230 and 232 of the 2013 Act read with the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 (Arrangement Rules) govern the provisions relating to a scheme of arrangement undertaken by a company. Different forms of arrangements which can be taken up by companies under Section 230 and 232 of the 2013 Act are as follows:

a. Reorganisation of the company's share capital by the consolidation of shares of different classes or by the division of shares into shares of different classes, or by both of those methods

b. Reduction of share capital

c. Corporate debt restructuring (consented by not less than 75 per cent of the secured creditors)

d. Buy-back of securities

e. Takeover offer

f. Merger/amalgamation of any two or more companies

g. Demerger/division of companies.

The provisions of Section 230 and Section 232 of the 2013 Act (other than those relating to the takeover offer) came into effect from 15 December 2016.

New development

The MCA notified the provisions relating to takeover offer i.e. Section 230(11) and 230(12) under the 2013 Act with effect from 3 February 2020. Also, related amendment has been made to the Arrangement Rules and the National Company Law Tribunal (NCLT) Rules, 2016 (NCLT Rules).

The key features of the notified provisions are as follows:

- **Eligibility for takeover offer (Section 230(11) and Rule 5 of the Arrangement Rules):**
  - *In case of listed companies:* Takeover offer would be governed by the regulations prescribed by the Securities and Exchange Board of India (SEBI) i.e. SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
  - *In case of companies other than listed companies:* An application for the takeover offer can be made to the NCLT by a member which along with any other member holds not less than three-fourth shares[1] in the company. The application should be filed for acquiring any part of the remaining shares of the company.

    The requirement to file an application to the NCLT by a member holding three-fourth shares of the company for acquiring its remaining shares does not apply to a transfer/transmission of shares

1. *Shares* means 'equity shares of the company carrying voting rights, and includes any securities, such as depository receipts, which entitles the holder thereof to exercise voting rights.'

through a contract, arrangement or succession or transfer of shares pursuant to statutory or regulatory requirement.

- **Particulars of a takeover application (Rule 5 of the Arrangement Rules):** The application for a takeover arrangement should contain the following:
  a. Report of a registered valuer disclosing the details of the valuation of the shares proposed to be acquired by the member after considering certain factors. Those are as follows:
     i. The highest price paid by any person or group of persons for acquisition of shares during last 12 months and
     ii. The fair price of shares of the company to be determined by the registered valuer after considering valuation parameters including return on net worth, book value of shares, earning per share, price earning multiple vis-a-vis the industry average and other parameters as are customary for valuation of shares of such companies.
  b. Details of a bank account, to be opened separately, by the member wherein a sum of amount not less than one-half of total consideration of the takeover offer is deposited.
- **Redressal of grievances (Section 230(12) read with Section 80A of the NCLT Rules):** In the event of any grievance with respect to the takeover offer of companies (other than listed companies), an aggrieved party may make an application to the NCLT in Form NCLT-1 along with prescribed documents. The NCLT may, on an application, pass such order as it may deem fit.

Effective date: The amendments to the NCLT Rules and Arrangement Rules came into effect from the date of their publication in the official gazette i.e. 6 February 2020 and 7 February 2020 respectively.

(Source: MCA notification no. G.S.R.79(E), G.S.R. 80(E) and S.O. 525(E) dated 3 February 2020)

Filing of Ind AS financial statements by NBFCs

On 30 January 2020, the MCA issued amendments to the Companies (Accounts) Rules. As per the amendments, every Non-Banking Financial Company (NBFC) which is required to comply with Ind AS should file their separate financial statements together with Form AOC-4 NBFC (Ind AS) and the consolidated financial statements with Form AOC-4 CFS NBFC (Ind AS) with the Registrar of Companies (ROC) in the prescribed format. The amendments are effective from 5 February 2020.

Further, MCA through a circular dated 30 January 2020 provided that the last date of filing the above-mentioned forms for the financial year 2018-19 without payment of additional fees would be 31 March 2020.

(Source: MCA notification no. G.S.R.60(E) and general circular no.02/2020 dated 30 January 2020)

Educational material on Ind AS 20, *Accounting for Government Grants and Disclosure of Government Assistance*

Recently, the Institute of Chartered Accountants of India (ICAI) has issued an educational material on Ind AS 20. The publication aims to provide guidance on implementing the requirements of the standard with the help of examples. It also covers major differences between Ind AS 20 and International Accounting Standard (IAS) 20, *Accounting for Government Grants and Disclosure of Government Assistance.*

(Source: Educational material on Ind AS 20 issued by ICAI in February 2020)

IIRC begins the process of refreshing the international <IR> Framework

Background

In December 2013, the International Integrated Reporting Council (IIRC) released the Integrated Reporting (<IR>) Framework. The <IR> Framework explains the fundamental concepts underpinning the integrated reporting and includes the guiding principles and content elements that govern the preparation of an integrated report.[2]

New development

In order to ensure <IR> Framework's continued relevance in an evolving business and policy environment, the IIRC recently began the process of revising the <IR> Framework. As part of the process, the IIRC seeks inputs on identified key themes raised by users and preparers of integrated reports. Each of the theme has been outlined in three topic papers.

2. An integrated report is used to assess the organisation's ability to create value over time.

The key proposals highlighted in these topic papers are as follows:

Topic paper	Key proposals
Responsibility for an integrated report	• Shift the focus from a statement of responsibility for the integrated report to an explanation of the processes underpinning its preparation • Support the disclosure of process-related information through supplementary guidance • Explain the meaning and scope of the term 'those charged with governance'.
Business model considerations	• Explore illustrative examples and visual techniques to elevate the significance of outcomes[3] • Explain the link between outcomes and value creation by including an illustrative example • Promote balance in the reporting of outcomes i.e. address an inherent bias introduced by the <IR> Framework's repeated use of the term 'value creation' and reinforce the importance of providing evidence for claims and conclusions • Reinforce the inclusion of impacts in integrated reporting i.e. clarify that the <IR> Framework's use of outcomes includes broader effects on society and nature.
Charting a path forward	• Changes to the purpose of an integrated report i.e. shift from a financial capital focus to multi-capitalism • Role of technology in corporate reporting i.e. views on how technology might influence the field of corporate reporting in the years to come • Assurance in integrated reporting i.e. further ways in which the <IR> Framework can enhance the assurance-readiness of integrated reports.

(Source: KPMG in India's analysis, 2020 based on IIRC topic papers on international <IR> Framework revision)

The comments on the proposals are invited up to 20 March 2020.

(Source: Topic papers on international <IR> Framework revision issued by IIRC on 20 February 2020)

3 The internal and external consequences (positive and negative) for the capitals as a result of an organisation's business activities and outputs.