CHAPTER 3

Regulatory updates

Eligibility of CSR funds for setting up makeshift hospitals and temporary COVID-19 care facilities

The Ministry of Corporate Affairs (MCA) through a circular dated 22 April 2021 has clarified that spending of funds earmarked for Corporate Social Responsibility (CSR) for setting up makeshift hospitals and temporary COVID-19 care facilities is an eligible CSR activity under Schedule VII of the Companies Act, 2013 (2013 Act) (item no. (i) and (xii). These items relate to promotion of healthcare, including preventive health care and disaster management respectively.

Companies may undertake these activities in consultation with state governments subject to the fulfillment of the Companies (CSR Policy) Rules, 2014 and circulars issued by MCA relating to CSR from time to time.

(Source: MCA general circular no. 05/2021 dated 22 April 2021)

Amendments relating to the maintenance of an accounting software with audit trail feature and related reporting in an auditor's report deferred up to 1 April 2022

Background

On 24 March 2021, MCA had issued certain amendments to the provisions of the Companies (Accounts) Rules, 2014 (Accounts Rules) and the Companies (Audit and Auditors) Rules, 2014 (Audit Rules) under the 2013 Act.

The amendments, *inter alia*, include the following:

- **Use of accounting software with audit trail feature (Rule 3 of Accounts Rules):** The amendment require every company which uses an accounting software for maintaining its books of account to use only such accounting software which has the following features:

  a. Records an audit trail of each and every transaction

  b. Creates an edit log or each change in books of account along with the date when such changes were made.

  Additionally, companies would need to ensure that audit trial is not disabled.

- **Additional matters to be reported in an auditor's report (Rule 11 of Audit Rules):** Basis the above mentioned requirement of a company to use an accounting software with audit trail features, MCA requires an auditor to, *inter alia*, include his/her views and comments as to the fact that the company has used such accounting software for maintaining its books of account which has a feature of recording audit trail (edit log) facility. Further, an auditor should also comment on whether:

  a. The audit trail feature has been operated throughout the year for all transactions recorded in the software

  b. The audit trail feature has not been tampered with and

  c. The audit trail has been preserved by the company as per the statutory requirements for record retention.

These amendments were to be effective from financial year commencing on or after 1 April 2021.

New development

The MCA through a notification dated 1 April 2021 has deferred the applicability of the above mentioned amendments. Accordingly, the amendments would now be applicable from financial year commencing on or after 1 April 2022.

For a detailed overview of the amendments, please refer KPMG in India's First Notes on 'Accounting software for maintaining books of account, changes to board's report and additional reporting in an auditor's report – New norms' dated 14 April 2021.

(Source: MCA notifications dated 1 April 2021)

Pre-packaged insolvency resolution process for MSMEs

The Ministry of Law and Justice has issued certain amendments to the Insolvency and Bankruptcy Code, 2016 (IBC) through the IBC (Amendment) Ordinance, 2021 dated 4 April 2021. This will address the specific requirements of Micro, Small and Medium Enterprises (MSMEs) relating to the resolution of their insolvency and provide an efficient alternative insolvency resolution process for corporate persons classified as MSME under IBC. The amendments introduced a pre-packaged insolvency resolution process for corporate persons classified as MSME.

Additionally, the MCA has issued the Insolvency and Bankruptcy (pre-packaged insolvency resolution process) Rules, 2021 effective from 9 April 2021. The Rules prescribe the manner of filing an application for initiating pre-packaged insolvency resolution process.

Further, in accordance with the amendments, the MCA has prescribed INR10 lakh as the minimum amount of default for the matters relating to the pre-packaged insolvency resolution process of corporate debtors under Chapter III-A of the IBC (pre-packaged insolvency resolution process).

(Source: MCA notification no. G.S.R 256(E) and notification no. S.O. 1543(E) dated 9 April 2021 and the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 issued by the Ministry of Law and Justice dated 4 April 2021)

SEBI reduced timelines for refund of application money

Currently, the Securities and Exchange Board of India (SEBI) (Issue of Capital and Disclosure Requirements) Regulations, 2018 requires an issuer to refund application money as per below timelines:

a. In case of non-receipt of minimum subscription, the application money is required to be refunded within a period of **15 days** from the closure of the issue.

b. In case of failure to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, the application money should be refunded within a period of **seven days** from the date of receipt of intimation of rejection from the stock exchanges.

SEBI through a circular dated 31 March 2021 has reduced the above timelines in relation to refund of application money by the issuer to **four days** from the closure of the issue or from the date of receipt of intimation of rejection from the stock exchanges as the case may be. *(Emphasis added to highlight the change)*

(Source: SEBI circular no. SEBI/HO/CFD/DIL1/CIR/P/2021/47 dated 31 March 2021)

SEBI extends relaxation relating to application for a rights issue

Background

In accordance with the requirements of Regulation 76 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations), an issuer can make an application for a rights issue only through an Application Supported by Blocked Amount (ASBA) facility.

In view of the pandemic and to ensure that all eligible shareholders are able to apply to the rights issue during such times, SEBI through a notification dated 6 May 2020 had permitted issuers along with lead manager(s) to the issue, the registrar, and other recognised intermediaries (as deemed fit by issuer and lead manager(s)) to institute an optional mechanism (non- cash mode only) to accept the applications of the shareholders subject to ensuring that no third party payments shall be allowed in respect of any application.

In respect of the said mechanism, an issuer along with lead manager(s) needs to ensure the following:

a. The mechanism(s) should only be an additional option and not a replacement of the existing process. As far as possible, attempts will be made to adhere to the existing prescribed framework.

b. The mechanism(s) should be transparent, robust and have adequate checks and balances. It should aim at facilitating subscription in an efficient manner without imposing any additional costs on investors. The issuer along with lead manager(s), and registrar should satisfy themselves about the transparency, fairness and integrity of such mechanism.

c. An FAQ, online dedicated investor helpdesk, and helpline should be created by the issuer company along with lead manager(s) to guide investors in gaining familiarity with the application process and resolve difficulties faced by investors on priority basis.

d. The issuer along with lead manager(s), registrar, and other recognised intermediaries (as incorporated in the mechanism) should be responsible for all investor complaints.

The relaxation was available for rights issue opening up to 31 March 2021.

New development

SEBI through a circular dated 22 April 2021 has further extended the relaxation for rights issue opening up to 30 September 2021. This is subject to the condition that the issuer along with the lead manager(s) should continue to comply with the points given in (a) to (d) above.

(Source: SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/552 dated 22 April 2021)

Declaration of dividends by banks

The Reserve Bank of India (RBI) through its circular dated 4 December 2020 has prohibited banks from making any dividend payment on equity shares from the profits pertaining to the financial year ended 31 March 2020.

Recently, RBI has decided to review the dividend declaration norms for the year ended 31 March 2021 as follows:

- **Commercial banks:** Banks may pay dividend on equity shares from the profits for the financial year ended 31 March 2021, subject to the quantum of dividend being not more than 50 per cent of the amount determined as per the dividend payout ratio.
- **Cooperative banks:** Banks will be permitted to pay dividend on equity shares from the profits of the financial year ended 31 March 2021.

Further, banks shall continue to meet the applicable minimum regulatory capital requirements after dividend payment. While declaring dividend on equity shares, it shall be the responsibility of the board of directors to, *inter alia*, consider the current and projected capital position of the bank vis-à-vis the applicable capital requirements and the adequacy of provisions, taking into account the economic environment and the outlook for profitability.

(Source: RBI notification no. RBI/2021-22/23 dated 22 April 2021)

Asset classification and income recognition following the expiry of COVID-19 regulatory package

In accordance with the judgement issued by the Hon'ble Supreme Court of India (SCI) dated 23 March 2021 in the matter of Small Scale Industrial Manufacturers Association vs UOI & Ors. and other connected matters, RBI has issued following advisory for the lending institutions[1] vis-à-vis COVID-19 regulatory package:

- **Refund/adjustment of 'interest on interest':** All lending institutions shall immediately put in place a board-approved policy to refund/adjust the 'interest on interest' charged to the borrowers during the moratorium period, i.e. 1 March 2020 to 31 August 2020 in conformity with the above judgement. The methodology for calculation of the amount to be refunded/adjusted for different facilities shall be finalised by the Indian Banks Association (IBA) in consultation with other industry participants/bodies, which shall be adopted by all lending institutions.

  The above reliefs shall be applicable to all borrowers, including those who had availed of working capital facilities during the moratorium period, irrespective of whether moratorium had been fully or partially availed, or not availed.

  Lending institutions are also required to disclose the aggregate amount to be refunded/adjusted in respect of their borrowers based on the above reliefs in their financial statements for the year ended 31 March 2021.

- **Asset classification:** Asset classification of borrower accounts by all lending institutions would continue to be governed by the following instructions:

  a. *In respect of accounts which were not granted any moratorium in terms of the COVID-19 regulatory package:* Asset classification would be as per the criteria laid out in the 'Master Circular - Prudential norms on Income Recognition, Asset Classification and Provisioning' dated 1 July 2015 or other relevant instructions as applicable to the specific category of lending institutions (IRAC norms).

  b. *In respect of accounts which were granted moratorium in terms of the COVID-19 regulatory package:* Asset classification for the period from 1 March 2020 to 31 August 2020 would be governed in terms of the RBI circular dated 17 April 2020 (COVID-19 regulatory package - asset classification and provisioning). For the period commencing 1 September 2020, asset classification for all such accounts shall be as per the applicable IRAC norms.

(Source: RBI notification no. RBI/2021-22/17 dated 7 April 2021)

Deferment of reporting under clause 30C and 44 of the Tax Audit Report

The Central Board of Direct Taxes (CBDT) through a notification dated 20 July 2018 made certain amendments to the Form No. 3CD (tax audit report). The amendments, *inter alia*, introduced following new clauses:

- **Clause 44: Break up of total expenditure between GST registered vendors and unregistered vendors:** Clause 44 requires a break-up of total expenditure incurred during the year between expenditure incurred relating to entities not registered under Goods and Service Tax (GST) and expenditure incurred relating to entities registered under GST. Additionally, the expenditure relating to GST registered vendors is required to be further bifurcated between expenditure in relation to exempt supply, expenditure towards entities registered under composition scheme and other registered entities.
- **Clause 30C:** Clause 30C requires a taxpayer to report the nature and tax impact of impermissible avoidance arrangement as referred to in Section 96 of the Income Tax Act, 1961 (IT Act) if any. Section 96 of the IT Act provides that an arrangement would be presumed to be impermissible if the main purpose of whole or part of the arrangement is to obtain a tax benefit.

These new clauses were kept in abeyance up to 31 March 2021.

Relaxation

In view of the ongoing pandemic, CBDT has decided that the reporting under clause 30C and 44 of the tax audit report (Form 3CD) would be kept in abeyance till 31 March 2022.

(Source: CBDT circular no. 05/2021 dated 25 March 2021)

1. Commercial banks (including small finance banks, local area banks and regional rural banks), primary (urban) co-operative banks/state co-operative banks/district central co-operative banks, All-India Financial Institutions (AIFIs), and Non-Banking Financial Companies (NBFCs) (including Housing Finance Companies (HFCs)).

Temporary exceptions to hedge accounting prescribed under guidance note on accounting for derivative contracts due to interest rate benchmark reform

For the entities that do not apply Ind AS, the provisions regarding hedge accounting are prescribed in the guidance note on 'Accounting for Derivative Contracts' issued by the Institute of Chartered Accountants of India (ICAI) in 2015.

Recently, ICAI through an announcement has provided temporary exceptions from applying specific hedge accounting requirements prescribed under the guidance note on Accounting for Derivative Contracts for entities not following Ind AS. The exceptions are in line with those provided in phase I to the entities following Ind AS (i.e. those addressing pre-replacement issues). The temporary exceptions would be applicable to all hedging relationships directly affected by interest rate benchmark reform.

The key exceptions are as follows:

- **The highly probable requirement:** An entity should assume that the interest rate benchmark on which the hedged cash flows (contractually or non-contractually specified) are based is not altered as a result of interest rate benchmark reform.
- **Prospective assessments:** An entity should assess whether the economic relationship between the hedged item and the hedging instrument exists based on the assumptions that the interest rate benchmark on which the hedged item and the hedging instrument are based is not altered as a result of IBOR reform.
- **End of application:** An entity should prospectively cease applying the exceptions at the earlier of:
  a. When the uncertainty regarding the timing and the amount of interest rate benchmark based cash flows is no longer present and
  b. The discontinuation of the hedging relationship (or reclassification of all amounts from the cash flow hedge reserve).

Effective date: The temporary exceptions will be effective for annual reporting periods beginning on or after 1 April 2020.

The requirements will apply only to those hedging relationships that existed at the beginning of the reporting period in which an entity first applies these requirements or were designated thereafter, and to the amount accumulated in the cash flow hedge reserve that existed at the beginning of the reporting period in which an entity first applies these requirements.

(Source: ICAI announcement dated 31 March 2021)

Approved investment for insurers

Currently, an issuer is permitted to invest or keep invested its controlled fund only in approved securities specified in Regulation 3 of the Insurance and Regulatory Development Authority of India (IRDAI) (Investment) Regulations, 2016. These approved securities, *inter alia*, includes:

a. Preference shares of any company which has paid dividends on its equity shares for at least **two consecutive years** immediately preceding

b. Equity shares of any listed company on which not less than 10 per cent dividends have been paid for at least **two consecutive years** immediately preceding.

IRDAI through a circular dated 31 March 2021 has permitted insurers to classify investments in preference shares and equity shares as a part of approved investment if such shares have paid dividend for at least **two years out of three consecutive years** immediately preceding for the period from 1 April 2020 to 30 September 2021.

(Source: IRDAI circular no. IRDAI/F&I/CIR/INV/065/03/2021 dated 31 March 2021)

Investments in debt securities of InvITs and REITs

Investments-Master Circular permits insurers to invest in units of listed Infrastructure Investment Trusts (InvITs) and Real Estate Investment Trusts (REITs) subject to specified conditions.

The Finance Act, 2021 permitted these trusts to issue debt securities. Accordingly, IRDAI through a circular dated 22 April 2021 prescribes certain conditions to be applied by insurers investing in debt securities issued by InvITs / REITs. Those conditions, *inter alia*, includes:

a. An insurer should not invest more than 10 per cent of the outstanding debt instruments (including the current issue) in a single InvIT/REITs issue.

b. The cumulative investments in units and debt instruments of InvITs and REITs should not exceed three per cent of total fund size of the insurer at any point of time.

c. No investment should be made in debt instruments of an InvIT/ REIT where the sponsor is under the promoter group of the insurer.

d. The concurrent auditor in his quarterly report to the audit committee/board of the insurer should specifically confirm compliance to all the specified norms.

(Source: IRDAI circular no. IRDAI/F&I/CIR/INV/098/04/2021 dated 22 April 2021)

Proposed amendments to IFRS 13, *Fair Value Measurement* and IAS 19, *Employee Benefits*

On 25 March 2021, the International Accounting Standards Board (IASB) has issued an exposure draft which comprise of proposed guidance for itself when developing and drafting disclosure requirements in IFRS in future. It also includes proposed amendments to IFRS 13 and IAS 19 consequent to the application of the proposed guidance.

The proposed guidance explains how IASB will modify disclosure requirements in IFRS to enhance the use of judgement. In summary, IASB will:

a. Require entities to comply with **overall disclosure objectives** that describe the overall information needs of users of financial statements. To comply with those objectives, entities would be required to assess whether information provided in the notes by complying with the specific disclosure objectives meets the overall user information needs.

b. Require entities to comply with **specific disclosure objectives** that describe the detailed information needs of users of financial statements. To comply with those objectives, entities would be required to disclose all material information needed to meet the detailed user information needs.

c. Supplement specific disclosure objectives with explanations of what the **information provided to meet those objectives** is intended to help users of financial statements do.

d. Link each specific disclosure objective with items of information an entity may, or in some cases is required to, disclose to satisfy the objective.

Proposed amendments to IFRS 13 include:

- **Assets and liabilities measured at fair value in the statement of financial position after initial recognition:** An overall disclosure objective that enables user of financial statements to evaluate the entity's exposure to uncertainties associated with fair value measurements of classes of assets and liabilities measured at fair value in the statement of financial position after initial recognition. The information shall enable users of financial statements to understand:

  a. The significance of those classes of assets and liabilities for the entity's financial position and performance

  b. How their fair value measurements have been determined and

  c. How changes in those measurements could have affected the entity's financial statements at the end of the reporting period.

  IASB also proposes specific disclosure objectives that require an entity to disclose information about the:

  a. Assets and liabilities within each level of the fair value hierarchy

  b. Measurement uncertainties associated with their fair value measurements

  c. Reasonably possible alternative fair value measurements

  d. Reasons for changes in their fair value measurement.

- **Assets and liabilities not measured at fair value in the statement of financial position but for which fair value is disclosed in the notes:** A specific disclosure objective that requires an entity to disclose information that enables users of financial statements to understand:

  a. The amount, nature and other characteristics of each class of assets and liabilities not measured at fair value in the statement of financial position but for which fair value is disclosed in the notes and

  b. How the characteristics relate to the categorisation of those classes of assets and liabilities in the fair value hierarchy.

Proposed amendments to IAS 19 include:

- **Defined benefit plans:** An overall disclosure objective that requires an entity to disclose information that enables users of financial statements to:

  a. Assess the effect of defined benefit plans on the entity's financial position, financial performance and cash flows and

  b. Evaluate the risks and uncertainties associated with the entity's defined benefit plans.

  IASB also proposes specific disclosure objectives that require an entity to disclose information about:

  a. Amounts in the primary financial statements relating to defined benefit plans

  b. The nature of, and risks associated with, defined benefit plans

  c. Expected future cash flows relating to defined benefit plans

  d. Future payments to members of defined benefit plans that are closed to new members

  e. Measurement uncertainties associated with the defined benefit obligation

  f. Reasons for changes in the amounts recognised in the statement of financial position for defined benefit plans.

- **Defined contribution plans:** An overall disclosure objective that requires an entity to disclose information that enables users of financial statements to understand the effect of defined contribution plans on the entity's financial performance and cash flows.
- **Other types of employee benefit plans:** An overall disclosure objective that requires an entity to disclose information that enables users of financial statements to understand:
  a. The effect of short-term employee benefits on the entity's financial performance and cash flows
  b. The nature of other long-term employee benefits and the effect of those benefits on the entity's financial position, financial performance and cash flows
  c. The nature of termination benefits and the effect of those benefits on the entity's financial position, financial performance and cash flows.

The exposure draft also proposed consequential amendments to IAS 34, *Interim Financial Reporting* and IFRIC 17, *Distributions of Non-cash Assets to Owners.*

Comments have been invited up to 21 October 2021.

(Source: ED/2021/3, Disclosure Requirements in IFRS Standards - A Pilot Approach issued by IASB in March 2021)

FASB issued an Accounting Standard Update (ASU) on Topic 350, *Intangibles - Goodwill and Other*

Under the current guidance in subtopic 350-20, *Intangibles-Goodwill and Other-Goodwill*, an entity is required to monitor and evaluate goodwill impairment triggering events throughout the reporting period. The triggering event analysis and resulting goodwill impairment test, if any, are required to be performed when a triggering event occurs without the use of hindsight or known changes to facts and circumstances after the triggering event date.

Certain stakeholders have expressed concern about the cost and complexity of private companies evaluating triggering events and potentially measuring a goodwill impairment during the reporting period, rather than completing the analysis as of the end of the reporting period. The issue had become more apparent during COVID-19 pandemic because of the uncertainty in the economic environment and the significant changes in facts and circumstances, quarter over quarter.

To address the said issues, the Financial Accounting Standards Board (FASB) has issued certain amendments which provide private companies and not-for-profit entities with an accounting alternative to perform the goodwill impairment triggering event evaluation as of the end of the reporting period, whether the reporting period is an interim or annual period. In accordance with the amendments:

- An entity that elects this alternative is not required to monitor for goodwill impairment triggering events during the reporting period but, instead, should evaluate the facts and circumstances as of the end of each reporting period to determine whether a triggering event exists and, if so, whether it is more likely than not that goodwill is impaired.
- An entity that does not elect the accounting alternative for amortising goodwill and that performs its annual impairment test as of a date other than the annual reporting date should perform a triggering event evaluation only as of the end of the reporting period.

Effective date: The amendments are effective on a prospective basis for fiscal years beginning after 15 December 2019. Early adoption is permitted for both interim and annual financial statements that have not yet been issued or made available for issuance as of 30 March 2021.

The amendments also include an unconditional one-time option for entities to adopt the alternative prospectively after its effective date without assessing preferability under Topic 250, *Accounting Changes and Error Corrections.*

(Source: FASB ASU No. 2021-03 issued in March 2021)