

CHAPTER 4

Regulatory
updates**MCA issued amendments to Ind AS including interest rate benchmark reform (phase 2)**

On 18 June 2021, the Ministry of Corporate Affairs (MCA) has issued the Companies (Indian Accounting Standards (Ind AS)) Amendments Rules, 2021 and made amendments to various Ind AS. Some of the key amendments relate to the following standards:

Standard	Overview of the amendments
Ind AS 107, <i>Financial Instruments: Disclosures</i>	<p>Additional disclosures included relating to interest rate benchmark reform. Those, <i>inter alia</i>, include information about:</p> <ol style="list-style-type: none"> Nature and extent of risks to which the entity is exposed arising from financial instruments subject to interest rate benchmark reform and how the entity manages these risks and Entity's progress in completing the transition to alternative benchmark rates and how the entity is managing the transition. <p>Effective date: An entity should apply the amendments when it applies amendments to Ind AS 109, Ind AS 104 or Ind AS 116.</p>
Ind AS 109, <i>Financial Instruments</i>	<p>A new paragraph included on changes in the basis for determining the contractual cash flows as a result of interest rate benchmark reform. As per the guidance provided, the basis for determining the contractual cash flows of a financial asset or financial liability can change in the following manner:</p> <ol style="list-style-type: none"> By amending the contractual terms specified at the initial recognition of the financial instrument In a way that was not considered by or contemplated in the contractual terms at the initial recognition of the financial instrument, without amending the contractual terms Due to the activation of an existing contractual term. <p>Effective date: An entity should apply the amendments for annual reporting periods beginning on or after 1 April 2021.</p>
Ind AS 116, <i>Leases</i>	<p>Practical expedient relating to rent concessions occurring as a direct consequence of COVID-19 has been modified. Accordingly, a lessee is not required to account for rent concessions as lease modifications if the reduction in lease payments affects only payments originally due on or before 30 June 2022 (earlier 30 June 2021) and subject to compliance with other specified conditions.</p> <p>Effective date: A lessee should apply the amendment for annual reporting periods beginning on or after 1 April 2021. In case a lessee has not yet approved the financial statements for issue before the issuance of the amendment, then the same may be applied for annual reporting periods beginning on or after the 1 April 2020.</p> <p>A lessee should apply the amendment retrospectively and recognises the cumulative effect of initially applying them in the opening retained earnings of the annual reporting period in which it is first applied.</p>

(Source: MCA notification no. G.S.R. 419(E) dated 18 June 2021)

MCA notifies accounting standards for SMCs under the Companies Act, 2013

MCA through a notification dated 23 June 2021 has issued the Companies (Accounting Standards) Rules, 2021. The Accounting Standards (AS) notified under the Rules will be applicable to companies (other than companies to which Ind AS are applicable) including Small and Medium sized Companies (SMCs) in preparation of financial statements. The Rules prescribe revised definition of a SMC. According to it, SMC would mean a company which meets the following criteria as at the end of the relevant accounting period:

- Whose equity or debt securities are not listed or are not in the process of listing on any stock exchange, whether in India or outside India
- Which is not a bank, financial institution or an insurance company
- Whose turnover (excluding other income) does not exceed **INR250 crore** (earlier INR50 crore) in the immediately preceding accounting year
- Which does not have borrowings (including public deposits) in excess of **INR50 crore** (earlier INR10 crore) at any time during the immediately preceding accounting year and
- Which is not a holding or subsidiary company of a company which is not a SMC.

The key standards notified under the Rules includes:

- AS 9, *Revenue Recognition*
- AS 10, *Property, Plant and Equipment*
- AS 12, *Accounting for Government Grants*
- AS 14, *Accounting for Amalgamations*
- AS 15, *Employee Benefits*
- AS 16, *Borrowing Costs*
- AS 18, *Related Party Disclosures*
- AS 19, *Leases*
- AS 21, *Consolidated Financial Statements*
- AS 25, *Interim Financial Reporting*
- AS 26, *Intangible Assets*
- AS 28, *Impairment of Assets*
- AS 29, *Provisions, Contingent Liabilities and Contingent Assets*.

Effective date: The AS are effective for accounting periods beginning on or after 1 April 2021.

(Source: MCA notification dated 23 June 2021)

Relaxation in matters to be dealt through VC or OAVM facility

Currently, Section 173(2) of the Companies Act, 2013 (2013 Act) provides that the directors can participate in Board of Directors' (BoD) meetings

in person, through Video Conferencing (VC) or Other Audio-Visual Means (OAVM) in the prescribed manner. However, Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 (Board Meeting Rules) specify certain matters which cannot be considered in a meeting through VC or OAVM facility. Those are as follows:

- Approval of the annual financial statements
- Approval of the board's report
- Approval of the prospectus
- Audit committee meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the BoD under Section 134(1) of the 2013 Act and
- Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Amendment

MCA through a notification dated 15 June 2021 has issued an amendment to the Board Meeting Rules and omitted Rule 4. Accordingly, meetings to discuss the matters specified in Rule 4 of the Board Meeting Rules (i.e. approval of the annual financial statements, board's report, prospectus, etc.) can now take place through VC or OAVM facility.

Effective date: The amendment is effective from the date of its publication in the official gazette i.e. 15 June 2021.

(Source: MCA notification no. G.S.R 409(E) dated 15 June 2021)

MCA relaxation for conduct of EGMs through VC

MCA through a circular dated 23 June 2021 has extended the timeline for conduct of Extraordinary General Meetings (EGMs) by companies through VC/OAVM or transact items through postal ballot upto 31 December 2021. This will be in accordance with the framework provided in the circulars dated 8 April 2020, 13 April 2020, 15 June 2020, 28 September 2020 and 31 December 2020.

(Source: MCA general circular no. 10/2021 dated 23 June 2021)

Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2021

MCA through a notification dated 9 June 2021 issued certain amendments to the Investor Education and Protection Fund (IEPF) Authority (Accounting, Audit, Transfer and Refund) Amendment Rules, 2016.

As per the amendments, IEPF will include all shares held by the IEPF Authority in accordance with provisions of Section 90(9) of the 2013 Act (shares held by significant beneficial owners of the company) and all the resultant benefits arising out of such shares, without any restrictions¹.

1. Shares are transferred to the IEPF Authority if no application has been made by the beneficial owners of the company aggrieved by the order of the Tribunal directing restrictions on shares pursuant to an application made by the company in case of non-furnishing of information or unsatisfactory information by beneficial owner of shares.

The transfer of shares by a company to the IEPF shall be deemed to be transmission of shares and companies will be required to follow specified procedure for transmission of shares. The company should make such transfers through corporate action and should also preserve copies for its records.

While effecting the transfer, the company should send a statement to the IEPF Authority in Form No. IEPF-4 within 30 days of the corporate action taken containing details of the transfer. The company should also attach the copy of the order of the Tribunal along with a declaration that no application under Section 90(9) of the 2013 Act has been made or is pending before the Tribunal.

Effective date: The amendments are effective from the date of their publication in the official gazette i.e. 9 June 2021

(Source: MCA notification no G.S.R 396(E) dated 9 June 2021)

SEBI issues a new format of compliance report on corporate governance for listed entities

Background

Regulation 27(2) of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) requires every entity with listed securities² to submit a quarterly compliance report

on corporate governance to the recognised stock exchanges. The report should be submitted within 15 days from close of the quarter in the format specified by SEBI. SEBI through its notifications dated 24 September 2015 and 16 July 2019 prescribed the formats of the compliance report to be submitted:

- On a quarterly basis
- At the end of Financial Year (FY)
- At the end of six months from the close of FY.

New development

With a view to strengthen the disclosures around loans/guarantees/comfort letters/security provided by the listed entity, directly or indirectly to a promoter/promoter group entities or any other entity controlled by them, SEBI through its circular dated 31 May 2021 has decided to mandate disclosures around loans, guarantees, comfort letters, etc. provided by the listed entity in the compliance report on corporate governance on a half-yearly basis. Accordingly, in addition to the current disclosures, SEBI has issued a new format of specified disclosures to be made on a half-yearly basis as part of the compliance report on corporate governance. The format is effective from first half-year of FY2021-22.

(Source: SEBI circular no. SEBI/HO/CFD/CMD-2/P/ CIR/2021/567 dated 31 May 2021)

SEBI (Delisting of Equity Shares) Regulations, 2021

SEBI through a notification dated 10 June 2021 has issued new regulations namely, SEBI (Delisting of Equity Shares) Regulations, 2021 (Delisting Regulations). These regulations shall apply to delisting of equity shares of a company including equity shares with superior voting rights from all or any of the recognised stock exchanges where such shares are listed. The regulations lay down two methods of delisting – voluntary method and compulsory method.

- Voluntary delisting:** It means delisting of equity shares of a company voluntarily on an application made by the company in accordance with the provisions of Chapter III of the Delisting Regulations.
- Compulsory delisting:** A recognised stock exchange may by a reasoned order delist equity shares of a company on any ground prescribed in the rules made under the Securities Contracts (Regulation) Act, 1956.

As per the regulations, delisting of equity shares will not be permitted in the following cases:

- A period of three years has not elapsed since the listing of that class of equity shares on any recognised stock exchange
- If any instrument issued by the company, which is convertible into the same class of equity

share(s) that is sought to be delisted, is outstanding

- Delisting pursuant to a buyback of equity shares by the company, including a buyback pursuant to consolidation or division of all or part of the equity share capital of the company, unless a period of six months has elapsed from the date of completion of such buyback
- Delisting pursuant to a preferential allotment made by the company unless a period of six months has elapsed from the date of such allotment.

Effective date: The regulations are effective from the date of their publication in the official gazette i.e. 10 June 2021.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2021-25 dated 10 June 2021)

System driven disclosures to include listed debt securities

Background

Currently, Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) requires a promoter, an employee and a director of a listed company to disclose about the transaction relating to the acquisition or disposal of securities to the company within two trading days. This disclosure is required if the value of such a

2. Equity shares and convertible securities as defined under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009.

transaction exceeds INR10 lakh over any calendar quarter. Also, a listed company is required to notify the particulars of such trading to the stock exchange within two trading days of receipt of the disclosure of such information.

SEBI through a circular dated 9 September 2020 had decided to implement system driven disclosures for member(s) of promoter group and designated person(s) in addition to the promoter(s) and director(s) of a company (referred to as 'entities') under Regulation 7(2) of the PIT Regulations.

As per the circular, system driven disclosures under PIT Regulations would pertain to trading in equity shares and equity derivative instruments i.e. futures and options of the listed company (wherever applicable) by the entities. The process for implementation of the system has been specified in the circular.

As per the process, listed entities should provide the information including Permanent Account Number (PAN) of their promoters, designated person(s) and director(s) to the designated depository in a format and manner prescribed by the depositories within 10 days from the date of the circular. Any subsequent update in the details of entities need to be updated by the listed entity on the same day.

New development

SEBI through a circular dated 16 June 2021 has decided to include the listed debt securities of equity listed companies under the purview of the said system driven disclosures. The procedure for implementation of the system as specified in circular dated 9 September 2020 would also be applicable for the listed debt securities.

The depositories and stock exchanges are required to make necessary arrangements such that the disclosures pertaining to listed debt securities along with equity shares and equity derivative instruments are disseminated on the websites of respective stock exchanges with effect from 1 July 2021.

(Source: SEBI circular no. SEBI/HO/ISD/ISD/CIR/P/2021/578 dated 16 June 2021)

Relaxation under SEBI (Share Based Employee Benefit) Regulations, 2014

Currently, Regulation 18(1) and 24(1) of the SEBI (Share Based Employee Benefit) Regulations, 2014 (Share based Regulations) provide that there shall be a minimum vesting period of one year in case of employee stock options (options) and Stock Appreciation Rights (SAR).

Further, Regulation 9(4) of the Share based Regulations states that in the event of death of an employee while in employment, all the options,

SAR or any other benefit granted to him/her under a scheme till such date shall vest in the legal heirs or nominees of the deceased employee.

Relaxation

SEBI has decided to provide following relief to the families of the deceased employees of listed companies in view of the COVID-19 situation:

- The provisions under Share based Regulations relating to minimum vesting period of one year shall not apply in case of death (for any reason) of an employee.
- In such instances, all the options, SAR or any other benefit granted to such employee(s) shall vest with his/her legal heir or nominee on the date of death of the employee.

The relaxation will be available to all employees who have deceased on or after 1 April 2020.

(Source: SEBI circular no. SEBI/HO/CFD/DCR2/CIR/P/2021/576 dated 15 June 2021)

Relaxation in compliance with requirements pertaining to AIFs and VCFs

SEBI through a circular dated 31 May 2021 has decided to extend the due dates for regulatory filings by Alternative Investment Funds (AIFs) and Venture Capital Funds (VCFs) that fell due during the period ending March 2021 to July 2021 as

prescribed under SEBI (AIF) Regulations, 2012 and circulars issued thereunder. Accordingly, AIFs and VCFs may submit regulatory filings for the said period on or before 30 September 2021.

(Source: SEBI circular no SEBI/HO/IMD/IMD-I/DOF6/CIR/2021/568 dated 31 May 2021)

Mandatory risk based internal audit for HFCs

The Reserve Bank of India (RBI) through a notification dated 3 February 2021 has mandated Risk-Based Internal Audit (RBIA) framework for specified class of Non-Banking Financial Companies (NBFCs) and Primary (Urban) Co-operative Banks (UCBs).

RBI through a circular dated 11 June 2021, has further extended the applicability of the RBIA framework to the following class of Housing Finance Companies (HFCs):

- All deposit taking HFCs, irrespective of their size
- Non-deposit taking HFCs with asset size of INR5,000 crore and above.

Accordingly, these HFCs are required to put in place a RBIA framework by 30 June 2022, in accordance with the provisions of the circular dated 3 February 2021.

(Source: RBI circular no. RBI/2021-22/53 dated 11 June 2021)

RBI issued clarifications on guidelines for appointment of statutory central auditors/statutory auditors of commercial banks, UCBs and NBFCs

RBI through its notification dated 27 April 2021 has prescribed guidelines for appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SA) of commercial banks (excluding Regional Rural Banks (RRBs)), Urban Co-operative Banks (UCBs) and Non-Banking Finance Companies (NBFCs) (including HFCs) for FY2021-22 and onwards. The guidelines aim to streamline the procedure of appointment of statutory auditors and to improve the quality and standards of audit in RBI regulated entities.

Recently, RBI has issued certain clarifications in the form of Frequently Asked Questions (FAQs) to ease the implementation of the guidelines. Some of the key clarifications are as follows:

- **Applicability of time gap in non-audit work:**

As per the guidelines, the time gap between any non-audit work (specified in Section 144 of the Companies Act, 2013, special/internal assignments, etc.) by the SCAs/SAs for the entities or any audit/non-audit work for its group entities should be at least one year, before or after its appointment as SCAs/SAs.

Clarification

The group entities refer to the RBI regulated

entities in the group, which fulfil the definition of group entity, as provided in the circular. If an audit firm engaged with audit/non-audit works for the group entities (which are not regulated by RBI) is being considered by any of the RBI regulated entities in the group for appointment as SCAs/SAs, then it would be the responsibility of the board/Audit Committee Board/Local Management Committee (LMC) of the concerned RBI regulated entity to ensure that there is no conflict of interest and independence of auditors is ensured. This should be suitably recorded in the minutes of the meetings of board/ACB/LMC.

- **Eligibility criteria for audit firms:** In accordance with the guidelines, if any partner of a Chartered Accountant (CA) firm is a director in any entity, then the said entity would not be considered as SCA/SA of any of the group entities of that entity.

Clarification

RBI clarified that group entities in the guidelines refer to RBI regulated entities in the group. Therefore, if any partner of a CA firm is a director in an RBI regulated entity in the group, then the said firm shall not be appointed as SCA/SA of any of the RBI regulated entities in the group. However, if an audit firm is being considered by any of the RBI regulated entities in the group for appointment as SCAs/SAs, whose partner is a director in any of the group entities (which are

not regulated by RBI), the said audit firm should make appropriate disclosures to the ACB as well as board/LMC.

- **Continued appointment of existing SCA/SAs:** The existing SCAs/SAs of the entity can continue (including as joint auditors) only if they fulfil the eligibility criteria and have not completed the stipulated tenure of three years as SCAs/SAs of the entity. Till the appointment of SCAs/SAs for FY2021-22, the SCAs/SAs for FY2020-21 can continue for the limited review for quarter 1, quarter 2, etc.

(Source: FAQs on 'Guidelines for Appointment of Statutory Central Auditors (SCAs)/Statutory Auditors (SAs) of Commercial Banks (excluding RRBs), UCBs and NBFCs (including HFCs)' hosted on RBI's website)

Guidelines for declaration of dividends by NBFCs

RBI through a notification dated 24 June 2021 has issued guidelines on distribution of dividend by NBFCs. Some of the key requirements prescribed by the guidelines are as follows:

- A. **Board oversight:** The board of directors would need to consider the following aspects while considering the proposals for dividend:
 - a. Supervisory findings of the Reserve Bank (National Housing Bank (NHB) for HFCs) on divergence in classification and provisioning for Non-Performing Assets (NPAs)

- b. Qualifications in the auditors' report to the financial statements and
- c. Long term growth plans of the NBFC.

B. **Eligibility criteria:** NBFCs should comply with the prescribed minimum prudential requirements to be eligible to declare dividend. Those, *inter alia*, include:

- a. The net NPA ratio shall be less than six per cent in each of the last three years, including as at the close of the financial year for which dividend is proposed to be declared.
- b. NBFCs (other than standalone primary dealers) should have met the applicable regulatory capital requirement (given in Annexure I of the circular) for each of the last three financial years including the financial year for which the dividend is proposed.
- c. NBFCs should be compliant with the prevailing regulations/guidelines issued by RBI. RBI or the NHB (for HFCs) should not have placed any explicit restrictions on declaration of dividend.

C. **Quantum of dividend payable:** The ceilings on dividend payout ratios for NBFCs eligible to declare dividend are as under:

Type of NBFC	Maximum dividend payout ratio (percentage)
NBFCs that do not accept public funds and do not have any customer interface	No ceiling specified
Core Investment Company (CIC)	60
Standalone primary dealers	60
Other NBFCs	50

Effective date: The guidelines will be effective for declaration of dividend from the profits of the financial year ending 31 March 2022 and onwards.

(Source: RBI notification no. RBI/2021-22/59 dated 24 June 2021)

Revision in threshold for aggregate exposure of resolution framework for COVID-19 related stress of individuals, small businesses and MSMEs

Background

RBI through its notifications dated 5 May 2021 has announced the framework for resolution of COVID-19 related stress of individuals, small

businesses and Micro, Small and Medium Enterprises (MSMEs) respectively. The framework prescribes the eligibility of the borrowers which may be considered for resolution under the framework. Those, *inter alia*, include:

Individuals and small business

- a. Individuals who have availed loans and advances for business purposes and to whom the lending institutions have aggregate exposure of not more than **INR25 crore** as on 31 March 2021.
- b. Small businesses, including those engaged in retail and wholesale trade, other than those classified as MSMEs as on 31 March 2021, and to whom the lending institutions have aggregate exposure of not more than **INR25 crore** as on 31 March 2021.

MSMEs

- a. The aggregate exposure, including non-fund based facilities, of all lending institutions to the borrower does not exceed **INR25 crore** as on 31 March 2021.

New development

RBI through its notifications dated 4 June 2021 has increased the threshold of INR25 crore in the above-mentioned eligibility criteria to INR50 crore.

(Source: RBI notification no. RBI/2021-22/46 and RBI/2021-22/47 dated 4 June 2021)

FASB proposed improvements to discount rate guidance for lessees that are not public business entities

Currently, Topic 842, *Lease Accounting* provides lessees that are not public business entities with a practical expedient that allows them to make an accounting policy election to use a risk-free rate as the discount rate for all leases. The practical expedient aims to provide relief to those lessees from having to calculate an incremental borrowing rate, which could create unnecessary cost and complexity.

On 16 June 2021, the Financial Accounting Standards Board (FASB) has issued a proposed Accounting Standards Update (ASU) that would improve discount rate guidance for lessees that are not public business entities - including private companies, not-for-profit organisations, and employee benefit plans.

The amendments in the proposed ASU would allow lessees that are not public business entities to make the risk-free rate election by class of underlying asset, rather than at the entity-wide level. It would also require that, when the rate implicit in the lease is readily determinable for any individual lease, a lessee would use that rate (rather than a risk-free rate or an incremental borrowing rate), regardless of whether it has made the risk-free rate election.

Comments on the proposed ASU have been invited up to 16 July 2021.

(Source: Proposed ASU on Topic 842 issued by FASB on 16 June 2021)

