

Chapter 3

Regulatory updates

SEBI issued amendments to the related party framework under LODR

SEBI through a notification dated 9 November 2021 has issued certain amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR). Consequent disclosure obligations have been laid down in a separate circular dated 22 November 2021¹.

Key amendments are as follows:

- **Definition of related parties:** The definition of related party has been amended, and would include:
 - a. A 'related party' as defined under Section 2(76) of the Companies Act, 2013 (2013 Act) and the applicable accounting standards or Ind AS,
 - b. Any person or entity forming a part of the 'promoter' or promoter group' of the listed entity (effective from 1 April 2022)
 - c. Any person or any entity, holding equity shares in the listed entity either directly or on a beneficial interest basis as prescribed under Section 89 of the 2013 Act at any time during the immediately preceding financial year:
 - of 20 per cent or more, or (effective from 1 April 2022)

1. The provisions of the circular shall come into force with effect from 1 April 2022.

- of 10 per cent or more (effective from 1 April 2023).
- **Definition of RPTs:** The definition of Related Party Transactions (RPTs) has been amended to include transactions carried out between:
 - a. A listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand or (effective from 1 April 2022)
 - b. A listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries (effective from 1 April 2023).

The above transactions would be considered as RPTs regardless of whether a price has been charged.

Additionally, following transactions are excluded from the definition of RPTs (effective 1 April 2022):

- a. The issue of specified securities on a preferential basis subject to compliance of the requirements under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
- b. Corporate actions by the listed entity which are uniformly applicable/offered

to all shareholders in proportion to their shareholding such as payment of dividend, subdivision or consolidation of securities, issuance of securities by way of a rights issue or a bonus issue and buy-back of securities.

- c. Acceptance of fixed deposits by banks/ Non-Banking Finance Companies (NBFCs) at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of RPTs every six months to the stock exchange(s), in the specified format.
- d. Units issued by mutual funds which are listed on a recognised stock exchange.

- **Shareholders' approval for RPTs:** The amendment requires prior approval of the shareholders of a listed entity for all material RPTs and **subsequent material modifications of such transactions** (effective 1 April 2022).

(Emphasis added to highlight the change)

However, a prior approval of the shareholders would not be required if the transaction is entered into by a listed subsidiary of the listed entity, and the subsidiary is subject to compliance with Regulation 23 and Regulation 15(2) of the LODR. Further, for RPTs of unlisted subsidiaries of a listed subsidiary, prior approval of the shareholders of the listed subsidiary would suffice.

Information to be provided to shareholders

The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the 2013 Act, include the following information as part of the explanatory statement:

- a. A summary of the information provided by the management of the listed entity to the audit committee
 - b. Justification for why the proposed transaction is in the interest of the listed entity
 - c. Percentage of the counter party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis
 - d. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders
 - e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis.
- **Materiality threshold:** In accordance with the revised definition of materiality, an RPT would be considered material, if the transaction entered into individually or taken together with previous

transactions during a financial year, exceeds **INR 1,000 crore** or 10 per cent of the consolidated annual turnover of the listed entity as per last audited financial statements, whichever is lower (effective from 1 April 2022).

(Emphasis added to highlight the change)

- **Audit committee approval:** The amendment requires prior approval of the audit committee of the listed entity in the following circumstances:
 - a. All RPTs and subsequent material modifications as defined by the audit committee (effective from 1 April 2022)
 - b. A RPT to which the subsidiary of a listed entity is a party, but the listed entity is not a party if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds threshold of:
 - i. 10 per cent of the annual consolidated turnover in accordance with the last audited financial statements of the listed entity (effective from 1 April 2022)
 - ii. 10 per cent of the annual standalone turnover in accordance with the last audited financial statements of the subsidiary (effective from 1 April 2023).

Additionally, audit committee approval would not be required if the listed subsidiary is subject to compliance with Regulation 23 and Regulation 15(2) of the LODR. Furthermore, the amendments clarify that for RPTs of unlisted subsidiaries of a listed subsidiary, prior approval of the audit committee of the listed subsidiary would suffice.

Information to be reviewed by the audit committee for approval of RPTs

The listed entity shall provide the following information, for review of the audit committee for approval of a proposed RPT:

- a. Type, material terms and particulars of the proposed transaction
- b. Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise)
- c. Tenure of the proposed transaction (particular tenure shall be specified)
- d. Value of the proposed transaction
- e. The percentage of the listed entity's annual consolidated turnover for the immediately preceding financial year, that is represented by the value of the proposed transaction. For

a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided.

- f. If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:
 - i. Details of the source of funds in connection with the proposed transaction
 - ii. Where any financial indebtedness is incurred to make or give loans, inter-corporate deposits, advances or investments – nature of indebtedness, cost of funds and tenure
 - iii. Applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security and
 - iv. The purpose for which the funds will be utilised by the ultimate beneficiary of such funds pursuant to the RPT.
- g. Justification as to why the RPT is in the interest of the listed entity
- h. A copy of the valuation or other external party report, if any such report has been relied upon



- i. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis
- j. Any other information that may be relevant.

Additionally, the audit committee shall review the status of long-term (more than one year) or recurring RPTs on an annual basis.

- **Enhanced disclosures:** As per the amendment, listed entities will be required to provide RPT disclosures under Regulation 23(9) of the LODR every six months in the format specified by SEBI (vide circular dated 22 November 2021) within the following timelines:
 - a. Within 15 days from the date of publication of the standalone and consolidated financial results (effective 1 April 2022)
 - b. On the date of publication of its standalone and consolidated financial results (effective 1 April 2023).

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2021/55 dated 9 November 2021 and SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated 22 November 2021)

Scheme of arrangement by listed entities

Recently, SEBI has issued certain amendments to its master circular (no. SEBI/HO/CFD/DIL1/CIR/P/2020/249) dated 22 December 2020 which laid down the framework for schemes of arrangement by listed entities. The amendments mainly prescribe additional documents to be submitted with the stock exchanges before the scheme is sanctioned by the NCLT. Those are as follows:

- a. In accordance with the master circular, listed entities are required to submit a valuation report with the stock exchange. The amendments additionally require listed entities to submit an undertaking that no material event impacting the valuation has occurred during the intervening period of filing the scheme documents with stock exchange and period under consideration for valuation.
- b. Declaration from the listed entity on any past defaults of listed debt obligations of the entities forming part of the scheme.
- c. No Objection Certificate (NOC) from the lending scheduled commercial banks/financial institutions/debenture trustees².
- d. A report from its audit committee and the independent directors certifying that the listed entity has compensated the eligible shareholders.

Both the reports shall be submitted within seven days of compensating the shareholders.

(Source: SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000657 dated 16 November 2021 and SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000659 dated 18 November 2021)

FAQs on Share-based and Sweat Equity Regulations

In August 2021, SEBI notified the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (Share-based and Sweat Equity Regulations).

On 16 November 2021, SEBI has issued certain clarifications in respect of terms/concepts related to the Share-based and Sweat Equity Regulations.

Some of the key clarifications are as follows:

- **Definition of employee:** With respect to definition of an employee under the Share-based and Sweat Equity Regulations, term 'exclusively working in India or outside India' means any employee who is exclusively working with such a company, irrespective of whether such person is employed either in India or outside India.
- **Eligibility of contractual employees:** It has been clarified that contractual employees are also eligible to receive benefits under the Share Based Employee Benefits schemes provided they

2. SEBI circular dated 18 November 2021.

are designated as employees by their employers and are exclusively working with such a company or its group company including subsidiary, its associate company, or its holding company.

- **Benefits granted to employees of group companies:** Shareholders are required to approve the grant of options, Stock Appreciation Rights (SAR), shares or other benefits, as the case may be, to employees of a group company including subsidiaries, its associate companies, joint ventures, or holding company.
- **Benefits to directors:** As per the clarification, grants, SARs or other benefits granted and not vested to the directors who have vacated the office due to retirement would continue to vest in accordance with the respective vesting schedules even after the cessation of directorship due to retirement. This is subject to the terms of the company's policies.
- **Employee welfare scheme with no share-based benefits:** General Employee Benefits Scheme (GEBS) has been defined as any scheme of a company framed in accordance with the Share-based and Sweat Equity Regulations dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of

sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such a company. Therefore, any employee welfare scheme holding/dealing in shares of the company or the shares of its listed holding company is covered under the scope of Share-based and Sweat Equity Regulations, including the timelines prescribed thereunder.

(Source: SEBI FAQs on Share-based and Sweat Equity Regulations issued on 16 November 2021)

MCA issued amendments to the IEPF Rules

On 9 November 2021, the Ministry of Corporate Affairs (MCA) has issued certain amendments to the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016 (IEPF Rules). Key amendments are as follows:

- **Documents to be submitted to register transmission of securities:** Currently, Schedule II of the IEPF Rules prescribe list of documents to be submitted to the IEPF authority to register transmission of securities held in physical mode and DEMAT mode. In accordance with Schedule II, certain documents are required to be furnished if the value of securities is up to **INR2 lakh** per issuer company as on date of application including

succession certificate or probate of will or will or letter of administration or decree, as may be applicable in terms of Indian Succession Act, 1925.

The amendments have increased the above-mentioned threshold from INR2 lakh to **INR5 lakh**. Further, the company may enhance the limit of INR5 lakh per issuer company in accordance with Schedule VII of the LODR after taking approval of its board of directors and provide copy of board resolution to IEPF Authority at the time of verification of claim.

- **Documents to be submitted in case of loss of securities held in physical mode:** As per the amendments, in case of loss of securities held in physical mode, claimant is required to submit a copy of advertisement issued in at least one English language national daily newspaper with nationwide circulation and in one regional language daily newspaper published in the place of registered office of company, if the market value of shares is greater than **INR5 lakh** (earlier INR10,000).
- **Revised Form no. IEPF-5: The amendments** have also issued revised format for making an application to the IEPF authority for claiming unpaid amounts and shares out of IEPF in Form no. IEPF-5.

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

(Source: MCA notification no. G.S.R. 785(E) dated 9 November 2021)

Prudential norms on Income Recognition, Asset Classification and Provisioning pertaining to Advances

On 1 October 2021, the Reserve Bank of India (RBI) has issued a master circular on matters relating to prudential norms on Income Recognition, Asset Classification and Provisioning (IRACP) pertaining to advances.

With a view to ensure uniformity in the implementation of IRACP norms across all lending institutions, on 12 November 2021, RBI has issued certain clarifications which will be applicable *mutatis mutandis* to all lending institutions. Those are as follows:

- **Specification of due date/repayment date:** The extant instructions on IRACP norms specify that an amount is to be treated as overdue if it is not paid on the due date fixed by the bank. In this context, RBI clarified that the exact due dates for repayment of a loan, frequency of repayment, breakup between principal and interest, etc.

should be clearly specified in the loan agreement. Further, the borrower should be apprised of the same at the time of loan sanction and also at the time of subsequent changes, if any, to the sanctioned terms/loan agreement till full repayment of the loan.

In cases of loan facilities with moratorium on payment of principal and/or interest, the exact date of commencement of repayment should also be specified in the loan agreements.

These instructions shall be complied with at the earliest, but not later than 31 December 2021, in respect of fresh loans. In case of existing loans, compliance to these instructions shall necessarily be ensured as and when such loans become due for renewal/review.

- **Classification as Special Mention Account (SMA) and Non-Performing Asset (NPA):** RBI's 'Prudential Framework for Resolution of Stressed Assets' requires the lenders to recognise incipient stress in borrower accounts, immediately on default, by classifying them as SMA. To remove ambiguity, RBI has clarified that the intervals are intended to be continuous and accordingly, the



basis for classification of SMA categories shall be as follows:

Loans other than revolving facilities		Loans in the nature of revolving facilities like cash credit/overdraft	
SMA sub-categories	Basis for classification- Principal or interest payment or any other amount wholly or partly overdue	SMA sub-categories	Basis for classification- Outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for a period of:
SMA-0	Up to 30 days		
SMA-1	More than 30 days and up to 60 days	SMA-1	More than 30 days and up to 60 days
SMA-2	More than 60 days and up to 90 days	SMA-2	More than 60 days and up to 90 days

Further, it has been clarified that borrower accounts shall be flagged as overdue by the lending institutions as part of their day-end processes for the due date, irrespective of the time of running such processes. Similarly, classification of borrower accounts as SMA as well as NPA shall be done as part of day-end process for the relevant date and the SMA or NPA classification date shall be the calendar date for which the day end process is run. In other words, the date of SMA/NPA shall reflect the asset classification status of an account at the day-end of that calendar date.

The instructions on SMA classification of borrower accounts are applicable to all loans³, including retail loans, irrespective of size of exposure of the lending institution.

- **Definition of an 'out of order':** An account shall be treated as 'out of order' if:
 - a. The outstanding balance in the Cash Credit (CC)/Overdraft (OD) account remains continuously in excess of the sanctioned limit/drawing power for 90 days, or

b. The outstanding balance in the CC/OD account is less than the sanctioned limit/drawing power but there are no credits continuously for 90 days, or the outstanding balance in the CC/OD account is less than the sanctioned limit/drawing power but credits are not enough to cover the interest debited during the previous 90 days period.

- **Upgradation of accounts classified as NPAs:** Loan accounts classified as NPAs may be upgraded as 'standard' asset only if entire arrears of interest and principal are paid by the borrower. With regard to upgradation of accounts classified as NPA due to restructuring, non-achievement of date of commencement of commercial operations (DCCO), etc., the instructions as specified for such cases shall continue to be applicable.
- **Income recognition policy for loans with moratorium on payment of interest:** In cases of loans where moratorium has been granted for repayment of interest, lending institutions may recognise interest income on accrual basis for accounts which continue to be classified as 'standard'. It is clarified that if loans with moratorium on payment of interest (permitted at the time of sanction of the loan) become NPA after the moratorium period is over, the capitalised interest corresponding to the interest accrued during such moratorium period need not be reversed.

3. Agricultural advances governed by crop season-based asset classification norms shall be exempt from this instruction.

- **NPA classification in case of interest**

payments: As per the extant instructions of master circular dated 1 October 2021, in case of interest payments, an account is classified as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter. To fully align with the 90 days delinquency norm as well as the requirement to apply interest at monthly rests, the above instructions are modified as under:

In case of interest payments in respect of term loans, an account will be classified as NPA if the interest applied at specified rests remains overdue for more than 90 days.

These instructions are effective from 31 March 2022. Accordingly, in respect of any borrower account which becomes overdue on or after 31 March 2022, its classification as NPA shall be based on the account being overdue for more than 90 days.

- **Consumer education:** With a view to increase awareness among the borrowers, lending institutions should place consumer education literature on their websites, explaining with examples, the concepts of date of overdue, SMA and NPA classification and upgradation, with specific reference to day-end process. Lending institutions may also consider displaying such consumer education literature in their branches by means of posters and/or other appropriate media.

Further, it shall also be ensured that their front-line officers educate borrowers about all these concepts, with respect to loans availed by them, at the time of sanction/disbursal/renewal of loans. These instructions shall be complied with at the earliest, but not later than 31 March 2022.

(Source: RBI notification no. RBI/2021-2022/125 dated 12 November 2021)

PCA framework for scheduled commercial banks

In 2002, RBI notified the Prompt Corrective Action (PCA) framework for Scheduled Commercial Banks (SCBs) which is reviewed by RBI on a continuous basis. The objective of the PCA framework is to enable supervisory intervention at appropriate time and require the supervised entity to initiate and implement remedial measures in a timely manner, so as to restore its financial health. The PCA framework does not preclude the RBI from taking any other action as it deems fit at any time, in addition to the corrective actions prescribed in the framework.

On 2 November 2021, RBI has issued certain revisions to the PCA framework which are effective from 1 January 2022. Key features of the revised framework are as follows:

- Capital, asset quality and leverage will be the key areas for monitoring in the revised framework.

- Indicators to be tracked for capital, asset quality and leverage would be CRAR/Common Equity Tier I Ratio, net NPA ratio and Tier I Leverage Ratio respectively.
- A bank will generally be placed under the PCA framework based on the audited annual financial results and the ongoing supervisory assessment made by RBI. RBI may impose PCA on any bank during the course of a year (including migration from one threshold to another) in case the circumstances so warrant.
- The PCA framework would apply to all banks operating in India including foreign banks operating through branches or subsidiaries based on breach of risk thresholds of identified indicators.
- Some of the actions that can be taken under the framework are:
 - a. Strategy related actions:** RBI to advise the bank's board to:
 - i. Activate the recovery plan that has been duly approved by the supervisor
 - ii. Undertake a detailed review of business model in terms of sustainability of the business model, profitability of business lines and activities, medium and long-term viability, etc.



- iii. Review short term strategy focussing on addressing immediate concerns
- iv. Undertake restructuring of operations as appropriate.

b. Governance related actions:

- i. RBI to recommend to owners (government/promoters/parent of foreign bank branch) to bring in new management/board
- ii. RBI to remove managerial persons or supersede the board
- iii. RBI to impose restrictions on directors or management compensation, as applicable.

c. Capital related actions:

- i. Restriction on investment in subsidiaries/associates
- ii. Requiring the bank to bolster reserves through retained profits
- iii. Restriction in expansion of high risk-weighted assets to conserve capital.

d. Credit risk related actions:

- i. Preparation of time bound plan and commitment for reduction of stock of NPAs
- ii. Strengthening of loan review mechanism
- iii. Restrictions/reduction in total credit risk weight density

- iv. Sale of assets.

(Source: RBI notification no. RBI/2021-22/118 dated 2 November 2021)

IASB proposed amendments to IAS 1

On 19 November 2021, the International Accounting Standards Board (IASB) has proposed narrow-scope amendments to IAS 1, *Presentation of Financial Statements* through an Exposure Draft (ED) - *Non-current Liabilities with Covenants*. The amendments are expected to improve the information companies provide about long-term debt with covenants.

Currently, IAS 1 requires a company to classify a liability as non-current only if the company has a right to defer settlement of the liability for at least 12 months after the reporting date. However, such a right is often subject to the company complying with covenants after the reporting date. For example, a company might have long-term debt that could become repayable within 12 months if the company fails to comply with covenants after the reporting date.

The proposed amendments would specify that, in such a situation, covenants would not affect the classification of a liability as current or non-current at the reporting date. Instead, a company would:

- Present non-current liabilities that are subject to covenants on the statement of financial position separately from other non-current liabilities and

- Disclose information about the covenants in the notes to its financial statements, including their nature and whether the company would have complied with them based on its circumstances at the reporting date.

Comments on the ED are invited up to 21 March 2022.

(Source: IASB announcement dated 19 November 2021)

FASB updates

ASU on Topic 842, Leases

On 11 November 2021, the Financial Accounting Standards Board (FASB) has issued an Accounting Standards Update (ASU) which intends to improve discount rate guidance for lessees that are not public business entities - including private companies, not-for-profit organisations, and employee benefit plans.

Currently, Topic 842 provides lessees that are not public business entities with a practical expedient that allows them to elect, as an accounting policy, to use a risk-free rate as the discount rate for all leases.

The amendments in the ASU allow those lessees to make the risk-free rate election by class of underlying asset, rather than at the entity-wide level. An entity that makes the risk-free rate election is required to disclose which asset classes it has elected to apply a risk-free rate.

The amendments require that when the rate implicit in the lease is readily determinable for any individual lease, the lessee 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.

Effective date: The effective date for this ASU is different for entities that have not yet adopted Topic 842 as of 11 November 2021, and those that have. Accordingly:

- *Entities that have adopted Topic 842 as of 11 November 2021:* The amendments are effective for fiscal years beginning after 15 December 2021, and interim periods within fiscal years beginning after 15 December 2022. Earlier application is permitted.
- *Entities that have not yet adopted Topic 842 as of 11 November 2021:* Such entities are required to adopt the amendments at the same time that they adopt Topic 842.

(Source: FASB's ASU no. 2021-09 on Topic 842 issued on 11 November 2021)

ASU on Topic 832, Government Assistance

FASB through an announcement dated 17 November 2021 has issued an ASU which is expected to increase transparency in financial reporting by requiring business entities to disclose, in notes to their financial statements, information about certain types of government assistance they

receive. Examples of such government assistance include cash grants and grants of other assets.

The amendments in the ASU require following annual disclosures about transactions with a government that are accounted for by applying a grant or contribution accounting model by analogy to other accounting guidance such as a grant model within FASB's Accounting Standards Codification Topic 958, *Not-for-Profit Entities*, or International Accounting Standards (IAS) 20, *Accounting for Government Grants and Disclosure of Government Assistance*:

- Information about the nature of the transactions and the related accounting policy used to account for the transactions.
- The line items on the balance sheet and income statement that are affected by the transactions, and the amounts applicable to each financial statement line item.
- Significant terms and conditions of the transactions, including commitments and contingencies.

Effective date: The amendments in the ASU are effective for all entities within their scope, which excludes not-for-profit entities and employee benefit

plans, for financial statements issued for annual periods beginning after 15 December 2021. Early application is permitted.

(Source: FASB's ASU no. 2021-10 on Topic 832 issued on 17 November 2021)

Proposed ASU on Topic 270, *Interim Reporting*

The Financial Accounting Standards Board (FASB) through an announcement dated 1 November 2021 has issued an Accounting Standards Update (ASU) which intends to modify the disclosure requirements for interim financial reporting in Topic 270, *Interim Reporting*. The proposed ASU is part of the FASB's disclosure framework project to improve the effectiveness of disclosure to the notes to financial statements.

The proposed amendments relate to the following:

- **Disclosure principle:** The amendments in this proposed ASU add a new principle, based on the removed portion of Regulation S-X, Rule 10-01. That principle requires disclosures for a significant event or transaction that has a material effect on an entity and results in disclosures that are transaction or event specific.

- **Presentation and disclosure alternatives in interim reporting:** The amendments would clarify that interim reporting can take the following three forms:

- a. Financial statements prepared with the same level of detail as the previous annual statements subject to all the presentation and disclosure requirements in GAAP
- b. Financial statements prepared with the same level of detail as the previous annual statements subject to all the presentation requirements in GAAP and limited notes subject to the disclosure requirements in Topic 270
- c. Condensed financial statements and limited notes subject to the disclosure requirements in Topic 270.

The amendments in this proposed ASU would apply to all entities that provide interim financial statements and notes in accordance with GAAP.

Comments on the proposed ASU are invited up to 31 January 2022.

(Source: FASB's proposed ASU on Topic 270 issued on 1 November 2021)

