

CHAPTER 4

# Regulatory updates



## Amendments issued to Indian Accounting Standards

The Ministry of Corporate Affairs (MCA) vide notification dated 23 March 2022 issued the Companies (Indian Accounting Standards) Amendment Rules, 2022. These rules notify certain amendments to Indian Accounting Standards (Ind AS). These amendments are effective from 1 April 2022.

Most of these amendments have been made to keep the Ind AS converged with the International Financial Reporting Standards (IFRS) issued by the International Accounting Standards Board (IASB) except for an amendment to Ind AS 16, *Property, Plant and Equipment*.

An overview of the amendments are given below:

| Ind AS   | Amendments notified  |
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| <b>Ind AS 37, Provisions, Contingent Liabilities and Contingent Assets</b> | <p>As per Ind AS 37, a contract is 'onerous' when the unavoidable costs of meeting the contractual obligations (i.e. the lower of the costs of fulfilling the contract and the costs of terminating it) outweigh the economic benefits. Ind AS 37 did not define what are the costs of fulfilling a contract.</p> <p>The amendments have clarified the types of costs a company can include as the 'costs of fulfilling a contract' while assessing whether a contract is onerous as under:</p> <p>(a) The incremental costs of fulfilling that contract—for example, direct labour and materials; and</p> <p>(b) An allocation of other costs that relate directly to fulfilling contracts—for example, an allocation of the depreciation charge for an item of property, plant and equipment used in fulfilling that contract among others.</p> <p><b>Transition:</b> The amendments apply for annual reporting periods beginning on or after 1 April 2022 to contracts existing at the date when the amendments are first applied. At the date of initial application, the cumulative effect of initially applying the amendments is recognised as an opening balance adjustment to retained earnings or other component of equity, as appropriate. The comparatives are not required to be restated.</p> |
| <b>Ind AS 103, Business Combinations</b>                                   | <p>The amendments have given reference of <i>Conceptual Framework for Financial Reporting under Ind AS</i> for definition of assets and liabilities without changing the accounting requirements for business combinations.</p> <p>This amendment is applicable to business combinations for which acquisition date is on or after 1 April 2022.</p>   |

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| <b>Ind AS 16, Property, Plant and Equipment (PPE)</b> | <p>Amendments to Ind AS 16 have clarified the accounting treatment for sale proceeds of items produced by PPE while preparing it for its intended use.</p> <p>These amendments have clarified that excess of net sale proceeds of items produced over the cost of testing, if any, would not be recognised in the statement of profit or loss, but deducted from the directly attributable costs considered as part of cost of an item of PPE. (Note: This is a carve out from IAS 16, <i>Property, Plant and Equipment</i>, which requires proceeds from selling items before the related item of PPE is available for use to be recognised in the statement of profit and loss.)</p> <p>The amendments are effective for annual reporting periods beginning on or after 1 April 2022</p> |
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### Annual improvements to Ind AS (2021)

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| <b>Ind AS 101, First-time Adoption of Indian Accounting Standards</b> | <p>As per the amendment, if a subsidiary adopts Ind AS later than its parent and applies Ind AS 101.D16(a), then a subsidiary may elect to measure cumulative translation differences for all foreign operations at amounts included in the consolidated financial statements of the parent, based on the parent's date of transition to Ind AS. A similar election is available to an associate or joint venture that uses the exemption in paragraph D16(a).</p>                                      |
| <b>Ind AS 109, Financial Instruments</b>                              | <p>This amendment clarifies that for the purpose of performing the '10 per cent test' for derecognition of financial liabilities – in determining those fees paid net of fees received, a borrower includes only fees paid or received between the borrower and the lender, including the fees paid or received by either the borrower or lender on the other's behalf.</p> <p>This amendment would be applicable to financial liabilities that are modified or exchanged on or after 1 April 2022.</p> |
| <b>Ind AS 41, Agriculture</b>   | <p>The amendment removes the requirement to exclude cash flows for taxation when measuring fair value, thereby aligning the fair value measurement requirements in Ind AS 41 with those in Ind AS 113, <i>Fair Value Measurement</i>.</p> <p>This amendment would be applicable to fair value measurements on or after 1 April 2022.</p>  |

(Source: MCA notification no G.S.R. 255 (E) dated 23 March 2022)

## Extension of timelines by MCA

### Manner of maintaining books of account in electronic mode

As per the proviso to rule 3 of the Companies (Accounts) Rules, 2014, every company which uses accounting software for maintaining its books of account, should use only such accounting software which has a feature of recording audit trail of each and every transaction, creates an edit log of each change made in the books of account along with the date when such changes were made and ensures that the audit trail cannot be disabled. This rule was applicable from 1 April 2022.

The MCA vide circular dated 31 March 2022 has deferred the applicability of this clause. Accordingly, it would now be applicable from 1 April 2023.

(Source: MCA notification dated 31 March 2022)

### Time period for filing of CSR return

On 11 February 2022, MCA had amended rule 12 of the Companies (Accounts) Rules, 2014, thereby inserting a new sub-rule (1B) which required every company covered under section 135(1) of the Companies Act, 2013 (2013 Act) to furnish a report on Corporate Social Responsibility (CSR) in Form CSR-2 to the Registrar of Companies (RoC) for the preceding financial year (2020-2021) and onwards as an addendum to Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

Form CSR-2 for the preceding financial year (FY2020- 2021) would be filed separately on or before 31 March 2022, after filing Form AOC-4 or AOC-4 XBRL or AOC-4 NBFC (Ind AS), as the case may be.

The MCA, vide notification dated 31 March 2022 has extended the due date for filing Form CSR-2 for FY2020-2021 to 31 May 2022.

(Source: MCA notification dated 31 March 2022)

## The Company Law Committee report

In 2019, the Company Law Committee (CLC) was constituted by the Ministry of Corporate Affairs (MCA) to make recommendations to the Government on changes aimed at facilitating and promoting greater ease of doing business in India.

The CLC has submitted its latest Report (2022) to the Government on 21 March 2022 which has made recommendations on issues expected to facilitate smooth conduct of business, given the COVID-19 pandemic. The report recommends various changes to the 2013 Act to recognise new concepts, expedite corporate processes, improve compliance requirements, and remove ambiguities from existing provisions.

Some of the key recommendations of the CLC regarding the 2013 Act are as follows:

- Allowing certain companies to revert to the financial year followed in India
- Facilitating certain companies to communicate

with their members in only electronic form

- Recognising issuance and holding of fractional shares, restricted stock units and stock appreciation rights
- Easing the requirement of raising capital in distressed companies
- Replacing the requirement of furnishing affidavits with the filing of self certification/ declaration
- Clarifying the inclusion of 'free reserves' while determining the limit for buying back of a company's equity shares
- Allowing companies to hold general meetings in virtual, physical or hybrid modes
- Creating an electronic platform for maintenance of statutory registers by companies
- Strengthening the National Financial Reporting Authority
- Reviewing and strengthening the audit framework and introducing mechanisms to ensure the independence of auditors
- Standardising the manner for auditors to provide qualifications
- Recognising and providing an enabling framework for the constitution of Risk Management Committees
- Clarifying the tenure of independent directors
- Revising provisions relating to the

disqualification and vacation of the office of directors

- Clarifying the procedure for the resignation of key managerial personnel
- Strengthening the provisions relating to mergers and amalgamations
- Modernising enforcement and adjudication activities through electronic mode.

(Source: MCA issued Report of the Company Law Committee dated 21 March 2022)



## SEBI issues clarification on omnibus approval of audit committee on material related party transactions

### Background

- As per Regulation 23(3)(e) of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations), an omnibus approval granted by the audit committee shall be valid for a period not exceeding one year and shall require fresh approvals after expiry of one year.
- Regulation 23(4) of the Listing Regulations requires shareholder's approval for material Related Party Transactions (RPTs). Further, as per the 2013 Act the time gap between two Annual General Meetings (AGMs) cannot be more than 15 months.
- SEBI received various requests to clarify the period of validity of the omnibus approval where the transactions are material and shareholders' approval is also required.

### Clarification

Accordingly, in order to enable listed entities to align their processes to conduct AGMs and obtain omnibus shareholders' approval for material RPTs, SEBI provided the below clarifications:

- The shareholders' approval of omnibus RPTs obtained in an AGM then it would be valid upto the date of the next AGM for a period not

exceeding 15 months

- In case of omnibus approvals for material RPTs, obtained from shareholders in general meetings other than AGMs then such omnibus approval would be valid for one year.

(Source: SEBI notification no SEBI/HO/CFD/CMD1/CIR/P/2022/47 dated 8 April 2022)

## SEBI amends certain Regulations

SEBI, vide notification dated 11 April 2022, has issued amendments in the following regulations:

### SEBI Listing Regulations (Third Amendment) Regulations, 2022

Regulation 54 of the SEBI Listing Regulations provides that a listed entity which has issued listed non-convertible debt securities should maintain 100 per cent asset cover sufficient to discharge the principal amount at all times for the non-convertible debt securities issued. The recent amendments are as follows:

- Term 'asset cover' has been substituted with the term 'security cover' in Regulation 54 and 56
- Regulation 54 states that a listed entity shall maintain 100 per cent security cover sufficient to discharge both principal **and interest** (Earlier: only principal)
- Maintenance of security cover prescribed for **secured** listed non-convertible debt securities (Earlier: listed non-convertible debt securities).

## SEBI (Debenture Trustees) (Amendment) Regulations, 2022

Regulation 15 of SEBI (Debenture Trustee) Regulations, 1993, specifies duties of the debenture trustees, has been amended by substituting the term 'asset cover' with the term 'security cover'.

## SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2022

The following amendments have been made:

- Regulation 23 and 38 of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 have been amended to state that the issuer and lead manager should ensure that the secured debt securities are secured by 100 per cent security cover or higher security cover as per the terms of the offer document and/or debenture trust deed, sufficient to discharge the principal amount and the interest thereon at all times for the issued debt securities.
- Due Diligence by the debenture trustee shall be followed by furnishing a due diligence certificate to the Board and the stock exchanges in the formats prescribed for secured debt securities (Schedule IV) and unsecured debt securities (Schedule IVA)
- Rationalised references with respect to disclosure of credit ratings have been stated.

(Source: SEBI notification no SEBI/LAD-NRO/GN/2022/77, SEBI/LAD-NRO/GN/2022/78, SEBI/LAD-NRO/GN/2022/79 dated 11 April 2022).

## RBI issued clarification with regard to the revised regulatory framework for NBFCs – Scale Based Regulation

### Background

In October 2021, the Reserve Bank of India (RBI) had issued the Scale-Based Framework (SBR framework) for Non-Banking Financial Companies (NBFCs), rendering the regulation and supervision of the NBFCs to be a function of their size, activity and perceived riskiness. Various regulatory revisions were prescribed for NBFCs under different layers of the SBR framework (NBFC-Base Layer (BL), NBFC- Middle Layer (ML), NBFC- Upper Layer (UL) and NBFC- Top Layer (TL). However, RBI had mentioned that it would issue clarifications on some of these regulations on subsequent dates.

### New development

On 19 April 2022, RBI issued clarifications on the following topics:

#### A. Capital requirements for NBFCs

NBFC-UL shall maintain, on an on-going basis, Common Equity Tier 1 (CET1) capital of at least 9 per cent of Risk Weighted Assets and provides the formula for the CET 1 ratio. The circular also prescribes the elements of CET I Capital to include head such as paid-up equity share capital issued by the NBFC, share premium resulting from the issue of equity shares, capital reserves representing surplus arising out of sale proceeds of assets,

statutory reserves, revaluation reserves, subject to meeting prescribed conditions, etc.

*Applicability* – These clarifications are applicable to all NBFCs identified as NBFC-UL, except Core Investment Companies (CICs).

### **B. Disclosures in Financial Statements – Notes to Accounts of NBFCs**

NBFCs are required to make disclosures in their financial statements in accordance with existing prudential guidelines, applicable accounting standards, laws, and regulations. RBI has issued certain additional disclosure requirements for NBFCs in line with the SBR framework. Comprehensive disclosures that help in the understanding of financial position and performance of the company have been encouraged. The additional disclosure requirements for NBFCs in accordance with the SBR framework are prescribed as annexure in the RBI circular.

*Applicability* – The RBI circular is applicable to all NBFCs. The circular specifies the applicability of specific disclosure requirements to specific NBFC layers as per Scale Based Regulation. The disclosure requirements applicable to lower layers of NBFCs will be applicable to NBFCs in higher layers. These guidelines are effective for annual financial statements for year ending 31 March 2023, and onwards.

### **C. Regulatory restrictions with regard to Loans and Advances**

The RBI circular has provided detailed guidelines on regulatory restrictions on lending in respect of NBFCs placed in different layers as per the Scale Based Regulation. These guidelines shall be effective from 1 October 2022.

#### **Guidelines applicable to NBFC – Middle Layer (ML) and NBFC-Upper Layer (UL) regulatory restrictions on loans and advances**

**1. Loans and advances to Directors** – NBFCs require sanction by the Board of Directors/ Committee of Directors for grant of any loans or advances aggregating INR5 crore and above to:

- Their directors (including the Chairman/ Managing Director) or relatives of directors
- Any firm in which any of their directors or their relatives is interested as a partner, manager, employee or guarantor
- Any company in which any of their directors, or their relatives is interested as a major shareholder, director, manager, employee or guarantor.

**2. Loans and advances to senior officers of the NBFC** – All loans and advances sanctioned to senior officers are required to be reported to the Board. A senior officer or a committee comprising of a senior officer shall not sanction any credit to a relative of that senior officer. Such a facility shall be sanctioned by the

next higher sanctioning authority under the delegation of powers.

- 3. Loans and advances to real estate sector** – The borrowers from this sector are required to obtain prior permission from government/ local government/ other statutory authorities for the project. The disbursements shall be made only after the borrower has obtained requisite clearances from the government/other statutory authorities.
- 4. Guidelines for NBFC Base Layer (BL)** – A Board approved policy shall be in place for grant of loans to directors, senior officers and relatives of directors and to entities where directors or their relatives have major shareholding. The policy should prescribe a threshold beyond which loans to abovementioned persons shall be reported to the Board. A disclosure is required in the annual financial statements stating the aggregate amount of such sanctioned loans and advances.

#### **D. Large Exposure Framework for NBFC (UL)**

RBI has introduced Larger Exposures Framework (LEF) for NBFC-UL which sets out the prudential guidelines on exposure norms aimed at addressing credit risk concentration in NBFC-UL. These instructions set out to identify large exposures, refine the criteria for grouping of connected counterparties and put in place norms for large exposures. These instructions will be applicable from 1 October 2022.

(Source: RBI circular no RBI/2022-23/26, RBI/2022-23/29, RBI/2022-23/30 and RBI/2022-23/32 dated 19 April 2022)

### **Compliance function and role of chief compliance officer under the Scale Based Regulation framework**

As per the revised regulatory framework for NBFCs (SBR framework) issued by RBI in October 2021, the Non-Banking Financial Companies in the Upper Layer (NBFC-UL) and Middle Layer (NBFC-ML) would be required to have an independent Compliance Function and a Chief Compliance Officer (CCO).

Compliance function has a critical part in the overall corporate governance structure. RBI, on 11 April 2022, issued a circular with the aim of introducing certain principles, standards and procedures for Compliance Function in NBFC-UL and NBFC-ML, keeping in view the principles of proportionality. NBFC (UL) and (ML) shall put in place a Board approved policy and a Compliance Function, including the appointment of a Chief Compliance Officer (CCO), based on the framework provided in the circular, latest by 1 April 2023 and 1 October 2023, respectively.

(Source: RBI circular no RBI/2022-23/24 dated 11 April 2022)

## Implementation guide on new reporting requirements under the Companies (Audit and Auditors) Rules, 2014

### Background

Section 143(3) of the Companies Act, 2013 ("the Act") provides various matters on which auditors are required to report in their auditor's report. Rule 11 of the Companies (Audit and Auditors) Rules, 2014 specifies such other matters that are to be reported by the auditor.

The Ministry of Corporate Affairs vide notification dated 24 March 2021 issued the Companies (Audit and Auditors) Amendment Rules, 2021 amending Rule 11 by adding new Rule 11 (e)<sup>1</sup> which deals with reporting on lending or receiving funds via pass through entities marked for ultimate beneficiary and new Rule 11 (f)<sup>2</sup> which deals with reporting on the payment/declaration of dividend. The new reporting requirements are applicable for audits of financial year 2021-22 and onwards.

### New development

In April 2022, ICAI has issued an Implementation Guide on these new reporting requirements with the aim to provide guidance to auditors to discharge their duties in an efficient and effective manner.

The Implementation Guide contains detailed guidance on various aspects of reporting under Rule 11(e) and 11 (f) like analysis of Rules, management's responsibilities in respect of disclosures in financial statements under Schedule III to the Companies Act, 2013, various audit procedures to be performed, reporting requirements, illustrative formats of confirmation letters, illustrative formats of management representations.

In addition, it discusses various scenarios for better understanding of practical situations faced by auditors while reporting under these rules.

(Source: ICAI issued Implementation Guide on reporting under Rule 11 (e) and Rule 11 (f) of the Companies (Audit and Auditors) Rules, 2014 in April 2022)

## IAASB has issued revised International Standard on Auditing (ISA) 600

Recently, on 7 April 2022, the International Auditing and Assurance Standards Board (IAASB) released International Standard on Auditing (ISA) 600 (Revised). The revised standard addresses special considerations that apply to group audits, including when component auditors are involved. It includes new and revised requirements that aligns the standard with the recently revised standards such as International Standard on Quality Management 1 and International Standards on Auditing 220 (Revised), *Quality management for an audit of financial statements* and ISA 315, *Identifying and assessing the risks of material misstatement*.

ISA 600 (Revised) has a robust risk-based approach to planning and performing a group audit which focuses the group auditor's attention on identifying and assessing the risks of material misstatement of the group financial statements and designing and performing further audit procedures to respond to those assessed risks. It also recognises that component auditors can be, and often are, involved in all phases of the group audit. The standard

furthermore promotes a clear, proactive and scalable approach for group audits that can be applied to today's evolving group audit structures.

*Applicability* - ISA 600 (Revised) will be effective for audits of group financial statements for periods beginning on or after 15 December 2023.

(Source: IAASB announcement dated 7 April 2022)

1. Rule 11(e) of the Companies (Audit and Auditors) Rules, 2014 in April 2022)
  - (i) Whether the management has represented that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been advanced or loaned or invested (either from borrowed funds or share premium or any other sources or kind of funds) by the company to or in any other person(s) or entity(ies), including foreign entities ("Intermediaries"), with the understanding, whether recorded in writing or otherwise, that the Intermediary shall, whether, directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the company ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries;
  - (ii) Whether the management has represented, that, to the best of its knowledge and belief, other than as disclosed in the notes to the accounts, no funds have been received by the company from any person(s) or entity(ies), including foreign entities ("Funding Parties"), with the understanding, whether recorded in writing or otherwise, that the company shall, whether, directly or indirectly, lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party ("Ultimate Beneficiaries") or provide any guarantee, security or the like on behalf of the Ultimate Beneficiaries; and
  - (iii) Based on such audit procedures that the auditor has considered reasonable and appropriate in the circumstances, nothing has come to their notice that has caused them to believe that the representations under sub-clause (i) and (ii) contain any material mis-statement."
2. Rule 11(f) of the Companies (Audit and Auditors) Rules 2014:
 

"Whether the dividend declared or paid during the year by the company is in accordance with section 123 of the Companies Act 2013".