

MCA clarifications regarding circulation and filing of financial statements under the Companies Act, 2013

24 July 2015



First Notes on:

Financial reporting

Corporate law updates

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Sector:

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Relevant to:

All

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CFO

Others

Transition:

Immediately

Within the next 3 months

Post 3 months but within 6 months

Post 6 months

Background

The Ministry of Corporate Affairs (MCA) received representations from various stakeholders in relation to circulation and filing of financial statements under the Companies Act, 2013 (2013 Act). On 21 July 2015, the MCA issued a general circular no.11/2015, which provided clarifications with regard to the following provisions of the 2013 Act:

- Section 101 – notice of meeting
- Section 136 – right of member to copies of audited financial statements
- Section 137 – copy of financial statements to be filed with the Registrar of Companies (ROC).

This issue of First Notes provides an overview of the clarifications issued by the MCA.

Circulation of financial statements at a short notice

Background

- Currently, Section 101(1) of the 2013 Act and the proviso state that a general meeting of a company may be called by giving not less than clear 21 days notice either in writing or through an electronic mode in such manner as may be prescribed. A general meeting may be called after giving a shorter notice if the consent for a shorter notice is given in writing or by an electronic mode by not less than 95 per cent of the members entitled to vote at such meeting.

However, without prejudice to Section 101 of the 2013 Act, Section 136(1) of the 2013 Act, *inter alia*, requires that a copy of the financial statements, including

consolidated financial statements (CFS), if any, which are to be laid before a company in its general meeting, should be sent to every prescribed person, not less than 21 days before the date of the general meeting.

- Considering the above background, it was unclear whether Section 136 of the 2013 Act would allow circulation of the financial statements at a shorter notice if conditions under Section 101 are fulfilled.

Clarification

- The MCA clarified that a company holding a general meeting after giving a shorter notice as provided under Section 101 of the 2013 Act may also circulate financial statements (to be laid/considered in the same general meeting) at such shorter notice.

Filing of financial statements of foreign subsidiaries

Background

- Fourth proviso to Section 136(1) of the 2013 Act, *inter alia*, requires that every company having a subsidiary or subsidiaries should place separate audited financial statements of each of its subsidiary on its website, if any.

Fourth proviso to Section 137(1) of the 2013 Act requires that a company should along with its financial statements to be filed with the ROC, attach the financial statements of its subsidiary or subsidiaries which have been incorporated outside India and which have not established their place of business in India.

- Considering the above background, stakeholders sought following clarifications:
 - Whether a company covered under the above provisions can place/file unaudited financial statements of a foreign subsidiary, if the audit of such foreign subsidiary is not a mandatory legal requirement in the country of its incorporation and such audit has not been conducted?
 - Whether financial statements of such foreign subsidiary would need to be as per the format

under the Schedule III/Accounting Standards or the format as per country of incorporation of the foreign subsidiary would be sufficient?

Clarifications

- The MCA after consulting with the Institute of Chartered Accountants of India, has clarified that
 - in case of a foreign subsidiary which is not required to get its financial statements audited as per legal requirements prevalent in the country of its incorporation and
 - which does not get such financial statements audited

the Indian holding/parent company may place/file such unaudited financial statements to comply with the requirements of Section 136(1) and 137(1) of the 2013 Act, as applicable. These, however, would need to be translated in English, if these financial statements are not in English.

- Further, the format of financial statements of foreign subsidiaries should be, as far as possible, in accordance with the requirements under the 2013 Act. In case this is not possible, a statement indicating the reasons for deviation may be placed/filed alongwith such financial statements.

Our comments

These clarifications indicate that the MCA is committed to address the practical challenges faced by the corporates while implementing the requirements of the 2013 Act. These clarifications are a step in the right direction and echoes MCA's efforts to nurture a supportive regulatory environment.

The bottom line

The clarifications are a clear reflection of the fact that the MCA continues to consider the practical challenges while implementing the Act. However, there are several other areas where corporates may still continue to face challenges. We hope that the Companies Law Committee set up by the MCA, would conduct a thorough review of the 2013 Act and the related Rules in order to make recommendations on issues arising from the implementation of the 2013 Act.

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The website provides information and resources to help board and audit committee members, executives, management, stakeholders and government representatives gain insight and access to thought leadership publications that are based on the evolving global financial reporting framework.

IFRS Notes



The IASB confirms its decision to defer the effective date of the new revenue standard

On 22 July 2015, the IASB confirmed a one year deferral of the effective date of IFRS 15. Entities are now required to apply IFRS 15 no later than 1 January 2018. An early adoption continues to be permitted.

The IASB is expected to release its proposed amendments to the new standard shortly. The proposals are expected to relate to licences, identifying performance obligations, principal-agent considerations and transitional provisions.

This decision at the IASB meeting is consistent with that of the Financial Accounting Standards Board (FASB) on 9 July 2015 where it finalised a one year deferral of the new revenue standard.

On 12 May 2015, the FASB issued a proposed ASU, Identifying Performance Obligations and Licensing, which would amend FASB ASC Topic 606, Revenue from Contracts with Customers, to clarify the guidance about identifying performance obligations and accounting for licences of intellectual property.

Missed an issue of Accounting and Auditing Update or First Notes?

July 2015

The July 2015 edition of the Accounting and Auditing Update highlights some of the key accounting and regulatory requirements relating to schools in India. This month we examine how the transport and logistics sector is expected to be impacted by the new revenue recognition standard Ind AS 115, Revenue from Contracts with Customers. We also analyse the impacts of Ind AS implementation in India with respect to government grants and highlight the corresponding requirements of Income Computation and Disclosure Standards applicable with effect from 1 April 2015.

Additionally, we discuss the amendments made to the guidance on licences and identifying performance obligations by the Financial Accounting Standards Board (FASB). We also highlight how the International Accounting Standards Board (IASB) plans to address these issues in the IFRS version of the standard. Recently, the Reserve Bank of India (RBI) has allowed banks to undertake a Strategic Debt Restructuring (SDR) scheme by converting loan dues to equity shares. This month, we provide an overview of the guidelines issued by the RBI for effective implementation of the SDR.

Finally, in addition to our regular round up of regulatory updates, this edition also provides an overview of the new requirements on auditor's report issued by the International Auditing and Assurance Standards Board (IAASB).



The MCA extends the last date for filing of annual return and financial statements forms

14 July 2015

The Ministry of Corporate Affairs (MCA) has issued a general circular dated 13 July 2015 where it has clarified the following:

- **By 30 September 2015**, the electronic version of the Forms AOC-4, AOC-4 XBRL and MGT-7 will be available for filing.
- **By October 2015**, a separate form for filing of CFS 'AOC-4 CFS' will be made available.
- **Till 31 October 2015**, the Forms AOC-4, AOC-4 XBRL and MGT-7 can be filed with the ROC without payment of additional fees.
- **Till 30 November 2015**, companies to which XBRL is not applicable but are required to file CFS would be able to do so in a separate form for CFS 'AOC-4 CFS' without payment of additional fees.



KPMG in India is pleased to present Voices on Reporting – a monthly series of knowledge sharing calls to discuss current and emerging issues relating to financial reporting.

On 22 July 2015, we covered following topics :

- (1) Overview of Ind AS 110, *Consolidated Financial Statements* and Ind AS 27, *Separate Financial Statements*
- (2) Key differences between AS 21, *Consolidated Financial Statements* and Ind AS 110
- (3) Overview of key relaxations for private companies from certain provisions of the Companies Act, 2013.

Feedback/queries can be sent to aaupdate@kpmg.com

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