KPMG

Voices on Reporting

Quarterly updates publication

Click here to access

January 2021

-

home.kpmg/in

Table of contents

In this publication, we have summarised important updates relating to the quarter ended 31 December 2020 from the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), the Institute of Chartered Accountants of India (ICAI) and the Reserve Bank of India (RBI).

1. Disclosure norms on forensic audit by listed entities

On 8 October 2020, SEBI issued certain amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) relating to disclosure requirements of forensic audit related to listed entities.

Currently, Para A of Part A of Schedule III to the Listing Regulations specifies events which are deemed to be material events to be reported by companies with listed specified securities (i.e. equity shares and convertible securities). These events should be informed to the recognised stock exchange(s) as soon as possible but not later than 24 hours from the occurrence of the event or information. Those, *inter alia*, include events relating to:

a. Fraud/defaults by a promoter, Key Managerial Personnel (KMP) or by the listed company

b. Arrest of KMP or promoter

c. Change in directors, KMP, auditor and compliance officer

d. Resignation by an auditor and independent director of the listed company.

Amendment

In addition to the current requirements, every company with listed specified securities is required to make the following disclosures to the stock exchange(s) in case of initiation of forensic audit (by whatever name called):

a. The fact of initiation of forensic audit along-with the name of the entity initiating the audit and reasons for the same, if available

b. Final forensic audit report (other than for forensic audit initiated by regulatory/enforcement agencies) on receipt by the listed entity along with comments of the management, if any.

Effective date: The amendments are effective from the date of their publication in the Official Gazette i.e. 9 October 2020.

FAQ issued by SEBI

On 27 November 2020, SEBI issued Frequently Asked Questions (FAQs) to provide clarifications to certain aspects of its circular dealing with the requirement of the disclosure of information regarding forensic audit of listed entities. Those clarifications are as follows:

a. *Scope of forensic audits*: The FAQ clarified that the audits (by whatever name called), which are initiated with the objective of detecting any mis-statement in financials, mis-appropriation/siphoning or diversion of funds would be covered. Also, audit on matters such as product quality control practices, manufacturing practices, recruitment practices, supply chain process including procurement and matters that would not require any revision to the financial statements disclosed by the listed entity would be out of the scope of disclosure.

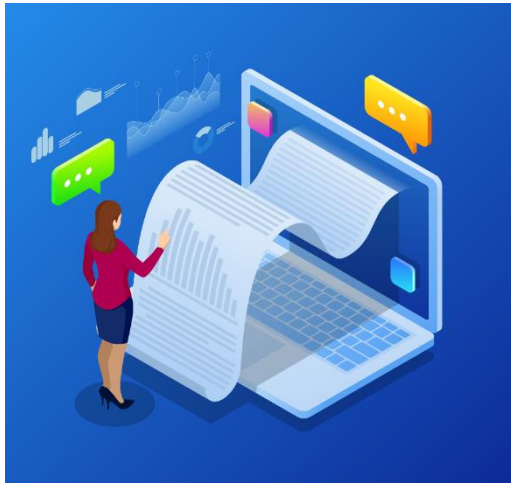
b. *Disclosure of initiation of forensic audit*: The fact of initiation of any forensic audit by the management of a listed entity, lenders, regulatory/enforcement agencies, is required to be disclosed.

c. *Applicability*: It was clarified that the new requirement is applicable prospectively and is applicable to all audits which are initiated and audit reports which are finalised after 8 October 2020.

d. *Expungement from the disclosure of the final forensic audit report*: The disclosure of any personally identifiable information including names of individuals and commercially sensitive information, if any, may be expunged.

Also refer to KPMG in India's First Notes on 'SEBI issues amendments for listed companies including disclosure of forensic audit' dated 28 October 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/33 dated 8 October 2020 and SEBI-FAQ on disclosure of information related to forensic audit of listed entities dated 27 November 2020.)



2. SEBI streamlines the framework for schemes of arrangement for listed companies

On 3 November 2020, SEBI made certain amendments to the regulatory framework for schemes of arrangements by listed companies as laid down in its circular dated 10 March 2017 which had prescribed requirements to be complied with by the listed companies while undertaking schemes of arrangements. The amendments relate to the following areas:

a. Documents to be submitted by the listed company to the stock exchanges before the scheme is submitted to the National Company Law Tribunal (NCLT)

- *Report from the audit committee:* The amendment requires audit committee of the listed company to comment on the following matters and include them in its report while submitting to stock exchange:
  i. Need for the merger/demerger/amalgamation/ arrangement
  ii. Rationale of the scheme
  iii. Synergies of business of the entities involved in the scheme
  iv. Impact of the scheme on the shareholders
  v. Cost benefit analysis of the scheme.
- *Valuation Report:* Listed companies are required to obtain the valuation report from a registered valuer as defined to mean a person, registered as a valuer, having such qualifications and experience and being a member of an organisation recognised, as specified in Section 247 of the 2013 Act read with the applicable rules issued thereunder.
- *Report from a committee of independent directors:* The amendments require a listed company to also submit a report from a committee of independent directors to the stock exchange(s). The report should recommend the draft scheme, taking into consideration, inter alia, that the scheme is not detrimental to the shareholders of the listed company. This is a new requirement and a listed company is required to submit this report to the stock exchange(s).

These amendments are applicable to all the schemes filed with the stock exchanges after 17 November 2020.

b. Obligations of the stock exchange(s) and processing of the draft scheme by SEBI: The amendments have removed the requirement of stock exchanges(s) to provide an observation letter on the draft scheme to SEBI. Now, stock exchange(s) would provide a 'No-Objection' letter to SEBI on the draft scheme in coordination with each other. Consequently, SEBI would issue a comment letter upon receipt of 'No-Objection' letter from the stock exchange(s).

The amendments are applicable to all the schemes filed with the stock exchanges after 17 November 2020.

c. Conditions for companies seeking relaxation under Rule 19(7) of the Securities Contracts (Regulation) Rules, 1957

Some key amendments are as follows:

- Additional disclosures prescribed while issuing a newspaper advertisement for seeking relaxation from minimum public shareholding.
- Disclosures to be provided in the form of an information document to the stock exchange by a transferee company.
- Listing and trading of specified securities to commence within 60 days (earlier 45 days) of receipt of the order of the high court/NCLT.
- Non applicability of minimum offer and allotment requirements to the listing of equity shares with superior voting rights issued to promoter group.

The amendments are applicable for all listed entities seeking listing and/or trading approval from the stock exchanges after 3 November 2020.

For a detailed read, please refer KPMG in India's First Notes on 'SEBI streamlines the framework for schemes of arrangement for listed companies' dated 19 November 2020.

2. SEBI streamlines the framework for schemes of arrangement for listed companies

Key takeaways

The amendments to the framework aim to streamline the process of draft schemes of arrangement filed by the listed companies and to empower the stock exchanges with the decision making regarding such schemes. These amendments would help ensure that the recognised stock exchanges refer draft schemes to SEBI only upon being fully convinced that the listed company is in compliance with the SEBI Act, Rules, Regulations and circulars issued thereunder. Additionally, these amendments seek to strengthen the process relating to a scheme of arrangement within a company by adding responsibility on independent directors and audit committees to review these schemes. It also enhances the responsibility on the companies to include additional disclosures in their filing with the stock exchanges.

Some of the key areas to consider are:

- An audit committee would shoulder more onus and would need to comment on certain additional matters in its report recommending the draft scheme of arrangement.
- The amendment relating to observation letter seems to indicate that a draft scheme would not be considered by SEBI unless the observations of stock exchanges, if any on the scheme have been resolved by the listed company.
- The committee of independent directors is expected to review the scheme and help to improve the overall credibility of schemes of arrangement undertaken by the listed companies keeping the interest of all stakeholders in mind including minority shareholders.
- Additional disclosures for seeking relaxation from minimum public shareholding are expected to facilitate greater transparency and better decision-making by stakeholders.

(Source: SEBI circular no. SEBI/HO/CFD/DIL1/CIR/P/2020/215 dated 3 November 2020)

3. SEBI issued amendments to ICDR Regulations relating to rights issue

SEBI through its notification dated 28 September 2020, has issued SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations (ICDR Regulations), 2020 which revises certain requirements relating to rights issue.

Key amendments relate to:

- **Applicability of ICDR Regulations**: The provisions of the ICDR Regulations are now applicable to a rights issue by a listed issuer where the aggregate value of the issue is INR50 crore (earlier INR10 crore) or more.
- **Minimum subscription**: Currently, the minimum subscription to be received in the issue should be at least 90 per cent of the offer through the offer document. In case of failure, all application money received should be refunded to the applicants not later than 15 days from the closure of the issue.

  As per the amendment, the minimum subscription criteria will not be applicable to an issuer if:

  a. The objects of the issue involves financing other than financing of capital expenditure for a specific project and

  b. The promoter(s) and the promoter group of the issuer undertake to subscribe fully their portion of rights entitlements and do not renounce their rights entitlements except to the extent of renunciation within the promoter group.

- **Eligibility conditions for fast track rights issue:** The amendments have modified the conditions that an issuer is required to satisfy while making a rights issue through the fast track route. Following are the revised requirements:

  a. No show-cause notices, excluding proceedings for imposition of penalty, have been issued by SEBI and pending against the issuer, its promoters or whole-time directors as on the reference date.

     In cases where show-cause notice(s) has been issued by SEBI in a proceeding for imposition of penalty or prosecution proceedings have been initiated by SEBI against the issuer, its promoters or whole-time directors, necessary disclosures in respect of such action(s) along-with its potential adverse impact on the issuer should be made in the letter of offer.

  b. For audit qualifications, if any, in respect of any of the financial years for which accounts are disclosed in the letter of offer, the issuer should provide the restated financial statements adjusting for the impact of the audit qualifications. Further, that for the qualifications wherein impact on the financials cannot be ascertained the same should be disclosed appropriately in the letter of offer.

The amendments are effective from the date of their publication in the Official Gazette i.e. 1 October 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/31 dated 28 September2020)

4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

SEBI, with a view to strengthen the role of debenture trustees and to enable them with uniform monitoring and disclosure guidelines, issued amendments to various frameworks and regulations related to debenture trustees including Listing Regulations, SEBI (Issue and Listing of Debt Securities) Regulations, 2008 (Debt Listing Regulations) and SEBI (Debenture Trustees) Regulations, 1993 (Debenture Trustees Regulations).

Following are the key amendments made by the SEBI with regard to debenture trustees:

A. Amendments to the Listing Regulations

- **Intimation to debenture trustee:** Currently, a company with listed debt securities is required to send certain documents and intimations to the debenture trustee promptly. In addition to the current requirements a listed company is now required to provide an intimation of all covenants of the issue (including side letters, accelerated payment clause, etc.) to the debenture trustees.

Further, the requirement relating to submission of half-yearly certificate has also been amended. As per the revised requirement, a listed entity is required to submit a half-yearly certificate regarding maintenance of 100 per cent asset cover or asset cover as per the terms of offer document/Information Memorandum and/or debenture trust deed, including compliance with all the covenants, in respect of listed NCDS, by the statutory auditor, along with the half-yearly financial results.

The submission of half-yearly certificate is not applicable where bonds are secured by a government guarantee. Accordingly, no exemption is available to a listed company which is a bank or NBFC from submission of the said half-yearly certificate.

- **Asset cover by debt listed companies**: The amendments to the Listing Regulations permit a listed company to maintain an asset cover as per the terms of offer document/Information Memorandum and/or debenture trust deed in respect of the NCDS issued.

Additionally, the exemption from maintaining asset cover granted to unsecured debt securities issued by regulated financial sector entities has been removed.

The amendments are effective from the date of their publication in the Official Gazette i.e. 9 October 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/33 dated 8 October 2020)

B. Amendment to Debt Listing Regulations

- **Revised definition of 'private placement' (Regulation 2):** The amendments revise the definition of private placement in the Debt Listing Regulations. As per the revised definition, private placement would mean 'an offer or invitation to subscribe **or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application**, which satisfies the conditions specified in **Section 42 of the 2013 Act.**

(Emphasis added to highlight the changes)

- **Trust Deed (Regulation 15)**: Currently, the Debt Listing Regulations had reference to the Companies Act, 1956 (1956 Act), the amendments remove the reference of 1956 Act, wherever used in the Debt Listing Regulations with corresponding provisions under the 2013 Act. Accordingly, as per the amendments, every debenture trustee should amongst other matters, accept the trust deeds which should contain the matters as prescribed under Section 71 of the 2013 Act and Form No. SH.12 of the Companies (Share Capital and Debentures) Rules, 2014.

Further, it prescribed that the trust deed should consist of following two parts:

a. Part A containing statutory/standard information pertaining to the debt issue.

b. Part B containing details specific to the particular debt issue.

Consequent to the above changes, amendments have been made to the Debenture Trustee Regulations.

4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

Recovery expense fund (Regulation 26): An issuer of debt securities is now required to create a recovery expense fund in the manner as may be specified by SEBI from time to time and inform the debenture trustee about the same.

The amendments are effective from the date of their publication in the Official Gazette i.e. 9 October 2020.

Further, on 22 October 2020, SEBI through a circular has prescribed the manner of creation and operation of recovery expense fund. Those are as follows:

a. *Amount of deposit*: An issuer proposing to list debt securities should deposit an amount equal to 0.01 per cent of the issue size subject to a maximum of INR25 lakh per issuer towards recovery expense fund with the designated stock exchange as identified and disclosed in its offer document/Information Memorandum.

b. *Form of deposit*: The issuer should deposit cash or cash equivalent(s) including bank guarantees towards contribution to the fund at the time of making the application for listing of debt securities. The issuer should ensure that the bank guarantee remains valid for a period of six months post the maturity date of the listed debt security. The issuer shall keep the bank guarantee in force and renew the bank guarantee at least seven working days before its expiry, failing which the designated stock exchange shall invoke such bank guarantee.

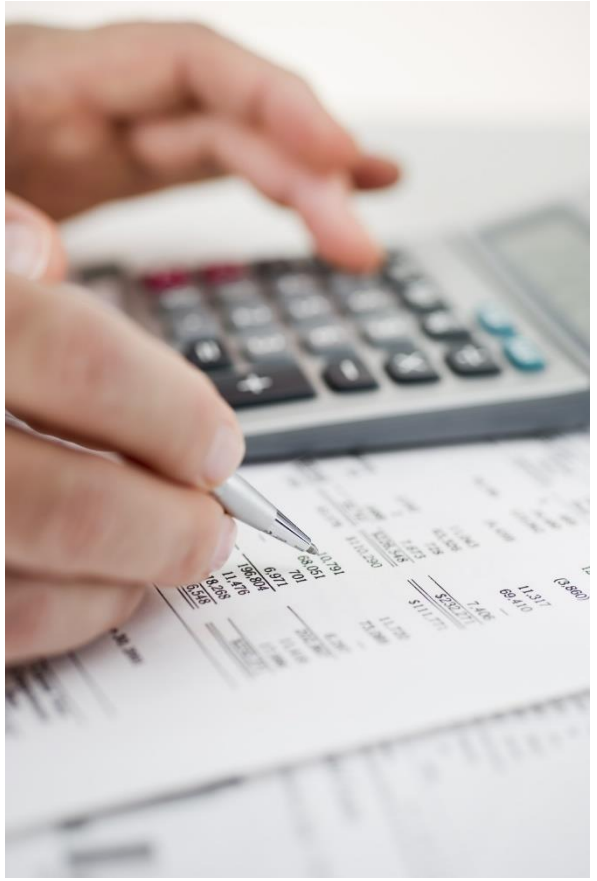
c. *Utilisation of fund*: In the event of default, the debenture trustee/lead debenture trustee should obtain the consent of holders of debt securities for enforcement of security and should inform the same to the designated stock exchange. The amount of the recovery expense fund would be released by the designated stock exchange within five days of receipt of such intimation.

d. *Refund of balance amount*: The balance in the recovery expense fund would be refunded to the issuer on repayment to holders of debt securities on their maturity or at the time of the exercise of call or put option for which a No Objection Certificate (NOC) should be issued by the debenture trustee(s) to the designated stock exchange. The debenture trustee(s) should satisfy that there is no 'default' on any other listed debt securities of the issuer before issuing the NOC.

The provisions of the circular would come into force with effect from 1 January 2021. Accordingly, all applications for listing of debt securities made on or after 1 January 2021 should comply with the condition of creation of recovery expense fund.

An additional time period of 90 days would be given to the existing issuers whose debt securities are already listed on stock exchange(s) to comply with the requirements for creation of recovery expense fund.

(Source: SEBI (Issue and Listing of Debt Securities) (Amendment) Regulations, 2020 dated 8 October 2020 and SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/207 dated 22 October 2020)



4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

C. Amendment to Debenture Trustees Regulations

Duties of a debenture trustee:

The amendments require a debenture trustee to perform the following:

a. *Recovery expense fund*: A debenture trustee would need to ensure implementation of the conditions regarding recovery expense fund in addition to those relating to creation of security for the debentures and debenture redemption reserve.

b. *Quarterly/yearly reporting*: The current requirements of obtaining documents on quarterly/yearly basis have also been amended. According to the revised requirements, in case where listed debt securities are secured by way of receivables/book debts, a debenture trustee is required to perform the following:

Quarterly basis	Carry out the necessary due diligence and monitor the asset cover in the manner as may be specified by SEBI.
Half-yearly basis	Obtain a certificate from the statutory auditor of the issuer giving the value of receivables/book debts including compliance with the covenants of the offer document/Information Memorandum in the manner as may be specified by SEBI.

c. *Due diligence:* In addition to the current duties, a debenture trustee is required to exercise independent due diligence before creating a charge on the security for the debentures to ensure that such security is free from any encumbrance or that it has obtained the necessary consent from other charge-holders If the security has an existing charge, in the manner as may be specified by SEBI.

d. *Inter-creditor agreement:* A debenture trustee may enter into inter-creditor agreements, on behalf of the debenture holders, as provided under the framework specified by RBI, subject to the approval of the debenture holders and the conditions as may be specified by SEBI.

- **Meeting of debenture holders:** Currently, a debenture trustee shall call or cause to be called by the body corporate a meeting of all debenture holders on the occurrence of any event, which constitutes a default or which in the opinion of the debenture trustees affects the interest of the debenture holders.

  In addition to the current guidance, meeting shall be called by a debenture trustee or cause to be called by the body corporate in case of breach of covenants (as specified in the offer document/Information Memorandum and/or debenture trust deed).

Also refer to KPMG in India's First Notes on 'SEBI issues amendments for listed companies including disclosure of forensic audit' dated 28 October 2020.

(Source: SEBI (Debenture Trustees) (Amendment) Regulations, 2020 dated 8 October 2020)

4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

D. Guidelines for due diligence and monitoring of charge by debenture trustees

SEBI through its circulars dated 3 November 2020 and 12 November 2020 has issued guidelines with respect to performance of due diligence by debenture trustee(s) for creation of security at the time of issuance of debt securities and monitoring of security created/assets on which charge is created.

Key points to consider are as follows:

- **Due diligence by debenture trustee for creation of security:** The due diligence to be exercised by debenture trustee(s) with respect to creation of security should, inter alia, include the following:
  a. Verification of the assets provided by issuer for creation of security from registrar of companies, sub-registrar or other sources where charge is registered/disclosed.
  b. In case of personal guarantee, corporate guarantee and any other guarantees/form of security, verification of relevant filings available on websites of regulators and obtain appraisal report/necessary financial certificates.

Debenture trustee(s) should also issue a 'due-diligence certificate' to the issuer as per the format specified in the circular, subject to the following conditions:

a. Information on consents/permissions required for creation of further charge on assets are adequately disclosed in offer document or Private Placement Memorandum (PPM)/Information Memorandum (IM).
b. All disclosures made in the offer document or PPM/IM with respect to creation of security are in confirmation with the clauses of debenture trustee agreement.
c. All covenants proposed to be included in debenture trust deed (including any side letter, accelerated payment clause, etc.) are disclosed in the offer document or PPM/IM.

The provisions would be effective from 1 April 2021 i.e. for new issues proposed to be listed on or after 1 April 2021 (earlier 1 January 2021).

(Source: SEBI circular no. dated SEBI/HO/MIRSD/CRADT/CIR/P/2020/254 dated 31 December 2020 and SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated 3 November 2020)

- **Monitoring of security created/assets on which charge is created:** Debenture trustees(s) should incorporate the terms and conditions of periodical monitoring in the debenture trust deed. As per the terms, listed entity would be liable to provide relevant documents/information to enable the debenture trustee(s) to submit the following reports/certification to stock exchange(s) within the timelines mentioned below:

Reports/certificate	Periodicity
Asset cover certificate	Quarterly basis within 60 days from end of each quarter
A statement of value of pledged securities	
A statement of value for Debt Service Reserve Account or any other form of security offered	
Net worth certificate of guarantor (secured by way of personal guarantee)	Half-yearly basis within 60 days from end of each half-year
Financials/value of guarantor prepared on the basis of audited financial statements, etc. of the guarantor (secured by way of corporate guarantee)	Annual basis within 75 days from end of each financial year.
Valuation report and title search report for the immovable/movable assets, as applicable.	

The provisions would be effective from quarter ended 31 December 2020 for listed debt securities.

(Source: SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/230 dated 12 November 2020)

4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

Key takeaways

The new requirements relating to regulations and debenture trustee framework aim to bring transparency and provide visibility on incidents of corporate fraud and defaults by companies and their outcomes to regulators and other stakeholders.

Given recent corporate bankruptcies and defaults, regulators have sought to introduce additional disclosure and governance requirements including additional diligence by debenture trustees. If implemented in the right spirit, these changes should strengthen our debt markets and result in higher investor confidence.

5. Standard timelines for listing of securities issued on a private placement basis

SEBI through a circular dated 5 October 2020 has issued standard timelines for listing of securities issued on a private placement basis under the following regulations:

a. SEBI (Issue and Listing of Debt Securities) Regulations, 2008

b. SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations, 2013

c. SEBI (Public Offer and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 and

d. SEBI (Issue and Listing of Municipal Debt Securities) Regulations, 2015.

The timelines are as follows:

Details of activities	Due dates
Closure of issue	T day
Receipt of funds	To be completed by T+2 trading day
Allotment of securities	
Issuer to make listing application to stock exchange(s)	To be completed by T+4 trading day
Listing permission from stock exchange	

In case of delay in listing of securities issued on a private placement basis beyond the timelines specified above, an issuer would be:

a. Liable to pay a penalty at the rate of one per cent per annum over the coupon rate for the period of delay to the investor (i.e. from date of allotment to the date of listing) and

b. Permitted to utilise the issue proceeds of its subsequent two privately placed issuances of securities only after receiving final listing approval from stock exchanges.

The provisions of the circular are effective from 1 December 2020.

(Source: SEBI circular no. SEBI/HO/DDHS/CIR/P/2020/198 dated 5 October 2020)

6. SEBI issues uniform structure for non-compliance with provisions related to continuous disclosures by issuers with listed NCDS/NCRPS/CPs

SEBI through a circular dated 13 November 2020 has issued a uniform structure for imposing fines and taking appropriate actions by the stock exchange(s) in respect of non-compliance with continuous disclosure requirements (as laid down in LODR and related SEBI circulars) by issuers of listed Non-Convertible Debt Securities (NCDS)/Non-Convertible Redeemable Preference Shares (NCRPS)/Commercial Papers (CPs).

Following are the fines prescribed by the circular:

Particulars	Fine payable and/or other action to be taken for non-compliance by an entity with listed NCDS/NCRPS*
Failure to intimate stock exchange (s):	
Delay in furnishing prior intimation with respect to date of payment of interest / redemption amount or intimation regarding board meeting effecting the rights or interest of holders of NCDs/NCRPS.	INR1,000 per International Securities Identification Number (ISIN)
Non-compliance with regulations relevant to financial results:	
a. Non-submission of the financial results within the specified timeline by an issuer with listed NCDS/NCRPS/CPs.	INR5,000 per day
a. Non-disclosure of line items as prescribed while filing half yearly/annual financial results (including non-disclosure by an issuer of listed CPs) or non-disclosure of items pertaining to NCRPS as notes to financials as required.	INR1,000 per day
a. Non-submission of a certificate signed by the debenture trustee taking note of the contents specified in (b) above.	INR1,000 per day
a. Non-submission of deviations/ variations in utilization of issue proceeds.	INR1,000 per day
Non-compliance with regulations for assets cover:	
Non-disclosure of extent and nature of security created and maintained with respect to secured listed NCDs in the financial statements.	INR1,000 per day

6. SEBI issues uniform structure for non-compliance with provisions related to continuous disclosures by issuers with listed NCDS/NCRPS/CPs

Particulars	Fine payable and/or other action to be taken for non-compliance by an entity with listed NCDS/NCRPS*
Non-compliance with regulations for structure of NCDS and NCRPS:	
Failure to obtain prior approval of stock exchange for any structural change in terms of NCDs/ NCRPS.	INR50,000 per instance
Non-compliance with website norms:	
Non-compliance with norms pertaining to functional website.	Advisory/warning letter per instance of non-compliance per item INR10,000 per instance for every additional advisory/warning letter exceeding the four advisory/ warning letters in a financial year.
Payment obligations by an issuer of listed CPs	
Non-submission of certificate regarding fulfillment of payment obligations by an issuer of listed CPs	INR1,000 per day per ISIN
Non-compliance with regulations for other submissions to stock exchange (s):	
Non-disclosure of information related to payment obligations.	INR1,000 per day per ISIN
Non-compliance with respect to record date:	
Delay in submission of the notice of record date.	INR10,000 per ISIN

The fines specified in the structure would continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognised stock exchange. Such accrual would be irrespective of any other disciplinary/enforcement action(s) initiated by recognised stock exchange(s) or SEBI.

The provisions of the circular would be effective for compliance period ending on or after 31 December 2020

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/231 dated 13 November 2020)

7. SEBI clarifications on insider trading norms

On 17 July 2020, SEBI issued amendments to the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) which, *inter alia*, included amendments relating to maintenance and preservation of the structured digital database by a listed company.

In line with the amendments to the PIT Regulations, on 8 October 2020 SEBI issued revised clarification relating to information to be maintained in a structured digital database, in case the designated person is a fiduciary or intermediary.

As per the revised clarification, the listed company should maintain a structured digital database internally, which should contain information including the following:

- Details of UPSI
- Details of persons with whom such UPSI is shared (along with their Permanent Account Numbers (PANs)/other unique identifier in case PAN is not available) and details of persons who have shared the information.

Similarly, another structured digital database should be maintained internally by fiduciary or intermediary capturing the above information in accordance with Regulation 9A (2)(d) and Schedule C to the PIT Regulations.

(Source: SEBI-FAQs on SEBI (PIT) Regulations, 2015 dated 8 October 2020)

8. SEBI issued guidelines for transfer, dematerialisation of re-lodged physical shares

On 7 September 2020, SEBI through a circular had fixed the cut-off date for re-lodgement of transfer deeds as 31 March 2021. Additionally, it clarified that the shares that are re-lodged for transfer (including those request that are pending with the listed company/Registrar and Transfer Agents (RTA) on date) would be issued only in demat mode.

Further on 2 December 2020, SEBI has issued the operational guidelines for crediting the transferred shares into the respective demat account of the investor. Following are the key features of the guidelines:

- The RTA should retain the physical shares and intimate the investor (transferee) about the execution of transfer through 'Letter of Confirmation' (LOC) in the specified format after processing the re-lodged transfer request.
- The investor is required to submit the demat request within 90 days of issue of the LOC to Depository Participants (DP).
- The shares would be in lock-in demat mode for a period of six months from the date of registration of transfer, if the shares are required to be locked-in as per SEBI circular (no. SEBI/HO/MIRSD/DOS3/CIR/P/2018/139) dated 6 November 2018.
- In case of non-receipt of demat request from the investor within 90 days of the date of LOC, the shares would be credited to suspense escrow demat account of the company.

(Source: SEBI circular no. SEBI/HO/MIRSD/RTAMB/CIR/P/2020/236 dated 2 December 2020)

9. SEBI issues guidelines for rights issue of units by an unlisted InvIT

Currently, Chapter VIA of the of SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) provides the framework for private placement of units by InvITs which are not eligible to be listed.

With a view to enable unlisted InvITs to raise further funds, SEBI through a circular dated 4 November 2020 has introduced a mechanism for raising of funds by unlisted InvITs through rights issue of units and has also issued related guidelines.

Key requirements for the rights issue are as follows:

- **Conditions for issuance**: An InvIT is required to comply with following conditions for making a rights issue of its units:
  a. A resolution of the board of directors of the investment manager approving the rights issue of the units and determining the record date should be passed.
  b. The units proposed to be issued must be of the same class as those already issued by the InvIT.
  c. None of the promoters, partners, or directors of the sponsor(s) or investment manager or trustee of the InvIT is a fugitive economic offender.
  d. None of the respective promoters, partners, or directors of the sponsor(s) or investment manager or trustee of the InvIT is:
     i. Debarred from accessing the securities market by SEBI
     ii. A promoter, director or person in control of any other company or a sponsor, investment manager or trustee of any other InvIT which is debarred from accessing the capital market under any order or directions made by SEBI.
- **Timeline**: The rights issue should open within three months from the record date. The subscription period would be minimum three working days and maximum 15 working days.
- **Pricing of units**: The investment manager should decide the issue price before determining the record date. Also, the issue price should be disclosed in the letter of offer.
- **Filing of the letter of offer**: The letter of offer is required to be filed by the investment manager with SEBI at least five days prior to opening of the rights issue.
- **Allotment**: The minimum allotment to any investor should be INR1 crore.
- **Restriction on further capital issues**: The InvIT is restricted from making any further issue of units between the date of filing of letter of offer and the allotment of units offered pursuant to the rights issue.

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS/CIR/P/2020/223 dated 4 November 2020)

10. SEBI clarification on fraudulent and unfair trade practices for listed companies

On 19 October 2020, SEBI issued the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) (Second amendment) Regulations, 2020 to amend the Unfair Trade Practices Regulations and add an explanation to Regulation 4(1) of the Unfair Trade Practices Regulations.

The explanation clarified that any act of diversion, misutilisation, siphoning-off of assets, earnings of a company, or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

The amendment is effective from 19 October 2020.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2020/36 dated 19 October 2020)

1. MCA notified certain sections of the Companies (Amendment) Act, 2020

The Ministry of Finance introduced the Companies (Amendment) Bill 2020 (the Bill) which proposed extensive amendments in the Companies Act, 2013 (2013 Act). On 19 September 2020, Lok Sabha passed the Companies (Amendment) Bill, 2020 and on 22 September 2020 it was passed by the Rajya Sabha.

On 30 September 2020, the Companies (Amendment) Act, 2020 (the 2020 Amendment Act) received the assent of the President of India. The 2020 Amendment Act incorporates amendments suggested by Company Law Committee (CLC) report.

Further, on 21 December 2020, the central government notified certain sections of the 2020 Amendment Act.

Following is the overview of the notified sections of the 2020 Amendment Act.

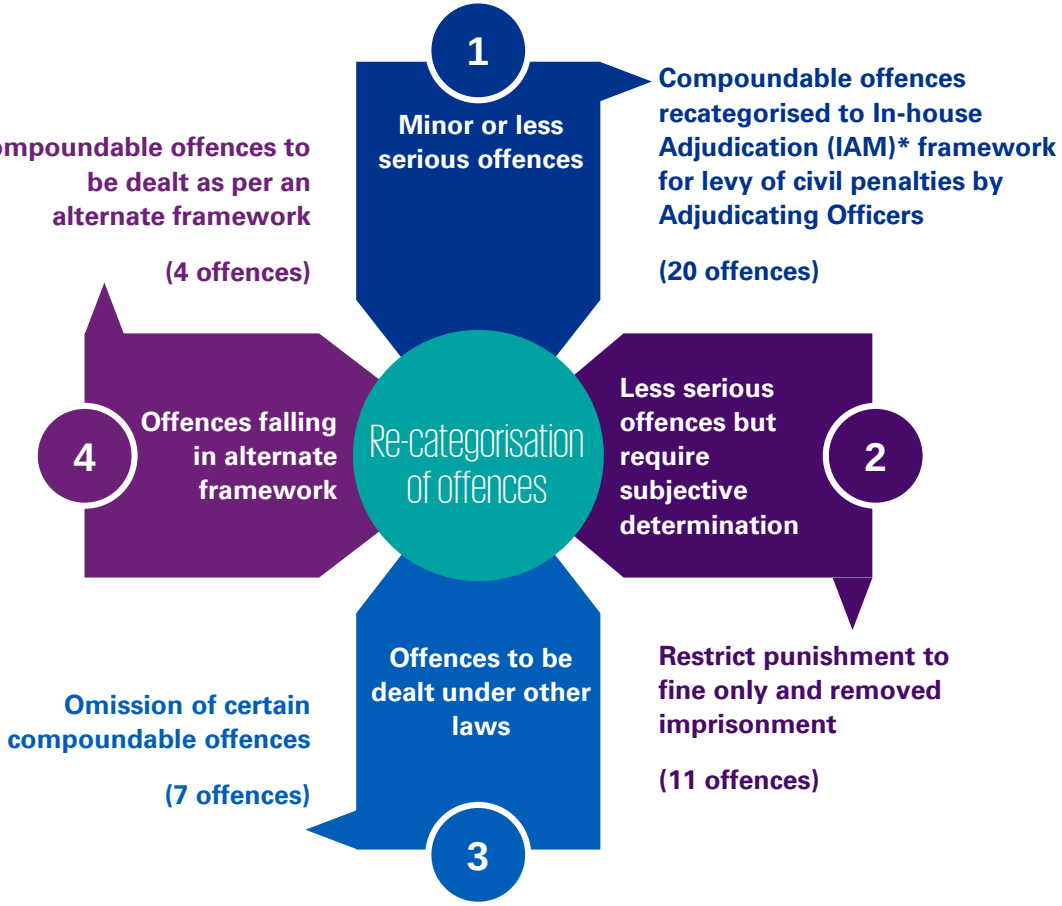
Part I: Decriminalisation of certain compoundable offences

The 2020 Amendment Act introduced amendments relating to 46 compoundable offences under the 2013 Act. With an aim to strike a balance between civil and criminal liabilities, the 2020 Amendment Act decriminalised and recategorised 46 offences.

The recategorisation helps ensure that serious violations of law would be dealt with under criminal law, whereas procedural, technical and minor non-compliances would be assigned to civil jurisdiction. This is likely to help declog the criminal justice system by reducing burden on special courts in India.

Further, on 21 December2020, MCA notified sections relating to 42 offences out of 46 offences.

The chart below summarises the amendments to 42 offences into four categories.



1. MCA notified certain sections of the Companies (Amendment) Act, 2020

Part II - Changes in penalties

The 2020 Amendment Act rationalised penalties in respect of following six sections:

Default	Revised penalty
Failure or delay in filing notice for alteration of share capital (Section 64)	The penalty in case of a default that continues has been amended to be reduced to INR500 per day instead of INR1,000 per day. Further maximum penalty has been capped at INR5 lakh in case of a company and INR1 lakh in case of an officer in default instead of fixed amount of INR5 lakh.
Failure or delay in filing annual return (Section 92)	The penalty amount for a failure or delay in filing an annual return at the first instance of failure or delay has been reduced to INR10,000 from INR50,000. In case a default continues, the maximum penalty has been capped at INR2 lakh in case of a company and at INR50,000 in case of an officer in default instead of fixed amount of INR5 lakh.
Failure or delay in filing of certain resolutions or agreements to ROC (Section 117)	The penalty amount for failure or delay in filing of certain resolutions or agreements to ROC at the first instance of failure or delay has been reduced to INR10,000 from INR1 lakh. In case a default continues, the penalty has been fixed as INR100 per day subject to the maximum penalty of INR2 lakh in case of a company and at INR50,000 in case of an officer in default.
Failure or delay in filing of the financial statements with ROC (Section 137)	The penalty amount for or delay in filing financial statements with the ROC at the first instance of failure or delay has been fixed to INR10,000 instead of INR1 lakh. In case the default continues, the penalty has been fixed as INR100 per day subject to the maximum penalty of INR2 lakh in case of a company and INR50,000 in case of an officer in default.
Failure/delay in filing statement with the company or ROC by an auditor after resignation (Section 140)	The maximum amount of penalty for failure or delay in filing a statement by an auditor after resignation with the company or ROC has been capped at INR2 lakh instead of INR5 lakh.
Accepting directorships beyond specified limits (Section 165)	The penalty for each day's default of accepting directorships beyond specified limits has been reduced to INR2,000 from INR5,000 and a maximum penalty has been INR2 lakh for the defaulting directors.

1. MCA notified certain sections of the Companies (Amendment) Act, 2020

Key takeaways

The Amendment Act was issued with an aim to foster improved corporate compliance framework for the corporates in India.

Some of the key considerations are as follows:

Decriminalising offences

A large part of the newly notified amendments relate to decriminalising the offences under the 2013 Act. The notified sections of the 2020 Amendment Act amends provision relating to 42 offences, so as to either remove criminality, or to restrict the punishment to only fine, or to allow rectification of defaults through alternative methods.

Rationalisation of penalties

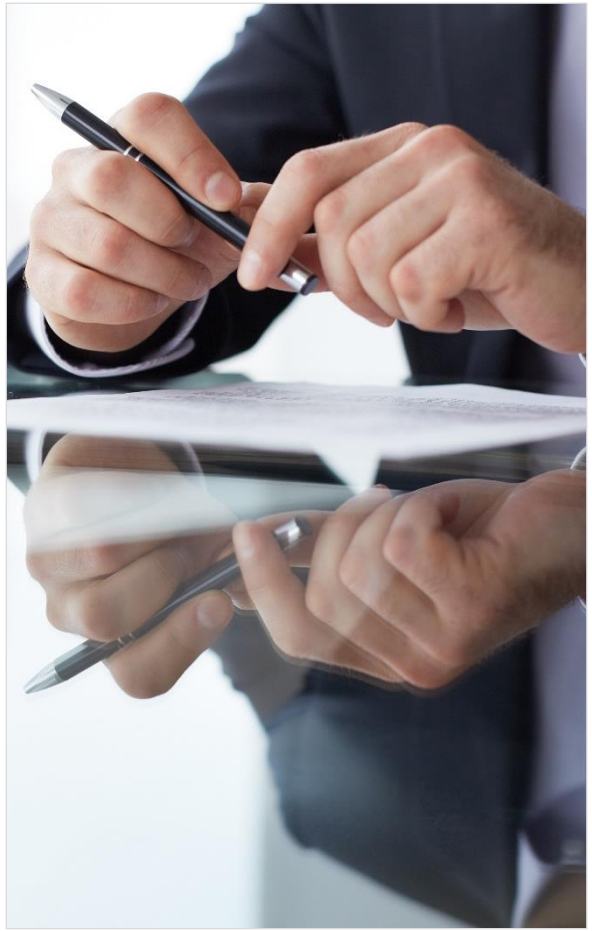
The 2020 Amendment Act also reviewed the quantum of penalties and amended six sections considering the gravity of default. The changes brought by the Amendment Act would allow companies to rectify the default by paying the penalty and provide such defaulting companies with the chance to become compliant with the provisions of the law.

Remaining sections not yet notified

There are certain amendments relating to ease of doing business which are not yet notified. Companies in India should watch out for development in this area.

Following are some of the key sections which are still pending to be notified:

- Amendment to definition of listed company
- Payment of remuneration to non-executive directors in case of inadequacy of profits or in case of losses
- Modifying CSR provisions
- Periodic financial results for unlisted companies
- Direct listing in foreign jurisdictions.



For a detailed read, please refer to KPMG in India's First Notes on 'The Companies (Amendment) Act, 2020' dated 15 October 2020.

(Source: MCA notification no. S.O 4646(E) dated 21 December 2020)

2. Amendment to the Prospectus Rules

Currently, Rule 14(1) of the Companies (Prospectus and Allotment of Securities) Rules, 2014 (Prospectus Rules) prohibits a company from making an offer or invitation to subscribe to securities through a private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations.

Amendment

The Ministry of Corporate Affairs (MCA) through a notification dated 16 October 2020 has amended Rule 14(1) of the Prospectus Rules and introduced a provision. As per the provision, in case of offer or invitation of any securities to QIBs, it would be sufficient if the company passes a previous special resolution only once in a year for all the allotments to such buyers during the year.

The amendment is effective from the date of its publication in the Official Gazette i.e. 16 October 2020.

(Source: MCA notification no G.S.R. 642(E) dated 16 October 2020)

3. Norms for purchase of minority shareholding in demat form

Currently, any person or group of persons holding 90 per cent of the issued equity share capital of a company by virtue of an amalgamation, share exchange, conversion of securities or for any other reason, can purchase the remaining equity shares of the company from minority shareholders at a price determined by a registered valuer in accordance with the prescribed rules under the 2013 Act. Similarly, the minority shareholders of the company may also offer the majority shareholders to purchase the minority equity shareholding of the company.

In the event of a purchase of minority shareholding, company whose shares are being transferred would act as a transfer agent for receiving and paying the price to the minority shareholders and for taking delivery of the shares and delivering such shares to the majority, as the case may be.

Recently, MCA has notified guidelines for purchase of minority shareholding held in demat form. The key requirements as prescribed by the guidelines are as follows:

- **Verification of details:** A company should verify the details of the minority shareholders holding shares in dematerialised form within two weeks from the date of receipt of the amount equal to the price of shares to be acquired by the acquirer (under Section 236 of the 2013 Act).
- **Notice to shareholders:** Once verified, a notice should be sent by the company to such minority shareholders about a cut-off date on which the shares of minority shareholders would be debited from their account and credited to the designated DEMAT account of the company, unless the shares are credited in the account of the acquirer, as specified in such notice, before the cut-off date.
- **Intimation to depository:** Immediately after publication of the notice, the company is required to inform the depository about the cut-off date along with following declarations:
  a. The corporate action[1] is being effected in pursuance of the provisions of Section 236 of the 2013 Act
  b. The minority shareholders whose shares are held in dematerialised form have been informed about the corporate action (a copy of the notice served to such shareholders and published in the newspapers to be attached)
  c. The minority shareholders should be paid by the company immediately after completion of corporate action
  d. Any dispute or complaints arising out of such corporate action should be the sole responsibility of the company.
- **Transfer of shares by depository into demat account:** The depository would make the transfer of shares of the minority shareholders, who have not, on their own, transferred their shares in favour of the acquirer, into the designated DEMAT account of the company on the cut-off date and intimate the company.
- **Disbursement of price:** After receiving the intimation of successful transfer of shares from the depository, the company should immediately disburse the price of the shares so transferred, to each of the minority shareholders after deducting the applicable stamp duty, which should be paid by the company, on behalf of the minority shareholders.
- **Transfer of shares from demat account:** The company should inform the depository to transfer the shares of shareholders, kept in the designated DEMAT account of the company, to the DEMAT account of the acquirer upon successful payment to the minority shareholders.

Effective date: The provisions are applicable from the date of their publication in the official gazette i.e. 18 December 2020.

(Source: MCA notification no. G.S.R. 773(E) dated 18 December 2020)

1. Corporate action means any action taken by the company relating to transfer of shares and all the benefits accruing on such shares namely, bonus shares, split, consolidation, fraction shares and right issue to the acquirer.

1. Extended relaxation relating to minimum residency of a director for FY2020-21

Currently, Section 149(3) of the 2013 Act requires every company to have at least one director who stays in India for a total period of not less than 182 days during the Financial Year (FY). In March 2020, as part of special measures introduced in lieu of COVID-19, MCA provided that if the company fails to ensure compliance with the requirement for FY2019-20, then it will not be treated as a non-compliance.

MCA through a circular dated 20 October 2020 has extended the relaxation for FY2020-21. Accordingly, failure to meet the minimum residency requirement of a director would not be treated as a non-compliance for FY2020-21.

(Source: MCA general circular no. 36/2020 dated 20 October 2020)

2. MCA deferred effective date of CARO 2020 to 1 April 2021

MCA through its notification dated 17 December 2020 has deferred the effective date of the new auditor's report i.e. Companies (Auditors' Report) Order, 2020 (CARO 2020) by one more year. It will now be applicable for audits of financial years commencing on or after 1 April 2021 (earlier was applicable from 1 April 2020).

(Source: MCA notification no. S.O. 4588(E) dated 17 December 2020)

3. Revised norms for enrolment in databank of independent directors

On 22 October 2019, MCA had notified the provisions relating to creation and maintenance of the databank of independent directors under the 2013 Act.

Recently, MCA has issued certain amendments to the norms relating to the enrolment of independent directors in the databank. The amendments have extended the time period of passing the online proficiency test. Accordingly, an individual whose name is included in the data bank is now required to pass the test within a period of **two years (earlier one year)** from the date of inclusion of his/her name in the data bank. The minimum score required to pass the test has been reduced from 60 per cent to **50 per cent.**

Exemption from passing the test – revised criteria

The amendments have also revised the exemptions granted from passing the online proficiency. As per the revised norms, an individual will not be required to pass the online proficiency self-assessment test if he/she has served for a total period of **not less than three years[2] (earlier 10 years)** as on the date of inclusion of their name in the data bank:

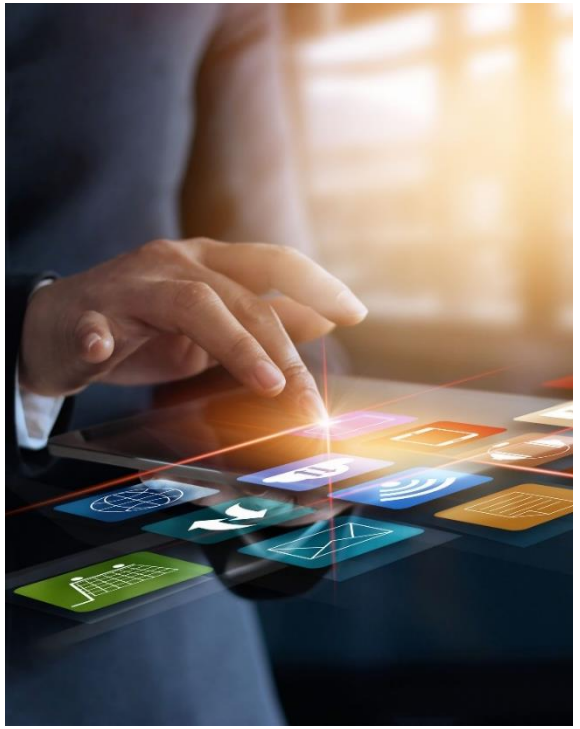
A. As a director or key managerial personnel, as on the date of inclusion of his/her name in the databank, in either of the following companies:
   a. A listed public company
   b. An unlisted public company with a paid-up share capital of INR10 crore or more
   c. Body corporate listed on any recognised stock exchange or in a country which is a member State of the Financial Action Task Force on Money Laundering and the regulator of the securities market in such member state is a member of the International Organisation of Securities Commissions
   d. Bodies corporate incorporated outside India with a paid-up share capital of USD2 million or more
   e. Statutory corporations set up under an Act of Parliament or any State Legislature carrying on commercial activities.

B. In the pay scale of director or above in the MCA or the Ministry of Finance or Ministry of Commerce and Industry or the Ministry of Heavy Industries and Public Enterprises and having experience in handling the matters relating to corporate laws, securities laws, or economic laws.

C. In the pay scale of Chief General Manager or above in the Securities and Exchange Board of India (SEBI), the Reserve Bank of India (RBI), the Insurance Regulatory and Development Authority of India (IRDAI) or the Pension Fund Regulatory and Development Authority and having experience in handling the matters relating to corporate laws or securities laws or economic laws.

The revised norms are effective from the date of their publication in the official gazette i.e. 18 December 2020.

(Source: MCA notification no. G.S.R. 774(E) dated 18 December 2020)



2. For the purpose of calculation of the period of three years, any period during which an individual was acting as a director or as key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time will be counted only once.

4. Relaxation on passing of ordinary and special resolutions by companies

MCA through circular dated 31 December 2020 extended the timeline and allowed companies to conduct their Extra Ordinary General Meetings (EGMs) through Video Conferencing (VC) or Other Audio Visual Means or transact items through postal ballot in accordance with prescribed conditions up to 30 June 2021 (earlier 31 December 2020).

(Source: MCA general circular no. 39/2020 dated 31 December 2020)

5. Relaxation in conducting board meeting through VC or OAVM

MCA through a circular dated 30 December 2020 extended the timeline and allowed companies to conduct their Board meetings to discuss the matters specified in Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 (i.e. those relating to approval of financial statements, board's report, prospectus, etc.) through VC/OAVM up to 30 June 2021 (earlier allowed up to 31 December 2020).

(Source: MCA notification no. G.S.R. 806(E) dated 30 December 2020)

6. Relaxation with respect to validity of SEBI observations and revision in issue size

SEBI through a circular dated 29 September 2020 has extended the timeline for relaxations provided with respect to validity of SEBI observations and revision in issue size as follows:

- ***Flexibility in issue size:*** An issuer is permitted to increase or decrease the fresh issue size by up to 50 per cent of the estimated issue size without filing fresh draft offer document with SEBI subject to specified conditions. The relaxation is applicable up to 31 March 2021 (earlier up to 31 December 2020).
- ***Extension of validity of SEBI observations:*** Currently, a public issue/rights issue may be opened within 12 months from the date of issuance of observations by SEBI. The validity of SEBI observations expiring between 1 October 2020 and 31 March 2021 has been extended up to 31 March 2021, subject to an undertaking from lead manager to the issue confirming compliance with Schedule XVI of the ICDR Regulations while submitting the updated offer document to SEBI.

The provisions of the circular are effective from 1 October 2020.

(Source: SEBI circular no SEBI/HO/CFD/DIL1/CIR/P/2020/188 dated 29 September2020)

7. SEBI introduces uniform e-voting facility for shareholders of listed entities

Regulation 44 of the Listing Regulations requires listed entities to provide remote e-voting facility to its shareholders in respect of all shareholders' resolutions. Currently, there are multiple e-voting service providers (ESPs) providing e-voting facility to listed entities in India. This necessitates registration on various ESPs and maintenance of multiple user IDs and passwords by the shareholders.

In view of the above, SEBI through a circular dated 9 December 2020 has decided to enable e-voting to all the demat account holders, by way of a single login credential, through their demat accounts/websites of depositories/DPs. Demat account holders would be able to cast their vote without having to register again with the ESPs.

The facility would be implemented in a phased manner as follows:

- **Phase-1**: Following process for e-voting would be implemented within six months of the date of the circular:

a) *Direct registration with depositories*: Shareholders can register directly with the depository. Shareholders would be able to access the e-voting page of various ESPs through the websites of the depositories without further authentication by ESPs for participating in the e-voting process.

b) *Through demat accounts with DPs*: Demat account holders will have the option of accessing various ESP portals directly from their demat accounts. They would be routed to the webpage of the respective depositories from their demat accounts, which in turn would enable access to the e-voting portals of various ESPs without further authentication by ESPs for participating in the e-voting process.

- **Phase-2**: Under phase-2, the depository would validate the demat account holder through a One Time Password (OTP) verification process as under.

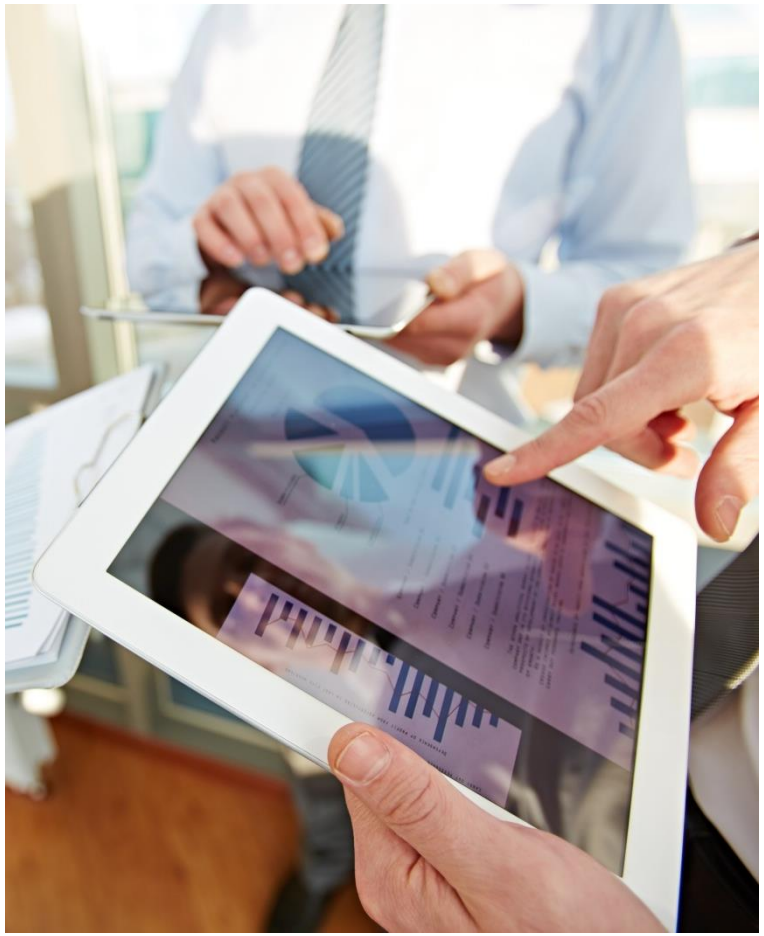
a. *Direct registration with depositories:* Depositories would allow login through registered mobile number/e-mail based OTP verification as an alternate to login through username and password.

b. *Through demat accounts with DPs:* A second factor authentication using mobile/ e-mail based OTP would be introduced before the demat account holders can access the websites of the depositories through their demat accounts.

Phase-2 would be implemented within 12 months from the completion of the process in phase-1.

ESPs may continue to provide the facility of e-voting as per the existing process to all physical shareholders and shareholders other than individuals i.e. institutions/corporate shareholders.

(Source: SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/242 dated 9 December 2020)



8. Extension of due date of submitting IT returns and tax audit reports

The Ministry of Finance through a press release dated 30 December 2020 has extended the due dates for submission of income tax returns and audit reports under the Income-tax Act, 1961 (IT Act) as follows:

Extension for tax audit reports: Due date for furnishing tax audit reports under the IT Act including tax audit report and report in respect of international/specified domestic transaction extended to 15 January 2021 (earlier 31 December 2020).

Extension of due date of IT returns:

a. For the taxpayers (including their partners) who are required to get their accounts audited - 15 February 2021 (earlier 31 January 2021) (due date as per IT Act is 31 October 2020).

b. For the taxpayers who are required to furnish report in respect of international/specified domestic transactions - 15 February 2021 (earlier 31 January 2021) (due date as per IT Act is 30 November 2020).

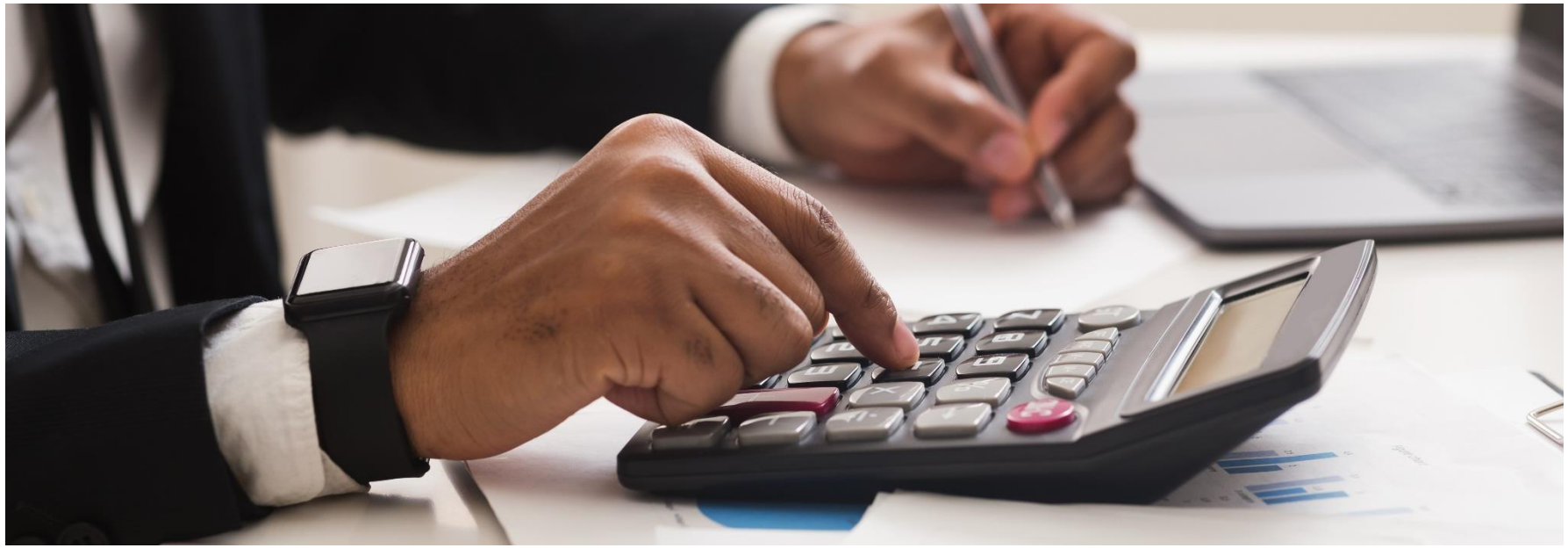
c. Due date for furnishing IT returns for other taxpayers (for whom the due date as per the IT Act is 31 July 2020) – 10 January 2021 (earlier 31 December 2020).

(Source: Ministry of Finance- Press release on 'Extension of time limits' dated 30 December 2020)

9. RBI prohibits banks from declaration of dividends amid COVID-19

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. The decision has been taken in view of the ongoing stress and heightened uncertainty on account of COVID-19.

(Source: RBI circular no. RBI/2020-21/75 dated 4 December 2020)



RBI issued regulatory framework for HFCs

The provisions of the National Housing Bank (NHB) Act, 1987 were amended with effect from 9 August 2019 pursuant to the Finance (No. 2) Act, 2019 and conferred certain powers for regulation of Housing Finance Companies (HFCs) with the Reserve Bank of India (RBI).

Consequently, RBI on 17 June 2020 issued a draft regulatory framework for HFCs for public comments.

New development

Basis the comments received, on 22 October 2020, RBI through a circular issued a revised regulatory framework applicable to all HFCs. HFCs will continue to comply with all extant instructions issued by NHB, which are not covered in the framework.

Some of the key features of the framework are as follows:

- **Definition of HFC**: HFC shall mean a company incorporated under the 2013 Act that fulfils following conditions:
  a. It is an NBFC whose financial assets, in the business of providing finance for housing, constitute at least 60 per cent of its total assets (netted off by intangible assets).
  b. Out of the total assets (netted off by intangible assets), not less than 50 per cent should be by way of housing financing for individuals.
- **Transition**: Registered HFCs which do not currently fulfil the above criteria but wish to continue as HFCs, will be provided with the following timeline for transition:

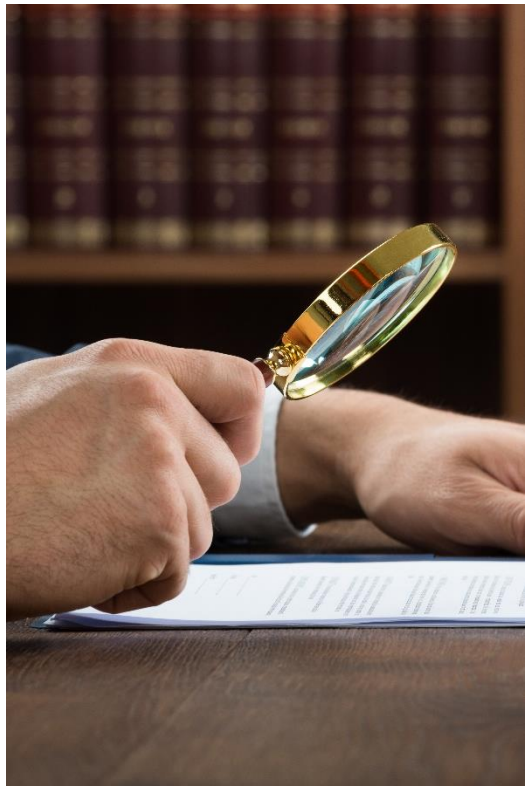
Timeline	Minimum percentage of total assets towards housing finance	Minimum percentage of total assets towards housing finance for individuals
31 March 2022	50 per cent	40 per cent
31 March 2023	55 per cent	45 per cent
31 March 2024	60 per cent	50 per cent

HFCs which are unable to fulfil the above criteria as per the timeline would be treated as NBFC-Investment and Credit Companies (NBFC-ICC) and they would be required to approach RBI for conversion of their Certificate of Registration (CoR) from HFC to NBFC-ICC. Application for such conversion should be submitted with all supporting documents meant for new registration together with an auditor's certificate on principal business criteria and necessary board resolution approving the conversion.

- **Minimum NOF for HFCs:** RBI specified INR20 crore as the minimum Net Owned Fund (NOF) for a company to commence or carry on housing finance as its principal business. HFC which hold a CoR with NOF of less than INR20 crore, may continue to carry on the business of housing finance, if such a company achieves NOF of INR15 crore by 31 March 2022 and INR20 crore by 31 March 2023.

  HFCs whose NOF stands below INR20 crore would be required to submit a statutory auditor's certificate with RBI within a period of one month evidencing compliance with the prescribed levels as at the end of the period indicated above.

(Source: RBI circular no. RBI/2020-21/60 dated 22 October 2020)



Labour codes received Presidential assent

With an aim to rationalise labour laws prevalent in India, recently, following codes have been passed by the Parliament and have received assent of the President of India on 28 September 2020:

- **The Occupational Health, Safety and Working Conditions Code, 2020**: The Code seeks to amend the laws regulating the occupational safety, health and working conditions of the persons employed in an establishment and related matters.
- **The Industrial Relations Code, 2020**: The Code seeks to consolidate and amend the laws relating to trade unions, conditions of employment in industrial establishment or undertaking, investigation and settlement of industrial disputes and related matters.
- **The Code on Social Security, 2020**: The Code seeks to amend and consolidate the laws relating to social security with the goal to extend social security to all employees and workers either in the organised, unorganised or any other sectors and related matters.

Effective date: The Codes will come into force on such date as the Central Government (CG) may, by notification in the Official Gazette, appoint. Different dates may be appointed for different provisions of the Code.

For a detailed read, please refer to KPMG in India's First Notes on 'Revised norms relating to PF and gratuity under the Code on Social Security, 2020' dated 29 October 2020.

(Source: Codes issued by the Ministry of Law and Justice on 29 September 2020)

CBDT amends the Tax Audit Report (Form 3CD)

On 1 October 2020, the Central Board of Direct Taxes (CBDT) through a notification has amended the Income-tax Rules, 1962 (the Rules) which, , include amendments to Form 3CD (statement of particulars required to be furnished under Section 44AB of the Income-tax Act, 1961 (IT Act)).

The amendments are as follows:

- **Clause introduced in Part A of Form 3CD**: Additional information to be provided as to whether the assessee has opted for taxation under Section 115BA[3]/115BAA[4]/115BAB[5] of the IT Act.
- **Clauses modified in Part B of Form 3CD**:
  - **Particulars of depreciation:** Additional information to be provided with respect to adjustment made to the written down value of assets under Section 115BAA (for assessment year 2020-21 only) along with adjusted written down value.
  - **Brought forward loss/depreciation allowance:** Details of brought forward loss or depreciation allowance in Form No. 3CD has been modified to incorporate details relating to losses/allowances not allowed under Section 115BAA of the IT Act and amount as adjusted by withdrawal of additional depreciation on account of opting for taxation under Section 115BAA of the IT Act.

The amendments are effective from 1 October 2020.

(Source: CBDT notification no. G.S.R.610(E) dated 1 October 2020)

3. Tax on income of certain manufacturing domestic companies
4. Tax on income of certain domestic companies
5. Tax on income of new manufacturing companies

ICAI publications

Publications issued by ICAI during the quarter ended 31 December 2020

Indian Accounting Standard: An overview (Revised 2020)	The publication gives a glance on the basic aspects of applicable Indian Accounting Standards (Ind AS) in a summarised manner, differences between Ind AS and Accounting Standards (AS) and Ind AS and International Financial Reporting Standards (IFRS). The publication also captures all the amendments to Ind ASs notified by the MCA through notification dated 24 July 2020 as Companies (Indian Accounting Standards) Amendment Rules 2020, which are applicable for the accounting year beginning on or after 1 April 2020.
Approach to Tax Audit under section 44AB of the Income tax Act, 1961 (Checklist)	The checklist has been issued to assist in tax audits in a more objective manner and with consciousness towards related audit documentations. The checklist includes certain commonly found errors/non -compliances observed by the Taxation Audits Quality Review Board of ICAI while conducting review of tax audit reports.
Guidance note on accounting for share based payments (Revised 2020)	The revised guidance note on accounting for share based payments deals with share-based payment transactions with employees as well as non-employees. This guidance note will be applicable to share-based payment plans where the grant date falls on or after 1 April 2021. Further, it has been clarified that an entity is not required to apply revised guidance note to share-based payment to equity instruments that are not fully vested as at 1 April 2021.
Guidance note on applicability of AS 25 and measurement of income tax expense for interim financial reporting (Revised 2020)	ICAI issued the guidance note to revise the 'Guidance Note on Applicability of AS 25 to Interim Financial Results' which was issued in the year 2008 and 'Guidance Note on Measurement of Income Tax Expense for Interim Financial Reporting in the context of AS 25' which was issued in the year 2006. The publication aims to provide additional guidance about applicability of AS 25 to interim financial results presented by an entity pursuant to the requirements of a statute/regulator; and measurement of income tax expense in interim financial results. Further revised guidance note incorporates updated references, relevant examples and the impact of opinions issued by ICAI on the preparation of interim financial reports.
Technical guide on Base Erosion and Profit Shifting (BEPS) action plans and Multilateral Instrument (MLI)	The Organisation for Economic Co-operation and Development (OECD through the BEPS action plans,) recommended certain minimum standards, reinforcement of international standards, common practices and best approaches for domestic law that should have been incorporated in every domestic tax system which will facilitate the convergence of the best international tax practices and curbing avoidance by Multinational Enterprises (MNE). The technical guide discusses each action plan in detail (total 15 action plans) and discusses the final Action plan no.15 which deals with multilateral instrument.

(ICAI notification dated 6 October 2020, 27 October 2020, 4 November 2020, 3 November 2020)

ICAI publications

EACs issued by ICAI during the quarter ended 31 December 2020

Topic	Month
Classification of spares under Ind AS 16, *Property Plant and Equipment*	December 2020
Disclosure/classification of late payment interest charges collected from customers in the statement of cash flows under Ind AS 7, *Statement of Cash Flow*	November 2020
Accounting treatment of expenditure incurred for rejuvenation of petrochemical plant under Ind AS 16, *Property Plant and Equipment*	October 2020

(Source: The Chartered Accountant – ICAI Journal for the month of October, November and December 2020)

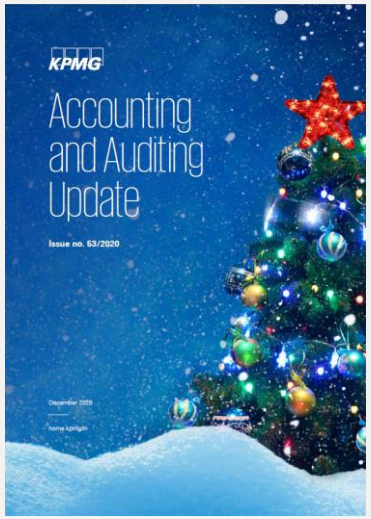
Our publications

Accounting and Auditing Update: Issue no. 53 - December 2020

In this edition of Accounting and Auditing Update (AAU), we discuss some of the key reporting requirements as introduced by the Companies (Auditor's Report) Order, 2020 (CARO 2020) which is now applicable for audits of financial years commencing on or after 1 April 2021 instead of 1 April 2020 such as reporting in relation related party transactions and non-cash transactions, if any entered into by a company along with highlighting the related guidance provided by the Institute of Chartered Accountants of India (ICAI).

Recently, the Securities and Exchange Board of India (SEBI) has deliberated on this topic and concluded that the current regulatory prescription under the Listing Regulations needs to be re-looked at along with further strengthening the disclosure regime. Accordingly, it has issued certain recommendations addressing the gaps of information asymmetry which thereby, would aid in promoting market parity and transparency. The publication summarises the recommendations made by SEBI regarding disclosures pertaining to analyst and investor meets and conference calls.

The publication also included a regular round-up of some recent regulatory updates in India and internationally.



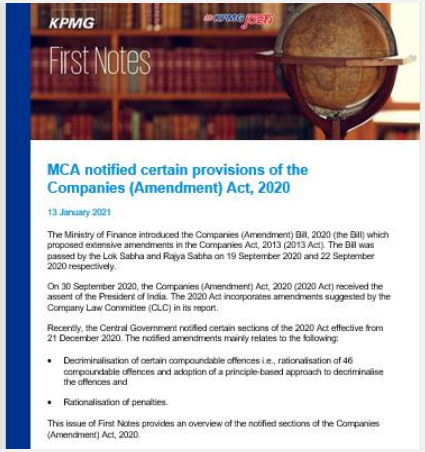
First Notes
MCA notified certain provisions of the Companies (Amendment) Act, 2020

On 30 September 2020, the Companies (Amendment) Act, 2020 (2020 Act) received the assent of the President of India. The 2020 Act incorporates amendments suggested by the Company Law Committee (CLC) in its report.

Recently, the Central Government notified certain sections of the 2020 Act effective from 21 December 2020. The notified amendments mainly relates to the following:

- Decriminalisation of certain compoundable offences i.e., rationalisation of 46 compoundable offences and adoption of a principle-based approach to decriminalise the offences and
- Rationalisation of penalties.

This issue of First Notes provides an overview of the notified sections of the Companies (Amendment) Act, 2020.



THIS ADVERTISEMENT FEATURES KPMG INDIA EMPLOYEES

KPMG in India contacts:

Sai Venkateshwaran
Partner
Assurance
T: +91 20 3090 2020
E: saiv@kpmg.com

Ruchi Rastogi
Partner
Assurance
T: +91 124 334 5205
E: ruchirastogi@kpmg.com

home.kpmg/in

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

Previous editions are available to download from:
home.kpmg/in

#KPMG josh

Follow us on:
home.kpmg/in/socialmedia

KPMG Assurance and Consulting Services LLP, Lodha Excelus, Apollo Mills Compound, NM Joshi Marg, Mahalaxmi, Mumbai - 400 011 Phone: +91 22 3989 6000, Fax: +91 22 3983 6000.