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Updates relating to the Companies Act, 2013



Updates relating to SEBI Regulations



Other updates

Table of contents

1

Updates
relating to the
Companies
Act, 2013

2

Updates
relating to SEBI
Regulations

3

Other
updates

In this publication, we have summarised important financial reporting and regulatory updates relevant for the quarter ended 30 September 2022 from the Ministry of Corporate Affairs (MCA), Securities and Exchange Board of India (SEBI), Reserve Bank of India (RBI), Insurance Regulatory and Development Authority of India (IRDAI), and the Institute of Chartered Accountants of India (ICAI).



1. Amendments to Corporate Social Responsibility (CSR) Rules

Section 135 of the Companies Act 2013 (2013 Act), read with the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules), prescribes the requirements and framework relating to CSR for all the companies meeting the prescribed criteria.

As per Section 135 of the 2013 Act, companies having net worth of INR500 crore or more, or turnover of INR1,000 crore or more or a net profit of rupees INR5 crore or more during the immediately preceding financial year, are required to contribute two per cent of their profits for CSR purpose. The section further provides that, if the amount to be spent by a company, does not exceed INR50 lakh, then such a company is not required to constitute a CSR committee and the functions of such committee shall be discharged by the board of directors of such company.

The MCA, through its notification dated 20 September 2022, amended the CSR Rules. The amendments are as follows:

- **Constitution of CSR Committee:** Rule 3(1) requires every company fulfilling the eligibility criteria i.e. the net worth or

turnover or net profit is above the prescribed threshold, then such a company should comply with the provisions of Section 135 of the 2013 Act and CSR Rules. MCA amended Rule 3(1) to provide that, in case a company has any amount in its unspent CSR account, then such a company is required to constitute a CSR committee and comply with all the CSR provisions stipulated under Section 135(2) to 135(6)¹ of the 2013 Act.

Further, Rule 3(2) provides that, a company which does not meet the eligibility criteria i.e. its net worth, turnover, or net profit is below the prescribed threshold, for three consecutive financial years, then such a company is not required to comply with the CSR provisions prescribed under Section 135 until the applicability criteria is met again. Now, MCA through its amendment omitted this sub-rule.

- **Registered public trust and registered society can undertake CSR activities:** Rule 4(2) of the CSR Rules has been amended to provide that, in addition to

entities mentioned, now CSR activities can be undertaken by registered public trust or a registered society exempted under sub-clauses (iv), (v), (vi) or (via) of Section 10 (23C) of the Income-tax Act, 1961 or through an entity being a statutory body constituted under an Act of Parliament or State Legislature to undertake activities covered in Schedule VII of the 2013 Act.

- **CSR impact assessment expenditure:** As per Rule 8(3) of the CSR Rules, every company with average CSR obligation of INR10 crore or more (computed in accordance with Section 135(5)) in three immediately preceding financial years, should undertake an impact assessment through an independent agency of CSR projects having outlays of INR1 crore or more, and which have been completed not less than one year before undertaking the impact study.

The amendment provides that such companies may book the expenditure relating to impact assessment towards CSR for that financial year, which shall not exceed two percent of the total CSR

expenditure for that financial year or INR50 lakh, whichever is higher.

Prior to the amendment, the company undertaking impact assessment may book the expenditure towards CSR for that financial year, which shall not exceed five percent of the total CSR expenditure for that financial year or INR50 lakh, whichever is less.

- **Annual Report on CSR activities:** The notification also provides a revised format for the annual report on CSR activities to be attached to the board's report for the financial year.

The above amendments are applicable from 20 September 2022.

Also refer to KPMG in India's First Notes - MCA amends certain Rules relating to Corporate Social Responsibility dated 19 October which provides detailed overview of the amendments.

(Source: MCA Notification No. G.S.R. 715(E) Companies (CSR Policy) Amendment Rules, 2022 dated 20 September 2022)

1. Section 135(2) to 135(6) deals with the formation and responsibilities of the CSR committee, the quantum of CSR spends and treatment of unutilised amount.



1. Amendments to Corporate Social Responsibility (CSR) Rules

Key takeaways

The CSR amendments provide more clarity on certain aspects of implementation. The amendment on provision relating to CSR Committee requires formation of such committee as long as there is any amount lying in the unspent CSR account. The amendment clarifies that companies that incur CSR expenditure should form a CSR Committee to monitor its activities. The omission of Rule 3(2) is also in line to the amendment made in Rule 3(1) mentioned above since now companies which have any amount outstanding in its unspent CSR account should constitute a CSR Committee and comply with the relevant provisions of Section 135 of the 2013 Act.

Further, the change in the limit of expenses incurred towards impact assessment is likely to enable companies to undertake meaningful impact studies especially for entities that are involved in large CSR projects. This is due to the fact that the threshold for such expenditure has been relaxed i.e. to two per cent of the total CSR expenditure for that financial year or INR50 lakh, whichever is higher.





2. Amendments to rules relating to maintaining of books of accounts by companies

Rule 3 of the Companies (Accounts) Rule 2014 (Accounts Rules) prescribes the manner in which the books of accounts are required to be kept in electronic mode. The MCA through its notification dated 5 August 2022 has amended certain provisions of Rule 3 of the Accounts Rules. The amendments are as follows:

- **Availability of books of accounts:**

Rule 3(1) of the Accounts Rules has been amended to provide that the books of account and other relevant books and papers maintained in an electronic mode should remain accessible in India, **at all times** so as to be usable for subsequent reference.

- **Maintaining of backups:** Rule 3(5) of the Accounts Rules requires every company to maintain proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board of Directors may deem appropriate and such records should not be disposed of or rendered unusable, unless permitted by law.

Additionally, companies are required to maintain the back-up of the books of account and other relevant books and papers in an electronic mode on servers physically located in India **on a daily basis** (*earlier periodic basis*) even in cases where such backups are maintained at a place outside India.

- **Service provider:** Rule 3(6) of the Accounts Rules requires disclosure by a company to the Registrar of Companies (ROC) in case a service provider has been used for maintenance of books of accounts in an electronic form. The amendments require an additional disclosure relating to the name and address of the person in control of the books of account and other books and papers in India, where the service provider is located outside India.

The revised requirements to be disclosed to the ROC on an annual basis at the time of filing of financial statement are:

- a) The name of the service provider
- b) The internet protocol address of the service provider
- c) The location of the service provider (wherever applicable)
- d) Where the books of account and other books and papers are maintained on a cloud, such address as provided by the service provider
- e) **Details of where the service provider is located outside India, the name and address of the person in control of the books of account and other books and papers in India.**

(Emphasis added to highlight the changes)

Effective date: The amended Rules are effective from 11 August 2022.





2. Amendments to rules relating to maintaining of books of accounts by companies

Key takeaways

From 1 April 2023, companies that use an accounting software for maintaining books of accounts, should ensure that the accounting software has a feature to recording audit trail for each transaction and the same shall not be disabled in accordance with Rule 12(1) of the Accounts Rules.

These regulations for maintenance of books of accounts in electronic mode have become more stringent. Companies are required to make sure that the books of accounts and other documents, when kept in an electronic mode, are always available in India. Further, transition time has not been provided to the companies to implement the above mentioned amendment with regards to daily backups on servers available in India as it is effective from 11 August 2022.

(Source: MCA notification G.S.R. 624(E), Companies (Accounts) Fourth Amendment Rules, 2022 dated 5 August 2016 and KPMG in India's First Notes MCA amends rules relating to maintaining of books by companies dated 8 September 2022)





3. Amendments to Deposit Rules

As per Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014 (Deposit Rules), every company (other than a government company), shall file a return in form DPT-3 with the registrar by 30 June of each year wherein the information contained is as on 31 March of that year duly audited by the auditor of the company.

On 29 August 2022, MCA amended Rule 16 of the Deposit Rules through Companies (Acceptance of Deposits) Amendment Rules, 2022. As per the amendment, the auditor of the company **should additionally submit a declaration, that forms part of the DPT-3 Form, certifying the particulars of deposits and liquid assets furnished in the form.** Additionally, MCA has issued revised Forms DPT-3 and DPT-4.

(Emphasis added to highlight the changes)

The above amendments are effective from 29 August 2022.



(Source: MCA notification G.S.R. (E), Companies (Acceptance of Deposits) Amendment Rules, 2022 dated 29 August 2022)



4. Amendment to the definition of small companies

The MCA has notified an amendment in the Companies (Specification of definition details) Rules, 2014 on 15 September 2022. The amendment has revised the definition of 'small company' under the 2013 Act. The revised definition is as follows:

A small company means a company, other than a public company, which meets both the given conditions:

- a) Its paid-up share capital does not exceed **INR4 crore** (earlier INR2 crore), or such higher amount as may be prescribed and which should not be more than INR10 crore, and
- b) Its turnover as per profit and loss account for the immediately preceding financial year does not exceed **INR40 crore** (earlier INR20 crore) or such higher amount as may be prescribed, and which should not be more than INR100 crore.

(Emphasis added to highlight the changes)

The revised definition is effective from 15 September 2022.

Key takeaways

The regulator has provided a range of benefits to small companies such as cash flow statements are not required to be prepared by such companies, relaxation for conducting board meetings to only twice a year etc. The amendment has resulted in increasing the limit and accordingly, more companies would be categorised as small companies thereby availing the relaxations and exemptions available to small companies. The recent amendment aims to facilitate the ease of doing business and to reduce compliance burden on such companies.



(Source: MCA Notification No. G.S.R. 700(E), the Companies (Specification of definition details) Amendment Rules, 2022 dated 15 September 2022)



5. Amendments relating to provisions of physical verification of registered office by the ROC

Section 12(9) of the 2013 Act provides that, if the Registrar of Companies (ROC) has reasonable cause to believe that the company is not carrying out any business or operations, then the ROC may cause a physical verification of the registered office of the company. And ROC can initiate removal of the name of the company from the registrar of the companies under Chapter XVIII of the 2013 Act.

Accordingly, On 18 August 2022, MCA through its notification, has inserted Rule 25B in the Companies (Incorporation) Rules 2014. The new Rule 25B prescribes the procedure to be followed by the ROC for conducting a physical verification of the registered office of the company. The key considerations of Rule 25B are as follows:

- The ROC would conduct physical verification of the registered office of the company based on the information and documents made available on MCA21.

The verification would be conducted in the presence of two independent witnesses of the locality in which the said registered office is situated and assistance of the local police for such verification can also be taken, if required.

- The ROC shall cross verify the authenticity of the address from the supporting documents, duly authenticated by the occupant of the property of the registered office, which are collected during the physical verification.
- After performing the above procedures, if the ROC has the reasonable cause to believe that the registered office is not capable of receiving and acknowledging all communications and notices, then a notice shall be issued to the company and its directors specifying the intention to remove the name of the company from the register of companies.

- The rule also prescribes the format of a physical verification report.

Subsequently, on 24 August 2022, MCA amended the forms pertaining to removal of name of companies under the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. As per the amendment, the following forms can now, also be issued in case the company is not carrying on any business or operation as per the physical verification conducted in accordance with Section 12(9) of the 2013 Act:

- Form SKT-1: Notice by registrar for removal of the name of the company
- Form SKT-5 and Form SKT-5A: Public Notice for removal of the name of the company.

Key takeaways

The above amendments broaden the scope of the process of conducting physical verification of shell/dormant/inactive companies by MCA. The companies should ensure their compliance with Section 12 of the 2013 Act and the Companies (Incorporation) Rules 2014 by confirming that details of the registered office are correctly updated on the MCA portal and on all documents of the company.

(Source: MCA notification G.S.R. (E) Companies (Incorporation) Third Amendment Rules, 2022 dated 18 August 2022 and MCA notification G.S.R 658(E) Companies (Removal of Names of Companies from the Register of Companies) Second Amendment Rules, 2022 dated 24 August 2022)



6. Amendments relating to provisions relating to registration of charges

The Companies (Registration of Charges) Rules, 2014 governs the provisions around creation of charges by a company. On 29 August 2022, MCA amended Companies (Registration of Charges) Rules, 2014 and inserted new Rule 13.

As per Rule 13, the e-forms for registering a charge should be signed by an insolvency resolution professional, resolution professional, or liquidator for companies under resolution or liquidation. As a result, the following e-forms have been amended:

- **CHG-1** – Application of registration for creation, modification of charge (other than those related to debentures) including particulars of modification of charge by Asset Reconstruction Company in terms of Securitization and Reconstruction of Financial Assets and Enforcement Interest Act, 2002 (SARFAESI)

- **CHG-4** – Particulars of satisfaction of charge
- **CHG-8** – Application to Central Government for extension of time for filing particulars of registration of satisfaction of charge or for rectification of omission or misstatement of any particular in respect of creation/modification/satisfaction of charge
- **CHG-9** – Application for registration of creation or modification of charge for debentures or rectification of particulars filed in respect of creation or modification of charge for debentures

The above amendments are effective from 29 August 2022.



(Source: MCA notification G.S.R. (E), Companies (Registration of Charges) Second Amendment Rules, 2022 dated 29 August 2022)



7. Clarification on disclosure of absolute figures in e-forms

As per Schedule III to the 2013 Act companies are mandatorily required to round off the figures appearing in the financial statements depending upon their total income. In this regard, MCA has issued a clarification on 26 September 2022, that, if the companies provide absolute figures in e-forms for filing of the financial statements i.e. Form AOC-4, the same would not be treated as incorrect certification by the professionals.



(Source: MCA clarification dated 26 September 2022)



1. SEBI introduces regulations pertaining to Social Stock Exchange

The Government of India in the FY2019-20 budget proposed for the creation of a Social Stock Exchange (SSE) under the regulations of the Securities Exchange Board of India (SEBI) for listing social enterprises and voluntary organisations working towards achieving social objectives.

Considering this, on 25 July 2022, SEBI issued amendments to following regulations to insert provisions relating to SSE:

- SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations)
- SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) and
- SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations).

Subsequently, on 19 September 2022, SEBI through its circular issued a detailed framework prescribing the minimum requirements to be followed by an SSE.

A. Key provisions introduced under the ICDR Regulations are as follows:

- **Meaning:** An SSE means a separate segment of a recognised stock exchange having nationwide trading terminals permitted to register Not for Profit Organisations (NPO) and/or list the securities issued by NPO in accordance with provisions of ICDR Regulations. In case a NPO or a For Profit Social Enterprise (FPSE) is desirous of registering itself as a Social Enterprise (SE), it must meet the eligibility criteria specified under Chapter X-A of ICDR Regulations.
- **Eligibility conditions for being identified as a social enterprise:** In order to be recognised as an SE, an NPO which satisfies the minimum registration requirements as per the SEBI Framework or a FPSE would need to establish social intent as their primary goals by demonstrating their focus towards the eligible social

objectives and satisfying the prescribed conditions. The SE shall be eligible to raise funds from an SSE provided it engages in a social activity that is listed by the regulator (there are 16 broad categories).

Further, the SE shall have at least 67 per cent of its activities qualifying as eligible activities through one or more of the following:

- At least 67 per cent of the immediately preceding 3-year average of revenues comes from providing eligible activities
- At least 67 per cent of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities
- Members of the target population to whom the eligible activities have been provided constitute at least 67 per cent of the

immediately preceding three-year average of the total customer base and/or total number of beneficiaries.

Additionally, corporate foundations, political or religious organisations or activities, professional or trade associations, infrastructure and housing companies, except affordable housing, shall not be eligible to be identified as a SE.

- **Applicability:** The provisions of the chapter X-A are applicable to:
 - NPO seeking to only get registered with an SSE
 - NPO seeking to get registered and raise funds through an SSE
 - FPSE seeking to be identified as an SE.



1. SEBI introduces regulations pertaining to Social Stock Exchange

• Funds raise by an SE:

- i) An NPO can raise funds through issuance of Zero Coupon Zero Principal (ZCZP) instruments or donations through mutual fund schemes as specified by SEBI or other means as specified by SEBI. In case funds are raised through issuance of ZCZP instruments, the NPO is required to abide by the disclosure requirements, while filing the draft/final fund-raising document. The document should include information regarding the vision, target segment, strategy, governance structure, management, operations, financial statements of last three years, details of compliance and credibility, social impact, its risks and mitigation steps.
- ii) A FPSE can issue equity shares on the main board, Small and Medium Enterprise (SME) platform or innovators growth platform or equity shares issued to an Alternative Investment Fund (AIF)

including a Social Impact Fund (SIF) or issue debt securities or through other means as prescribed by SEBI.

- **Other Provisions:** In addition to the above, ICDR Regulation has also laid the provisions with respect to:

- i) Ineligibility criteria for raising of funds
- ii) Eligibility for issuance of ZCZP instruments
- iii) Procedure for public and private issue of ZCZP instruments by an NPO
- iv) Other conditions relating to issuance of ZCZP instruments
- v) Termination of listing of ZCZP instruments from SSE

B. Key provisions introduced under the LODR Regulations:

- **Disclosures by a FPSE:** A FPSE whose designated securities are listed on the stock exchange(s) shall comply with the disclosure requirements for issuers

of specified securities listed on the main board or the SME Exchange or the Innovators Growth Platform.

- **Disclosures by an NPO:** A NPO registered on the SSE(s), including an NPO whose designated securities are listed on the SSE(s), are required to provide disclosures to the SSE(s) annually on prescribed matters, within 60 days from the end of the financial year. The SEBI circular prescribes a detailed list of disclosures with respect to the general, governance and financial aspects that should form part of the annual disclosures. Additionally, the circular also contains a guidance (Annexure I to the circular) with respect to each of these aspects.
- **Materiality:** An SE should disclose to SSE or stock exchange its policy for determination of materiality duly approved by its board or management. Also, the board and management would authorise one or more of its Key Managerial Personal (KMP) for determining materiality of an event or information and for the

purpose of making such a disclosure. The contact details of such personnel should be disclosed to the SSE(s) or the stock exchange(s).

- **Annual Impact Report (AIR):** An SE is required to submit an audited AIR to the SSE in the specified format within 90 days from the end of the financial year and it should be audited by a Social Audit Firm employing a Social Auditor.

The AIR should contain qualitative and quantitative information regarding the social impact generated by the entity, project or solution for which funds are raised from the SSE. In case of an NPO registered as an SE without listing any security, the AIR must include information relating to the NPO's significant activities, intervention, programmes or projects during the year and the methodology for determination of significance must be explained.



1. SEBI introduces regulations pertaining to Social Stock Exchange

The AIR must include information with respect to the following aspects:

- i. Strategic intent and planning
- ii. Approach
- iii. Impact score card.

The SEBI circular contains a guidance (Annexure II to the circular) with respect to each of the above categories of disclosures.

- **Statement of utilisation of funds:** A listed NPO shall submit to the SSE(s) a statement of utilisation of funds within 45 days from the end of the quarter in the following manner:
 - a) category-wise amount of monies raised;
 - b) category-wise amount of monies utilised;
 - c) balance amount remaining unutilised.

Also, LODR Regulation provides that the unutilised amount of funds shall

be kept in a separate bank account and not to be co-mingled with other funds. The statement shall be given till the time the issue proceeds have been fully utilised or the purpose for which they were raised, has been achieved.

C. Key provisions introduced under the AIF Regulations are as follows:

A registered AIF can raise funds by way of a 'social impact fund' (earlier referred to as a social venture fund). A social impact fund has been defined as an AIF which invests primarily in securities, units or partnership interest of social ventures or securities of social enterprises and which satisfies the social performance norms laid down by the fund. A social impact fund or a scheme of a social impact fund issues social units i.e. units issued to investors who have agreed to receive only social returns or benefits and no financial returns against their contribution. The regulations provide key provisions with respect to a social impact fund.

D. Social audit standards

With reference to the above provisions introduced by SEBI, the Institute of Chartered Accounts of India (ICAI), on 5 August 2022, has released an Exposure Draft (ED) on the Compendium of Social Audit Standards (SAS) standards. The SAS shall be applicable whenever an independent social audit of an SE is carried out. The five elements of a social audit engagement are:

- A three-party relationship involving a social auditor, a responsible party (generally SE), and the intended user
- Project/programme/intervention to be covered
- Project monitoring framework
- Evidence
- A written report.

The ED also provides a framework on SAS which describes the elements and objectives of the social audit to be performed by a social auditor. The SASs

contain essential procedures and related guidance/criteria for the performance of each of the area-specific social audit engagements based on the 16 categories of social activities as specified by SEBI. The respective SASs may be referred for the area specific social indicators.





1. SEBI introduces regulations pertaining to Social Stock Exchange

Key takeaways

SSE is a novel concept in India. SEBI's circular lays down detailed provisions for NPOs in India to get listed on an SSE. This will entail a paradigm shift in the way NPOs operate, their governance structure and compliances with laws and regulations. Some key considerations for NPOs and FPSEs are as below:

- **Eligibility requirements:** The SEBI circular prescribes the minimum requirements for registration of an NPO on an SSE. Some of the key requirements include:
 - i. Such an NPO should have been in existence for a minimum of three years,
 - ii. The NPO should have a valid Income Tax Permanent Account Number (IT PAN).
 - iii. The registration certificate under Section 12A/12AA/12AB² of the Income-tax Act, 1961 (IT Act) should be valid for at least the next 12 months.
 - iv. The annual spending by an NPO as per the audited financial statements for the past financial year should be at least INR50 lakh.
 - v. The annual funding received by such an NPO as per the audited accounts should be at least INR10 lakh.
- **Annual disclosures:** A listed NPO is required to provide annual disclosures to the SSE within 60 days from the end of the financial year. The disclosure requirements are elaborate and will require significant judgement and tracking mechanisms to be developed by NPOs to track each project, initiative, its budget vs actual funding, stakeholder grievances, compliance management system.
- **Annual impact report:** A listed NPO is required to submit within 90 days of the end of the financial year an audited Annual Impact Report (AIR). Such an audit is required to be conducted by a social auditor. The AIR should contain detailed disclosures and metrics including an impact score card to report on trends and data across various significant projects/programmes and the impact on the stakeholder/beneficiary. Further, NPOs and FPSEs would need to assess the requirements of the SAS and how will these integrate with the disclosure requirements in the AIR.
- **Statement of utilisation of funds:** The Listing Regulations provide that a listed NPO should submit to the SSE(s) a statement in respect of utilisation of the funds raised, on a quarterly basis in the manner prescribed. The SEBI circular now clarifies that such a statement of utilisation is required to be submitted within 45 days from the end of the quarter.

Also refer to KPMG in India's First Notes - Social Audit Standards – Exposure Draft dated 12 September which provides detailed overview of these notifications.

2. Section 12A of the IT Act prescribes the conditions for availing the benefits under Section 11 and 12 of the IT Act which pertains to income of a trust or institution. Section 12AA of the IT Act provides the procedure for registration for trusts and institutions. Section 12AB of the IT Act deals with the procedure for a fresh registration by trusts and institutions.

(Source: SEBI Notification no. SEBI/LAD-NRO/GN/2022/90, F. No. SEBI/LAD-NRO/GN/2022/88, F. No. SEBI/LAD-NRO/GN/2022/89. dated 25 July 2022, Circular no. No. SEBI/HO/CFD/PoD-1/P/CIR/2022/120 dated 19 September 2022 and Exposure Draft of Compendium of Social Audit Standards issue by ICAI on 5 August 2022)



2. Amendment to the definition of 'associates' under mutual fund regulations

The SEBI (Mutual Fund) Regulations, 1996 are a set of regulations that govern mutual funds.

As per the regulations, an 'associate' is defined as a person:

- i. Who directly or indirectly, by himself, or in combination with relatives, exercises control over the asset management company or the trustee (or the sponsor), as the case may be, or
- ii. In respect of whom the asset management company or the trustee (or the sponsor), directly or indirectly, by itself, or in combination with other persons exercises a control, or
- iii. Whose director (except an independent director), officer or employee is a director, officer or employee of the asset management company

On 3 August 2022, SEBI amended the aforementioned definition to further provide that the definition of an associate would not be applicable to such sponsors, which invest

in various companies on behalf of the beneficiaries of insurance policies or such other schemes as may be specified by SEBI from time to time.

Subsequently, SEBI vide a circular dated 25 August 2022, provided that the Asset Management Companies (AMCs) investing in securities of entities are excluded from the revised definition of an 'associate'. Additionally, such AMCs should provide a scheme wise disclosure of investments in securities of such entities that are excluded from the definition of an associate. The disclosure should be provided as on the last date of each quarter. The disclosures of investments would include International Securities Identification Number (ISIN) wise value of investment and value as a percentage of Asset Under Management (AUM) of the scheme. Such disclosures should be provided on the websites of respective AMCs and on the website of the Association of Mutual Funds in India.

The amendments are applicable from 3 September 2022.



(Source: SEBI notification SEBI/LAD-NRO/GN/2022/92 dated 3 August 2022 and SEBI circular SEBI/HO/IMD/DOF2/P/CIR/2022/111 dated 25 August 2022)



3. Enhanced guidelines for debenture trustees and listed issuer companies on security creation and initial due diligence

SEBI issued a circular on 3 November 2020³ on creation of security of listed debt securities and due diligence by Debenture Trustees (DTs). The circular lays down the procedure for conducting the due diligence, the format of the due diligence certificate and the documents to be submitted by the issuer. Further, it also prescribes the disclosures to be made by the issuer in the offer document or private placement memorandum/information memorandum and the manner for creation and registration of charge.

Since the issue of the circular, SEBI received feedback from market participants on the aspects of due diligence and security

creation. Accordingly, SEBI has issued a circular on 4 August 2022 stipulating the revised requirements with respect to:

- Procedure for change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities
- Encumbrance on securities for issuance of listed debt securities
- Issue of due diligence certificate in case of shelf prospectus/memorandum
- Empanelment of external agencies by DTs.



3. Circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated November 03, 2020

(Source: SEBI Circular SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/106 dated 4 August 2022)



RBI Updates

Overseas investment framework issued by Central Government and Reserve Bank of India Regulations

In order to promote ease of doing business, the Central Government and the Reserve Bank of India (RBI) have issued Foreign Exchange Management (Overseas Investment) Rules, 2022 (OI Rules) followed by issuance of Foreign Exchange Management (Overseas Investment) Regulations, 2022 (OI Regulations) and Foreign Exchange Management (Overseas Investment) Directions, 2022 (OI Directions) by the Reserve Bank of India (RBI).

The OI Rules supersedes the Foreign Exchange Management (Transfer or Issue of Any Foreign Security) Regulations, 2004 and the Foreign Exchange Management (Acquisition and Transfer of Immovable Property Outside India) Regulations, 2015. The revised framework aims to enhance the ease of doing business in India.

The framework introduces new definitions and provides clarity with respect to various existing definitions and also provide clarity in implementation of the rules.

The key consideration of the OI Rules and regulations are as follows:

1. A person resident in India having an account appearing as a Non-Performing Asset (NPA) or is classified as wilful defaulter or is under investigation by a financial sector regulator/investigative agency is required to obtain a No-Objection Certificate (NOC) from the lender bank/regulatory body/investigative agency, before making financial commitment or undertaking disinvestment. However, if a lender bank/regulatory body/investigative

agency does not provide the NOC within 60 days from the date of such request, then it would be presumed that such authorities do not have any objection.

2. Any Overseas Direct Investment (ODI) in startups shall not be made out of borrowed funds. Further, an ODI in startups can be made by an India entity only from internal accruals, whether from the Indian entity, group, or associate companies in India and in case of resident individuals, it can be made from own funds of such an individual
3. The transactions with respect to the issue and transfer of equity capital of a foreign entity between a person resident in India and a person resident outside India should be in compliance with the arm's

length pricing by considering the valuation as per the internationally accepted pricing methodology for valuation. Further, any lending by an eligible person resident in India in debt/debt instrument of a foreign entity, to be backed up by a loan agreement and the rate of interest shall be charged at an arm's length basis.

4. As per the revised regulation, an Indian entity is not allowed to lend directly to its overseas Step Down Subsidiary (SDS). The India entity can issue guarantee, as per the guidelines, to any of its SDS in which it has acquired control through a foreign entity.



RBI Updates

Overseas investment framework issued by Central Government and Reserve Bank of India regulations

5. At the time of making a financial commitment or at any time thereafter, no person resident in India shall undertake such a financial commitment in a foreign entity that has invested or invests into India, either directly or indirectly, resulting in a structure with more than two layers of subsidiaries.
6. The ODI investment criteria in financial services sector has been relaxed for sectors other than banking and insurance sectors. Therefore, as per the revised rules, the ODI investment criteria is now permissible to an entity not engaged in financial service sector, subject to three years profitability criteria.
7. A person resident in India can make an investment in an International Financial Services Centre (IFSC) in the same manner as making an investment in a foreign entity. The criteria for three years profitability for overseas investment in financial services sector is not applicable to an Indian entity making ODI in IFSC.
8. Under the new framework, ODI in strategic sectors will be subject to an Indian entity obtaining necessary permissions from a competent authority. The restriction of having a limited liability structure for a foreign entity does not apply to entities with core activities in any strategic sector.

Also read KPMG in India's Tax Flash News, New overseas investment framework under FEMA 1999 notified by Central Government and Reserve Bank of India dated 24 August 2022 for detailed overview of the OI framework.

(Source: Notification no. G.S.R. 646(E). issued by Ministry of Finance dated 22 August 2022, RBI Circular No. RBI/2022-2023/110 A.P. (DIR Series) Circular No.12 and FEMA 400/2022-RB dated 22 August 2022)





RBI Updates

RBI issues guidelines for digital lending

On 2 September 2022, RBI issued guidelines for digital lending with an aim to provide an innovate and inclusive digital lending system and protect customer interest.

These guidelines are applicable to all Regulated Entities (REs) (i.e. all commercial banks, primary (urban) cooperative banks, district central cooperative banks and non-banking financial companies (including housing finance companies)) providing loans through the digital lending platforms). The guidelines reiterate the responsibilities of REs by stating that outsourcing arrangements entered by REs with a Lending Service Provider (LSP)/ Digital Lending App (DLA) shall be in accordance with the master guidelines on outsourcing⁴.

The REs should ensure that the LSPs engaged by them and the DLAs (either of the RE or of the LSP engaged by the RE) should comply with the guidelines contained in this circular.

The main focus areas of the guidelines are:

- i. Customer protection and conduct requirements
- ii. Technology and data requirement
- iii. Regulatory framework

The effective date for applicability of the guidelines is as follows:

- i. **New loans disbursed:** The guidelines are applicable on an immediate basis (i.e. from 2 September 2022) to the existing customers availing fresh loans and to new customers getting onboarded
- ii. **Existing loans:** REs would be given time till 30 November 2022 to put in place adequate systems and processes to ensure that existing digital loans comply with the guidelines.

Also refer to KPMG in India's First Note, Digital lending guidelines applicable to NBFCs issued on 30 September 2022 for detailed overview of these provisions.

Key takeaways

The digital lending guidelines have a significant impact on digital lending companies and RE. The main focus of RBI through these guidelines is to protect the customer interest. These guidelines reiterate that the ultimate responsibility of customer protection, data protection, lending policies etc. would lie with the RE.



(Source: RBI Notification no. RBI/2022-23/111 DOR.CRE.REC.66/21.07.001/2022-23 dated 2 September 2022)

4. Para 2.6 of the Master Circular on "Loans and Advances – Statutory and Other restrictions" dated July 01, 2015; Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks issued vide Circular dated November 03, 2006 as amended from time to time; Para 120 and 120 A of "Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016" dated September 01, 2016, as amended from time to time; Para 106 and 106A of the 'Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016' both dated September 01, 2016, as amended from time to time; 'Guidelines for Managing Risk in Outsourcing of Financial Services by Co-operative Banks', dated June 28, 2021; Circular on 'Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents' dated August 12, 2022, and other related instructions issued by the Reserve Bank from time to time.



IRDAI Updates

IRDAI issues circular on appointment and continuation of common directors of an insurance company

Section 48A of the Insurance Act, 1938 (Insurance Act) deals with the prohibition of common directors in an insurance company. As per Section 48A, an insurance agent or intermediary or insurance intermediary shall not be eligible to be or remain a director in an insurance company. However, the Insurance Regulatory and Development Authority of India (IRDAI) may permit an agent or intermediary or insurance intermediary to be on the board of an insurance company subject to such conditions or restrictions as imposed by IRDAI in order to protect the interest of policyholders or to avoid conflict of interest.

On 2 September 2022, IRDAI issued a circular on appointment and continuation of common directors in an insurance company. The circular prescribes the framework for

appointment and continuation of common directors in an insurance company.

The key considerations of the circular are as follows:

- i. A common director can be appointed as a chairperson on the board of the insurance company/agent/intermediary/insurance intermediary provided necessary safeguards are in place in order to protect the interest of policy holders and avoid any conflict of interest that may arise on account of such an appointment.
- ii. An individual already acting or proposed to act as an executive director or a whole-time director on the board of the insurer/agent/intermediary/insurance intermediary should not be appointed as a nominee/common director.
- iii. The appointment or continuation of a common director on the board of the insurance company shall be permitted, provided such other conditions as stipulated in the circular are complied. The conditions stipulated in the circular are with regards to:
 - Eligibility of the proposed director
 - Remuneration policy
 - Disclosure and resolution requirements
 - Voting power of the common director
 - Number of directorships that can be held by a common director
- iv. The insurer is required to submit an annual certificate, duly signed by the

Chief Executive Officer (CEO), confirming the compliance with the provisions stipulated in this circular on financial year basis. The certificate should be submitted by 30 April of the succeeding financial year.

Consequent to the above circular, a clarification was issued by IRDAI on 13 September 2022 stating that the common director appointed should continue to hold directorship till the completion of the tenure of appointment and in case an individual is a nominee of a promoter of the insurer, such an individual can be appointed as an executive director or a whole-time director on the board of the insurer/agent/intermediary/insurance intermediary.

(Source: IRDAI Circular no. IRDAI/F&I/CIR/MISC/183/9/2022 dated 2 September 2022 and Circular no. IRDAI/F&I/CIR/MISC/191/9/2022 dated 13 September 2022)



IRDAI Updates

IRDAI sets up expert committee for implementation of Ind AS in the insurance sector

IRDAI has been working on implementation of Ind AS in the insurance sector and including a new standard on insurance contracts in India which shall be equivalent to IFRS 17, *Insurance Contracts*. However, on account of the operational complexities and concerns involved in the implementation of Ind AS/ IFRS, IRDAI has decided to create an expert committee involving Institute of Chartered Accountants of India (ICAI), Institute of Actuaries of India (IAI) and insurance industry in order to address implementation issues of Ind AS/IFRS in insurance sector.

The expert committee shall provide recommendations on the best practices to be adopted for implementation of the standard in the insurance sector.



(Source: IRDAI Circular no. IRDAI/IFRS/ORD/MISC/177/08/2022 dated 22 August 2022)



ICAI Updates

ICAI's announcement on external confirmations through third party vendors

External confirmations have been an important and integral part of audit procedure in order to obtain sufficient appropriate audit evidence in line with requirement prescribed in various Standards on Auditing (SAs). Over the years, auditors have been using external confirmations to obtain account balances confirmation from various parties (confirming parties) including banks.

It was recently observed by the Institute of Chartered Accountants of India (ICAI) that auditors are facing various difficulties in obtaining external confirmations from banks. One of the major concern in this regard is that some banks are using services of third-party vendors to provide confirmations on their behalf to auditors. Use of third-party vendors leads to the risk that the information provided by third-party

vendors may not be authentic and complete. Further, it is not clear as to who will be responsible in case there is failure of IT controls at the end of third-party vendors which may impact the integrity of information provided.

These factors raise a question as to who will be held responsible for authenticity and completeness of information provided to auditors, the concerned bank or such third-party vendors. Presently, there is no legal framework/guidelines to deal with these aspects. Thus, auditors are exposed to serious risk, in case they use the confirmation from such third-party vendors as audit evidence.

Therefore, the ICAI has advised auditors to seek direct confirmation from the concerned banks.



(Source: ICAI announcement on External Confirmations through Third Party Vendors dated 7 September 2022)



ICAI Updates

ICAI has mandated evaluation of the audit quality maturity of firms

ICAI formed Centre for Audit Quality (CAQ) to develop a framework for audit quality, to work on key elements of Audit Quality, to develop Audit Quality Maturity Model (AQMM) and to develop and promote Audit Quality Indicators (AQI).

On 13 September 2022, ICAI issued the Audit Quality Maturity Model Version 1.0 (AQMM v1.0), which is an evaluation model consisting of AQIs to enable auditing firms to not only assess their current audit maturity level but also provide guidance to firms to improve their audit quality.

The evaluation model would be mandatory from 1 April 2023 for all firms (other than firms only conducting branch audits) auditing the following types of entities:

- a) A listed entity or
- b) Bank other than co-operative bank (except multi-state co-operative banks) or
- c) Insurance company.



(Source: ICAI announcement by Centre For Audit Quality Directorate dated 13 September 2022)



ICAI publications

The table below provides an overview of some important publications released by ICAI during the quarter:

Publications	Particulars
Education material	
Educational material on Ind AS 34, <i>Interim Financial Reporting</i>	Ind AS 34 prescribes the minimum content of an interim financial report and the principles for recognition and measurement in complete or condensed financial statements for an interim period. The educational material on Ind AS 34 explains the principles enunciated in the standard in the form of Frequently Asked Questions (FAQs). It provides guidance to stakeholders on content of an interim financial report, application of the recognition and measurement principles to an interim financial report and various other aspects related to such report.
Guidance notes	
Guidance note on the Companies (Auditor's Report) Order, 2020 (Revised 2022 Edition)	The Companies Act, 2013 (2013 Act) requires auditors of specified class of companies to include a statement in their reports on specific matters as prescribed in the Companies (Auditors' Report) Order (CARO). The ICAI on 1 July 2022 has revised the guidance note on CARO 2020 (Revised Edition 2022). The revised guidance has been issued to include the revised disclosure requirements of Schedule III amended by MCA and include other revised guidance and regulatory updates relating to CARO 2020.
Guidance note on tax audit under section 44AB of the Income-tax Act, 1961 (IT Act)	Section 44AB of the IT Act contains provisions pertaining to the tax audit. The Direct Tax Committee of the ICAI has issued a revised Guidance Note on Tax Audit under Section 44AB of the IT Act. The revised guidance note incorporates all the changes in provisions in the law which have taken place in the form of amendments, judicial pronouncements, circulars etc. This guidance note is for the audits to be conducted for Assessment Year (AY) 2022-23.



Updates relating to the Companies Act, 2013



Updates relating to SEBI Regulations



Other updates

ICAI publications

Publications	Particulars
Technical guide	
Technical guide on Financial Statements of Limited Liability Partnerships (LLPs)	The Technical Guide prescribes the format for the preparation and presentation of the financial statements of LLPs. Additionally, it provides the format for the balance sheet, cash flow statement and profit and loss account.
Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961	The Direct Tax Committee of ICAI has issued a 'Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961' to provide guidance to the auditors conducting the audit of charitable institutions and public trusts. The technical guide provides guidance with respect to the responsibilities of the institution and an auditor, nature and scope of audit procedures to be performed, compliance with the Accounting Standard (AS) and Auditing and Assurance Standards issued by ICAI.
Technical guide on valuation of business in the telecom tower industry	The technical guide aims to provide guidelines for valuation of business in telecom tower industry and includes the study of overall telecom industry including telecom operators and telecom tower industry, business valuation methodology, industry's history and future outlook and the key drivers impacting the valuation in this industry.



Updates relating to the Companies Act, 2013



Updates relating to SEBI Regulations



Other updates

ICAI publications

Publications	Particulars
Others	
Compendium of Indian Accounting Standards (Ind AS) (Year 2022-2023)	The recent compendium of Ind AS is a comprehensive up-to-date version encompassing all the amendments issued by MCA till 5 July 2022 that are effective as of 1 April 2022. The compendium is issued in two parts - Volume 1 from Ind AS 101 to Ind AS 116 & Volume 2 is from Ind AS 1 to Ind AS 41.
Emerging role of Auditors and CFOs in addressing Risk Management: A New Perspective	The Research Committee of ICAI undertook a research project on the topic of the Emerging role of Auditors and CFOs in addressing Risk Management: A New Perspective. The primary objective of the research study is to bring out the emerging and changing role of auditors and CFOs in addressing risks. The study is meant to address the auditors as well as the CFOs in understanding the risk management systems of their organisation and provide assurance that risks are being managed effectively.

(Source: ICAI announcements - Educational material on Ind AS 34 , 4 July 2022, Revised guidance note on the Companies (Auditor's Report) Order, 2020 (Revised 2022 Edition), July 2022, Revised guidance note on tax audit under section 44AB of the IT Act ,19 August 2022, Technical guide on financial statements of LLPs , June 2022, Technical guide on valuation of business in the telecom tower industry, July 2022, Technical guide on audit of charitable institutions under Section 12A of the IT Act , September 2022, Compendium of Indian Accounting Standards, 5 July 2022, Publication on the emerging role of auditors and CFOs in addressing risk management: A new perspective, July 2022)



Updates relating to the Companies Act, 2013



Updates relating to SEBI Regulations



Other updates

EACs issued by ICAI during the quarter ended 30 September 2022

Topic	Month
Non-reversal of impairment in respect of investment in subsidiary in separate financial statements on account of non-reversal of impairment in underlying goodwill under Ind AS 36, <i>Impairment of Asset</i> .	July 2022
Presentation of accrued interest in the statement of cash flows in accordance with Ind AS 7, <i>Statement of Cash Flows</i> .	August 2022
Classification of 'stock of track' as inventory or property, plant and equipment under Ind AS.	September 2022



(Source: The Chartered Accountant –ICAI Journal for the month of July 2022, August 2022 and September 2022)



Updates relating to the Companies Act, 2013



Updates relating to SEBI Regulations



Other updates



First Notes

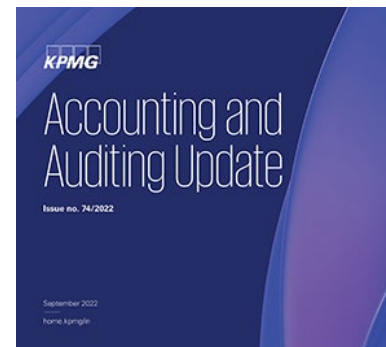
Digital lending guidelines applicable to banks and NBFCs 30 September 2022

The digital lending landscape in India has sharply risen, especially during the COVID-19 pandemic. Banks and NBFCs are increasingly lending either directly through their own digital platforms or through a digital lending platform under an outsourcing arrangement. Such outsourcing arrangements are generally entered into with Lending Service Providers (LSP)/ Digital lending Applications (DLAs).

On 2 September 2022, RBI issued the guidelines on digital lending (the guidelines), which are applicable to all Regulated Entities (REs). The REs would also need to ensure that the LSPs engaged by them, and the digital lending apps of the REs and of the LSPs engaged by the REs comply with the guidelines.

This issue of First Notes provides an overview of the digital lending lifecycle and the guidelines issued by RBI.

To access the First Notes, please click [here](#)



Accounting and Auditing Update

Issue no. 74 –September 2022

A GHG Statement is a quantified statement of an entity's GHG emissions over a particular period. Preparing a GHG statement in a structured format would help communicate the emission performance effectively and transparently. Independent audit of the same would help add credibility and ensure that the data is reliable. This edition of the Accounting and Auditing Update (AAU) contains an article on GHG statements, which provides an overview of the key concepts relating to GHG statements and highlight the key considerations relating to assurance of such statements.

The publication also carries an article on revised International Standard on Auditing (ISA) 315, *Identifying and Assessing the Risks of Material Misstatement* which is applicable for audits of financial statements of all entities for periods beginning on or after 15 December 2021. The article summarises key changes introduced by the revised ISA 315 and highlights key considerations with respect to identification and assessment of material misstatement in the financial statements.

As is the case each month, we have also included a regular round-up of some recent regulatory updates in India.

To access the publication, please click [here](#)

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