

CHAPTER 3

Regulatory updates

The final leg to LIBOR transition

Prior to 2021, the London Inter-Bank Offered Rate (LIBOR) was one of the most critical numbers as it was used as an interest rate benchmark across various contracts in multiple currencies. However, with questions being raised on the integrity and reliability of LIBOR, in 2017, the Financial Conduct Authority (FCA) had announced that post 2021,

While transition to IBOR has various consequences, some of the critical ones are on business and on accounting:

Business impact

- Insertion of fallback clauses
- Transition to ARRs
- Development of systems and processes to manage transition away from LIBOR.

(Source: KPMG in India's analysis, 2023)

Globally, most banks and financial institutions have processed all business-related changes and have also adopted the accounting amendments (phase 2 amendments were applicable from 1 January 2021 internationally, and for annual reporting periods

corporates and banking institutions should adopt Alternative Reference Rates (ARRs) in place of LIBOR.

IBOR linked with most of the currencies have ceased permanently by 31 December 2021 with certain select like USD LIBOR, which would finally phase out by 30 June 2023.

Accounting impact

- The International Accounting Standards Board (IASB) has issued amendments to IFRS- similar amendments have been issued to Ind AS
- Phase II amendments provide various exemptions, relaxations and practical expedients on transition to ARR.

beginning on or after 1 April 2021 in India).

With 30 June 2023 nearing, regulators are issuing constant reminders to banks/financial institutions and other businesses to complete the transition.

Position in India

India too had trillions of dollar worth contracts that were linked to LIBOR. Post the announcements made by FCA and RBI (in July 2021), India has achieved a smooth transition with respect to LIBOR settings that have ceased to be published/become non-representative after 31 December 2021. New transactions are now predominantly undertaken using ARRs, such as Secured Overnight Financing Rate (SOFR) and Modified MIFOR (Mumbai Interbank Offered Rate).

However, there are still certain contracts that have not transitioned from LIBOR to ARRs.

With effect from 30 June 2023, the publication of remaining five USD LIBOR settings would cease permanently, and accordingly, the MIFOR would also cease to be published¹. RBI vide its circular dated 12 May 2023 has stated the following:

- Banks/financial institutions/their customers should not enter into any new transaction that relies on or is priced using the USD LIBOR or the MIFOR
- Banks/financial institutions should take all necessary steps to ensure insertion

of fallback clauses in all remaining legacy financial contracts that reference USD LIBOR or MIFOR

- While certain synthetic LIBOR settings would continue to be published post 30 June 2023, these settings are not meant to be used in new financial contracts.
- Banks/financial institutions should develop systems and processes to manage the complete transition away from LIBOR from 1 July 2023.

1. MIFOR is a domestic interest rate benchmark that is reliant on USD LIBOR- it is published by the Financial Benchmarks India Private Limited (FBIL)



(Source: RBI notification no RBI/2023-24/30 dated 12 May 2023)

Amendments to the approval process of merger and amalgamation of companies

Rule 25 of the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 deals with the approval procedure of merger and amalgamation of certain companies. The Ministry of Corporate Affairs (MCA), on 15 May 2023, notified the Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2023 in order to amend the Companies (Compromises, Arrangements and Amalgamations) Rules, 2016.

The amendment has modified the below mentioned sub-rules to Rule 25 (Directions at hearing of the application) to streamline the approval process for mergers and bring clarity with respect to deemed approvals in the following cases:

No objection received (Rule 25(5)):

The amended rule provides that if no objection/suggestion is received within a period of 30 days from the Registrar of Companies (RoC)/official liquidator by the Central Government (CG), and if the CG is of the opinion that the scheme is in the public interest or in the interest of creditors, then CG can issue a confirmation order of such scheme of merger or amalgamation in Form No. CAA.12 within a period of 15 days after the expiry of the said 30 days. However, if the CG does not issue a confirmation order within 60 days, it

will be deemed that there is no objection, and a confirmation order will be issued by the CG.

Objections received from RoC (Rule 25(6)):

The amended rule provides that if objections or suggestions are received within the 30 days window from the RoC or official liquidator, then the CG should undertake the following action:

- Issue a confirmation order within 30 days, if the CG is of the opinion that the objections/suggestions are unsustainable, and the scheme is in the public interest or the interest of creditors.
- If CG is of the opinion that the scheme is not in the public interest or the interest of creditors, CG can file an application before the Tribunal within 60 days, stating the objections/opinion and requesting the Tribunal to consider the scheme under Section 232 of 2013 Act.

Further, if the CG does not issue a confirmation order or file an application within a period of 60 days of the receipt of the scheme under Section 233 of the 2013 Act, it would be deemed that it has no objection to the scheme and a confirmation order should be issued accordingly.

(Source: MCA notification no G.S.R. 367(E) dated 15 May 2023)

Amendments to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016

Rule 4 of the Companies (Removal of Names of Companies from the Registrar of Companies) Rules, 2016 specifies the procedure to be followed by companies for making an application for removal of its name from RoC.

On 17 April 2023, MCA issued amendments to the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 relating to application process for removing of a company's name from the RoC (MCA). The amendment revised Rule 4(1) and inserted a new Rule 4 (3A) to include provisions relating to establishment of Centre for Processing Accelerated Corporate Exit (C-PACE) and application made to C-PACE for removal of name of a company under Section 248(2) of the 2013 Act. The C-PACE has been set up to centralise the process of striking off companies and to promote ease of doing business and the ease of exit for companies.

Additionally, the eForms related to striking up off companies such as eForm STK-2, eForm STK-6 and eForm STK-7 have also been revised.

Subsequently, on 10 May 2023, the MCA issued further amendments to Rule 4(1) to include following requirements for companies while filing

an application for removal of a company's name from RoC:

- The company should not file an application unless the company has filed overdue financial statements under Section 137 and overdue annual returns under Section 92 of the 2013 Act up to the end of the financial year in which the company ceased to carry out its business operations
- In case the company intends to file an application after the RoC initiated steps to remove the name of the company, it can only file the application after filing all pending financial statements under Section 137 and all pending annual returns under Section 92 of the 2013 Act
- Once RoC has issued a notice for publication pursuant to action initiated under Section 248(1), then the company will not be allowed to file the application under this sub-rule.

(Source: MCA notification dated 17 April 2023 and 10 May 2023)

SEBI introduces Legal Entity Identifier (LEI) for issuers

On 3 May 2023, the Securities and Exchange Board of India (SEBI) introduced the Legal Entity Identifier (LEI) system for issuers that have listed or are planning to list non-convertible securities, securitised debt instruments and security receipts. This unique global identifier for legal entities participating in financial transactions aims to create a global reference data system that uniquely

identifies every legal entity, in any jurisdiction, that is a party to a financial transaction basis a unique 20-character code.

Presently, the RBI's directions require non-individual borrowers having aggregate exposure of above INR25 crore, to obtain an LEI code.

Further, SEBI has specified a deadline to obtain and report the LEI code by issuers, as tabulated below:

| Category of security | Relevant regulation | Applicability | Timeline |
|--|--|--|--------------------------|
| Non-convertible Securities | SEBI (Issue and listing of Non-convertible Securities) Regulations, 2021 | Issuer proposing to issue and list non-convertible security | On or after 1 September |
| | | Issuer having outstanding listed non-convertible security as on 31 August 2023 | On or before 1 September |
| Securitised debt instruments and security receipts | SEBI (Issue and Listing of Securitised Debt Instruments and Security Receipts) Regulations, 2008 | Issuer proposing to issue and list Securitised Debt Instruments or Security Receipts | On or after 1 September |
| | | Issuer having outstanding listed Securitised Debt Instruments and Security Receipts as on 31 August 2023 | On or before 1 September |

SEBI would additionally specify the requirement of LEI for issuers proposing to list or that have outstanding municipal debt securities in future.

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/64 dated 3 May 2023)

Additional requirements for issuers of transition bonds

In February 2023, SEBI issued amendments to certain provisions of the NCS Regulations, *inter alia* expansion of the definition of green debt security that included transition bonds as one of the sub-categories of green debt security. Further, as per the SEBI (Issue and Listing of Non-Convertible Securities), 2021, transition bonds comprise 'funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions.'

Additionally, on 6 February 2023, SEBI issued revised disclosure requirements for such issuances.

New development

With the aim to facilitate transparency and informed decision-making among the investors and to ensure that the funds raised through transition bonds are not being misallocated, on 4 May 2023, SEBI prescribed certain additional disclosure requirements for issuance and listing of transition bonds. The additional requirements are as follows:

- For differentiating transition bonds from other categories of green debt security, an issuer should disclose the denotation GB-T in the offer documents on the cover page and in type of instrument field in the term sheet. It should also disclose it in the centralised database for corporate bonds/debentures.

- Details of transition plans such as interim targets, project implementation strategy, usage of technology and overseeing mechanism should be disclosed in the offer document.
- Revised transition plan accompanied by an explanation for each revision should be disclosed to the stock exchanges.
- Details of transition plans along with a brief on the progress of its implementation should be disclosed in the annual report.



(Source: SEBI circular no. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2023/66 dated 4 May 2023)

Consultation paper on review of the definition of UPSI

Background

The Unpublished Price Sensitive Information (UPSI) defined under SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) means 'any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:

- Financial results
- Dividends
- Change in capital structure
- Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions
- Changes in key managerial personnel.'

Further, Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) requires listed entities to disclose material events or information to the stock exchanges. The events specified in Para A of Part A of Schedule III of LODR are deemed to be material events which listed entities are mandatorily required to disclose.

(Source: SEBI consultation paper on proposed review of the definition of Unpublished Price Sensitive Information (UPSI) under SEBI (Prohibition of Insider Trading) Regulations, 2015 issued on 18 May 2023)

Further, events under Para B of Part A of Schedule III of LODR are required to be disclosed based on application of the guidelines for materiality, which the listed entities are required to frame (materiality policy) based on the criteria specified in Regulation 30.

Additionally, SEBI in its board meeting dated 29 March 2023 approved the proposal for review and rationalisation of the disclosure of material events or information by the listed entities.

In this regard, SEBI observed that certain information/event which are disclosed as material events in accordance with the LODR Regulations and should have been categorised as UPSI was not done so by the listed entity, highlighting that companies were not exercising due care in this regard.

Proposal

Considering the above-mentioned background as base, SEBI, has issued a consultation paper on 18 May 2023, proposing that the current definition of UPSI be amended and the disclosures as required under Regulation 30 of LODR should be considered and disclosed as UPSI under the PIT Regulations.

The comments on the consultation paper can be provided upto 2 June 2023.

Draft guidelines on remuneration of non-executive directors and key managerial persons of private sector insurers

In 2016, the Insurance Regulatory and Development Authority of India (IRDAI) had issued the framework of remuneration of non-executive directors/chief executive officer/whole time director/managing director of private sector insurers.

On 2 May 2023, IRDAI has issued an exposure draft proposing to replace the extant guidelines of the remuneration framework. The key revisions proposed in the exposure draft aim to:

Bring the remuneration of other Key Managerial Persons (KMPs) also within the ambit of the guidelines

Provide more clarity to the extent of variable pay with respect to the total remuneration of directors and KMPs, variable pay deferral, malus and clawback provisions, accounting, disclosures, etc.

The revised guidelines have been proposed to be made applicable for remuneration payable to KMPs of private sector insurers from F.Y. 2023-24.

The period to provide comments ended on 15 May 2023.

(Source: IRDAI issued exposure draft dated 2 May 2023)



Proposed ASU to determine accounting of profit interest awards

On 11 May 2023, FASB issued a proposed Accounting Standard Update (ASU) to demonstrate how an entity should account for profit interest awards.

As profit interest holders only participate in future profits and/or equity appreciation and have no rights to the existing net assets of the partnership, stakeholders have indicated that it can be complex to determine whether a profits interest award should be accounted for as a share-based payment arrangement (Topic 718 - Stock Compensation) or similar to a cash bonus or profit-sharing arrangement (Topic 710 – General Compensation).

The amendments in this proposed update would improve Generally Accepted Accounting Principles (GAAP) by adding an illustrative example that includes four fact patterns to demonstrate how an entity should apply the scope guidance to determine whether a profits interest award should be accounted for in accordance with Topic 718.



(Source: FASB news and media advisory issued on 11 May 2023)

Public consultation for proposed revisions ISA 570

Recently, on 26 April 2023, the International Auditing and Assurance Standards Board (IAASB) proposed revisions to International Standard on Auditing (ISA) 570 (Revised), *Going Concern*. The exposure draft issued aims to:

- Promote consistent practice and behaviour and facilitate effective responses to identified risks of material misstatement related to going concern
- Strengthen the auditor's evaluation of management's assessment of going concern, including reinforcing the importance, throughout the audit, of the appropriate exercise of professional skepticism; and
- Enhance transparency with respect to the auditor's responsibilities and work related to going concern where appropriate, including strengthening communications and reporting requirements.

Some of the key changes proposed in the exposure draft are as follows:

- Enhanced requirements and application materials under:
 - Risk identification and assessment
 - Information from sources external to the entity
 - Management's assessment of going concern
 - Professional Skepticism

(Source: IRDAI issued exposure draft dated 2 May 2023)

- Communication with Those Charged With Governance (TCWG) and external parties.
- Insertion of a newly defined term "material uncertainty related to going concern" and its enhanced application material to clarify key concepts such as 'significant doubt' along with other related terminology.

The period to provide comments on exposure draft is upto 24 August 2023.



ISSB issued a consultation regarding SASB standards

The International Sustainability Standards Board (ISSB) has issued an exposure draft to gather feedback on its proposed methodology for enhancing the international applicability of the Sustainability Accounting Standards Board's (SASB) standards as it is an important source of guidance for companies applying IFRS S-1, *General Requirements for Disclosure of Sustainability-related Financial Information*.

The proposed methodology aims to remove jurisdiction-specific references from SASB standards and directing users to equivalent requirements that are more relevant to a global audience. The enhancements are designed to ensure that entities can apply the SASB Standards regardless of the jurisdiction in which they operate or the type of GAAP an entity applies.

Thus, the ISSB aims to incorporate the feedback received from stakeholders and revise the metrics before the implementation of IFRS S1 in January 2024.

The period to respond to this consultation ends on 9 August 2023.

(Source: ISSB consultation to enhance the international applicability of the SASB standards issued on 11 May 2023)

