

CHAPTER 3

Regulatory updates



Declaration of beneficial interest in any shares

Rule 9 of the Companies (Management and Administration) Rules, 2014 (Management and Administration Rules) stipulates the provisions for declaration of beneficial interest in any shares of a company. On 27 October 2023, the Ministry of Corporate Affairs (MCA) issued a notification, mandating every company to designate a person who would be responsible for furnishing information regarding beneficial interest in the shares of the company to the Registrar of Companies (RoC) or any other authorised officer and accordingly extend necessary cooperation.

The other key takeaways from the circular are as follows:

- **Eligibility:** A company could designate a Company Secretary (CS) or a Key Managerial Personnel (KMP) or every director if the company does not have CS or KMP.
- **Deemed designated person:** Until a person has not been appointed the deemed

designated person would be:

- a. CS or
- b. Every managing director or manager, in case CS is not appointed
- c. Every director, if there is no CS or managing director, or manager.

- **Submission in annual return:** A company should furnish the details of the designated person in the annual return.
- **Change in designated person:** In case of change in the designated person at any point in time, the company should intimate to RoC in e-form GNL-2 under the Companies (Registration Offices and Fees) Rules, 2014.

The above provisions are applicable from 27 October 2023.

(Source: MCA notification no. G.S.R.(E) dated 27 October 2023)



Dematerialisation of securities

On 27 October 2023, MCA amended the Companies (Prospectus and Allotment of Securities) Rules, 2014 (Prospectus and Allotment of Securities Rules) and introduced a provision for dematerialisation of share warrants issued by public companies and of securities by private companies.

The key takeaways are as follows:

- **Issue of share warrants by public companies:** The notification has amended Rule 9 of the Prospectus and Allotment of Securities Rules pertaining to dematerialisation of securities. As per the amendment, if a public company has issued share warrants prior to the commencement of the Companies Act, 2013 (2013 Act) and the same have not been converted into shares then such a public company should:
 - i. Inform RoC about such share warrant details in (Form PAS-7) within a period of three months from the date of the notification.

- ii. Issue a notice (Form PAS-8), to the bearer of the share warrants to surrender such warrants and dematerialise the shares, within a period of six months from the date of the notification. The notice should be placed on the website of the company and circulated through the newspaper.
- iii. In case the bearer of share warrants does not surrender the warrants within the above-mentioned time period, the share warrants should be dematerialised and should be transferred to the Investor Education and Protection Fund (IPEF).

- **Issue of securities by private companies:** The notification has inserted a new rule – Rule 9B to provide requirements relating to issue of securities in dematerialised form by private companies. The key considerations are as follows:

- i. Every private company should issue securities only in dematerialised form

and should facilitate dematerialisation of all its securities within 18 months commencing from 31 March 2023.

- ii. Such private companies should ensure that the entire holding of securities of their promoters, directors, KMP have been dematerialised before making any offer for issue of any securities, buyback of securities, issue of bonus shares, or right offer.
- iii. The above provisions are not applicable to a company which is a small company as per the audited financial statements as on the financial year ending on or after 31 March 2023 and a Government company.

The abovementioned amendments for dematerialisation of share warrants issued by public companies and of securities by private companies are effective from 27 October 2023.

(Source: MCA notification no. G.S.R. (E) dated 27 October 2023)

Listing of securities in foreign jurisdictions

In 2020, MCA amended Section 23 of the 2013 Act thereby enabling certain class of public companies to issue certain class of securities for listing in identified stock exchanges in permissible foreign jurisdictions. Further, the Central Government could exempt any class or classes of public companies from this amendment to Section 23, Chapter IV, section 89, section 90, or section 127¹.

On 30 October 2023, MCA issued a notification stating that the effective date for applicability of the above provision is 30 October 2023. The MCA is yet to notify the class or classes of public companies and class of securities to be covered under these provisions.

(Source: MCA notification no. S.O. 4744(E) dated 30 October 2023)

1. Chapter IV stipulates provisions regarding Share Capital and Debentures, Section 89 stipulates provisions regarding Declaration in Respect of Beneficial Interest in any Share, Section 90 stipulates provisions regarding Register of significant beneficial owners in a company and Section 127 stipulates provisions regarding Punishment for failure to distribute dividends.

RBI mandates appointment of whole-time directors by banks

The Reserve Bank of India (RBI) issued a notification in April 2021 on 'Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board' which laid down instructions with respect to the chair and meetings of the board of directors, composition of certain committees of the board, age, tenure and remuneration of directors, and appointment of the Whole-Time Directors (WTDs).

However, on account of the increasing complexity in the banking sector, RBI issued a circular on 25 October 2023 to notify provisions relating to establishment of effective senior management team.

The key considerations from the circular are as follows:

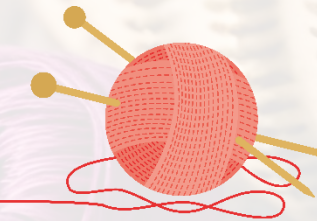
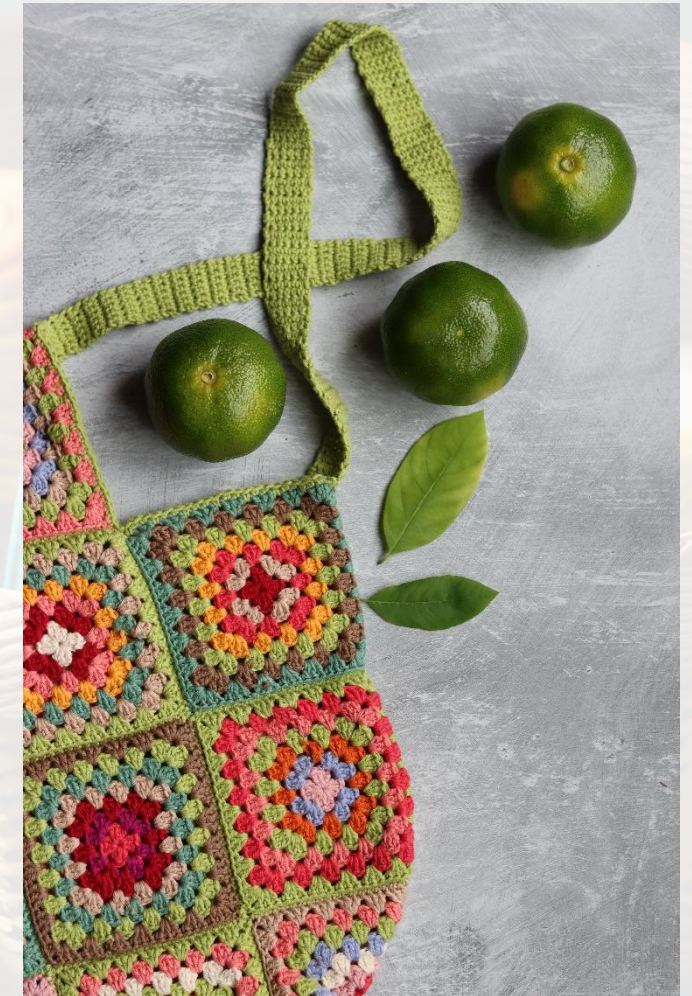
- Banks are advised to ensure the presence of at least two WTDs, including the Managing Director and Chief Executive Officer (MD&CEO), on their Boards.
- The number of WTDs should be decided by the Board by taking into account factors such as the size of operations, business complexity, and other relevant aspects.
- Banks that currently do not meet above mentioned minimum requirement, are advised to submit their proposals to the RBI for the appointment of WTD(s) as per Section 35B(1)(b)² of the Banking Regulation Act, 1949 (Banking Regulation

Act) within a period of four months from the date of issuance of this notification.

- In case banks do not have enabling provisions regarding appointment of WTDs in their Articles of Association (AOA), then necessary approvals should be sought under Section 35B(1)(a)³ under the Banking Regulation Act, expeditiously.

The provisions of the above notification are applicable to all private sector banks and wholly-owned subsidiaries of foreign banks (excluding payment banks and local area banks).

(Source: [RBI notification no. RBI/2023-24/70 DOR.HGG.GOV.REC.46/29.67.001/2023-24 dated 25 October 2023](#))



2. Section 35(1)(b) of the Banking Regulation Act states that no appointment or re-appointment or termination of appointment of a chairman, a managing or whole-time director, manager or chief executive officer by whatever name called, shall have effect unless such appointment, re-appointment or termination of appointment is made with the previous approval of the Reserve Bank.
3. Section 35(1)(a) of the Banking Regulation Act states that no amendment of any provision relating to [the maximum permissible number of directors or] the [appointment or re-appointment or termination of appointment or remuneration of a chairman, [managing director or any other director, whole-time or otherwise] or of a manager or a chief executive officer by whatever name called, whether that provision be contained in the company's memorandum or articles of association, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or by its Board of directors shall have effect unless approved by the Reserve Bank.

Presentation of unclaimed liabilities by commercial and cooperative banks

RBI issued a notification on 25 October 2023 to update the RBI (Financial Statements - Presentation and Disclosures) Directions, 2021 (Master Direction) to ensure consistency in the presentation of financial statements.

As per the notification, every commercial and cooperative bank is advised to present all unclaimed liabilities (where the amount due has been transferred to Depositor Education and Awareness (DEA) Fund) under 'Contingent Liabilities – Others' (*earlier presented under Schedule 12- Contingent Liabilities - Other items for which the bank is contingently liable*).

This is applicable for preparation of financial statements for the financial year ending 31 March 2024 and onwards.

It is further stated that banks should specify in the disclosures⁴ to the financial statements that balances of the amount transferred to

DEA Fund are included under 'Schedule 12 - Contingent Liabilities - Other items for which the bank is contingently liable' or 'Contingent Liabilities - Others,' as the case may be.

(Source: RBI notification no. RBI/2023-24/71 DOR.ACC.47/21.04.018/2023-24 dated 25 October 2023)



Exposure draft on Ind AS 21

In August 2023, the International Accounting Standards Board (IASB) issued amendments to IAS 21, *The Effects of Changes in Foreign Exchange Rate* requiring companies to provide more useful information in their financial statements when a currency cannot be exchanged into another currency.

In this regard, the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI) issued an exposure draft to Ind AS 21, *The Effects of Changes in Foreign Exchange Rate*. The exposure draft aims to help entities assess whether a currency is exchangeable and estimate the spot exchange rate when a currency is not exchangeable

The key takeaways from the exposure draft are as follows:

- **Definition of exchangeable currency:** A currency is exchangeable into another currency when an entity is able to obtain the other currency within a time frame that allows for a normal administrative delay

and through a market or exchange mechanism in which an exchange transaction would create enforceable rights and obligations. Therefore, an entity should assess whether a currency is exchangeable into another currency at a measurement date **and** for a specified purpose. Thus, if an entity is able to obtain no more than an insignificant amount of the other currency at the measurement date for the specified purpose, the currency is not exchangeable into the other currency.



4. Clause C.10 of Annex III to the Maser Direction ibid on 'Transfers to DEA Fund'

- **Determination of spot exchange rate when a currency is not exchangeable:**

The spot exchange rate should be estimated as at the measurement date when a currency is not exchangeable into another currency. The objective to estimate the spot exchange rate is to reflect the rate at which an orderly exchange transaction would take place at the measurement date between market participants under prevailing economic circumstances.

- **Disclosure requirements:** When the currency is not exchangeable, the entity should disclose the nature and financial effects of the currency not being exchangeable into the other currency, the spot exchange rate(s) used, the estimation process and the risks to which the entity is exposed because of the currency not being exchangeable into the other currency.

The comment period for the above-mentioned exposure drafts ends on 1 December 2023.

(Source: ICAI ED/Ind AS 21/2023/3 issued on 1 November 2023)

IAASB issued FAQs relation to ISSA 5000

In August 2023, the International Auditing and Assurance Standards Board (IAASB) issued proposed International Standard on Sustainability Assurance (ISSA) 5000, *General Requirements for Sustainability Assurance Engagements*, which deals with assurance engagements on sustainability information.

Subsequently on 25 October 2023, IAASB has issued a compilation of Frequently Asked Questions (FAQs) with an aim to address a variety of questions such as:

- How the concept of materiality applies to sustainability reporting and assurance
- The definition of double materiality

- How an assurance practitioner considers an organisation's materiality process during a sustainability assurance engagement.

The comment period for proposed ISSA 5000 ends on 1 December 2023.

(Source: IAASB news 'Explore ISSA 5000 FAQ on materiality' dated 25 October 2023)

