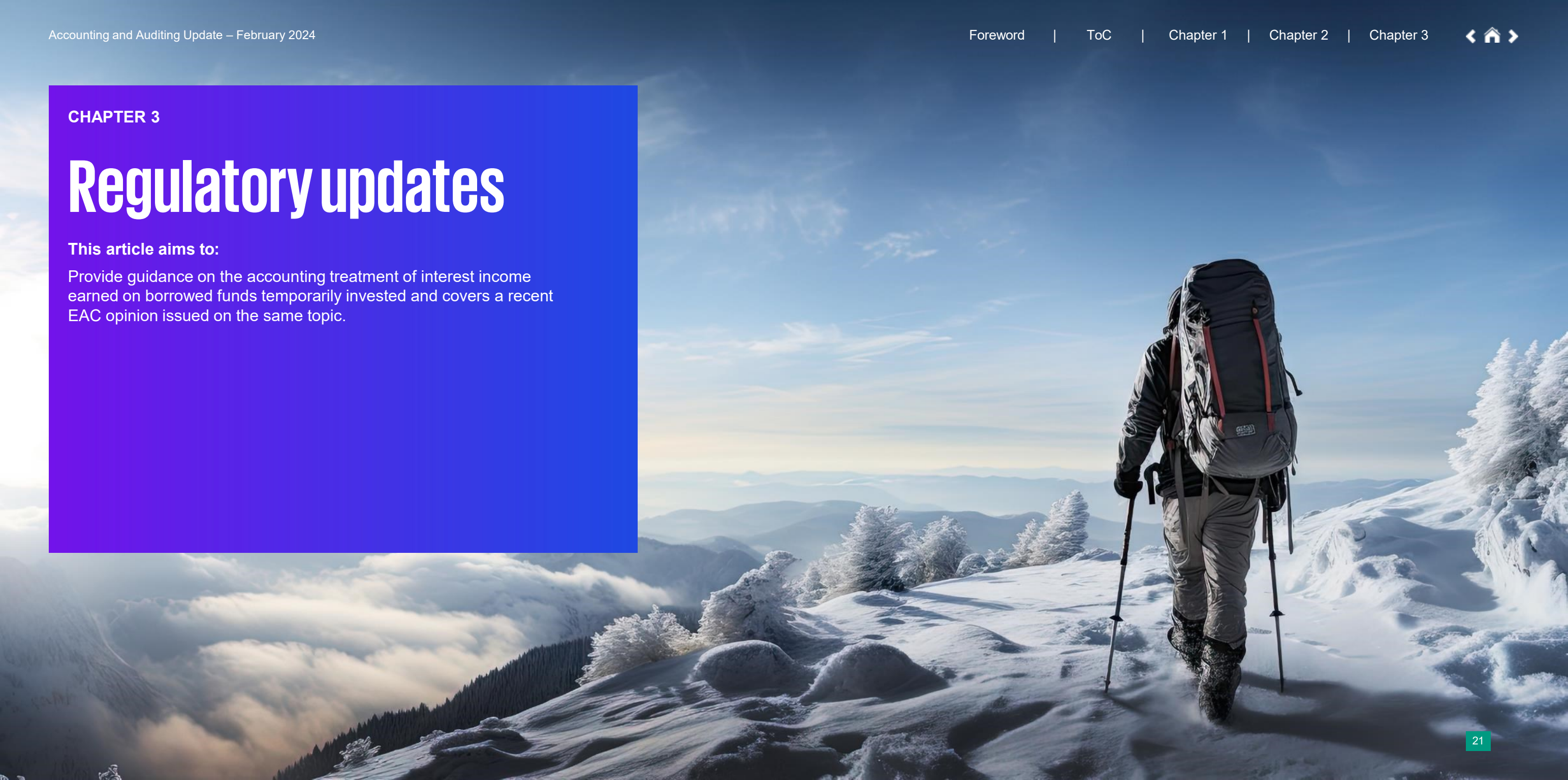


CHAPTER 3

Regulatory updates

This article aims to:

Provide guidance on the accounting treatment of interest income earned on borrowed funds temporarily invested and covers a recent EAC opinion issued on the same topic.



Listing of securities in foreign jurisdictions

Background

The Ministry of Corporate Affairs (MCA) through the Companies (Amendment) Act, 2020 amended Section 23 of the Companies Act, 2013 (2013 Act). The amendment enabled certain classes of public companies to issue specific class of securities for the purpose of listing on permitted stock exchanges in the prescribed foreign jurisdiction. In October 2023, MCA notified Section 23, thereby stipulating 30 October 2023 as the effective date for the applicability of this section.

Overview of recent developments

In this regard, recently the Central Government notified the following:

MCA Companies (Listing of Equity Shares in Permissible Jurisdictions) Rules, 2024 (LEAP Rules)

The LEAP Rules provide a framework related to listing in permissible foreign jurisdictions. The key points under the framework relate to:

- Eligibility criteria for unlisted public companies
- List if ineligible companies
- Procedural aspects related to listing of securities on permitted stock exchanges in permissible foreign jurisdictions, and
- Compliance with Ind AS post listing by companies.

SEBI is also in the process of issuing the operational guidelines for listed public Indian companies

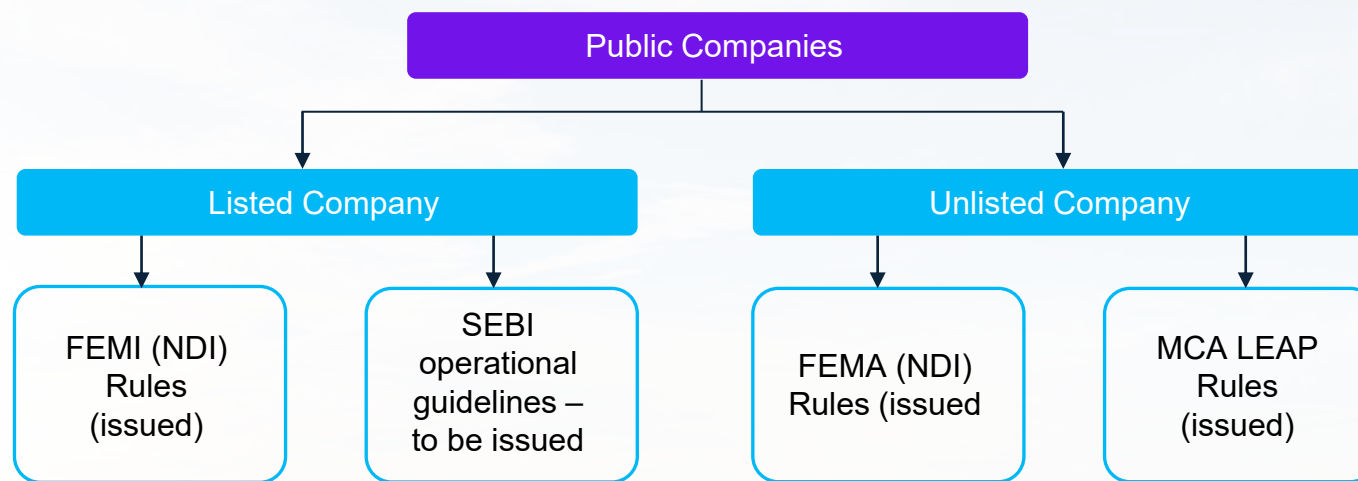
Ministry of Finance (MoF) notified the FEMA (Non-Debt Instruments) Amendment Rules, 2024 (NDI Rules)

The NDI rules aim to facilitate seamless overseas listing. These rules provide:

- Issue and listing conditions and requirements,
- Eligibility criteria for the public Indian company,
- Obligations of the public Indian companies, etc.

Frequently Asked Questions (FAQs) on Direct Listing Scheme

The FAQ provides key points relevant to understand the framework.

Figure: Applicable Regulatory Framework (Section 23)**Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024**

On 24 January 2024, the MCA issued the Companies (Listing of equity shares in permissible jurisdictions) Rules, 2024 (LEAP Rules). The aim is to provide Indian companies with access to both global and domestic markets for raising capital.

1. India International Exchange, NSE International Exchange

2. International Financial Services Centre in India

3. International Financial Services Centre in India As per Chapter V of the 2013 Act and rules made thereunder

An overview of the LEAP Rules is provided below:

Applicability

The rules would apply to listed and unlisted public companies which issue their securities for the purposes of listing on permitted stock exchanges¹ in permissible jurisdiction².

Eligibility

As per the LEAP Rules, the following companies are not eligible to issue equity shares for listing:

- Section 8 companies or a Nidhi company
- Companies limited by guarantee and also having share capital
- Companies having negative net worth
- Companies that have accepted deposits³ from the public
- Companies that have defaulted in payment of dues to any bank, public financial institution, non-convertible debenture holder, or any other secured creditor
- In case the company has made an application to wind-up or has any pending proceeding against it for winding-up under the Insolvency and Bankruptcy Code, 2016
- Companies that have not filed their annual return under Section 92 or financial statements under Section 137 of the 2013 Act, within the specified period.



Listing procedure

An unlisted public company which is eligible and has no partly paid-up shares can issue equity shares, including, offer for sale of equity shares by existing shareholders, for the purposes of listing on a stock exchange in a permissible jurisdiction. It is required to file the prospectus with the Registrar of Companies (ROC) in e-form LEAP-1 along with the prescribed fees within seven days after the same has been finalised and filed in the permitted stock exchange. Additionally, companies would be required to comply with the requirements of the scheme and conditions specified by SEBI.

Ind AS compliance

Post listing, companies are required to comply with Ind AS in addition to any other applicable accounting standard, in preparation of their financial statements. Such financial statements would be filed before the concerned securities regulator or with the relevant stock exchange.

FEMA (Non-Debt Instruments) Amendment Rules, 2024

On 24 January 2024, the MoF amended the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 (NDI Rules). Some of the key amendments made to the NDI Rules are as follows:

- Definitions of ‘International Exchange⁴’, ‘Listed Indian Company⁵’ and ‘Permissible Jurisdiction⁶’ have been inserted in Section 2 of the rules.
- Chapter X has been introduced allowing a permissible holder to purchase or sell equity shares of a public Indian company which is listed or to be listed on an International Exchange under the Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme.
- Schedule XI has been inserted to provide specific provisions for Direct Listing of Equity Shares of Companies Incorporated in India on International Exchanges Scheme.

Following are some of the key points from Schedule XI:

- a. **Eligibility:** A public Indian company or the existing shareholders can offer equity shares on an international exchange subject to compliance with the following conditions and other requirements laid down in the scheme:
 - i. A public Indian company would be eligible to issue equity shares in permissible jurisdiction, if:
 - a. The public Indian company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by the appropriate regulator
 - b. None of the promoters or directors of the public Indian company is a promoter or director of any other Indian company which is debarred from accessing the capital market by the appropriate regulator
 - c. The public Indian company or the

holder offering equity shares is not a wilful defaulter

- d. The public Indian company is not under inspection or investigation under the provisions of 2013 Act
- e. None of the promoters or directors of the public Indian company or the holder offering equity shares is a fugitive economic offender.



4. ‘International Exchange’ shall mean permitted stock exchange in permissible jurisdictions which are listed at Schedule XI annexed to these rules

5. Listed Indian company’ means an Indian company which has any of its equity instruments or debt instruments listed on a recognised stock exchange in India and on an International Exchange and the expression “unlisted Indian company” shall be construed accordingly

6. ‘Permissible jurisdiction’ means such jurisdiction as notified by the Central Government under Rule 9(3)(f) of Prevention of Money-laundering (Maintenance of Records) Rules, 2005

- ii. Existing holders of the public Indian company would be eligible to offer shares, if
 - a. The public Indian company, any of its promoters, promoter group or directors or selling shareholders are not debarred from accessing the capital market by the appropriate regulator
 - b. None of the promoters or directors of the public Indian company is a promoter or director of any other Indian company which is debarred from accessing the capital market by the appropriate regulator
 - c. The public Indian company or the holder offering equity shares is not a wilful defaulter
 - d. The public Indian company is not under inspection or investigation under the provisions of 2013 Act
 - e. None of the promoters or directors of the public Indian company or the holder offering equity shares is a fugitive economic offender.

b. Listing on international exchanges: A public Indian company can issue equity shares or offer equity shares of existing shareholders on an International Exchange in dematerialised form and they should rank *pari passu* with equity shares listed on a recognised stock exchange in India, subject to the specified conditions. It is mandatory to obtain prior government approval, wherever applicable.

c. Obligations of companies: The public Indian company is required to ensure compliance with the extant laws⁷ relating to issuance of equity shares, including requirements prescribed in the scheme. Further, Indian company should ensure that the aggregate of equity shares which may be issued or offered in a permissible jurisdiction, along with equity shares already held in India by persons resident outside India, should not exceed the sectoral or statutory limit on foreign holding specified under the Schedule I to NDI Rules.

d. Voting rights: In case of public Indian companies having their equity shares listed

on an International Exchange, the voting rights should be exercised directly by the permissible holder or through their custodian in accordance with the voting instructions provided from such permissible holder.

- e. Pricing:** In case of equity shares issued by a listed company or offered by the existing shareholders of equity shares listed on a recognised stock exchange in India, the same should be issued at a price, not less than the price applicable to a corresponding mode of issuance of such equity shares to domestic investors under the applicable laws.

In case of initial listing of equity shares by a public unlisted Indian company on the international exchange, the price of issue or transfer of equity shares is required to be determined by a book-building process as permitted by the said international exchange and should not be less than the fair market value under applicable rules or regulations under the Foreign Exchange Management Act, 1999 (FEMA Act).



7. The Securities Contracts (Regulation) Act, 1956 (42 of 1956), the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Depositories Act, 1996 (22 of 1996), the Foreign Exchange Management Act, 1999 (42 of 1999), the Prevention of Money-laundering Act, 2002 (15 of 2003) or the Companies Act, 2013 (18 of 2013) and rules and regulations made thereunder

FAQs on Direct Listing Scheme

The government has provided certain clarifications through FAQs on Direct Listing Scheme (the Scheme). Some of the key takeaways from FAQs are provided below:

a. Objective

The Scheme provides a framework for issuing and listing of equity shares of public Indian companies on international exchanges. Prior to this, Indian companies were not allowed to issue or list equity shares abroad.

b. Eligible companies under the scheme

Under the Scheme, only public Indian companies, listed or unlisted, are allowed to issue and list their shares on an international stock exchange. As of now, the framework allows unlisted public Indian companies to list their shares on an international exchange. SEBI is in the process of issuing the operational guidelines for listed public Indian companies.

c. Private companies – scoped out

Private companies are not eligible to issue or list their equity shares on an international stock exchange through the Direct Listing Scheme. As per the 2013 Act, private companies cannot invite subscription from the public.

d. Permissible stock exchange and jurisdiction

Permissible Jurisdiction	Permitted Stock Exchange
International Financial Services Centre in India (IFSC)	India International Exchange
	NSE International Exchange

e. Prohibited companies

Public companies that fall under sectors that have been prohibited from Foreign Direct Investment (FDI), cannot issue or offer equity shares under the scheme.

f. Sectoral caps

The equity shares listed on the international exchanges will be counted towards the foreign holding of the company. Therefore, the condition of sectoral caps applies to public Indian companies participating in the scheme.

g. Clarification related to Indian residents and Non-Resident Indians (NRIs)

Indian residents cannot purchase or sell shares of an Indian company listed on an international exchange through the Scheme. NRIs are permitted to buy or sell shares of an Indian company listed on international exchange under this Scheme.

h. Investment from land bordering countries

Individuals/entities from land bordering countries can invest in shares of Indian companies listed internationally, with prior government approval.

i. Compliance with domestic rules

An Indian company which issues and lists its equity shares on an international exchange is required to comply with the extant laws of India relating to issuance of equity shares.

j. List on domestic exchange

It is not mandatory for an unlisted company intending to list on international exchanges to also list on domestic exchanges. However, there is no restriction on such companies to opt for listing on domestic as well as international exchanges.

(Source: MCA notification no. G.S.R. 61(E) dated 24 January 2024, Ministry of Finance notification no. S.O. 332(E) dated 24 January 2024 and FAQs on Direct Listing Scheme)



Timeline extended for verification of market rumours

Regulation 30 (11) of the Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) requires prescribed listed companies, to confirm, deny or clarify market rumours. This requirement was applicable to the top 100 listed entities⁸ by market capitalisation from 1 February 2024 and the top 250 listed entities with effect from 1 August 2024.

In December 2023, SEBI issued a Consultation Paper proposing a revised framework related to verification of market rumours regulations.

Subsequently, on 25 January 2024, SEBI issued a circular to extend the timeline for compliance of verification of market rumours by listed entities. The revised timelines for compliance are as follows:

- Top 100 listed entities – from 1 June 2024 (*earlier 1 February 2024*)
- Top 250 listed entities – from 1 December 2024 (*earlier 1 August 2024*).

For a detailed note on consultation paper, refer KPMG in India Accounting and Auditing Update Issue no. 90 – Chapter 3 ‘Regulatory Updates’.

(Source: SEBI circular no. SEBI/HO/CFD/CFD-PoD-2/P/CIR/2024/7 dated 25 January 2024)



8. To be determined on the basis of market capitalisation, as at the end of the immediately preceding financial year.



Addendum to the consultation paper on harmonising ICDR and LODR Regulations

With an aim to facilitate ease of doing business and harmonise the provisions of LODR Regulations and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations), SEBI issued a consultation paper on 11 January 2024.

Subsequently, on 2 February 2024 the Expert Committee of SEBI has provided an additional recommendation under the ICDR Regulations relating to the requirement of security deposit in public/rights issue of equity shares.

The existing provisions require an issuer to deposit with the designated stock exchange, an amount calculated at the rate of one per cent of the issue size available for subscription to the public in the manner specified by SEBI and/or stock exchange. This security deposit was used to resolve post issue investor complaints. However, with various reforms such as Applications Supported by Blocked Amount (ASBA), Unified Payments Interface (UPI) etc., the concerns related to post-issue investor complaints do not arise.

Therefore, it has been proposed to remove the requirement of one per cent security deposit to reduce cost for the issuers.

For a detailed note on consultation paper on SEBI LODR and ICDR, refer KPMG in India Accounting and Auditing Update Issue no. 90 – Chapter 3 ‘Regulatory Updates’.

(Source: Addendum to SEBI consultation paper on Interim recommendations of the expert committee for facilitating ease of doing business and harmonisation of provisions of ICDR and LODR regulations issued on 2 February 2024)

Framework for Offer For Sale (OFS) of shares through stock exchange mechanism

In October 2023, SEBI issued a master circular specifying the comprehensive framework on Offer for Sale (OFS) of shares through the stock exchange mechanism. The said framework specifies the relevant provisions regarding offering of shares to employees by the promoters of the company. However, the existing procedure of OFS to employees of the eligible company is happening outside the stock exchange mechanism.

Based on feedback received, in order to enhance efficiency, SEBI issued a circular dated 23 January 2024, prescribing a detailed procedure through which the promoters can offer shares to the employees through the stock exchange mechanism. This alternative procedure will be an additional method to the already existing procedure of OFS to employees outside the exchange mechanism.

All recognised stock exchanges and clearing corporations are required to put in place the necessary systems and make amendments to relevant rules and regulations for the implementation of the newly introduced mechanism.

(Source: SEBI circular no. SEBI/HO/MRD/MRD-PoD-3/P/CIR/2024/6 dated 23 January 2024)



Guidelines on appointment/re-appointment of statutory auditors of co-operative banks

On 15 January 2024, the Reserve Bank of India (RBI) issued the guidelines on appointment/re-appointment of statutory auditors of State Co-operative Banks (StCBs) and Central Co-operative Banks (CCBs) (the guidelines). The guidelines mandate StCBs and CCBs to seek prior approval of RBI for appointment/re-appointment or removal of statutory auditors. The guidelines would be applicable to StCBs and CCBs with effect from 1 April 2024.

Some of the key aspects of the guidelines are discussed below:

Frequency of prior approval

Prior approval of RBI would be required before appointment/re-appointment/removal of statutory auditors. Further, banks would be required to seek prior approval from RBI for re-appointment of statutory auditors on an annual basis.

Eligibility and independence of auditors

The guidelines prescribe the following with respect to the eligibility and independence of auditors:

- The audit firm, proposed to be appointed should be duly qualified for appointment as auditor of a company in terms of Section 141⁹ of the 2013 Act.
- Banks must assess the independence of auditors and conflict of interest, if any, should be appropriately raised to the National Bank for Agriculture and Rural Development (NABARD).
- Concurrent auditors of the bank should not be considered for appointment as the statutory auditors of the same bank. Further, the banks should ensure minimum gap of one year between the completion of one assignment and commencement of another assignment.

- The time gap between any non-audit work¹⁰ undertaken by the statutory auditor for the appointing bank should be at least one year (both before the appointment and after completion of tenure as the statutory auditor). However, during its tenure as the statutory auditor, an audit firm may provide such services to the appointing bank which may not normally result in conflict of interest.
- The restrictions would also apply to an audit firm under the same network of firms or any other audit firm having common partner(s), as defined in Rule 6(3) of the Companies (Audit and Auditors) Rules, 2014.
- Consider the CISA/ISA/DISA¹¹ qualification of the auditor and their audit experience.

Tenure and rotation

The guidelines specify that:

- The statutory auditors would be appointed at a time for a period of one year only and would be reappointed annually for the succeeding two years. During such period, premature removal of the statutory auditors require prior approval of RBI
- An auditor/audit firm would not be eligible for appointment/re-appointment in the same bank for six years (two tenures) immediately after the completion of a full or part tenure¹².



9. Section 141 of the Companies Act, 2013 deals with eligibility, qualifications and disqualifications of auditors

10. Services mentioned in Section 144 of the Companies Act, 2013, internal assignments, special assignments.

11. Certified Information Systems Auditor (CISA)/Information Systems Audit (ISA)/Diploma in Information Systems Audit (DISA)

12. In case an auditor/audit firm has conducted audit of the bank for part-tenure (one or two years) and then is not re-appointed for the remainder tenure, it would not be eligible for re-appointment in the same bank for six years after the completion of part-tenure. However, audit firms can continue to undertake statutory audit of other banks

Maximum number of audits

An audit firm can concurrently assume the statutory audit of a maximum of five banks (including not more than one StCB) in a year.

Further, in a year, an audit firm cannot simultaneously take up the statutory audit of both StCB and CCBs operating in the same state. An audit firm can concurrently take up the statutory audit of a maximum of four commercial banks (including not more than one Public Sector Bank (PSB) or one All India Financial Institution¹³ or RBI), eight Urban Co-operative Banks (UCBs), eight Non-Banking Financial Companies (NBFCs), and five StCBs/CCBs in a year.

Review of performance of auditors

Banks are required to review the performance of statutory auditors on an **annual basis** and any serious lapse/negligence should be reported to NABARD within two months from the completion of audit.

Other requirements

Banks are required to:

- Frame a Board-approved policy on appointment of statutory auditor and host the same on its website/public domain
- Formulate the necessary procedures for selection/appointment/re-appointment/removal of auditor.

(Source: RBI circular no RBI/2023-24/113 dated 15 January 2024)



13. NABARD, SIDBI, NaBFID, NHB, EXIM Bank

Fixed remuneration for non-executive directors

In 2021, RBI issued a circular on corporate governance in banks specifying the fixed remuneration granted to Non-Executive Directors (NEDs) of banks. The ceiling of INR20 lakh per annum was specified in respect of remuneration of Non-Executive Directors (NEDs), other than the Chair of the Board.

Considering the crucial role of NEDs in efficient functioning of bank boards and its various committees and to further enable the banks to sufficiently attract qualified competent individuals on their Boards, RBI through its circular dated 9 February 2024, revised the aforementioned ceiling to INR30 lakh per annum.

Further, banks are required to make disclosure regarding the remuneration paid to the directors in their annual financial statements.

The instructions in this circular are effective from 9 February 2024.

(Source: RBI circular no. RBI/2023-24/121 dated 9 February 2024)

Automation of the internal compliance monitoring process

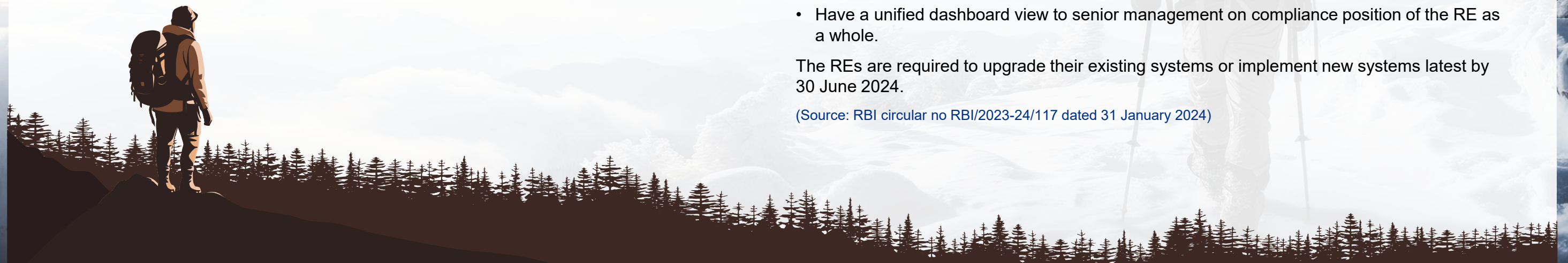
Recently, RBI conducted reviews of certain entities regarding their prevailing system for internal monitoring of compliance with regulatory instructions and the use of technology to support this function. As per the review, the automation of the compliance monitoring process in supervised entities is a work in progress. Therefore, RBI highlighted the need to implement comprehensive, integrated, enterprise-wide and workflow-based solutions/tools to enhance the effectiveness of this function.

Consequently, on 31 January 2024, RBI issued a circular directing the Regulated Entities (REs) to put in place a tool/solution that ensures the following:

- Effective communication and collaboration among all the stakeholders (by bringing business, compliance and Information Technology (IT) teams, senior management, etc. on one platform).
- Processes for identifying, assessing, monitoring and managing compliance requirements
- Escalation of issues of non-compliance
- Recording approval of competent authority for deviations/delay in compliance submission
- Have a unified dashboard view to senior management on compliance position of the RE as a whole.

The REs are required to upgrade their existing systems or implement new systems latest by 30 June 2024.

(Source: RBI circular no RBI/2023-24/117 dated 31 January 2024)



ICAI issued revised standards on auditing

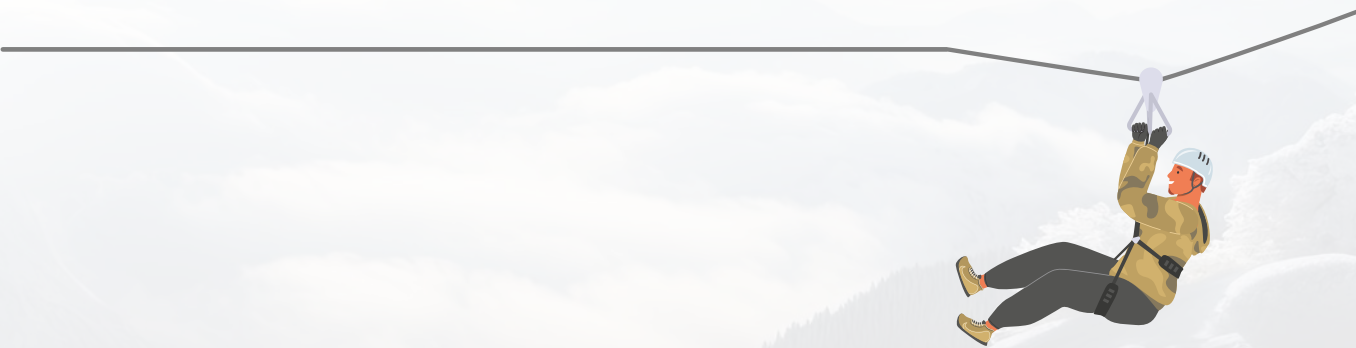
On 7 February 2024, the Institute of Chartered Accountants of India (ICAI) issued the following revised Standards on Auditing (SAs):

- SA 800(Revised): ‘Special Considerations—Audits of Financial Statements Prepared in Accordance with Special Purpose Frameworks’
- SA 805(Revised): ‘Special Considerations – Audits of Single Financial Statements and Specific Elements, Accounts or Items of a Financial Statement’
- SA 810(Revised): ‘Engagements to Report on Summary Financial Statements’

The revised standards will be applicable to audits/engagements for financial years beginning on or after 1 April 2024.

The existing versions of SA 800, SA 805, and SA 810 will continue to be applicable for audits and engagements for the financial year 2023-24.

(Source: ICAI announcement dated 7 February 2024)



Proposed revisions to strengthen auditor's efforts related to fraud

Recently, the International Auditing and Assurance Standards Board (IAASB) proposed revisions to International Standard on Auditing (ISA) 240 (Revised), *The Auditor's Responsibilities Relating to Fraud in an Audit of Financial Statements* with an aim to increase transparency about the auditors' responsibilities and fraud-related procedures in the auditor's report.

Some of the proposed revisions to the standard include:

- Clarified auditor's responsibilities relating to fraud in an audit.
- Emphasised professional skepticism to ensure auditors remain alert to possible fraud and exercise professional skepticism throughout an audit.
- Strengthened identification and assessment of risks of material misstatement due to fraud
- Clarified response to fraud or suspected fraud identified during the audit.
- Increased ongoing communication with management and those charged with governance about fraud.
- Increased transparency about auditors' responsibilities and fraud-related procedures in the auditor's report.
- Enhanced audit documentation requirements about fraud-related procedures.

The last date to provide comments on the proposed changes is 5 June 2024.

(Source: Proposed International Standard on Auditing 240 (Revised) issued by IAASB dated 6 February 2024)