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Regulatory updates for the month of December 2022

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Regulatory updates for December 2022

The regulatory updates publication issued by the Foundation for Audit Quality (FAQ) highlights the latest developments in accounting, auditing and regulatory developments in India and internationally.

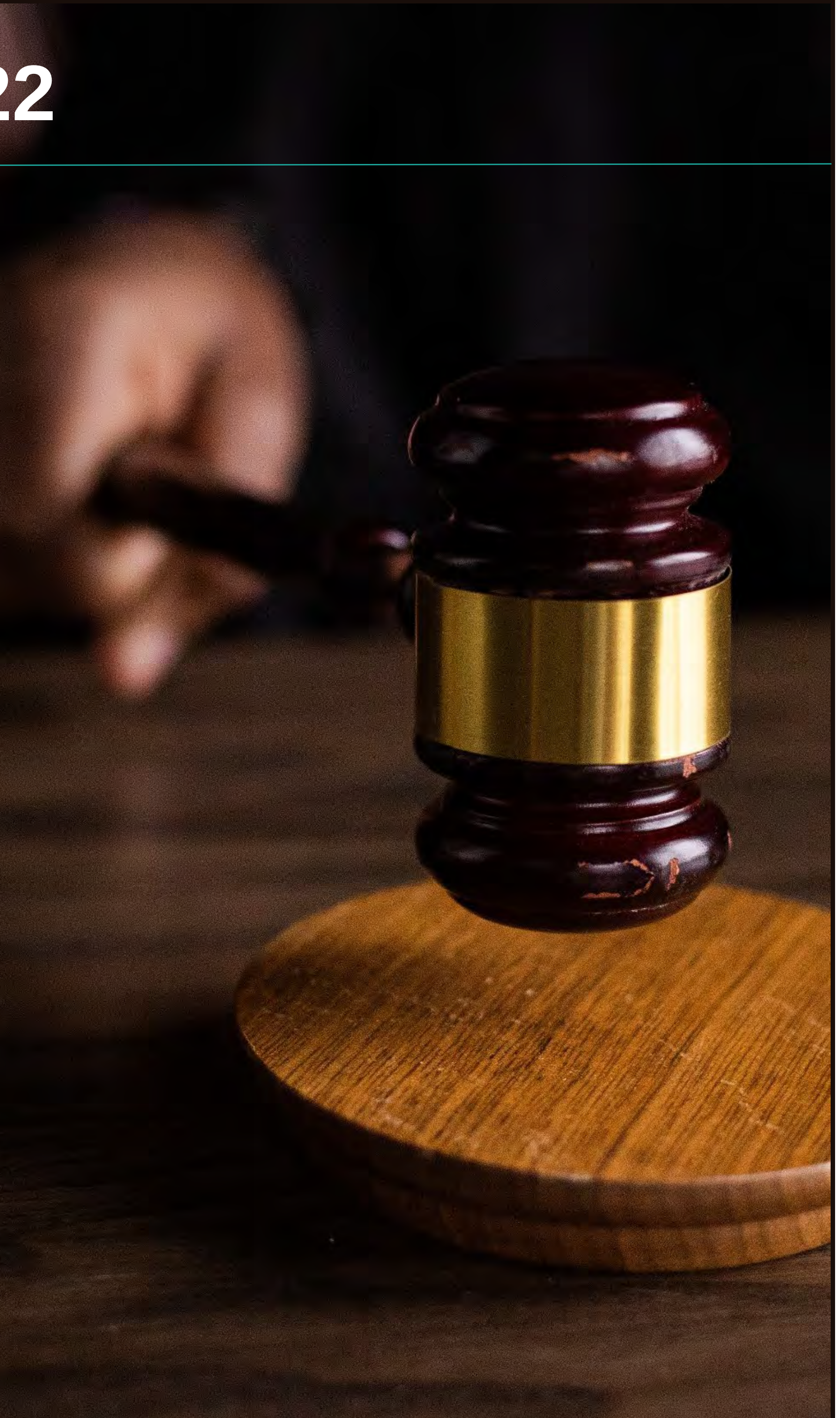
In this edition

Recently, the Institute of Chartered Accountants of India (ICAI) issued two Exposure Drafts (EDs) pertaining to amendments to Ind AS 1, *Presentation of Financial Statements* and Ind AS 116, *Leases*. The EDs are open for comments up to 30 January 2023.

Additionally, the Securities and Exchange Board of India (SEBI) in its board meeting dated 20 December 2022 took some key decisions pertaining to the following matters:

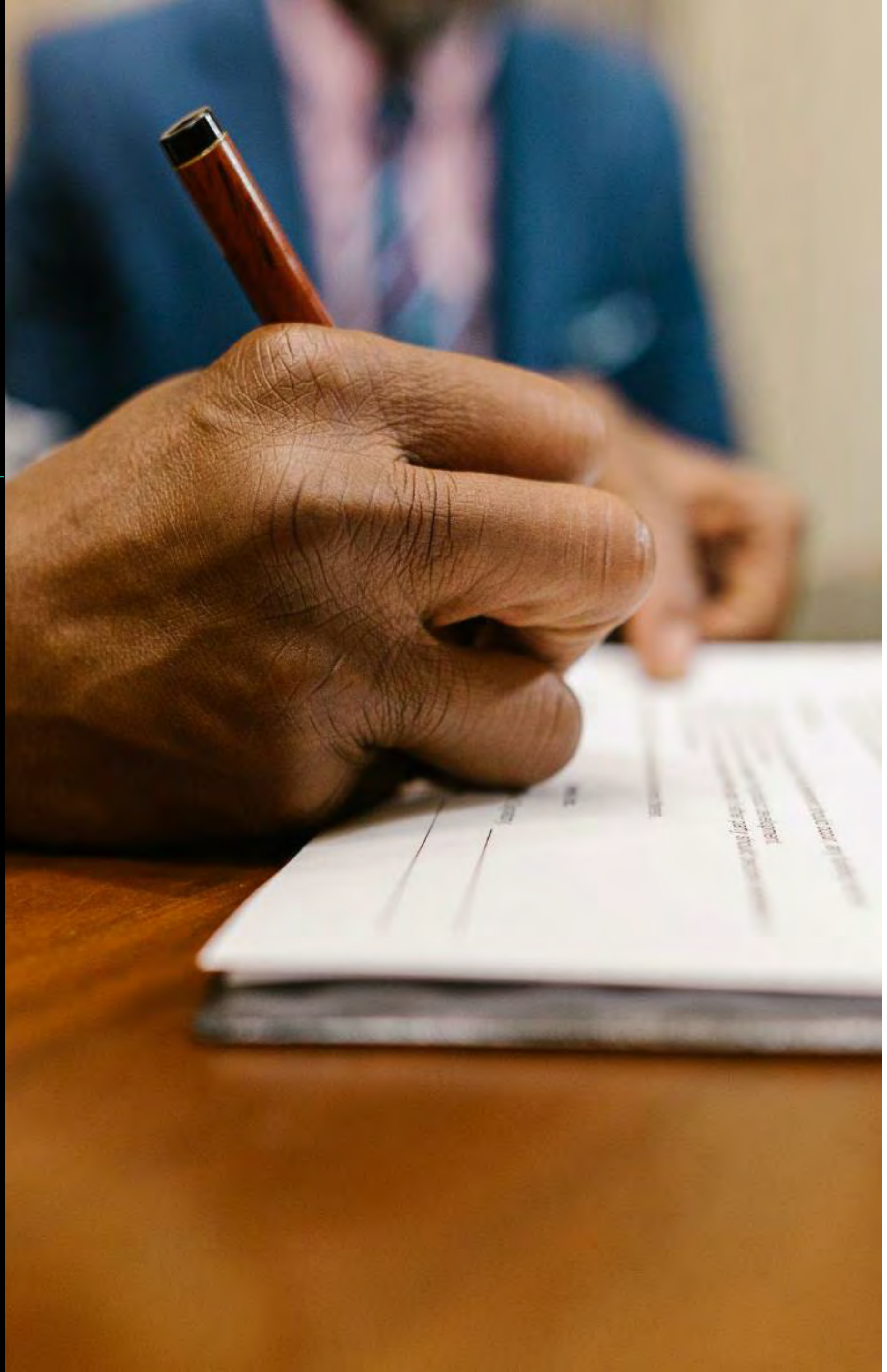
- Amendment to SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) to facilitate sustainable finance while safeguarding against greenwashing
- Amendment to NCS Regulations to streamline appointment of nominee director and specify public issue timelines
- Amendments regarding applicability of corporate governance norms, tenure of an auditor, computation of leverage and other provisions for REITs and InvITs
- Other amendments including – strengthening focus and governance mechanisms in Market Infrastructure Institutions (MIIs), amendment to SEBI (Buy-back of Securities) Regulations, 2018 etc.

This issue of the regulatory updates publication covers some of the important updates on accounting, auditing and regulatory matters for the period from **1 December 2022 to 31 December 2022**. It also highlights some of the action points that auditors may consider when applying the relevant provisions.



India update

Publications



India update

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Updates from ICAI

ICAI issues exposure drafts of amendments to Ind AS 1 and Ind AS 116

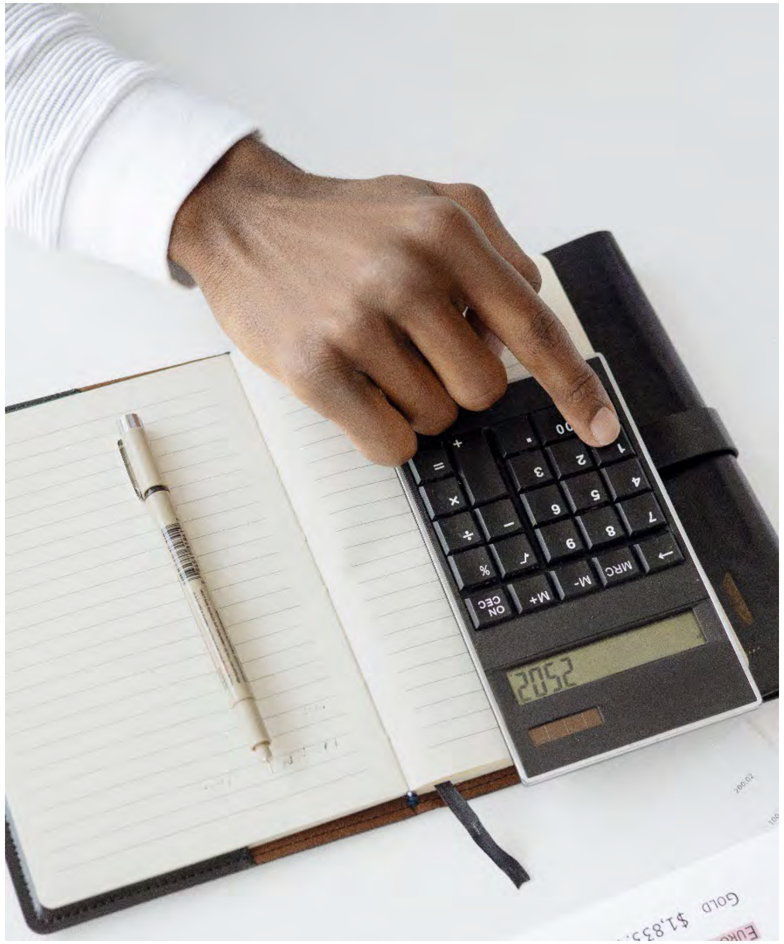
The Institute of Chartered Accountants of India (ICAI), from time to time, suggests amendments[1] to the Indian Accounting Standards (Ind AS) for ensuring convergence with the requirements of the International Financial Reporting Standards (IFRS). In this regard, on 30 December 2022, ICAI issued Exposure Drafts (EDs) of the amendments to Ind AS 1, *Presentation of Financial Statements* and Ind AS 116, *Leases*. The EDs are open for comments up to 30 January 2023. Some of the key amendments specified by the EDs are discussed below:

A. **Amendments to Ind AS 1, *Presentation of Financial Statements***: The ED has proposed following amendments to Ind AS 1:

- **Classification of liabilities as current or non-current**: The ED has proposed the following amendments to Ind AS 1:
  - ***Right to defer settlement***
    Under the existing requirements of Ind AS 1, companies classify a liability as current when they do not have an **unconditional right** to defer the settlement for at least 12 months after the reporting date.

    Through the ED, ICAI has now removed the requirement for a right to be unconditional, i.e., a liability would be classified as non-current, even if the right to defer settlement is subject to some underlying conditions (covenants). As per the ED, the right to defer settlement must exist at the reporting date.
    Accordingly, only the covenants with which an entity is required to comply on or before the reporting date and which have substance would affect the classification of a liability as current or non-current.
  - ***Non-current liabilities subject to future covenants***
    Covenants with which a company must comply after the reporting date (i.e. future covenants) do not affect a liability's classification at that date. However, when non-current liabilities are subject to future covenants, it has been proposed that such companies would be required to disclose information to help users understand the risk that those liabilities could become repayable within 12 months after the reporting date.
  - ***Liabilities that can be settled in a company's own shares***

    The terms of a liability may include a conversion option that when exercised by the counterparty could result in the settlement of the liability by issuance of a company's own equity instruments, for example, convertible debentures. Such a conversion option could either be recognised as an equity instrument, recognising it separately from the host liability, or it could be recognised as a liability.



1. ICAI suggests amendments to MCA, which ultimately notifies the amendments.

The ED now clarifies that when a company classifies the host liability as current or non-current, it can ignore only those conversion options that are recognised as equity.

- ***Removal of carve-out***

  Currently, Ind AS 1 is not in line with International Accounting Standard (IAS) 1, *Presentation of Financial Statements,* since it has a carve out with regard to classification of a long-term loan arrangement for which there has been a breach of a material provision either on or before the end of the reporting period[2].

  Under Ind AS 1, such an arrangement will be classified as a non-current liability as long as the breach has been condoned by the lender after the reporting period (but before the financial statements are approved). However, IAS 1 requires such an arrangement to be classified as a current liability because, at the end of the reporting period, the entity does not have the right to defer its settlement for at least 12 months after the reporting date.

  The ICAI has reconsidered the carve-out and has proposed to remove the same (and thereby make Ind AS consistent with IAS 1).

The amendments introduced by the ED are consistent with the recent amendments made by the International Accounting Standards Board (IASB) to IAS 1 in January 2020 and in October 2022.

Effective date: The above specified amendments are proposed to be made applicable for annual reporting periods beginning on or after 1 April 2024.

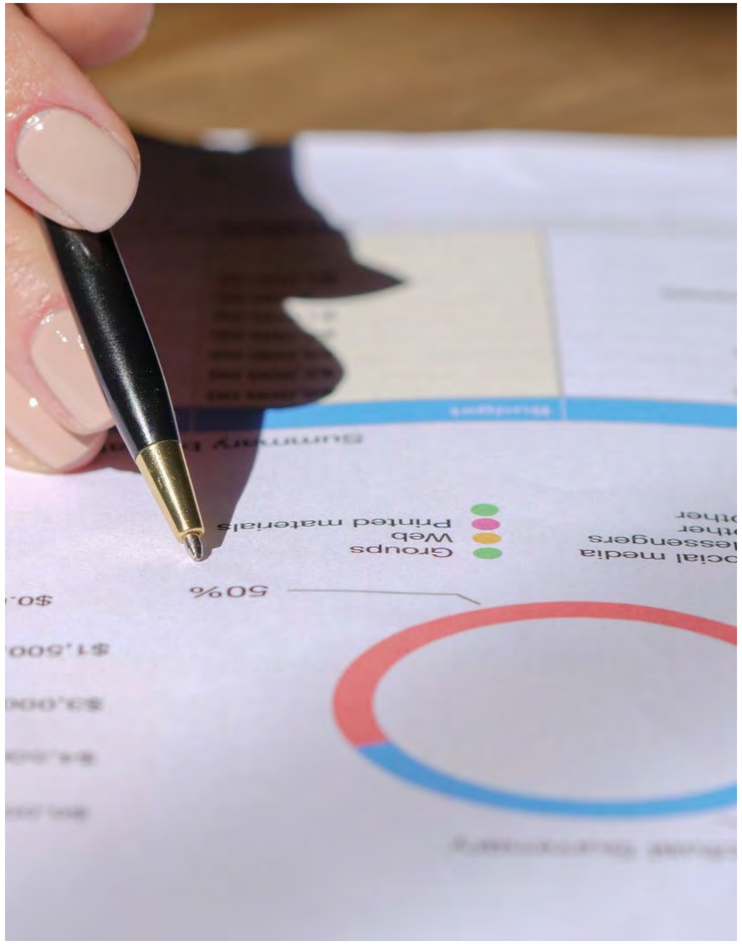
To access the text of the ED, please click here.

B. Amendments to Ind AS 116, *Leases*: A sale and leaseback is a transaction for which a company sells an asset and leases that same asset back for a period of time from the new owner. Currently, Ind AS 116 includes requirements on how to account for a sale and leaseback at the date the transaction takes place. However, the ED has now prescribed a subsequent measurement requirement for such transactions, particularly in a leaseback that includes variable lease payments that do not depend on an index or a rate – because these payments are excluded from 'lease payments'. The ED confirms:

- **On initial recognition:** On initial recognition, the seller-lessee should include variable lease payments in measuring a lease liability arising from a sale-and-leaseback transaction.

- **After initial recognition:** After initial recognition, the seller-lessee should apply the general requirements for subsequent accounting of lease liability and not recognise any gain or loss relating to the Right of Use (RoU) that is retained.

The ED has proposed that a seller-lessee may adopt different approaches that satisfy the new requirements on subsequent measurement.



2. Carve out has been made in paragraph 74 of Ind AS 1.

Accounting updates

The requirement proposed by the ED is consistent with the recent amendments made by IASB to IFRS 16, *Leases* in September 2022.

Effective date: The amendments are proposed to be made effective for annual reporting periods beginning on or after 1 April 2024.

To access the text of the ED, please click here.

Action Points for Auditors

Auditors should note that though the amendments proposed by the EDs would apply from 1 April 2024, they should evaluate disclosures under Ind AS 8, *Accounting Policies, Changes in Accounting Estimates and Errors*. Thus, auditors should engage with the companies to which these amendments would be applicable and discuss the reporting requirements and transition options available to the companies. Auditors are also encouraged to utilise the comment period to highlight their concerns or recommendations, if any with regard to the amendments introduced by the EDs.

Updates from ICAI

Implementation Guide to SA 230, *Audit Documentation*

Standard on Auditing (SA) 230, *Audit Documentation* prescribes the basic principles of audit documentation that should be complied by auditors while performing audits of financial statements.

In 2013, the Institute of Chartered Accountants of India (ICAI) had issued the 'Implementation Guide to SA 230, Audit Documentation' (the IG)[3] to provide practical implementation guidance to auditors in the form of various Frequently Asked Questions (FAQs).

Recently, on 15 December 2022, ICAI revised the implementation guide (revised IG) to provide more guidance on the aspect of assembly of the final audit file.

The revised IG (like its earlier version) includes summary of the standard, introduction, FAQs on SA 230, a checklist and also an illustrative working paper format. Some of the key guidance pertaining to the assembly of the final audit file include:

- **Assembly of the final audit file after the date of the auditors' report:** SA 230 permits only administrative changes to be made to audit documentation after the date of the auditor's report, therefore the revised IG advises that all audit documentation should be prepared on a timely basis – i.e. at the time the audit work is performed[4].

  When assembling an audit file, an engagement team should ensure that it has a complete and final set of documents that support an auditor's opinion. The revised IG also provides certain illustrative examples of activities that would be considered as administrative changes that are required to be completed before the final assembly of the audit file.

- **Changes to audit documentation which are other than administrative in nature:** The revised IG provides guidance on documentation requirements[5] by an engagement team when changes or additions that are not administrative in nature are made to the audit documentation after the date of the auditor's report but before the archive date. The revised IG has also provided examples of circumstances that require changes or additions to the documentation that are not administrative after the date of an auditor's report.

  In certain cases, an engagement team may discover that, considering the facts and circumstances at the time of the audit, one or more additional audit procedures may have been omitted to be performed. In such situations, when the engagement team is performing procedures and obtaining and documenting evidence after the date of the auditor's report, the engagement team does not discard any related documentation that previously existed.

3. The implementation guide was subsequently revised in 2018.
4. Timely audit documentation enhances the quality of audit and facilitates the effective review and evaluation of audit evidence obtained and conclusions reached before an auditors' report is finalised.
5. Such documentation includes:
   - An explanation describing what information was added or changed.
   - When the evidence was obtained.
   - The date the information was added and reviewed.
   - The name of the person who prepared and reviewed the additional information.
   - The circumstances encountered and the reasons for adding the information.
   - The new or additional audit procedures performed, audit evidence obtained, and conclusions reached.
   - When the conclusions in respect of the new information were approved by the engagement manager, engagement partner and / or engagement quality control reviewer (where applicable).
   - The effect on an auditor's report.

Auditing updates

- **Confidentiality, safe custody, integrity, accessibility and retrievability of documentation:** Auditors should comply with the requirements of the Standard on Quality Control (SQC) 1, *Quality Control for Firms that Perform Audits and Reviews of Historical Financial Information, and Other Assurance and Related Services Engagements*. As per SQC 1, audit firms should establish policies and procedures designed to maintain the confidentiality, safe custody, integrity, accessibility and retrievability of documentation of an engagement.

  For this purpose, appropriate controls may be designed and implemented to:
  - Enable determination of when and by whom engagement documentation was created, changed or reviewed
  - Protect the integrity of the information at all stages of the engagement
  - Prevent unauthorised changes to the documentation of an engagement
  - Allow access to the documentation by authorised persons to properly discharge their responsibilities

  For practical reasons, original paper documentation may be electronically scanned for inclusion in engagement files.

To access the text of the revised IG, please click here.

Action Points for Auditors

- The recent reports and observations issued by the National Financial Reporting Authority (NFRA) have highlighted lapses in certain aspects of audit documentation. Auditors should refer to the FAQs and examples mentioned in the revised IG to SA 230 and ensure adherence to the guidelines with respect to their specific audit engagements
- The revised IG has provided guidance on certain aspects pertaining to audit file assembly. Auditors should take note of the same while assembling the audit files after the date of their audit reports.
- Auditors should refer to the checklist provided by ICAI in the revised IG to SA 230 while compiling their audit files and also take note of the illustrative working paper format provided in the IG for reference.

Updates from SEBI

Updates from the SEBI board meeting (December 2022)

The Securities and Exchange Board of India (SEBI) in its board meeting dated 20 December 2022 took some key decisions pertaining to the following:

a. **Amendment to SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (NCS Regulations) to facilitate sustainable finance while safeguarding against greenwashing**[6]

With an increasing emphasis towards sustainable finance in India as well as around the globe, SEBI undertook a review of the regulatory framework for Green Debt Securities (GDS)[7]. The review is aimed to align it with the updated Green Bond Principles (GBP)[8] recognised by the International Organisation of Securities Commission (IOSCO). Based on the review, SEBI has decided to make the following amendments to the NCS Regulations:

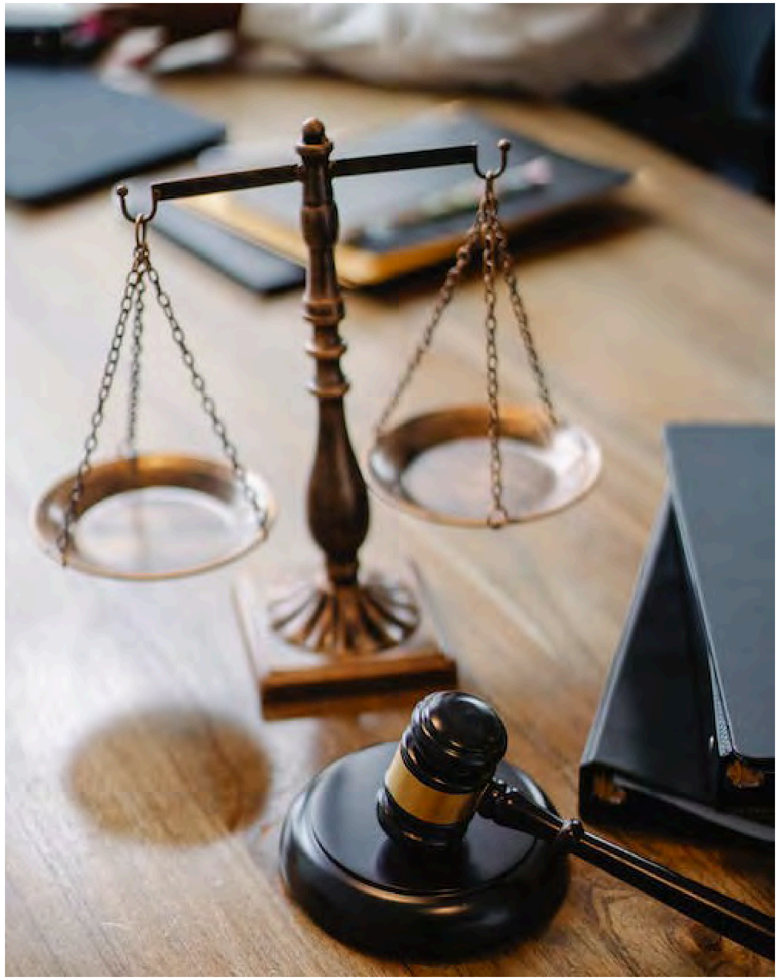
- Enhance the scope of the definition of GDS by including new modes of sustainable finance with respect to pollution prevention and control, eco-efficient products, etc.

6. Greenwashing is a term used for describing a false, misleading or untrue action or set of claims made by an organisation regarding the positive impact that a company, product or service has on the environment.

7. The NCS Regulations define GDS as “a debt security issued for raising funds that are to be utilised for project(s) and/or asset(s) falling under any of the following categories, subject to the conditions as may be specified by SEBI from time to time”:

   i. Renewable and sustainable energy including wind, solar, bioenergy, other sources of energy which use clean technology,
   ii. Clean transportation including mass/public transportation,
   iii. Sustainable water management including clean and/or drinking water, water recycling,
   iv. Climate change adaptation,
   v. Energy efficiency including efficient and green buildings,
   vi. Sustainable waste management including recycling, waste to energy, efficient disposal of wastage,
   vii. Sustainable land use including sustainable forestry and agriculture, afforestation,
   viii. Biodiversity conservation, or
   ix. A category as may be specified by SEBI, from time to time.

8. The GBP issued by the International Capital Market Association (ICMA) are voluntary process guidelines that recommend transparency and disclosure and promote integrity in the development of the Green Bond market by clarifying the approach for issuance of a Green Bond. The four core components for alignment with the GBP are – Use of proceeds, Process for project evaluation and selection, Management of proceeds and Reporting



- Introduce the concept of blue bonds (related to water management and marine sector)[9], yellow bonds (related to solar energy) and transition bonds[10] as sub categories of GDS.

  Additionally, in order to mitigate and address the concerns around green washing, SEBI would also prescribe certain basic dos and don'ts with respect to GDS.

b. Amendment to NCS Regulations to streamline appointment of nominee director and specify public issue timelines

SEBI approved the following amendments with a view to improve the regulatory mechanism of the corporate bond market:

- **Appointment of a nominee director:** SEBI in its board meeting decided that the issuers of listed debt securities must incorporate suitable provisions in their Articles of Association (AoA) regarding the obligation of the Board of Directors of the issuer to appoint the person nominated by its debenture trustee as a director in the event of default. Corresponding amendments are required to be made in the debenture trust deed. The existing listed debt issuers are required to ensure compliance with the same by **30 September 2023.**

- **Public issue timelines:** Currently, there are no stipulations regarding the duration for which a public issue of debt securities or Non-Convertible Redeemable Preference Shares (NCRPS) should be kept open. In this regard, SEBI decided that public issue of debt securities and NCRPS must be kept open for subscription for a minimum period of three working days and a maximum period of 10 working days. The timelines are aligned with timelines provided for specified securities[11] under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations).

9. The Government of India has announced an initiative to develop country's blue economy by rolling out the road map of project Sagarmala. According to the World Bank, blue economy refers to the "sustainable use of ocean resources for economic growth, improved livelihoods, and jobs while preserving the health of ocean ecosystem". In this regard, deployment of blue bonds can emerge as an important source of finance for various aspects of the blue economy.
10. Transition bonds and transition financing are emerging concepts wherein the proceeds of issue would be utilised to fund a firm's transition towards a reduced environmental impact and/or reduce the carbon emissions. Climate transition finance is most relevant and required by those industries with high greenhouse gas emissions which face the most complex climate-related transition challenges.
11. Specified securities refer to the equity shares and convertible securities

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c. Amendments regarding applicability of corporate governance norms, tenure of an auditor, computation of leverage and other provisions for REITs and InvITs

SEBI is its board meeting has specified that the corporate governance norms applicable for listed companies would also be applicable to Real Estate Investment Trusts (REITs) and Infrastructure Investment Trusts (InvITs), irrespective of whether any debt security is issued by them. However, certain provisions of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (LODR Regulations) which are not directly applicable or are already specified for REIT/InvIT under respective Regulations would be carved out.

Further, in order to streamline the tenure of an auditor, computation of leverage, unclaimed/unpaid distribution, etc., SEBI has decided to introduce the following amendments to the SEBI (REIT) Regulations, 2014 and SEBI (InvIT) Regulations, 2014:

- Tenure of an auditor will be till the conclusion of the fifth annual general meeting of the unit holders
- Statutory auditor of REITs/ InvITs must undertake limited review of audit of all the entities or companies whose accounts are to be consolidated
- Investment in overnight fund would need to be considered as cash and cash equivalent, for the purpose of computation of leverage, and
- Unclaimed/unpaid distributions for REITs/InvITs must be transferred to the Investor Protection and Education Fund.

d. <u>Other amendments:</u> Some other key amendments introduced by SEBI include:

- *Strengthening focus and governance mechanisms in MIIs:* Market Infrastructure Institutions (MIIS) are key pillars of a security market. Amendments have been made to their governance structure to strengthen focus and governance of MIIs, thus enhance stakeholder trust in the market.

- *Amendment to SEBI (Buy-back of Securities) Regulations, 2018:* In November 2022, SEBI had issued a public consultation with respect to buy-back of shares. Based on suggestions received from stakeholders, SEBI has issued certain amendments pertaining to buyback through stock exchange route and through tender offer route.

- *Foreign Portfolio Investors (FPIs):* SEBI has approved certain procedural requirements to streamline the on-boarding process. This is likely to facilitate ease of doing business and reduce the time taken for registration of FPIs (such as acceptance of digital signatures, etc.).

- *Alternative Investment Funds (AIFs) in credit default swaps:* SEBI has permitted AIFs to participate in Credit Default Swaps (CDS) as protection buyers and sellers, subject to certain conditions.

To access the text of the minutes of the SEBI board meeting, please click here

Action Points for Auditors

Auditors of REITs and InvITs should take note of the revised corporate governance requirements and key changes introduced with respect to their tenure, undertaking limited review of audit of all the entities or companies whose accounts are to be consolidated etc. Additionally, auditors should also engage with the companies issuing debt securities regarding the revised regulatory requirements introduced by SEBI.

SEBI issues amendments to LODR Regulations

Regulation 102 of the LODR Regulations empowers SEBI to exempt certain entities from the strict enforcement of the requirement(s) of the LODR Regulations under certain circumstances, which include:

a. Any provision of Act(s), Rule(s), Regulation(s) under which a listed entity is established or is governed by, or is required to be given precedence to
b. The requirement may cause undue hardship to investors
c. The disclosure requirement is not relevant for a particular industry or class of listed entities
d. The requirement is technical in nature
e. The non-compliance is caused due to factors affecting a class of entities but being beyond the control of the entities.

Recently, SEBI, vide a notification dated 5 December 2022 issued certain amendments[12] to Regulation 102 of the LODR Regulations (the amendments). The amendments have inserted an additional criterion to the above specified circumstances and provide that SEBI may, after taking into consideration the interest of investors and securities market, relax the strict enforcement of the requirement(s) of the LODR Regulations, if an application is made by the Central Government with respect to its strategic disinvestment in a listed entity.

Effective date: The amendments are effective from the date of publication in the Official Gazette, i.e., 5 December 2022.

To access the text of the notification, please click here.

12. The amendment has been issued vide the SEBI LODR (Seventh Amendment) Regulations, 2022 (LODR Amendment Regulations).

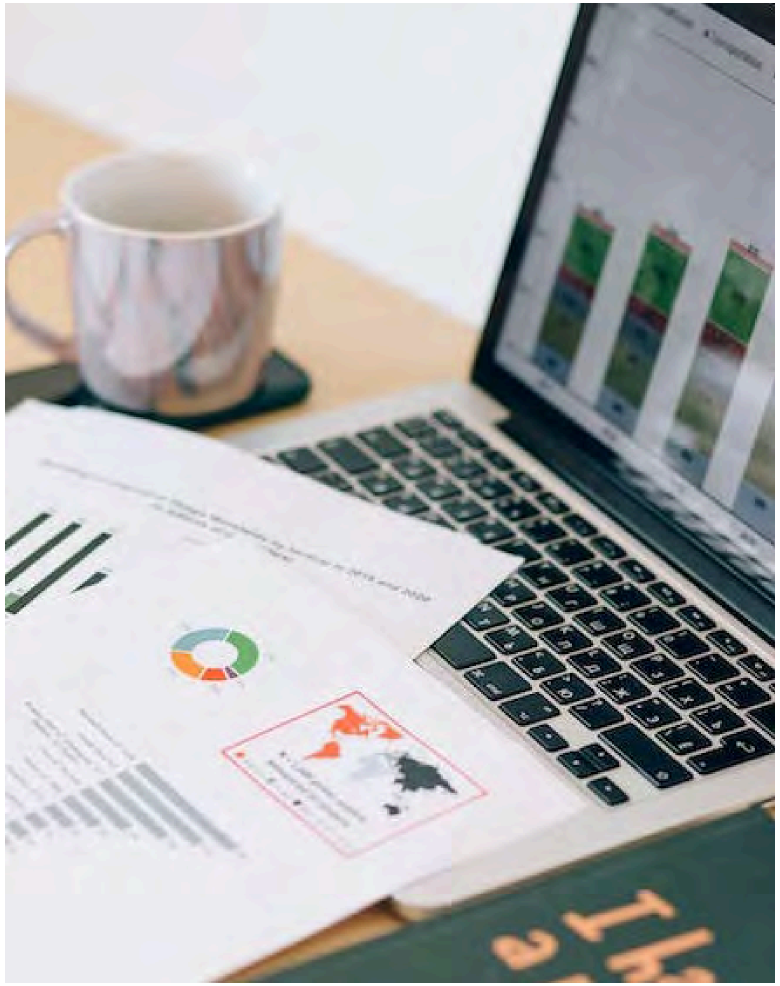
Updates from RBI

The RBI has prescribed greater transparency in disclosure of other assets and liabilities for certain banks

The Reserve Bank of India (RBI), vide a notification dated 13 December 2022 issued certain amendments to the RBI (Financial Statements – Presentation and Disclosures) Directions, 2021 (the Directions). The amendments are applicable to all commercial banks.

Part A of Annexure II to the Directions specify the notes and instructions for compilation of balance sheet and profit and loss account for commercial banks. The amendment emphasises on the disclosure of material items by the commercial banks in their financial statements. Some of the key changes introduced are summarised in the table below:

Schedule reference	Financial statement item	Change introduced
Schedule 5(IV)-	Other liabilities and provisions - Others (including provisions)	If any item classified under Schedule 5(IV) or Schedule 11(VI) **exceeds one per cent of the total assets**, particulars of those items must be disclosed in the notes to accounts
Schedule 11(VI)	Other assets - Others	



Regulatory updates

Further, Payments Banks should also disclose particulars of all such items in the notes to accounts, wherever any item under the Schedule 14(I)-Other Income-“Commission, Exchange and Brokerage” **exceeds one per cent of the total income**.

Effective date: The amendments are effective for disclosures in the notes to the annual financial statements for the year ending 31 March 2023 and onwards.

To access the text of the notification, please click here.

To access the text of the amended Regulations, please click here.

Action Points for Auditors

Since the amendments are applicable for the annual financial statements for the year ending 31 March 2023 and onwards, auditors should proactively engage with the banking companies regarding these additional disclosure requirements.

Publications

- India
- International

Publications – India

The table below provides an overview of some important publications released by various regulators during this month:

Regulator	Publication	Particulars
SEBI	**SEBI operational circular for listing obligations and disclosure requirements for Non-Convertible Securities, Securitised Debt Instruments and/or Commercial Papers**	The LODR Regulations prescribe the continuous disclosure requirements for issuers of listed Non-Convertible Securities, Securitised Debt Instruments and Commercial Papers. In this regard, multiple circulars have been issued over the years, covering various operational and procedural aspects thereof. With a view to ensure effective regulation of the corporate bond market and to enable the issuers and other market stakeholders get access to all the applicable circulars at one place, SEBI has issued an operational circular, thereby compiling the relevant existing circulars along with the consequent changes, if any. To access the text of the operational circular, please click here.

Publications - International

The table below provides an overview of some important international publications released by various regulators during this month:

Regulator	Publication	Particulars
IAASB	**IAASB fact sheet on ISA 220 (Revised) – Quality management and group audits: Highlighting certain aspects of interaction between ISA 220 (Revised) and ISA 600**	International Standard on Auditing (ISA) 220 (Revised), *Quality Management for an audit of financial statements* is effective for audits of financial statements for periods beginning on or after 15 December 2022. It also applies to group audit engagements and is thus, closely aligned with ISA 600, *Special Considerations – Audits of Group Financial Statements (Including the Work of Component Auditors)*. In this regard, the International Auditing and Assurance Standards Board (IAASB) recently released a fact sheet on ISA 220 (Revised) – Quality management and group audits: Highlighting certain aspects of interaction between ISA 220 (Revised) and ISA 600. The fact sheet focuses on the interaction between ISA 220 (Revised) and ISA 600. It also highlights certain provisions from the International Standard on Quality Management (ISQM) 1, *Quality management for firms that perform audits or reviews of financial statements, or other assurance or related engagements* which are relevant to the application of ISA 220 (Revised) to group audits. To access the text of the fact sheet, please click here

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