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Regulatory updates for the month of September 2022

14 October 2022

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Regulatory updates for September 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.

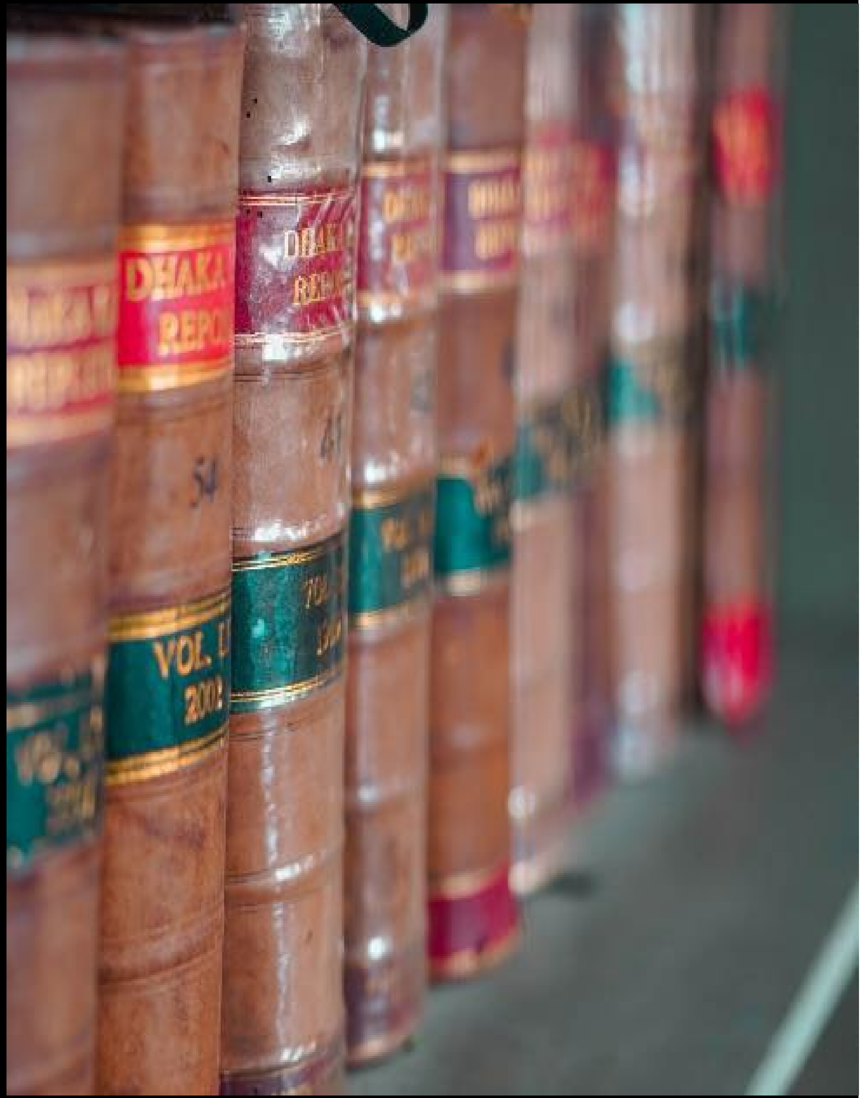
In this edition

Recently, the Ministry of Corporate Affairs (MCA) issued the Companies (CSR Policy) Amendment Rules, 2022. Some of the significant amendments issued in this regard include:

- Constitution of CSR Committee by a company having amounts in its unspent CSR account,
- Omission of Rule 3(2) of the Companies (CSR Policy) Rules, 2014,
- Clarification on the category of entities that can implement CSR activities,
- Change in the limit of expenditure incurred on impact assessment that can be considered as CSR spend, and
- Change in the format for annual report on CSR activities.

Additionally, the Institute of Chartered Accountants of India (ICAI) has mandated the evaluation of audit quality maturity for certain firms using AQMM Revised Version 1.0 with effect from 1 April 2023. In order to help firms to self-evaluate their audit maturity level, ICAI has also come out with an Implementation Guide (IG). The IG has been issued in the form of various implementation clues, which are practice based.

This issue of the regulatory updates publication covers some of the important updates on accounting, auditing and regulatory matters for the period from **1 September 2022 to 30 September 2022**. It also highlights some of the action points that auditors may consider when applying the relevant provisions.



India update

International update

ICAI publication

International publication

India update

- Accounting updates
- Auditing updates
- Regulatory updates

Updates from ICAI

AS 113, *Fair Value Measurement* – Exposure draft

Accounting Standards (AS) notified under the Companies (Accounting Standards) Rules, 2021 and those issued by the Institute of Chartered Accountants of India (ICAI) are applicable to entities to whom Indian Accounting Standards (Ind AS) are not applicable. Based on the discussions held at various standard setting forums, it was decided to revise the AS and in doing so, maintain consistency in numbering of AS with the Ind AS[1]. Accordingly, ICAI is working on a project of revision of the AS which will be applicable to the entities to whom Ind AS are not applicable. The revised set of AS would be applicable from a future date as per a road map which would be communicated by ICAI subsequently.

In this regard, ICAI has issued an Exposure Draft (ED) on AS 113, *Fair Value Measurement* (AS 113 (proposed)), keeping Ind AS 113, *Fair Value Measurement* as the base. Some of the key amendments between AS 113 (proposed) and Ind AS 113 are as follows:

- **Definitions:** In Ind AS, **t**he definitions of "market risk" and "credit risk" are included in Ind AS 107, *Financial Instruments: Disclosures*, and are not covered in Ind AS 113. However, AS 113 (proposed) has included the definitions of these terms, which are as below:
  – **Market risk:** The risk that the fair value or future cash flows of a financial instrument will fluctuate because of changes in market prices. Market risk comprises three types of risk: currency risk, interest rate risk and other price risk
  – **Credit risk:** The risk that one party to a financial instrument will cause a financial loss for the other party by failing to discharge an obligation[2].
- **Omission of disclosure requirements for recurring fair value measurements categorised within Level 3[3] of the fair value hierarchy:** In order to simplify the disclosure requirements for the entities to which Ind AS is not applicable, following disclosures are not included in AS 113 (proposed):
  – Narrative description of the sensitivity of the fair value measurement to changes in unobservable inputs, and
  – Effect of significant change in fair value due to change in one or more unobservable input, in order to reflect reasonably possible alternative assumptions.
- **No reference to Other Comprehensive Income:** Since revised AS 1, *Presentation of Financial Statements*, does not include the concept of Other Comprehensive Income (OCI), reference to OCI has been duly substituted with 'reserve(s)' in AS 113 (proposed).

ICAI has invited comments on the ED up to 18 October 2022.

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

[1] The entire set of revised Accounting Standards will consist of 32 standards, including a standard on transition from existing AS to Revised AS which are at various stages of formulation. So far, 28 Revised AS have been developed and approved by the Council of ICAI after due process.

[2] The definitions of market risk and credit risk as included in AS 113 (proposed) is in line with the definition of these terms in Ind AS 107.

[3] Level 3 inputs refer to the unobservable inputs for an asset or a liability

Accounting updates

Action Points for Auditors

Auditors should have discussions with the companies they audit to whom AS is applicable and evaluate the impact of AS 113 (proposed) on their financial disclosures. Auditors are also encouraged to send their queries and comments on the ED before the expiry of the comment period.

Updates from MCA

MCA issues clarification on amendments to Schedule III

The Ministry of Corporate Affairs (MCA), vide a notification dated 24 March 2021 had issued various key amendments to Schedule III of the Companies Act, 2013. As a part of the amendments issued, companies were required to mandatorily round off the figures appearing in the financial statements, based on their 'total income'[4].

In this regard, MCA, vide a clarification dated 26 September 2022 has stated that if the companies provide absolute figures in various e-forms i.e., AOC-4, etc., the same would not be treated as incorrect certification by the professionals.

To access the text of the Schedule III amendments, please click here

Action Points for Auditors

Few companies have prepared their financial statements and submitted annual returns providing absolute amounts. With this clarification, auditors of such companies, **need not** highlight the fact that amounts have not been rounded off, and need not report it as a non-compliance of Schedule III in their audit report.

[4]As per Schedule III (Divisions I, II and III), the rounding off requirements are as below:

- Total Income < Rs. 100 Crores - Round off to the nearest hundreds, thousands, lakhs or millions or decimal thereof.
- Total Income >= Rs. 100 Crores - Round off to the nearest lakhs, millions or crores, or decimal thereof

Auditing updates

Updates from ICAI

ICAI issues an announcement on external confirmations through third-party vendors

Standard on Auditing (SA) 505, *External Confirmations* recognises that external confirmations are an integral method of obtaining audit evidence. Over the years, auditors have been using external confirmation procedures for obtaining account balances confirmation from various parties (confirming parties), such as banks, creditors, debtors, third-parties in possession of auditee's investments/property etc.

However, it has come to the notice of the ICAI that, in recent years, 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.

In this regard, ICAI, vide an announcement dated 7 September 2022 advised the auditors to seek direct confirmation from the concerned banks.

To access the text of the announcement, please click here

Auditing updates

ICAI mandates the evaluation of audit quality maturity of firms using AQMM Revised Version 1.0

In July 2021, ICAI had issued the Audit Quality Maturity Model Version 1.0 (AQMM v1.0), comprising of a set of different Audit Quality Indicators (AQIs) to enable audit firms to self-evaluate their current level of audit maturity, identify areas where they lack and thereby help them in developing a roadmap for upgrading to a higher level of maturity. AQMM was introduced with an aim to move away from the traditional approach of enforced regulation to a more modern self-compliant model for the audit firms.

Initially, AQMM v1.0 was recommendatory and covered certain firms.

The ICAI, vide a notification dated 13 September 2022 issued the revised version of the AQMM – Audit Quality Maturity Model Revised Version 1.0 (AQMM Rev v1.0). This is a **mandatory evaluation** of the audit quality maturity of firms auditing the following class of entities:

a. A listed entity, or
b. Banks other than co-operative banks (except multi-state co-operative banks), or
c. Insurance companies.

However, firms doing only branch audits are excluded from the mandate.

The requirement for mandatory evaluation of AQMM is with effect from **1 April 2023.**

Similar to AQMM v1.0, the AQMM Rev v1.0, includes the following dimensions of audit maturity categorised into three sections:

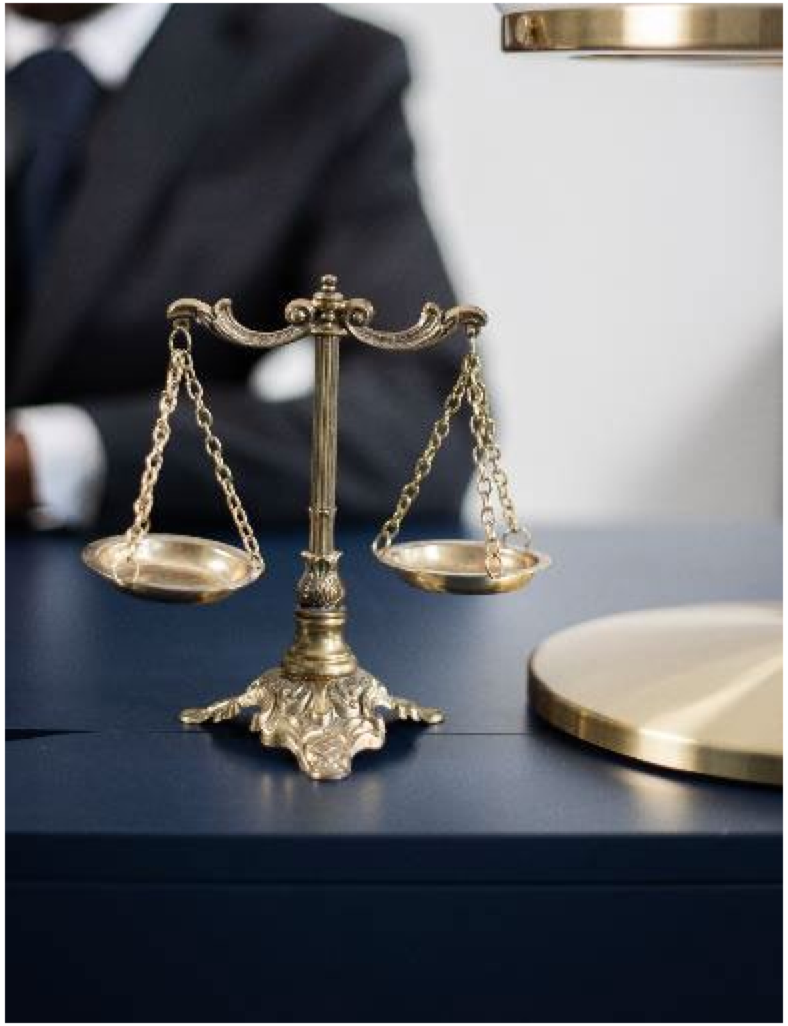
a. Practice Management – Operation,
b. Human Resource Management, and
c. Practice Management – Strategic/Functional.

Each of the aforementioned sections consist of the related AQIs and firm's maturity rating would be determined based on the score achieved in each section.

It has also been provided that the scores and level arrived at would be subject to review by a peer reviewer alongside the peer review cycle, which falls anytime on or after 1 April 2023. The level, so arrived at, after being reviewed by the peer reviewer should be hosted on the website of the ICAI alongside the details of the peer review certificate.

The firm(s) can get their scores reviewed by an AQMM reviewer[5] before their peer review cycle falls due. Also, the firms whose last peer review cycle has been completed and not a year has lapsed from the date of the last review, such firms can get their scores reviewed before their next peer review falls due by an AQMM reviewer. However, it has been stated that the subsequent reviews would necessarily be aligned to the peer review cycle and that the period of review in no case would be less than a year.

[5] AQMM reviewer is a member of the ICAI and empaneled as a peer reviewer. He/she is appointed by the Peer Review Board for conducting an AQMM review any time before the peer review cycle of the firm falls due.



Auditing updates

In this regard, ICAI has also released the Implementation Guide (IG) to the AQMM v1.0. The IG has been issued in the form of various implementation clues, which are practice based.

To access the text of ICAI's notification, please click here.

To access the text of the IG, please click here

To access the text of AQMM Rev v1.0, please click here

Action Points for Auditors

- Audit firms should develop the necessary infrastructure, including appropriate control mechanism in order to be able to collate data with respect to different AQIs for each engagement. This will help determine whether it meets a particular parameter i.e., 'yes' or 'no' criteria to award a score corresponding to an AQI. They should also maintain the relevant documentation to support their scores, which should be made available to the inspection teams, in case of any inspection.
- AQMM is required to be filled in for each firm in a network, even if such firms follow the same Standards on Quality Control (SQC), Human Resource and operational practices. Thus, those firms which are a part of a network and meet the applicability criteria should build in the required resources and refer the following roadmap for moving up the next level of audit maturity:

- **Step 1 Benchmarking:** Audit firms should benchmark their current maturity level and document a list of specific aspects that they are currently lacking, and which need to be initiated to move to the next level of the AQMM
- **Step 2 Planning initiatives:** Firms should convert the initiative to be taken into an action plan, with quarterly or annual timelines
- **Step 3 Identifying resources and execution plan:** A cross-functional team should be identified to own the execution of the plan and accountability should be defined for reporting progress and challenges, if any in the implementation
- **Step 4 Assessing progress:** Progress made should be re-evaluated against the AQMM and execution plan should be revisited on a half-yearly basis, to identify revisions, if any
- **Step 5 Perform a peer review/review by an external firm/internal inspection:** The firm should have its AQMM reviewed by a peer reviewer, or additionally by an external firm or internal inspection and assess the position at periodical intervals.

ICAI announces the applicability date of certain deferred provisions of the Code of Ethics, 2019

In January 2019, ICAI had issued the 12th edition of the Code of Ethics (Code of Ethics, 2019), coming into effect from 1 July 2020. However, applicability of certain provisions of Volume-I of the Code of Ethics, 2019 (the Code) had been deferred on account of situations prevailing at the given time due to Covid-19. These included provisions relating to:

- Responding to Non-Compliance with Laws and Regulations (NOCLAR),
- Fees - relative size, and
- Tax services to audit clients.

ICAI, vide an announcement dated 29 September 2022 (the amendment) has made the above-mentioned provisions applicable with effect from **1 October 2022** with certain amendments. Some of the significant amendments issued in this regard include:

- **Amendment to provisions relating to 'Responding to Non-Compliance with Laws and Regulations (NOCLAR)'**

- Section 260 of the Code specifies the provisions for responding to Non-Compliances with Laws And Regulations (NOCLAR), which is applicable to professional accountants in service. As per the extant requirements, the provisions were applicable to all the employees of listed entities. However, the amendment has now narrowed down the applicability criteria to only **senior professional accountants in service**[6], who are in employment of the listed entities. The amendment has also clarified that senior professional accountants in service refer to key managerial personnel.

- Section 360 of the Code guides professional accountants in public practice in assessing the implications of the matter and the possible courses of action when responding to NOCLAR during the course of audit engagements of listed entities.

[6] Senior professional accountants in service ('senior professional accountants') are directors, officers or senior employees who are able to exert significant influence over, and make decisions regarding, the acquisition, deployment and control of the employing organisation's human, financial, technological, physical and intangible resources. They refer to the Key Managerial Personnel (KMP) of the entity

Auditing updates

There are certain amendments with respect to the applicability of Section 360 of the Code, the definition of an ‘audit’ or ‘audit engagement’ and measures to be taken in case of an imminent breach. These are discussed below:

Existing provision	Amendment notified by ICAI
The provisions stipulated in Section 360 of the Code were applicable to audit engagements of all listed entities	Section 360 would now be applicable to audit engagements of entities, the shares of which are listed on recognised stock exchange(s) in India and have a **net worth of INR250 crore or more**. The applicability of Section 360 will subsequently be extended to all listed entities, at the date to be notified by ICAI.
The term ‘audit engagement’[7] has been defined in the glossary to the Code and is applicable to the entire Code.	For the purpose of Section 360, an ‘audit’ or ‘audit engagement’ shall mean a reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements give a true and fair view in accordance with an applicable financial reporting framework.
<u>Measures to be taken in case of imminent breach</u> As per Section R360.26 of the Code, where a professional accountant becomes aware of an imminent breach of a law or regulation that would cause substantial harm to stakeholders, he/she should first consider whether it would be appropriate to discuss the matter with management or those charged with governance of the entity, and then determine whether to disclose the matter immediately to an appropriate authority in order to prevent or mitigate the consequences of such imminent breach.	Section R360.26 has been repealed.

(Source: ICAI announcement dated 29 September 2022 (Applicable date of certain deferred provisions of Volume-I of Code of Ethics, 2019))

[7]Audit engagement has been defined as ‘A reasonable assurance engagement in which a professional accountant in public practice expresses an opinion whether financial statements are prepared in all material respects (or give a true and fair view or are presented fairly, in all material respects), in accordance with an applicable financial reporting framework, such as an engagement conducted in accordance with Standards on Auditing. This includes a Statutory Audit, which is an audit required by legislation or other regulation’

Amendment to provisions relating to 'Fees-relative size'

As per paragraph 410.3 of the Code, when the total fees generated from an audit client by a firm expressing an audit opinion on the financial statements of that client, represents a large proportion of the total fees of that firm, the dependence on that client and concern about losing the client creates a self-interest or intimidation threat (commonly referred to as threats).

Paragraphs 410.3 - R410.6 of the Code prescribe about factors that need to be evaluated while assessing the threats, and actions that can be taken to safeguard against such threats, etc. These provisions are applicable from 1 October 2022, with certain amendments, which are discussed below:

Existing provision	Amendment notified by ICAI
Where for two consecutive years, the total gross annual professional fees (total fees) from an audit client and its related entities represent more than 15 per cent of the total fees received by the firm which is expressing an opinion on the financial statements of the client (dependency on fees), the firm shall:	The threshold for determining an audit firms' dependency on fees from a client has been amended. The revised threshold has been prescribed separately for Public Interest Entities (PIEs) and Non PIEs as below: - **For PIEs:** An audit firm would be considered dependent on fees received from a PIE, if the total fees from the PIE represents more than **20 per cent** of the total fees of the firm, - **For Non PIEs:** An audit firm would be considered dependent on fees received from a non-PIE, if the total fees from the non-PIE represents more than **40 per cent** of the total fees of the firm.
A. Disclose to *Those Charged With Governance (TCWG)* of the audit client the fact of such dependency on the audit fees	Disclosure regarding dependency on fees is now required to be made to **ICAI**
(Exemption from the above provision is provided to the firm, where the total fees received from an audit client does not exceed INR5 lakh in respect of a firm[8], and/or in case of audits of government entities.[9])	- The exemption from making disclosures to ICAI regarding the dependency on audit fees would be applicable to firms who received total fees from an audit client of **INR20 lakh** (instead of the current limit of INR5 lakh). - 'Regulators' would be added to the list of government entities.
B. Discuss and apply the remedial actions to safeguard the threat created by dependency on the audit fees- which includes a pre-issuance and post-issuance review.	This provision has been repealed.

(Source: ICAI announcement dated 29 September 2022 (Applicable date of certain deferred provisions of Volume-I of Code of Ethics, 2019))

[8]This includes fees received by the firm for other services rendered through the medium of a different firm or firms in which such member or firm may be a proprietor or partner.
[9]This includes audit of government companies, public undertakings, nationalised banks, public financial institutions or where appointments of auditors are made by the Government.

Auditing updates

Amendment to provisions relating to 'Tax services to audit clients'

Sub Section 604 of the Code specifies the provisions relating to rendering of tax services to audit clients. As per sub-section 604, providing tax services to an audit client might create a self-review or advocacy threat. In order to mitigate such threats, sub-section 604 of the Code includes requirements that prohibit firms and network firms from providing certain tax services to audit clients in some circumstances.

One such service prescribed in sub-section 604 of the Code includes 'Assistance in the Resolution of Tax Disputes', wherein a firm or a network firm has been prohibited from providing services involving acting as an advocate for certain audit clients, before a court in the resolution of a tax matter.

Sub-section 604 further defines what would be considered as a court. This definition has been amended as below:

Existing provision	Amendment notified by ICAI
In case of Assistance in the resolution of Tax disputes, the term "Court" is explained as under: What constitutes a 'Court' depends on how tax proceedings are heard in India.	In case of Assistance in the resolution of Tax disputes, the term "Court" is explained as under: For the purpose of this sub-section, 'Court' does not include a Tribunal

(Source: ICAI announcement dated 29 September 2022 (Applicable date of certain deferred provisions of Volume-I of Code of Ethics, 2019))

To access the text of the announcement, please [click here]

To access the text of the detailed provisions (with amendments), please [click here]

To access the text of the Code of Ethics, 2019, please [click here]

Auditing updates

Action Points for Auditors

- Section 360 of the Code explains the provisions for responding to NOCLAR applicable to professional accountants in public practice. Though, the amendment has narrowed down the applicability criteria to audit engagements of entities, the shares of which are listed on recognised stock exchange(s) in India and have a net worth of INR250 crore or more, it has been specified that the applicability would be subsequently extended to all listed entities. Thus, practitioners auditing listed entities having net worth of less than INR250 crore should put in place the required system and necessary procedures for appropriate identification and disclosure of instances of non-compliance with laws and regulations.
- Auditors should take note of the requirements to make disclosures regarding fee amounts to the ICAI, where such fees exceed the prescribed threshold.

Updates from MCA

MCA amends the definition of a 'small company'

Section 2(85) of the Companies Act, 2013 read with Rule 2(1)(t) of the Companies (Specification of Definition Details) Rules, 2014 (Definition Rules) defines a 'small company' as:

A company, other than a public company,

i. paid-up share capital of which does not exceed INR50 lakh, or such higher amount as may be prescribed (as per the Definition Rules, this amount is INR2 crore) which shall not be more than INR10 crore, and
ii. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed INR2 crore, or such higher amount as may be prescribed (as per the Definition Rules, this amount is INR20 crore) which shall not be more than INR100 crore.

Provided that nothing in this clause would apply to:

a. a holding company or a subsidiary company,
b. a company registered under Section 8, or
c. a company or body corporate governed by any special Act.

On 15 September 2022, the Ministry of Corporate Affairs (MCA) issued the Companies (Specification of Definition Details) Amendment Rules, 2022 (Definition Amendment Rules), thereby amending the threshold of paid-up share capital and turnover, for determining a 'small company'.

As per the revised definition, the paid-up share capital and. turnover of a small company should not exceed **INR4 crore** *(earlier, INR2 crore)* **and INR40 crore** *(earlier, INR20 crore)* respectively.

To access the text of the Definition Amendment Rules, please click here.

Action Points for Auditors

With an aim to facilitate ease of doing business, MCA has increased the threshold for a business to be classified as a small company. This will open the benefits of easier reporting and compliance norms to a larger section of companies. The Companies Act, 2013 has provided various exemptions for small companies, some of the key exemptions are discussed below:

- **Cash flow statement:** A small company need not include a cash flow statement in its financial statements,
- **Meetings of the Board:** As per Section 173 of the Companies Act, 2013, a minimum number of four meetings of its Board of Directors should be held every year in such a manner that not more than 120 days shall intervene between two consecutive meetings of the Board of Directors. However, the Companies Act, 2013 has provided an exemption for a small company. A small company would be deemed to have complied with the provisions of Section 173[10], if at least one meeting of the Board of Directors has been conducted in each half of a calendar year and the gap between the two meetings is not less than 90 days,

[10] Section 173: Meetings of the Board

Action Points for Auditors (contd.)

- **Mandatory rotation of auditors as per Section 139(2) of the Companies Act, 2013:** Small companies are exempted from the requirement of mandatory rotation of auditors after every five years (individual auditors) or after every 10 years (firm of auditors),
- **Signing of annual return:** Section 92 of the Companies Act, 2013 requires companies to get their annual return signed by a director and the company secretary (where a company does not have a company secretary, then a company secretary in practice). However, the annual return of a small company can be signed by the company secretary alone, or where there is no company secretary, then by a director of the company,
- **Remuneration of directors and Key Managerial Personnel (KMP):** Small companies are required to provide details of only the aggregate amount of remuneration drawn by directors, instead of providing details of remuneration of directors and KMP of the company, and
- **Internal Financial Controls:** Auditor of a small company is not required to report on the adequacy and operating effectiveness of the Internal Financial Controls (IFC) in the auditor's report.

Auditors should engage with companies that would fall within the revised threshold limits and discuss the relaxations that would be available to them and evaluate the potential impact on financial statements and auditor reporting.

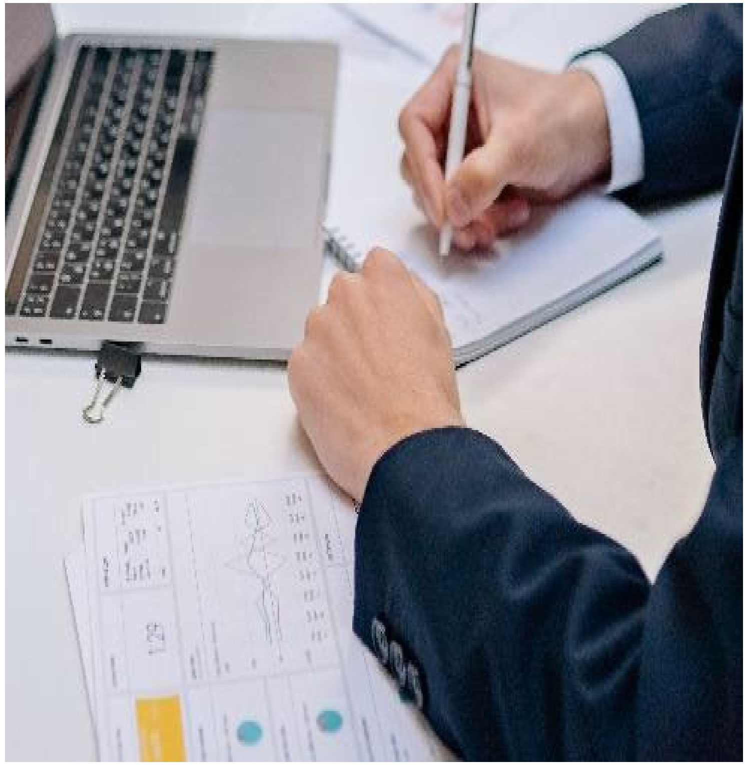
MCA issues the Companies (CSR Policy) Amendment Rules, 2022

Background

Over the years, with the continuous evolution of corporate reporting around the globe and increase in emphasis towards sustainability and non-financial information disclosures, MCA has from time to time, introduced various amendments and other key developments to the Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules).

Recently, MCA, vide a notification dated 20 September 2022 issued the Companies (CSR Policy) Amendment Rules, 2022 (CSR Amendment Rules). Some of the significant amendments issued include:

- **Constitution of CSR Committee by a company having amounts in its unspent CSR account:** Rule 3(1) of the CSR Rules requires every company, including its holding or subsidiary company, and a foreign company, fulfilling the prescribed criteria[11], to comply with the provisions of Section 135 of the Companies Act, 2013. Further, as per Section 135(6) of the Companies Act, 2013, companies that have not spent any CSR amount pursuant to any **ongoing project**, undertaken by a company in pursuance of its CSR policy, should be transferred by the company within a period of 30 days to an 'unspent CSR account'. This amount is required to be spent within a period of three years.



[11] Section 135(1) of the Companies Act, 2013 states that a company which meets any of the given threshold in the immediately preceding FY is required to comply with the CSR norms:

a. Net worth of INR500 crore or more, or
b. Turnover of INR1,000 crore or more, or
c. Net profit of INR5 crore or more.

MCA has now added a proviso to Rule 3(1), stating that a company that has amounts outstanding in its unspent CSR account should constitute a CSR Committee and comply with the relevant provisions of Section 135 of the Companies Act, 2013.

The insertion of this proviso will enable continuous monitoring of CSR activities by the CSR committee, which cannot be dissolved till the time an amount is lying in the unspent CSR account of the company.

- **Omission of Rule 3(2) of the CSR Policy Rules:** This rule dealt with a situation when CSR committee could be dissolved. However, this rule has been omitted. Therefore, a company would continue to constitute a CSR committee as long as it has funds to run those initiatives.

- **Clarification on the category of entities that can implement CSR activities:** Rule 4(1) of the CSR Policy Rules provides that the Board of Directors must ensure that CSR activities are undertaken by a company itself or through certain prescribed entities, i.e., the company may appoint another entity, called the implementing agency, to implement CSR activities on its behalf.

  The MCA, vide the CSR Amendment Rules has added additional class of entities that may act as an implementing agency with respect to the CSR activities undertaken by a company- these are:

  I. A Section 8 company, or a registered public trust, or a registered society, **exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10**[12] and approved under Section 80G of the Income Tax Act, 1961, established by the company, either singly or along with any other company, or

  ii. A Section 8 company, or a registered public trust, or a registered society, **exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of Section 10** and approved under Section 80G of the Income Tax Act, 1961, and has an established track record of at least three years in undertaking similar activities.

- **Expenditure on impact assessment that can be considered as a CSR spend:** Rule 8 of the CSR Rules require certain entities to undertake an impact assessment of their CSR projects that meet prescribed thresholds[13].

  Such companies may book the expenditure towards the impact assessment undertaken for that financial year as a CSR expenditure. Before the amendment, the threshold up to which such an expenditure could be considered as CSR spend could not exceed five per cent of the total CSR expenditure for that financial year or INR50 lakh, whichever is less. As per the CSR Amendment Rules, the limit of expenditure incurred on impact assessment that can be considered as CSR spend has been revised to **two per cent** of the total CSR expenditure for that financial year or INR50 lakh, whichever is **higher.**

[12] Following entities are covered under sub-clauses (iv), (v), (vi) and (via) of clause (23C) of Section 10 of the Income Tax Act, 1961:

- Sub-clause (iv): any other fund or institution established for charitable purposes which may be approved by the Principal Commissioner or Commissioner, having regard to the objects of the fund or institution and its importance throughout India, or throughout any State or States,
- Sub-clause (v): any trust (including any other legal obligation), or institution wholly for public religious purposes, or wholly for public religious and charitable purposes, which may be approved by the Principal Commissioner or Commissioner, having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof,
- Sub-clause (vi): any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad), and which may be approved by the Principal Commissioner or Commissioner, and
- Sub-clause (via): any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness, or for the reception and treatment of persons during convalescence, or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae), and which may be approved by the Principal Commissioner or Commissioner.

[13] Every company having an average CSR obligation of INR10 crore or more in pursuance of Section 135(5) of the Companies Act, 2013 in the three immediately preceding financial years, should undertake impact assessment, through an independent agency, of their CSR projects having outlays of INR1 crore or more, and which have been completed not less than one year before undertaking the impact study.

Change in the format for annual report on CSR activities: Annexure II of the CSR Rules prescribes a format for the annual report on CSR activities which needs to be included as a part of a company's Board of Directors' report. The MCA has amended the same and issued the revised format for reporting.

Effective date: The amendments are effective from the date of their publication in the official gazette i.e., 20 September 2022.

To access the text of the notification, please click here

Action Points for Auditors

- On 11 February 2022, MCA had amended Rule 12 of the Companies (Accounts) Rules, 2014, thereby inserting a new sub-rule (1B) which requires every company covered under section 135(1) of the Companies Act, 2013 to furnish a report on CSR in Form CSR-2 to the Registrar for the preceding FY 2020-2021 and onwards. Thus, it is important to note that while the aforementioned changes have been made in the information to be provided in the annual report , the information to be provided in Form CSR-2 remains unchanged.
- Form CSR-1 Registration of Entities for undertaking CSR Activities is required to be certified by a Chartered Accountant (in whole-time practice), or a Company Secretary (in whole-time practice), or a Cost Accountant (in whole-time practice). The form has been duly amended to incorporate the changes introduced in Rule 4(1) of the CSR Rules. Thus, auditors should take note of the changes in the form and make sure they certify the revised form .

Updates from SEBI

SEBI issues framework on Social Stock Exchange

On 25 July 2022, the Securities and Exchange Board of India (SEBI) had introduced new chapters to establish the broad framework relating to the Social Stock Exchange (SSE) by issuing the SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022 (ICDR Amendment Regulations), SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 (LODR Amendment Regulations) and SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2022 (AIF Amendment Regulations).

Consequently, SEBI, vide a circular dated 19 September 2022 (the circular) issued further clarifications regarding the overall framework of SSE. The key guidelines specified in this regard include:

a. **Minimum requirements for registration of a Not for Profit Organisation (NPO) with SSE:** Regulation 292F of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) prescribes that a Non-Profit Organisation (NPO) may seek registration with an SSE, however it may or may not raise funds through the SSE. The circular has laid down the minimum requirements for registration of an NPO on an SSE as below:

   - **Registration:** An entity should have been registered[14] as an NPO for at least three years, and the registration certificate should be valid for at least the next 12 months.
   - **Disclosure of ownership and control:** NPOs must disclose details with respect to their ownership and control and also submit prescribed documents such as the Memorandum of Association (MoA), Articles of Association (AoA), trust deed, bye-laws, constitution, etc.
   - **Income tax registration:** The NPO should have a valid IT PAN, a registration certificate under Section 12A/12AA/12AB of the Income Tax Act, 1961 which would be valid for at least the next 12 months, a valid registration under Section 80G of the Income Tax Act, 1961 and should not have a notice or ongoing scrutiny by Income Tax.
   - **Minimum fund flows**: The annual spending of an NPO desirous of being registered with an SSE, as per the audited financial statements for the past financial year should be at least INR50 lakhs. Additionally, the annual funding received by such an NPO as per the audited accounts should be at least INR10 lakh.

b. **Minimum initial disclosure requirements for NPOs raising funds through the issuance of ZCZP Instruments :** As per Regulation 292G(a) of the ICDR Regulations, an NPO which is eligible to get listed on an SSE, may raise funds by the issue of Zero Coupon Zero Principal (ZCZP) bonds, donations through mutual funds schemes, or other means, as specified by SEBI. Additionally, Regulation 292K specifies the procedure for public issue of ZCZP instruments by an NPO, including disclosure of certain requirements to be prescribed by SEBI.

[14] Entities must be registered in India as any one of the following entities:

- A charitable trust registered under the Indian Trusts Act, 1882,
- A charitable trust registered under the public trust statute of the relevant state,
- A charitable trust registered under the Societies Registration Act, 1860, or
- A company incorporated under Section 8 of the Companies Act, 2013.

The circular has now stipulated the minimum disclosures that should be provided by NPOs in the draft and final fund-raising document when raising funds through ZCZPs. The key disclosures required in this regard include:

- **Vision and strategy:** Details of the organisation's activities, interventions and programmes which are in line with the aims and objects stated in its constitution, and strategy formulation for accomplishing the vision.
- **Target Segment:** The target segment (i.e., those affected by the problem and how are they affected) and the approach to be followed to accomplish its planned activities should be disclosed. The NPO must disclose how its approach intends to improve inclusion of its customers/recipients.
- **Governance and management:** Details of the governing body, composition, dates of board meetings held, key managerial staff such as those in charge of programmes, fundraising, marketing, communication, finance, human resource, periodic performance appraisal process etc. should be disclosed.
- **Financial results and related compliance requirements:** Disclosure must be made of the audited financial statements for the last three financial years prepared in accordance with guidelines for NPOs issued by ICAI. It should also be noted that, there should not be any material qualifications or irregularities reported by the auditor. Additionally, the organisation should also be in compliance with the relevant income tax regulations.
- **Social impact:** Details of past social impact in terms of parameters specified under the minimum disclosures of the Annual Impact Report (AIR) should be disclosed.

c. **Annual disclosure requirements by NPOs[15] registered on SSE**

Regulation 91C of the SEBI (Listing Obligations and Disclosure Requirement) Regulations, 2015 (LODR Regulations) provides that an NPO which is registered on a SSE is required to provide annual disclosures on matters specified by SEBI, within 60 days from the end of the financial year or within such period as may be specified.

In this regard, SEBI vide the circular has issued the following list of disclosures that are required to be made on an annual basis:

General Aspects	Governance Aspects	Financial Aspects
• Name of the organisation (legal and popular name) • Location of its headquarters and of its operations • Vision/mission/purpose • Organisational goals, activities, products and services • Outreach of organisation (details of beneficiary stakeholders reached) • Scale of operations – the circular prescribes the manner in which the scale of operations should be explained • Details of top five donors or investors determined budget wise presented in a prescribed manner • Details of top five programmes in disclosure period determined budget wise presented in a prescribed manner.	• Ownership and legal form • Governance structure • Reporting of all related party transactions entered along with the reasons • Details of governing body, their remuneration policies, etc. • Executives with key responsibilities • Number of meetings by governing body and other committees formed by them along with attendance and the process of performance review • Organisation level potential risks and mitigation plan. • Mechanisms for advice and concerns about ethics, along with conflict of interest and communicating other critical concerns • Stakeholder grievance, process of grievance redressal and number of grievance received and resolved • Compliance management process and statement of compliance from senior decision maker • Organisation registration certificate and other licenses and certifications (12A, 80G, FCRA, GST, etc.).	• Financial statements[16] consisting of: a) Balance sheet b) Income statement c) Cash statement d) Programme-wise fund utilisation certificate for the year e) Percentage of organisational budget f) Breakup of organisational budget and expenditure g) Split of the budget across partners of the project/initiative is being jointly executed • Auditors report and details of the auditor

[15] The SEBI circular dated 19 September 2022 contains the guidance note with respect to each of the above categories of disclosures.

[16] It is to be noted that ICAI is in the process of publishing the uniform accounting and reporting framework for NGOs.

d. Disclosures in the Annual Impact Report (AIR)[17]

As per Regulation 91E of the LODR Regulations, a Social Enterprise[18] (SE), which is either registered with or has raised funds through an SSE, must submit the AIR to the SSE in the format specified by SEBI. The AIR must be audited by a social audit firm employing social auditors[19].

In this regard, SEBI, vide its circular dated 19 September 2022 issued the general requirements and the minimum disclosures required to be made in an AIR by all SEs registered with or which have raised funds using the SSE. These requirements are listed below:

General requirements

- **Time period for submission:** The audited AIR should be submitted within 90 days from the end of the financial year
- **Utilisation of funds:** The AIR should explicitly provide the qualitative and quantitative aspects of the social impact generated by the entity/project or solutions for which funds have been raised on SSE.

  In case of an NPO registered as a SE without listing any security, the AIR must include details regarding the significant activities, intervention, programmes or projects during the year and the methodology for determination of significance must be explained.

- **Social impact fund:** A social impact fund where the underlying recipients of the funds are SEs that have registered or raised funds using the SSE, should disclose an overall AIR of the fund, disclosing details of all investee/grantee organisations where the fund has been deployed.

Disclosure requirements

An AIR should at a minimum cover the following aspects:

- **Strategic intent and planning:** It should include the social or environmental challenge addressed by the organisation, approach adopted to cater to the challenge, etc.
- **Approach:** The baseline status, key past performance trend, etc.
- **Impact score card:** Disclose details of the metrices monitored, trend in performance, etc.

e. Due date for submission of statement of utilisation of funds

Regulation 91F of the LODR Regulations requires a listed NPO to submit to the SSE(s) the following statement of utilisation of the funds raised on a quarterly basis:

i. Category-wise amount of monies raised,
ii. Category-wise amount of monies utilised, and
iii. Balance amount remaining unutilised.

The SEBI, vide its circular dated 19 September 2022 has prescribed that the aforementioned statement of utilisation of funds should be submitted within a period of 45 days from the end of the quarter.

To access the text of the circular, please click here

[17] The circular also includes a guidance note which will enable preparation of the disclosures in an AIR.

[18] A social enterprise means either an NPO or a For Profit Social Enterprise that meets the eligibility criteria as specified by SEBI

[19] 'Social auditor' means an individual registered with a self-regulatory organisation under ICAI or such other agency, as may be specified by SEBI, who has qualified a certification program conducted by the National Institute of Securities Market and holds a valid certificate.

Action Points for Auditors

- NPOs desirous of raising funds by way of issue of ZCZP instruments must put in place processes and system of internal controls to ensure compliance with the SEBI framework. This may involve significant time and effort by the management, increased costs, hiring of specialists to ensure compliance with the new framework, etc. Additionally, the offer document issued prior to issuance of ZCZP instruments should include audited financial statements pertaining to the previous three financial years, prepared on the basis of the guidelines issued by ICAI. Thus, auditors should engage with the management and develop a roadmap for a smooth transition to the requirements of the SSE framework.

- SSE framework requires a listed NPO to submit an audited AIR within 90 days of the end of the financial year. Such an audit is required to be conducted by a social auditor. As per the provisions specified, an AIR must contain detailed disclosures and other qualitative metrics including an impact score card to report on trends and data across various significant projects/programmes, impact on the stakeholders/beneficiaries, etc. Since the outcome of the metrics may be subject to professional judgement and varied interpretation, there might be some challenges in quantifying the reach, depth and impact of such activities both by the preparer as well as the auditor.

  In this regard, ICAI recently released an Exposure Draft (ED) of the Social Audit Standards (SAS), which would help the auditors in conducting social audit in an effective and efficient manner. Thus, auditors should assess the requirements of the SAS (proposed) and how will these integrate with the disclosure requirements specified in the AIR. Since this is a developing space, auditors should actively watch out for any further guidelines introduced by the regulators.

- SEBI in its circular has mentioned that ICAI is in the process of publishing the uniform accounting and reporting framework for Non-Governmental Organisations(NGOs). Accordingly, guidance in this regard is expected to be issued in the near future.

Regulatory updates

SEBI board meeting

SEBI in its board meeting dated 30 September 2022 took some key decisions pertaining to the following:

a. Disclosure of Key Performance Indicators (KPIs) and price per share of the issuer, in public issues, based on past transactions and past fund raising from the investors

In February 2022, SEBI had issued a consultation paper[20] recommending provisions relating to disclosures for 'Basis of Issue Price' section in an offer document. As per the consultation paper, issuers undertaking an Initial Public Offering (IPO) would be mandated to provide key disclosure of Key Performance Indicators (KPIs), as well as the price per share of issuer based on past transactions and past fund raising done from the investors, subject to the conditions specified in this regard. The said disclosures must be made under '**Basis for Issue Price**' section of the offer document, and in the price band advertisement.

These proposals in the consultation paper have been approved by SEBI in its board meeting.

b. Introduction of pre-filing of offer documents in case of IPOs

In May 2022, SEBI had issued a consultation paper[21] recommending that SEBI would introduce an alternate mechanism for regulatory review of offer document by permitting pre-filing of offer documents for issuers contemplating an IPO.

Pre-filing mechanism allows issuers to carry out limited interaction without having to make any sensitive information

public. Further the document which incorporates SEBI's initial observations would be available to investors for a period of at least 21 days, thereby, assisting them better in their investment decision making process. The existing mechanism of processing offer document shall continue in addition to this alternative mechanism of pre-filing.

These proposals in the consultation paper have been approved by SEBI in its board meeting.

c. Flexibility in approval process for appointment and/or removal of Independent Directors

Currently, as per the provisions of the LODR Regulations, appointment, re-appointment or removal of independent directors must be made through a special resolution.

The SEBI has now introduced a new optional provision in the LODR Regulations for appointment and removal of independent directors, appointed for the first term in listed entities. As per the alternate mechanism, if the special resolution passed does not get the requisite majority, then the following thresholds should be tested:

- Threshold for ordinary resolution, and
- Threshold for majority of minority shareholders.

If the resolution passed meets the above two thresholds, in the same voting process, then such a resolution would be deemed to have been approved by the shareholders. This would also be applicable for removal of an independent director, appointed under this alternate mechanism.

[20] Consultation Paper on Disclosures for 'Basis of Issue Price' section in offer document under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018
[21] Consultation Paper on Pre-filing of Offer Document in case of Initial Public Offerings

d. **Amendment to LODR Regulations, in the context of schemes of arrangement**
SEBI has approved amendments to the LODR Regulations, to introduce provisions pertaining to schemes of arrangement for debt listed entities, handling of unclaimed amounts pertaining to non-convertible securities of listed entities which do not fall within the definition of a 'company' under the Companies Act, 2013 and the Rules made thereunder. Additionally, amendments have been approved for continuous disclosure norms for entities with listed non-convertible securities, pertaining to financial results and related requirements.

e. **Inclusion of units of mutual funds under the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations)**
In July 2022, SEBI had issued a consultation paper[22] which proposed to cover dealing in units of Mutual Funds under PIT regulations so as to harmonise the regulations governing trading in securities, while in possession of Unpublished Price Sensitive Information (UPSI).

The proposals in the consultation paper have been approved by SEBI in its board meeting.

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

[22] Consultation Paper on Applicability of SEBI PIT Regulations to MF units

Updates from IRDAI

Appointment or continuation of common director(s) u/s 48A of the Insurance Act, 1938

Section 48A of the Insurance Act, 1938 prohibits the appointment of an insurance agent, intermediary or insurance intermediary (agents or intermediaries) as common directors of a company. However, the second proviso of Section 48A of the Insurance Act, 1938 provides that the Insurance Regulatory and Development Authority of India (IRDAI) may permit agents or intermediaries to be on the board of an insurance company, subject to certain prescribed conditions or restrictions. For this, companies are required to file an application with the IRDAI seeking approval under section 48A of the Insurance Act, 1938, for new appointment or continuation of common director(s) representing such persons.

In this regard, IRDAI, vide a circular dated 2 September 2022 issued the framework for appointment of common director(s) on the board of an insurance company. Subsequently, IRDAI issued certain clarifications on the proposed framework vide a circular dated 13 September 2022.

As per the circulars, the appointment or continuation of common director(s) is permitted subject to the following conditions and restrictions:

- **Not to hold office of Chief Insurance Executive/Specified Person:** The proposed director should not be working in the capacity of the Chief Insurance Executive/Specified Person, or any other officer responsible for soliciting insurance business for or on behalf of agents or intermediaries, while holding the position of director in the insurance company

- **No conflict of interest:** There should not be any conflict of interest or prejudice against the interest of the policyholders as a result of such an appointment. Consequently, common director must recuse himself/herself from the discussion and voting on any matter pertaining to an area having potential conflict of interest or where the agents or intermediaries hold common directorship.

- **Remuneration of non-executive directors:** Insurers should not pay any remuneration to non-executive directors without prior approval of the IRDAI. However, sitting fees can be paid as per the applicable norms.

- **Compliance with appropriate corporate governance requirements:** Insurers must comply with the relevant disclosure requirements specified under the Corporate Governance Guidelines for Insurers in India, IRDA (Preparation of Financial Statement and Auditor's Report of Insurance Companies) Regulations, 2002 and other applicable laws.

- **Resolution for appointment:** A resolution must be passed by the board of directors approving the appointment of the agents or intermediaries.

- **Number of directorships:** The number of directorships held by the common director must not exceed, at any point of time, the maximum number of directorships[23] as specified under the Companies Act, 2013.

- **Executive Director/Whole-Time Director of an agent or intermediary:** An individual, who is already acting or proposed to act as the Executive Director/Whole-Time Director on the board of an agent or intermediary, should not be appointed as a nominee/common director. However, this provision would not be applicable in case any director is appointed or proposed to be appointed as a nominee of a promoter of the insurer.

- **Appointment as a chairperson:** The common director may be appointed as the chairperson on the board of the insurance company, or an agent or intermediary subject to the necessary safeguards to protect the interest of policyholders and avoid any conflict of interest, that may arise due to such appointment.

- **Certificate of compliance:** The insurers should file a certificate on an annual basis, duly certified by the CEO, confirming compliance with the aforementioned conditions on a financial year basis. The compliance must be filed with the IRDAI **not later than 30 April of the succeeding financial year**.

IRDAI has further clarified that directors appointed under Section 48A of the Insurance Act, 1938 after obtaining due approval of IRDAI may continue to hold the directorship till completion of tenure of appointment.

[23] Section 165 of the Companies Act, 2013 specifies the maximum number of directorships that an individual can hold. It states that no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time. Provided that the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

The above provisions are effective from the date of issuance of the circular (i.e., 2 September 2022), and they override the previous circular issued in August 2018[24] (2018 circular).

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

To access the text of the clarification, please click here

Action Points for Auditors

As per the IRDAI circular, insurance companies are required to file a certificate of compliance of the prescribed conditions for the appointment or continuation of a common director(s) on an annual basis, duly certified by the CEO. Such a certificate was required to be submitted as per the 2018 circular as well. Since the revised circular has additional compliance requirements for common directors, as compared to the 2018 circular, auditors should highlight to the insurance companies they audit that the certificate of compliance should include the revised requirements.

[24] Circular No. IRDA/F&A/CIR/MISC/141/08/2018 dated 30.08.2018

Updates from RBI

RBI issues guidelines on digital lending

Digital lending witnessed a sharp increase during the COVID-19 pandemic. Banks and Non-Banking Financial Companies (NBFCs) have been lending either directly through their own digital platforms or through a digital lending platform under an outsourcing arrangement. Such outsourcing arrangements are usually entered into with Lending Service Providers (LSP)/Digital Lending Applications (DLAs).

Until recently, there were no set of regulations that governed the 'digital lending' business, which resulted in various concerns such as unbridled engagement of third parties (LSPs), mis-selling, over indebtedness of customers, breach of data privacy, unfair business conduct, exorbitant interest rates and unethical recovery practices. Accordingly, on 2 September 2022, RBI notified the guidelines on digital lending (the guidelines).

Applicability

The guidelines would be applicable to all Regulated Entities (REs) (i.e., commercial banks, primary (urban) cooperative banks, state co-operative banks, district central cooperative banks and NBFCs (including housing finance companies)) providing loans through the digital lending platforms. 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 said guidelines.

Effective date

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

REs have been given time till 30 November 2022 to put in place adequate systems and processes to ensure that existing digital loans comply with the guidelines.

The guidelines reiterate that outsourcing arrangements entered into by REs with the LSPs/DLAs do not diminish an REs' obligations, and it should continue to conform to the extant guidelines on outsourcing prescribed by RBI. Additionally, it would be the REs' responsibility to ensure that the guidelines are conformed with by the LSPs and the DLAs.

The guidelines focus on three main areas:

- Customer protection and conduct requirement
- Technology and data requirement
- Regulatory framework

The key takeaways under each of these areas is discussed below:

Key takeaways under the three main areas

i. **Customer protection and conduct requirements:** Some of the important areas covered in the guidelines pertaining to customer protection and conduct requirements include:

- **Loan disbursal, servicing and repayment directly through RE account:** REs must ensure that all disbursements are made to a bank account of the borrower without any pass-through account/pool account of any third party (including LSPs/DLAs)[25], similarly all repayments should be made by a borrower directly into the REs' bank account (and not a third party/pool account)

- **Enhanced disclosures to the borrowers:** REs should make sure that various information such as key facts statement, digitally signed documents, product-related information, etc. is available to the borrowers

- **Fees/charges:** Fees, charges, etc. should be paid directly by the RE to the LSP, and these should not be charged to the borrower. Additionally, the penal interest should be charged on the outstanding amount of the loan, and the annual penal interest rate should be disclosed in the key fact statement

- **Grievance redressal mechanism:** The responsibility of grievance redressal would remain with the RE. Additionally, various grievance redressal provisions have been introduced which include having in place a suitable nodal grievance redressal officer with the LSPs to deal with digital lending related complaints/issues raised by the borrowers, complaint mechanism under Reserve Bank-Integrated Ombudsman Scheme (RB-IOS) etc.

- **Cooling-off/look-up period:** The guidelines have introduced a cooling-off/look-up period, wherein borrowers are given an option to exit digital loans by paying the principal and proportionate Annual Percentage Rate (APR)[26] without any penalty. This period needs to be determined by the board of directors of the RE, however the minimum cooling-off period has been prescribed by the guidelines.

- **Enhanced due diligence of LSPs and assessment of borrower's creditworthiness:** REs should conduct enhanced due diligence before entering into a partnership with an LSP, taking into account its technical abilities, data privacy policies, storage systems, etc.

REs must also capture the economic profile of the borrowers to assess the borrower's creditworthiness in an auditable way and also ensure that there is no automatic increase in the credit limit, unless explicit consent of the borrower is taken on record for such an increase.

ii. **Technology and data requirement:** The key provisions pertaining to technology and data requirement, as introduced by the guidelines include the following:

- **Collection, usage and sharing of data with third parties:** With regard to personal information of the borrowers, the REs should ensure that only need-based data is collected from borrowers, access to a borrowers'

[25] Certain exceptions to this include disbursals covered exclusively under statutory or regulatory mandate (of RBI or of any other regulator), flow of money between REs for co-lending transactions and disbursals for specific end use, provided the loans is disbursed directly into the bank.

[26] APR is an effective annualised rate that is charged to a borrower of a digital loan. It represents the all-inclusive cost- including cost of funds, credit cost, operating cost processing fee, verification charges, maintenance charges, etc.

mobile phone apps should be limited, borrower should be able to manage his/her data collected by the DLA, purpose of obtaining borrower's consent should be disclosed, and explicit consent of the borrower should be obtained before sharing of personal information, etc.

- **Storage of data:** REs should establish and disclose clear policy guidelines regarding storage of customer data- such as type of data, length of time it can be stored, etc. REs should also ensure that basic minimal data of the customer is stored by it, no biometric data is stored, and all data is stored in servers located within India.

- **Privacy policy and technology standards:** The REs should ensure that the DLAs and LSPs engaged by them have a comprehensive privacy policy, which is in compliance of the applicable laws, associated regulations and RBI guidelines. Additionally, REs should ensure that the REs and LSPs engaged by them comply with various technology standards, including requirements on cybersecurity.

iii. Regulatory framework: From a regulatory perspective, RBI has prescribed the following requirements for digital lending:

- **Reporting to Credit Information Companies (CICs):** REs should ensure that any lending done through their DLAs and/or DLAs of LSPs engaged by them, is reported to Credit Information Companies (CICs) irrespective of its nature/tenure. This will contribute towards reduced dependence on alternative data for financial consumers, as more and more of them would develop formal credit history for themselves

- **Provisions relating to loss sharing arrangement in case of default:** Various LSPs provide certain credit enhancement features such as first loss guarantee up to a pre-decided percentage of loans generated by it. The guidelines issued require the REs entering into financial contracts including a clause on First Loss Default Guarantee (FLDG) to comply with the Securitisation Guidelines, especially the provision relating to synthetic securitisation[27]. Also, RBI, vide a press release issued in August 2022 has stated that the recommendation pertaining to FLDG is under examination and further guidance is expected in near future.

To access the text of the guidelines, please click here

Action Points for Auditors

The guidelines issued by RBI have a significant impact on all entities within the digital lending ecosystem. Various FinTech entities that have partnered with banks and NBFCs would need to reevaluate their business model. The guidelines could result in mergers of certain FinTech entities, while it could require going concern assessment for few. Auditors of FinTech entities should discuss the impact of these guidelines with their clients and determine the repercussions the guidelines would have on the client's business, and consequently on the financial statements.

[27] Synthetic securitisation is an arrangement where the credit risk of an underlying pool of loan exposures is hedged by the originator through credit derivatives or credit guarantee arrangements

International update

Accounting updates

Updates from IASB

IASB issues amendments to IFRS 16

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, IFRS 16, *Leases* includes requirements on how to account for a sale and leaseback at the date the transaction takes place. However, IFRS 16 did not specify how a company accounts for a sale and leaseback after the date of the transaction. In this regard, the International Accounting Standards Board (IASB), in November 2020 had released an Exposure Draft (ED), *Lease Liability in a Sale and Leaseback (Proposed amendment to IFRS 16)*.

Consequently, on 22 September 2022, IASB issued final set of amendments to IFRS 16 (Lease liability in a Sale and Leaseback) (amendments), which add to the requirements explaining how a company accounts for a sale and leaseback after the date of the transaction. The amendments would not change the accounting for leases other than those arising in a sale and leaseback transaction.

Currently, as per IFRS 16, a seller should measure the right-of-use asset arising from the leaseback at the proportion of the previous carrying amount of the asset that relates to the right-of-use retained by the seller-lessee. However, IFRS 16 did not prescribe how a liability arising in a sale and leaseback transaction should be measured.

The amendments have now confirmed the following:

- **On initial recognition:** On initial recognition, the seller-lessee includes variable lease payments when it measures a lease liability arising from a sale-and-leaseback transaction
- **After initial recognition:** After initial recognition, the seller-lessee applies the general requirements for subsequent accounting of the lease liability such that it does not recognise any gain or loss relating to the right-of-use it retains.

A seller-lessee may adopt different approaches that satisfy the new requirements on subsequent measurement.

Effective date: The amendments are effective for annual reporting periods beginning on or after 1 January 2024. Earlier application is permitted.

A seller-lessee would be required to apply the amendments retrospectively in accordance with IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* to sale and leaseback transactions entered into after the date of initial application

To access the IFRS project page which discusses the amendment, please click here.

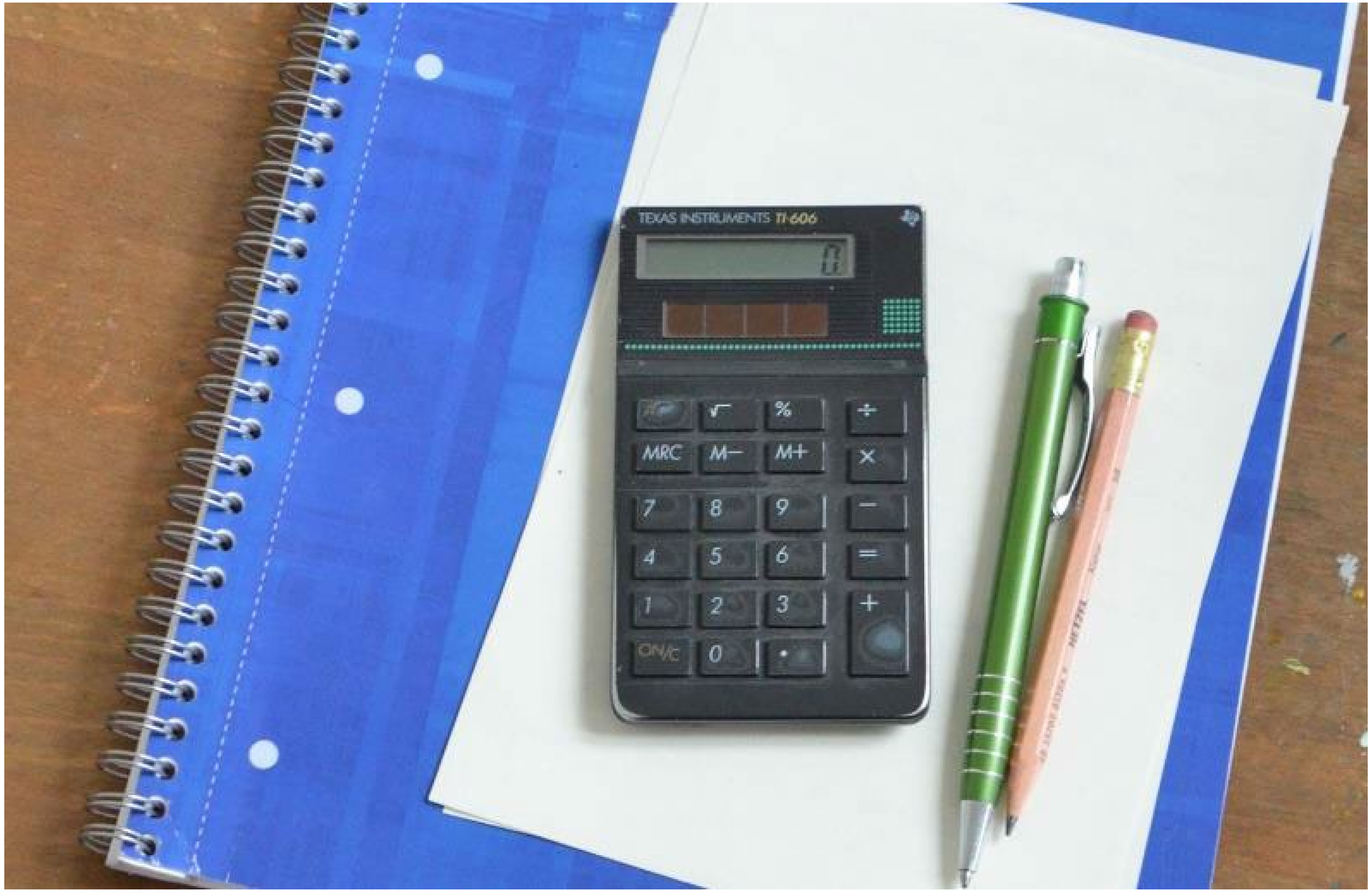
ICAI publication

Technical Guide on Audit of Charitable Institutions under Section 12A of the Income Tax Act, 1961

The law relating to audit of charitable trusts and institutions is complex and has been the subject matter of frequent amendments. In this regard, ICAI has issued the Technical Guide on Audit of Charitable Institutions under Section 12A of the Income tax Act, 1961. This publication provides guidance to members on audit of public charitable institutions under the Income-tax Act, 1961. Some key topics discussed in the Technical Guide include:

- Audit under Section 12A(1)(b),
- Scheme of exemption(s),
- Relevant judicial precedents, etc.

To access the text of the publication, please click here



International publication

International publication

IESBA Handbook of the International Code of Ethics for Professional Accountants (including International Independence Standards) – 2022 edition

The International Ethics Standards Board for Accountants (IESBA) released the 2022 edition of the Handbook of the International Code of Ethics for Professional Accountants (including International Independence Standards).

This handbook replaces the 2021 edition and incorporates the following revisions that would become effective in December 2022:

- Revisions to the Non-Assurance Services (NAS) and fee-related provisions,
- Revisions to address the objectivity of an Engagement Quality Reviewer (EQR) and other appropriate reviewers,
- The quality management-related conforming amendments that were issued as a result of the finalisation of the IAASB's suite of quality management standards.

To access the text of the publication, please click here

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