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# Voices on Reporting

Annual updates publication

May 2023

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In this publication, we have summarised important financial reporting and regulatory updates relevant for the year ended 31 March 2023 from the Securities and Exchange Board of India (SEBI), Ministry of Corporate Affairs (MCA), Institute of Chartered Accountants of India (ICAI), Reserve Bank of India (RBI), National Financial Reporting Authority (NFRA), and Insurance Regulatory and Development Authority of India (IRDAI).



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# 1. Amendments to rules relating to maintaining books of accounts in electronic mode

The MCA through its notification dated 5 August 2022 has amended certain provisions of Rule 3 of the Companies (Accounts) Rules, 2014 (Accounts Rules) which states the manner in which the books of account are required to be kept in an electronic mode. The amendments are as follows:

## Availability of books of account

Rule 3(1) of the Accounts Rules has been amended to provide that the books of account and other relevant books and papers maintained in an electronic mode should remain accessible in India, **at all times** so as to be usable for subsequent reference.

## Maintaining of backups

Rule 3(5) of the Accounts Rules requires every company to maintain proper system for storage, retrieval, display or printout of the electronic records as the audit committee, if any, or the board of directors may deem appropriate and such records should not be disposed of or rendered unusable, unless permitted by law.

Additionally, companies are required to

maintain the back-up of the books of account and other relevant books and papers in an electronic mode on servers physically located in India on a daily basis (earlier periodic basis) even in cases where such backups are maintained at a place outside India.

## Service provider

Rule 3(6) of the Accounts Rules requires disclosure (*such as name, internet protocol address and location of service provider*) by a company to the Registrar of Companies (ROC) in case a service provider has been used for maintenance of books of account in an electronic form. The amendments require an additional disclosure relating to the **name and address of the person in control of the books of account and other books and papers in India, where the service provider is located outside India.**

*(Emphasis added to highlight the changes)*

**Effective date:** The amended Rules are effective from 11 August 2022.

## Key takeaways

- These regulations for maintenance of books of accounts in an electronic mode have become more stringent. Companies are required to make sure that the books of accounts and other documents, when kept in an electronic mode, are always available in India.
- It is the responsibility of the management of a company to identify elements of its 'books of account' and 'other relevant books and papers'.
- The disclosure relating to the name and address of the person in control of the books of account and other books and papers in India, where the service provider is located outside India should include IP details and address (even where the service provider is a cloud based service provider)

*Also refer to KPMG in India's First Notes – MCA amends rules relating to maintaining of books by companies dated 8 September 2022 which provides detailed overview of the requirements.*

(Source: MCA notification G.S.R. 624(E), Companies (Accounts) Fourth Amendment Rules, 2022 dated 5 August 2022 and KPMG in India's First Notes MCA amends rules relating to maintaining of books by companies dated 8 September 2022)



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## 2. Amendment to Corporate Social Responsibility (CSR) Rules

Companies having net worth of INR500 crore or more, turnover of INR1,000 crore or more, or a net profit of rupees INR5 crore or more during the immediately preceding financial year, are required to contribute two per cent of their profits for CSR purpose as per Section 135 of the Companies Act, 2013 (2013 Act). The section further provides that, if the amount to be spent by a company, does not exceed INR50 lakh, then such a company is not required to constitute a CSR committee and the functions of such committee shall be discharged by the board of directors of such a company.

On 20 September 2022, MCA amended the CSR Rules. Key amendments are as follows:

### Constitution of CSR committee

Rule 3(1) requires that every company fulfilling the eligibility criteria should comply with the provisions of Section 135 of the 2013 Act and CSR Rules.

MCA amended Rule 3(1) to provide that in case a company has any amount in its unspent CSR account, then such a company is required to constitute a CSR committee

and comply with all the CSR provisions stipulated under Section 135(2) to 135(6) of the 2013 Act.

In addition, MCA has omitted sub-rule 3(2) which states that a company that does not meet the eligibility criteria for three consecutive financial years is not required to comply with the CSR provisions prescribed under Section 135 until the applicability criteria is met again.

### CSR impact assessment expenditure

As per Rule 8(3) of the CSR Rules, every company with average CSR obligation of INR10 crore or more (computed in accordance with Section 135(5)) in the three immediately preceding financial years, should undertake an impact assessment through an independent agency of CSR projects having outlays of INR1 crore or more, and which have been completed not less than one year before undertaking the impact study.

The amendment provides that such companies may book the expenditure relating to impact assessment towards CSR

for that financial year, which shall not exceed **two percent** of the total CSR expenditure for that financial year or INR50 lakh, whichever is **higher**.

### Annual Report on CSR activities

The format for the annual report on CSR activities to be attached to the board's report for the financial year has been revised.

### Entities that can undertake CSR activities

The amendment allows CSR activities to be undertaken by a **registered public trust or a registered society** exempted under sub-clauses (iv), (v), (vi) or (via) of Section 10 (23C) of the Income-tax Act, 1961 or through an entity being a statutory body constituted under an Act of Parliament or State Legislature to undertake activities.

The amendments are applicable from 20 September 2022.

*Also refer to KPMG in India's First Notes, MCA amends certain Rules relating to Corporate Social Responsibility dated 19 October which provides detailed overview of the amendments.*

### Key takeaways

- The threshold for expenses incurred towards impact assessment has been relaxed and it is likely to enable companies involved in large CSR projects to undertake meaningful impact assessment.
- The omission of Rule 3(2) is in line with the amendment made in Rule 3(1), since now companies which have any amount outstanding in its unspent CSR account should constitute a CSR committee and comply with the provisions of Section 135 of the 2013 Act.

(Source: MCA Notification No. G.S.R. 715(E) Companies (CSR Policy) Amendment Rules, 2022 dated 20 September 2022)



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## 3. Amendment to provisions of databank for independent directors

Rule 6 of the Companies (Appointment and Qualification of Director) Rules, 2014 (Directors Rules) provides that every individual who intends to be appointed as an independent director or who has been appointed as an independent director is required to apply online to the Indian Institute of Corporate Affairs at Manesar (IICA) for inclusion of his/her name in the databank for a period of one/two or five years or for lifetime. Further such individuals (unless otherwise exempt) are required to pass an online proficiency self-assessment test conducted by the IICA within a prescribed period of time.

On 10 June 2022, MCA amended the Directors Rules and inserted a new sub-rule, Rule 6(5), which provides that any individual whose name has been removed from the databank under Rule 6(4), may apply for restoration of his/her name on payment of fees of INR1,000 and IICA would allow such restoration subject to the following conditions:

- The name would be shown in a separate restored category for a period of one year

from the date of restoration within which, such individual would be required to pass the online proficiency self-assessment test and thereafter his/her name would be included in the databank. Further, the fees paid by such an individual at the time of initial registration shall continue to be valid for the period for which the same was initially paid, and

- In case such an individual fails to pass the online proficiency self-assessment test within one year from the date of restoration, his/her name would be removed from the data bank and would be required to apply afresh under Rule 6(1) for inclusion of his/her name in the databank.

(Source: MCA notification G.S.R. 439(E), Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 dated 10 June 2022)





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## 4. Amendments relating to foreign investment norms

With an aim to curb opportunistic takeovers/acquisitions of Indian companies due to the impact of the COVID-19 pandemic, in March 2022, the Government of India amended the foreign direct investment policy to mandatorily require entity of a country, sharing land border with India (termed as specific country) to take **prior government approval** under Foreign Exchange Management (Non-debt Instruments) Rules, 2019 for making any subscriptions or acquisitions within India. Considering these amended norms, MCA has issued amendments in the following Rules to the Companies Act, 2013 (2013 Act) to include the requirement of government approval:

Rule	Amendment
<b>Companies (Prospectus and Allotment of Securities) Rules, 2014</b>	<p>Rule 14 of the Prospectus Rules has been amended. This rule relates to procedure and restrictions applicable to a company that makes an offer or an invitation to subscribe to securities through issue of a private placement offer letter. The amendment requires a government approval before an offer or an invitation should be made to a body corporate incorporated in a specific country. The amendment also requires attaching such an approval with the private placement offer cum application letter.</p> <p>The amendments are effective from 5 May 2022.</p>
<b>Companies (Incorporation) Rules, 2014 (Incorporation Rules)</b>	<p>Section 7 of the 2013 Act and Rule 15 of the Incorporation Rules requires a declaration in Form No. INC-9 to be submitted with ROC by each of the subscribers to the memorandum and each of the first directors named in the articles of association.</p> <p>The form INC-9 has been revised to include the reporting requirements relating to government approval. Additionally, form SPICe32 (form for incorporation of a company), has been revised to include the requirement of submitting security clearance obtained from the Ministry of Home Affairs.</p> <p>The amendments are effective from 1 June 2022.</p>

Rule	Amendment
<b>Companies (Share Capital and Debenture) Rules, 2014 (Share Capital and Debenture Rules)</b>	<p>Section 56 of the 2013 Act and Rule 11(1) of the Share Capital and Debenture Rules, required the following information in Form SH-4 when securities held in physical form transferred:</p> <ul style="list-style-type: none"> <li>• Details of the securities to be transferred</li> <li>• Details of the transferor</li> <li>• Details of the transferee.</li> </ul> <p>The amendment in Rule 4 to the Share Capital and Debenture Rules requires additional declarations relating to government approval prior to transfer of shares for the transferee in form SH-4.</p> <p>The amendments are effective from 4 May 2022.</p>
<b>Companies (Comprises Arrangements and Amalgamations) Rules, 2016 (Amalgamation Rules)</b>	<p>Rule 25A of the Amalgamation Rules provides that if a foreign company incorporated outside India intends to merge with an Indian company, or vice versa, it needs to file an application before the Tribunal as per provisions of Sections 230 to 232 of the 2013 Act read with the Amalgamation Rules along with the other prescribed conditions.</p> <p>The amendment to Rule 25A includes a new requirement of filing a declaration relating to government approval in Form No. CAA-16 at the stage of submission of application under Section 230 of the 2013 Act. Additionally, a new Form No CAA-16 has also been inserted.</p> <p>The amendments are effective from 30 May 2022.</p>



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## 4. Amendments relating to foreign investment norms

Rule	Amendment
<b>Companies (Appointment and Qualification of Directors) Rules, 2014 (Directors Rules)</b>	<p><b>Rule 8 and Form DIR-2:</b> Rule 8 of the Directors Rules, provides that every person who has been appointed as a director is required to furnish to the company his/her consent in writing to act as such in form DIR-2. Further, companies are required to file such a consent with ROC in the form DIR-12 within 30 days of appointment of the director. The amendment has inserted new provision relating to the requirement of providing a government approval in case the person seeking appointment is a national of specific country.</p> <p><b>Amendment in Rule 10 and Form DIR-3:</b> Rule 9 and Rule 10 of the Directors Rules provides that every person who intends to be appointed as a director needs to apply to the Central Government for a Director Identification Number (DIN) in the form DIR-3. The amendment included the requirement of obtaining necessary security clearances from the Ministry of Home Affairs, Government of India.</p> <p>The amendments are effective from 1 June 2022.</p>

(Source: MCA notification G.S.R 338 (E), Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 dated 5 May 2022 and MCA Companies (Incorporation) Second Amendment Rules, 2022 dated 20 May 2022, The Companies (Share Capital and Debentures) Amendment Rules, 2022 dated 4 May 2022, The Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022 dated 30 May 2022 and The Companies (Appointment and Qualification of Directors) Amendment Rules, 2022 dated 1 June 2022.)





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## 5. Amendments to Deposit Rules

As per Rule 16 of the Companies (Acceptance of Deposits) Rules, 2014 (Deposit Rules), every company (other than a government company), is required to file a return in form DPT-3 with the ROC by 30 June of each year wherein the information contained is as on 31 March of that year duly audited by the auditor of the company.

On 29 August 2022, MCA amended Rule 16 of the Deposit Rules through the Companies (Acceptance of Deposits) Amendment Rules, 2022. As per the amendment, the auditor of a company is **required to additionally submit a declaration to certify the particulars of deposits and liquid assets furnished in the form**. The declaration forms part of the

DPT-3 Form. Consequently, MCA has also revised Forms DPT-3 and DPT-4.

*(Emphasis added to highlight the changes)*

The above amendments are effective from 29 August 2022.

[\(Source: MCA notification G.S.R. \(E\), Companies \(Acceptance of Deposits\) Amendment Rules, 2022 dated 29 August 2022\).](#)





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## 6. Amendments relating to the provisions of physical verification of registered office by the ROC

Section 12(9) of the 2013 Act provides that, if the ROC has a reasonable cause to believe that a company is not carrying out any business or operations, then the ROC may cause a physical verification of the registered office of that company. On 18 August 2022, MCA has issued an amendment that has inserted **Rule 25B relating to physical verification of the registered office of the company in the Companies (Incorporation) Rules, 2014.**

The Rule provides that the Registrar, based upon the information or documents made available on MCA21, must visit at the address of the registered office of the company and may cause the physical verification of the said registered office **in the presence of two independent witness** of the locality in which the said registered office is situated and may also seek **assistance of the local police** for such a verification, if required. If the registered office is not found to be capable of

receiving communications and notifications, the Registrar can send a notice for removal of the name of the company from the register of companies. The amendment also provides a format in which the report of the physical verification shall be prepared.

Additionally, on 24 August 2022, MCA amended the forms pertaining to removal of name of companies under the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016. As per the amendment, the following forms would be issued in case a company is not carrying on any business or operation as per the physical verification conducted in accordance with Section 12(9) of the 2013 Act:

- Form SKT-1: Notice by registrar for removal of the name of the company
- Form SKT-5 and Form SKT-5A: Public notice for removal of the name of the company.

### Key takeaway

The amendments aim to restrict malpractices by companies of providing fictitious address and forged documents about the registered office. The companies should ensure their compliance with Section 12 of the 2013 Act and the Companies (Incorporation) Rules 2014 by confirming that the details of the registered office are correctly updated on the MCA portal and on all documents of a company.

(Source: [MCA notification G.S.R. \(E\) Companies \(Incorporation\) Third Amendment Rules, 2022 dated 18 August 2022](#) and [MCA notification G.S.R 658\(E\) Companies \(Removal of Names of Companies from the Register of Companies\) Second Amendment Rules, 2022 dated 24 August 2022](#))





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## 7. Amendment to NFRA Rules

On 17 June 2022, MCA issued an amendment to Rule 13 of the National Financial Reporting Authority (NFRA) Rules, 2018 relating to punishment in case of non-compliance. The amended rule provides that failure to comply with the provisions of NFRA Rules 2018 would attract a **fine not exceeding INR5,000** (earlier INR10,000) and where the contravention is a continuing one, a **further fine not exceeding INR500** (earlier INR1,000) for every day after the first day during which the contravention continues.

The amendments are applicable from 17 June 2022.

(Source: MCA notification Companies (Registration of Charges) Amendment Rules, 2022 dated 27 April 2022)

## 8. Amendment to the definition of small companies

On 15 September 2022, MCA issued amendments to the Companies (Specification of definition details) to revise the definition of a 'small company' under the 2013 Act. The revised definition is as follows:

A small company means a company, other than a public company, which meets both the given conditions:

- Its paid-up share capital does not exceed **INR4 crore** (earlier INR2 crore), or such higher amount as may be

prescribed and which should not be more than INR10 crore, and

- Its turnover as per profit and loss account for the immediately preceding financial year does not exceed **INR40 crore** (earlier INR20 crore) or such higher amount as may be prescribed, and which should not be more than INR100 crore.

*(Emphasis added to highlight the changes)*

The revised definition is effective from 15 September 2022.



### Key takeaway

With the increased limit, more companies will fall under the ambit of small companies that can avail the benefits provided by the regulator, such as cash flow statements are not required to be prepared by such companies, conducting board meetings only twice a year, etc.

(Source: MCA Notification No. G.S.R. 700(E), the Companies (Specification of definition details) Amendment Rules, 2022 dated 15 September 2022)



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## 1. Amendments to Ind AS

On 31 March 2023, the MCA issued the Companies Indian Accounting Standards (Ind AS) Amendment Rules, 2023 to notify certain amendments to Ind AS which are effective from 1 April 2023. Some of the key amendments relate to the following standards:

Standard	Overview of the amendments
<p><b>Ind AS 1, <i>Presentation of Financial Statements</i></b></p>	<p>In 2021, certain amendments were introduced to International Accounting Standard (IAS) 1, <i>Presentation of Financial Statements</i>, in order to help companies, provide useful accounting policy disclosures. The amendments were applicable from 1 January 2023.</p> <p>In line with IAS 1 amendments, disclosure of accounting policy information under Ind AS 1 has been amended to state that:</p> <ul style="list-style-type: none"> <li>• Companies should disclose <b>material accounting policy information</b> instead of significant accounting policies</li> <li>• Accounting policy information, together with other information, is material when it can reasonably be expected to influence decisions of primary users of general-purpose financial statements</li> <li>• Accounting policy information that relates to immaterial transactions, other events or conditions need not be disclosed. Accounting policy information may be material because of the nature of the related transactions, other events or conditions, even if the amounts are immaterial. However, not all accounting policy information relating to material transactions, other events or conditions is itself material.</li> </ul> <p>Further, corresponding amendments have also been prescribed to Ind AS 34, <i>Interim Financial Reporting</i>, and Ind AS 107, <i>Financial Instruments: Disclosures</i>.</p>
<p><b>Ind AS 8, <i>Accounting Policies, Change in Accounting Estimates and Errors</i></b></p>	<p>The amendments have introduced certain key changes to Ind AS 8, which include:</p> <ul style="list-style-type: none"> <li>• Definition of 'change in account estimate' has been replaced by revised definition of 'accounting estimate'</li> <li>• As per revised definition, accounting estimates are monetary amounts in the financial statements that are subject to measurement uncertainty</li> <li>• A company develops an accounting estimate to achieve the objective set out by an accounting policy.</li> <li>• Accounting estimates include:             <ul style="list-style-type: none"> <li>– Selection of a measurement technique (estimation or valuation technique)</li> <li>– Selecting the inputs to be used when applying the chosen measurement technique.</li> </ul> </li> </ul> <p>The amendments introduced are in line with the amendments issued by IASB to IAS 8, <i>Accounting Policies, Changes in Accounting Estimates and Errors</i>, which are applicable from 1 January 2023.</p>



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## 1. Amendments to Ind AS

Standard	Overview of the amendments
<p><b>Ind AS 12, <i>Income Taxes</i></b></p>	<ul style="list-style-type: none"> <li>• The amendment has narrowed the scope of the Initial Recognition Exemption (IRE) with regard to leases and decommissioning obligations</li> <li>• As per the amendment, IRE does not apply to transactions that give rise to equal and offsetting temporary differences</li> <li>• Accordingly, companies will need to recognise a deferred tax asset and a deferred tax liability for temporary differences arising on transactions such as initial recognition of a lease and a decommissioning provision.</li> </ul> <p>The amendments issued are in line with the amendments issued by IASB to IAS 12, <i>Income Taxes</i>, which were effective from 1 January 2023. Consequent amendment made under Ind AS 101, <i>First-time Adoption of Indian Accounting Standards</i>. The amendments to Ind AS 101 provides that amendments to Ind AS 12 exempt an entity from recognising a deferred tax asset or liability in particular circumstances, at the date of transition to Ind AS, a first-time adopter should recognise a deferred tax asset and a deferred tax liability associated with:</p> <ol style="list-style-type: none"> <li>a. Right-of-use assets and lease liabilities, and</li> <li>b. Decommissioning, restoration and similar liabilities and the corresponding amounts recognised as part of the cost of the related asset.</li> </ol>

(Source: MCA notification no. G.S.R 242 (E) dated 31 March 2023.)





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## 2. Reviews by NFRA

In accordance with the provisions of Section 132 of the 2013 Act, NFRA monitors the compliance with accounting standards and auditing standards and has the power to conduct investigations. In this regard, NFRA has issued two circulars to highlight instances of Ind AS non-compliances and has advised the entities which are required to follow Ind AS to comply with the principles of the standard.

The instances of non-compliance highlighted in these circulars are as follows:

### Accrual of interest on borrowings classified as Non-Performing Asset (NPA) by the lender

As per Ind AS 109, *Financial Instruments*, borrowings and interest thereon should be recognised at amortised cost as per Effective Interest Method (EIM) and Effective Interest Rate (EIR). Further, Ind AS 109, states that a financial liability can be derecognised from the balance sheet only when it is extinguished i.e. when the borrower is legally released from the primary responsibility for the liability or part of it,

either by process of law or by the creditor.

Therefore, the circular clarifies that discontinuation of interest expense recognition on financial liability solely based on borrowing company's expectation of waiver/concession of a loan/interest without evidence of legally enforceable contractual documents would result in a major non-compliance with the principles of Ind AS 109.

### Revenue recognition and measurement

As per Ind AS 115, *Revenue from Contracts with Customers*, an entity is required to measure revenue at the transaction price excluding estimates of variable consideration that is allocated to that performance obligations. However, the circular highlighted that significant accounting policies disclosed by many companies incorrectly state that revenue is recognised and measured at fair value of the consideration received or receivable. This has resulted in a non-compliance with the requirements of the standard.

As per Ind AS 109, all financial assets are

required to be initially measured at fair value plus or minus the transaction costs and financial assets classified as FVTPL are required to be measured at fair value. However, an exception to this principle is financial assets in the form of trade receivables, that would be initially measured at transaction price (as defined in Ind AS 115) unless that contains a significant financing component determined in accordance with Ind AS 115 (or when an entity applies the practical expedient). The circular highlighted that significant accounting policies of many companies incorrectly state that the trade receivables are initially recognised (or measured) at fair value, which is contrary to the requirements of Ind AS 109.

Further, the circular reiterated that consistency should be maintained between the accounting policy for initial measurement of trade receivables and the accounting policy for measurement of corresponding revenue.

(Source: NFRA circular no. NF-25011/5/2022-O/o Secy-NFRA dated 20 October 2022 and circular no. NF-





## 1. SEBI Board Meeting

On 29 March 2023, SEBI in its board meeting approved certain key proposals pertaining to SEBI Regulations. Following are the key matters approved:

### I. ESG Regulatory Framework

SEBI approved the regulatory framework for Environmental, Social and Governance (ESG) disclosures, ratings and investing and corresponding amendments to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) and SEBI (Mutual Funds) Regulations, 1996 (MF Regulations) to facilitate a balanced approach to ESG. The key points are as follows:

- **ESG BRSR Core:** The Business Responsibility and Sustainability Reporting (BRSR) disclosures are mandatory for top 1,000 listed companies<sup>1</sup> from Financial Year (FY) 2022-23 onwards. Under ESG framework, SEBI approved to introduce 'BRSR Core' which consist of limited set of Key Performance Indicators (KPIs) under each E, S and G attributes/areas. Further reasonable

assurance would be applicable on BRSR Core in the following manner:

- Top 150 listed entities (by market capitalisation) from FY 2023-24 and
- Gradually, applicability will be extended to the top 1,000 listed entities by FY 2026-27
- **ESG disclosures for value chain of listed entities:** At present, the disclosure of supply chain metrics is covered under leadership indicators in the BRSR. Various companies have significant ESG footprints in their supply chain, therefore, SEBI approved to introduce ESG disclosures and assurance (BRSR Core only) for the value chain of companies with certain specified thresholds. The disclosure and assurance would be applicable in the following manner:
  - Disclosure: Top 250 listed entities (by market capitalisation), on a comply-or-explain basis from FY 2024-25 and

- Assurance: Top 250 listed entities, on a comply-or-explain basis from FY 2025-26.

- **ESG rating:** The ESG Rating Providers (ERPs) should provide a separate category of ESG rating called "Core ESG rating" based on information /reports that are assured/ verified/ audited and consider India and emerging market parameters under BRSR Core.
- **ESG Investing:** SEBI has approved the implementation of special measures with the aim of minimising the risk of mis-selling and greenwashing, improve stewardship reporting requirements and promote ESG investing. Following are the key amendments:
  - ESG schemes would be mandatorily required to invest at least 65 per cent of Asset Under Management (AUM) in listed entities where assurance on BRSR Core is undertaken.

- Mandatory third-party assurance and certification would be required by board of AMCs on compliance with objective of the ESG scheme.
- Mandating enhanced disclosures on voting decisions with specific focus on environmental, social and governance factors.
- Mandating disclosure of fund manager commentary and case studies which *inter-alia* highlight how the ESG strategy is applied on the fund/investments.
- Introduction of new scheme category, enabling the launch of multiple schemes on ESG related factors.
- Regulations for ERPs:** SEBI has approved the proposal to introduce a regulatory framework for ERPs in securities market by introducing a new chapter in the SEBI Credit Rating Agencies (CRA) Regulations.

1. As per market capitalisation as on 31 March of previous year



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## 1. SEBI Board Meeting

### II. Amendments to LODR Regulations focusing on shareholder empowerment

- **Disclosure of material events:** Following amendments have been approved in order to ensure timely disclosure of material events or information by listed entities:
  - Quantitative threshold would be introduced for determining 'materiality' of events/information
  - Stricter timeline for disclosure of material events/information to the stock exchanges - Within 30 minutes of decisions taken in the board of directors' meeting and within 12 hours of decisions that are taken by the listed entity
  - Market rumours to be verified and confirmed, denied or clarified, as the case may be, by top 100 listed by market capitalisation effective from 1 October 2023 and by top 250 listed entities with effect from 1 April 2024.

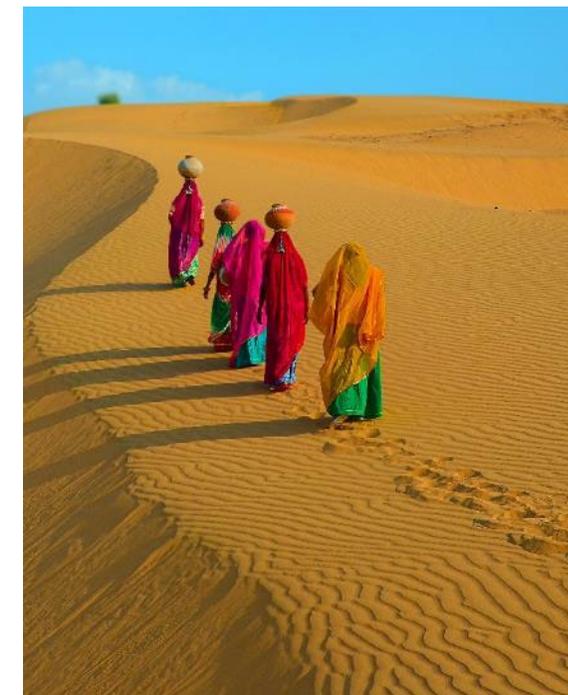
- **Strengthening corporate governance:** Following proposals have been approved by SEBI:
  - Periodic shareholders' approval for:
    - o any special right granted to a shareholder
    - o any director serving on the board of a listed entity
  - Strengthening the extant mechanism of sale, lease or disposal of an undertaking of a listed entity outside the 'Scheme of Arrangement' framework.
- **First financial results by newly listed entities:** SEBI has approved to streamline the timeline for submission of first financial results by newly listed entities in order to overcome the challenges in immediate submission of financial results post listing and to ensure that there is no omission in submission of financial results.

- **Filling vacancy of directors:** Listed entities are now required to fill up the vacancy of directors, compliance officer, Chief Executive Officer (CEO) and Chief Financial Officer (CFO) within a period of three months from the date of such vacancy, to ensure that such critical positions are not kept vacant.

### III. Amendments pertaining to debt listed entities

- **Extension of timeline for Large Corporates (LCs):** SEBI, in its board meeting decided that the period of compliance for Large Corporates to meet their financing needs from debt markets through issuance of debt securities to the extent of 25 per cent of their incremental borrowings in a contiguous block of two financial years will be extended to the contiguous block of three years. Consequently, on 31 March 2023, SEBI issued a circular to notify the extended compliance period.

- **Extension of timeline for High Value Debt Listed Entities (HVDLEs):** The corporate governance norms (i.e. Regulation 16 to 27 of LODR Regulations) would be applicable on a 'comply or explain' for HVDLEs till 31 March 2024 (*earlier till 31 March 2023*).



(Source: SEBI Board Meeting press release dated 29 March 2023 and SEBI circular no SEBI/HO/DDHS-RACPOD1/P/CIR/2023/049 dated 31 March 2023)



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## 2. Amendments to SEBI LODR Regulations

The SEBI LODR Regulations lays down the provisions for effective corporate governance and fair disclosures by Indian listed companies. Summarising below are some key amendments issued to Listing Regulations during the year:

- I. **Appointment and removal of independent directors:** Currently under Regulation 25 of the LODR Regulation appointment, reappointment, or removal of independent directors would be subject to shareholders' approval through a special resolution. In November 2022, Regulation 25 has been amended to include an alternate method for appointment and/or removal of independent directors. As per the alternate mechanism if a special resolution for the appointment of an independent director fails, then the following thresholds should be tested:
  - a. Votes cast in favour of the resolution exceed the votes cast against the resolution, and
  - b. Votes cast by the public shareholders

in favour of the resolution exceed the votes cast against the resolution.

If the above two thresholds are met then, the independent director is deemed to be appointed. The above threshold would be applicable for removal of an ID appointed under the alternate mechanism. Further, this route is applicable only on first time appointment and removal of an ID and not in case of re-appointment of an ID.

- II. **Clarification for unclaimed interest/dividend/redemption amount:** SEBI clarified that in case of listed entities which do not fall within the definition of a 'company' under the 2013 Act and the rules made thereunder, any amount in the escrow account that remains unclaimed for seven years should be transferred to the Investor Protection and Education Fund as per Section 11 of the 2013 Act.
- III. **Enhanced definition of 'senior management':** Regulation 16 of LODR Regulations has been amended to include functional heads of an entity as

senior management along with officers/personnel of a listed entity who are –

- members of its core management team,
- members of management one level below Chief Executive Officer (CEO)/Managing Director (MD)/Whole Time Director (WTD)/Manager, Chief Financial Officer (CFO), Company Secretary (*CEO and Manager in case they are not a part of the board*).

Senior Management would exclude the Board of Directors.

- IV. **Approval for re-appointment of a person on the board of directors:** Regulation 17 requires shareholders' approval for the purpose of appointment and re-appointment (*earlier required only for appointment*) of a person on the board of directors or as a manager. The approval should be taken in the general meeting or within a time period of three months from the date of appointment, whichever is earlier.

In case of a public sector company, the approval of the shareholders for appointment or re-appointment of a person on the board of directors or as a manager should be taken in the next general meeting.

- V. **Corporate governance disclosures in the annual report:** SEBI has inserted a new requirement that listed entities, in their annual reports for the financial year 2022-23, need to additionally provide details of material subsidiaries of the listed entity, including the date and place of incorporation and the name and date of appointment of the statutory auditors of such subsidiaries as a part of their corporate governance disclosures.



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## 2. Amendments to SEBI LODR Regulations

### VI. Amendments for entities that have listed Non-Convertible Securities (NCS):

The SEBI introduced following amendments for listed entities which have listed NCS:

- **Revised timeline for submission of results (Regulation 52(1)):** A listed entity that has issued NCS, is required to prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format specified by SEBI within 45 days from the end of the quarter other than for the last quarter.

Now SEBI has clarified the timeline for the submission of financial results of the last quarter, requiring a listed entity having NCS to submit its un-audited or audited quarterly and year to date standalone financial results within 60 days from the end of the last quarter to the recognised stock exchange.

- **Disclosure of ratios (Regulation 52(4)):** The amended regulation requires listed entities to disclose following ratios/financial information along with the quarterly and annual financial results:

- Debt-equity ratio
- Debt service coverage ratio
- Interest service coverage ratio
- Outstanding redeemable preference shares (quantity and value)
- Capital redemption reserve/debenture redemption reserve
- Net worth
- Net profit after tax
- Earnings per share
- Current ratio
- Long term debt to working capital
- Bad debts to account receivable ratio
- Current liability ratio

- Total debts to total assets
- Debtors' turnover
- Inventory turnover
- Operating margin per cent and
- Net profit margin per cent

In case any of the above requirements are not applicable to the listed entity, then the listed entity should disclose such other ratio/equivalent financial information as required under other applicable laws.

- **Statement of the utilisation of the issue proceeds (Regulation 52 (7) and 52 (7A)):** The statement for utilisation of issue proceeds and statement of material deviations, if any, should be submitted along with the quarterly financial results (*earlier within 45 days from the end of the quarter*). It should be submitted in the prescribed format and till such proceeds have been fully utilised or the purpose for which the proceeds were raised has been achieved.
- **Comptroller and Auditor General of India (CAG) audit entities:** The entities subject to CAG audit should submit the unaudited

financial results along with the limited review report issued by the CAG or an auditor appointed by the CAG or a practicing Chartered Accountant, to the stock exchange(s) within 60 days from the end of the financial year. Thereafter, the financial results audited by the CAG, should be submitted to the stock exchange(s), within nine months from the end of the financial year.

- **Newspaper advertisement (Regulation 52 (8)):** A listed entity is required to publish the financial results and details of ratios/financial information, in at least one English national daily newspaper, within two days of conclusion of the board meeting. The amendment has clarified that in case where a listed entity submits standalone and consolidated financial results to the stock exchange, then it should publish the consolidated financial results along with the details of ratios/financial information in the newspaper.



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## 2. Amendments to SEBI LODR Regulations

**VII. Monitoring agency in case of preferential issue and Qualified Institutional Placement (QIP):** In case a listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, then its report is required to be submitted to the stock exchange(s) within 45 days from the end of each quarter. Additionally, the report should also be placed before the audit committee on a quarterly basis. The amendment has clarified that, these provisions shall also be applicable to a preferential issue and a qualified institutional placement.

**VIII. Scheme of arrangement:** The amendment has issued a new Regulation 59 (A) which states that every listed entity that has listed NCDs/NCRPs and intends to undertake a scheme of arrangement or is involved in a scheme of arrangement as per the provisions of the 2013 Act, is required to first file draft scheme of arrangement with stock exchange in order to obtain a no-objection letter before filing the scheme with the court/tribunal.

On 17 November 2022, SEBI issued a circular on operational aspects to be followed by

entities entering into such scheme of arrangement, such as:

- The list of documents and procedure to file the scheme of arrangement with the stock exchange
- Submission of valuation report from a registered valuer and an auditor's certificate certifying the payment/repayment capability of the entity and stating that the accounting treatment contained in the scheme is in compliance with all the provisions of the 2013 Act and the rules framed thereunder
- Hosting the draft scheme of arrangement and all the documents on its website along with filing it with the stock exchange(s).

Subsequently, SEBI issued a circular on 9 December 2022 clarifying that, the above provisions should not apply to a scheme of arrangement between a debt listed entity and its unlisted wholly owned subsidiary. However, such a debt listed entity shall file the draft scheme of arrangement with the stock exchange(s) for the purpose of disclosure and the stock exchange(s) shall disseminate the scheme documents on their websites.



(Source: SEBI LODR (Sixth Amendment) Regulations, 2022 dated 14 November 2022, SEBI circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156 dated 17 November 2022 and circular no. SEBI/HO/DDHS/DDHSRACPOD1/P/CIR/2022/170 dated 9 December 2 SEBI notification no. SEBI/LAD-NRO/GN/2023/117 dated 17 January 2023)



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## 3. Updates related to Social Stock Exchange (SSE) and Social Audit Standards (SAS)

In July 2022, SEBI introduced provisions related to Social Stock Exchange (SSE) by amending certain regulations followed by issuing a detailed framework prescribing minimum requirements to be followed by an SSE in September 2022. Under the SSE framework, the Institute of Chartered Accountants of India (ICAI) has been entrusted with the responsibility of being the self-regulatory organisation for regulating the profession of social auditors.

In this regard, in January 2023, ICAI issued Social Audit Standards (SAS) which are based on the 16 categories of social activities specified by SEBI followed by issuing a framework for SAS in February 2023. The framework is applicable to a social audit (i.e. social impact assessment of project/programme of social enterprises) which is to be conducted by social auditors using the principles given in SASs.

Key considerations of the provisions issued pertaining to an SSE are as follows:

### Meaning

An SSE means a separate segment of a recognised stock exchange having nationwide trading terminals permitted to register Not for Profit Organisations (NPO) and/or list the securities issued by NPO in accordance with provisions of ICDR Regulations. In case a NPO or a For Profit Social Enterprise (FPSE) is desirous of registering itself as a Social Enterprise (SE), it must meet the eligibility criteria specified under Chapter X-A of ICDR Regulations.

### Eligibility condition for identification as a Social Enterprise (SE)

In order to be identified as a SE, an NPO is required to satisfy the minimum registration requirements as per the SEBI Framework and a FPSE is required to establish social intent as its primary goal. Additionally, SE shall have at least 67 per cent of its activities qualifying as eligible activities through one

or more of the following:

- i. At least 67 per cent of the immediately preceding 3-year average of revenues comes from providing eligible activities
- ii. At least 67 per cent of the immediately preceding 3-year average of expenditure has been incurred for providing eligible activities
- iii. Members of the target population to whom the eligible activities have been provided constitute at least 67 per cent of the immediately preceding three-year average of the total customer base and/or total number of beneficiaries.

### Funds raised by a SE

An NPO can raise funds through issuance of Zero Coupon Zero Principal (ZCZP) instruments or donations through mutual fund schemes or other means as specified by SEBI. An NPO is required to adhere to certain disclosure requirements in case funds are raised through the ZCZP route.

A FPSE can raise funds by issuing equity shares on various platforms such as the main board, Small and Medium Enterprise (SME) platform, innovators growth platform, through the Alternative Investment Fund (AIF), or any other means as prescribed by SEBI.

### Disclosures by a listed FPSE/listed NPO

A listed FPSE should comply with the disclosure requirements for issuers of specified securities listed on the main board, the SME Exchange, or the Innovators Growth Platform.

Further, a listed NPO is required to provide disclosures to the SSE(s) annually on prescribed matters, within 60 days from the end of the financial year. The SEBI circular prescribes a detailed list of disclosures bifurcated into three categories such general, governance and financial aspects that should form part of the annual disclosures.



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## 3. Updates related to Social Stock Exchange (SSE) and Social Audit Standards (SAS)

### Annual Impact Report (AIR)

An SE, which is either registered with or has raised funds through an SSE, should submit an AIR to the SSE in the format specified by SEBI. The AIR must be audited by a social audit firm employing social auditor(s). The SEBI circular provides general requirements as well as minimum disclosures to be made in an AIR by all SEs.

### Statement of utilisation of funds

A listed NPO is required to submit to the SSE(s) a statement of utilisation of funds within 45 days from the end of the quarter

giving details of category-wise amount of money raised and money utilised along with the balance amount that remains unutilised. The unutilised funds should be kept in a separate bank account. The statement shall be given till the time the issue proceeds have been fully utilised or the purpose for which they were raised, has been achieved.

### Social Impact Fund

A social impact fund has been defined as an Alternative Investment Funds (AIF) which invests primarily in securities, units or partnership interest of social ventures or securities of social enterprises and which

satisfies the social performance norms laid down by the fund. The regulations provide key provisions with respect to a social impact fund.

### Constitution of governing council for a Social Stock Exchange (SSE)

Regulation 292D of the ICDR Regulations requires every SSE to constitute a Social Stock Exchange Governing Council (SGC) to have an oversight on its functioning.

In this regard, SEBI issued a circular on 13 October 2022 stipulating the guidelines for composition and terms of reference for a

SGC. The circular specifies that the SGC should have minimum seven members comprising of individuals with relevant expertise who can contribute to the development of an SSE. Further, the SGC is expected to provide an oversight and guidance to facilitate smooth functioning of the operations of an SSE, with regard to registration, fund raising and disclosures by social enterprises.





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## 3. Updates related to Social Stock Exchange (SSE) and Social Audit Standards (SAS)

### Social Audit Standards

A social enterprise can raise funds from an SSE by engaging in the social activities listed by ICAI, which is responsible for regulating the profession of social auditor.

In January 2023, ICAI issued the SAS based on the 16 categories of social activities as specified by SEBI containing procedures and related guidance/criteria for the performance of each area of the 16 categories.

The list of the SAS are as follows:

- SAS 100: Eradicating hunger, poverty, malnutrition and inequality
- SAS 200: Promoting health care including mental healthcare, sanitation and making available safe drinking water
- SAS 300: Promoting education, employability and livelihoods
- SAS 400: Promoting gender equality, empowerment of women and LGBTQIA+ communities
- SAS 500: Ensuring environmental

sustainability, addressing climate change including mitigation and adaptation, forest and wildlife conservation

- SAS 600: Protection of national heritage, art and culture
- SAS 700: Training to promote rural sports, nationally recognised sports, Paralympic sports and Olympic sports
- SAS 800: Supporting incubators of social enterprises
- SAS 900: Supporting other platforms that strengthen the non-profit ecosystem in fundraising and capacity building
- SAS 1000: Promoting livelihoods for rural and urban poor including enhancing income of small and marginal farmers and workers in the non-farm sector
- SAS 1100: Slum area development, affordable housing, and other interventions to build sustainable and resilient cities
- SAS 1200: Disaster management,

including relief, rehabilitation and reconstruction activities

- SAS 1300: Promotion of financial inclusion
- SAS 1400: Facilitating access to land and property assets for disadvantaged communities
- SAS 1500: Bridging the digital divide in internet and mobile phone access, addressing issues of misinformation and data protection
- SAS 1600: Promoting welfare of migrants and displaced persons.

The SASs should be read in conjunction with the 'Preface to the Social Audit Standards' and 'Framework for the Social Audit Standards'. The framework is applicable to a social audit (i.e. social impact assessment of project/programme of social enterprises) which is to be conducted by social auditors using the principles given in SASs. This framework is mandatory in nature and is applicable from 4 February 2023.





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## 3. Updates related to Social Stock Exchange (SSE) and Social Audit Standards (SAS)

### Key takeaways

- An NPO desirous of being listed on any SSE, is required to ensure adequate processes and systems and internal controls to ensure compliance with the SEBI framework. This may involve significant time and effort by the management, investment, hiring of advisors or other specialists to ensure compliance with the new framework.
- A listed NPO is required to provide annual disclosures to the SSE within 60 days from the end of the financial year and submit an audited Annual Impact Report (AIR) within 90 days of the end of the financial year.
- The disclosure requirements prescribed are elaborate and would require significant judgement and tracking mechanisms to be developed by NPOs to track each project, initiative, its budget as compared to the actual funding, stakeholder grievances, compliance management system.
- Further, NPOs and FPSEs would need to assess the requirements of the SAS and how will these integrate with the disclosure requirements in the AIR.



*For a detailed overview of these notifications refer to KPMG in India's First Notes – Social Stock Exchange – A detailed framework issued by SEBI dated 21 October 2022 and Social Audit Standards –Exposure Draft dated 12 September 2022.*

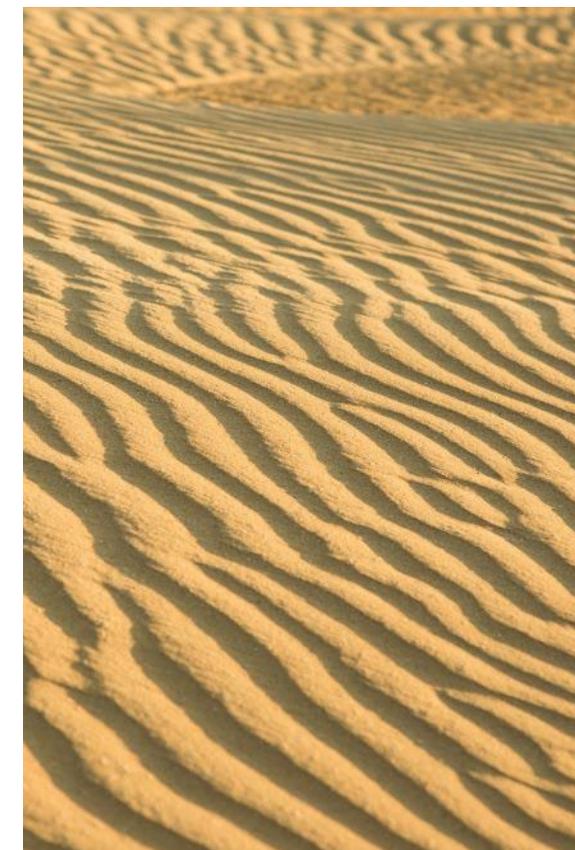
(Source: SEBI Notification no. SEBI/LAD-NRO/GN/2022/90, F. No. SEBI/LAD-NRO/GN/2022/88, F. No. SEBI/LAD-NRO/GN/2022/89, dated 25 July 2022, Circular no. No. SEBI/HO/CFD/PoD-1/P/CIR/2022/120 dated 19 September 2022, SEBI circular no. SEBI/HO/MRD/MRD-RAC-2/P/CIR/2022/141 dated 13 October 2022, ICAI announcement dated 14 January 2023 and ICAI announcement dated 4 February 2023)



## 4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

In May 2022, SEBI issued certain amendment regulations related to debt listed entities and also prescribed certain additional requirements relating to debenture trustees framework. Following are the key considerations from the SEBI notification:

- SEBI LODR Regulations:** Regulation 54 of the LODR Regulations provides that a listed entity which has issued listed non-convertible debt securities should maintain 100 per cent **security cover** (*earlier asset cover*) sufficient to discharge both **principal and interest amount** (*earlier principal only*) at all times for the non-convertible debt securities issued.
- SEBI (Debenture Trustees) Regulations:** Regulation 15 of SEBI (Debenture Trustees) (Amendment) Regulations, 2022 which specifies duties of the debenture trustees has been amended by substituting the term 'asset cover' with the term 'security cover'.
- SEBI (Issue and Listing of Non-Convertible Securities) Regulations:** (NCS Regulations):
  - Obligations of the issuer and lead manager stated in Regulation 23 and 38 of SEBI NCS Regulations have been amended to state that they must ensure that the secured debt securities are secured by 100 per cent security cover or higher security cover sufficient to discharge the principal amount and the interest thereon at all times for the issued debt securities.
  - A due diligence certificate should be furnished by the debenture trustee to the SEBI and the stock exchanges in the formats prescribed (Schedule IV for secured debt securities and Schedule IVA for unsecured debt securities)
  - Rationalised references with respect to disclosure of credit ratings have been specified.
- Revised format of security cover certificate:** Regulation 54 and 56(1)(d) of SEBI LODR Regulations requires listed entities to disclose security cover to stock exchange(s) and debenture trustee(s), in the prescribed format. In May 2022, SEBI issued a circular to revise a format of security cover certificate, monitoring, and revision in timelines.
  - The revised format has been prepared to provide a holistic picture of all the borrowings and the status of encumbrance on the assets of the listed entity.
  - It is applicable to issuers who have listed and/or propose to list non-convertible securities, securitised debt instruments, security receipts, municipal debt securities, or commercial paper and all stock exchanges along with debenture trustees registered with SEBI.





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## 4. Amendments to SEBI regulations relating to debt listed entities and debenture trustees framework

- Enhanced guidelines for debenture trustees and listed issuer companies:** In November 2020, SEBI through its circular<sup>2</sup> laid down the procedure for conducting the due diligence and creation of security of listed debt securities by debenture trustees. The circular prescribed the format of the due diligence certificate and the documents and disclosures to be submitted by the issuer. Since the issue of the circular, SEBI received feedback from market participants on the aspects of due diligence and security creation. Accordingly, SEBI issued a circular on 4 August 2022 stating the revised

requirements with respect to:

- Procedure for change in security/creation of additional security/conversion of unsecured to secured in case of already listed non-convertible debt securities
- Encumbrance on securities for issuance of listed debt securities
- Issue of due diligence certificate in case of shelf prospectus/memorandum
- Empanelment of external agencies by debenture trustees.



2. Circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2020/218 dated 3 November 2020

(Source: Debenture Trustees) (Amendment) Regulations, 2022, SEBI/LAD-NRO/GN/2022/78 and SEBI ICDR (Amendment) Regulations, 2022 SEBI/LAD-NRO/GN/2022/77 and SEBI circular no. SEBI/HO/MIRSD/CRADT/CIR/P/2022/67 dated 19 May 2022)



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## 5. Updates relating to REIT and InvIT

The SEBI (Infrastructure Investment Trusts) Regulations, 2014 (InvIT Regulations) and SEBI (Real Estate Investment Trusts) Regulations, 2014 (REIT Regulations) governs the regulatory framework for InvITs and REITs. Additionally, certain corporate governance provisions under LODR Regulations were applicable to high value debt listed entity that is a REIT or InvIT.

Considering representation received from stakeholders and gaps between an InvIT's structure and the application of the LODR Regulations, in January 2023, SEBI withdrew the applicability of corporate governance provisions to REITs and InvITs. Further it clarified that with effect from 1 April 2023, REITs and InvITs are required to comply with the governance norms stipulated under SEBI REIT Regulations, 2014 and SEBI InvIT Regulations, 2014, respectively, instead of the provisions under LODR Regulations.

Consequently, on 14 February 2023, SEBI issued corporate governance and audit related framework under the InvIT Regulations and REIT Regulations. Some of

the key considerations of the amendment are as follows:

### Definition of independent director and senior management

The amendment included definition of independent director and senior management in the REIT and InvIT Regulations in line with SEBI LODR Regulations. It also states the criteria of appointment and eligibility of independent directors along with roles and responsibility of senior management that are generally applicable to listed entities similar to SEBI LODR Regulations.

### Tenure of appointment of auditors

As per the amended provisions, the investment manager/manager shall appoint an individual or a firm as an auditor, who shall hold office from the date of conclusion of the annual meeting in which an auditor has been appointed till the date of conclusion of the sixth annual meeting of the unitholders. Additionally, the amendment has also specified the maximum period of appointment/re-appointment and cooling off period of re-appointment for the auditor i.e. five years from the date of completion of the term.

### Limited review of consolidated accounts

Auditors are required to undertake a limited review of the audit of all the entities or companies whose accounts are to be consolidated with the accounts of the InvIT/REIT as per the applicable Ind AS and any addendum thereto.

### New obligations for manager/investment manager

A new chapter stipulating the obligations and governance requirements of the investment manager/managers has been inserted. The key point include:

- Board of directors should consist of minimum of six directors and have at least one-woman independent director
- Quorum shall be one-third of its total strength or three directors, whichever is higher, including at least one independent director
- Board of directors should review compliance reports every quarter pertaining to all the applicable laws and initiate steps to rectify instances of non-compliances.

### Transfer of unpaid/unclaimed distributions

The REITs and InvITs are mandated to transfer any amount remaining unclaimed/unpaid out of the distribution declared to the Investor Education and Protection Fund.

### Investment in overnight mutual funds

The amendment prescribes that the investment in overnight mutual funds having maturity of one day should be treated as cash and cash equivalents and excluded from the value of assets of the InvIT/REIT.

### Vigil mechanism

The investment manager/manager should formulate a vigil mechanism including a whistle blower policy for directors and employees to report genuine concern. An independent service provider may be engaged for providing or operating the vigil mechanism. The audit committee shall review the functioning of the vigil mechanism.



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## 5. Updates relating to REIT and InvIT

### Key takeaway

With an aim to streamline the regulatory framework for the REITs and InvITs, SEBI specified the specific corporate governance requirements for REITs and InvITs. Through these amendments, SEBI carved out certain provisions of the LODR which are not directly applicable on REITs and InvITs. Also introduced separate corporate governance norms, in line with the LODR regulations, but relevant in the context of REITs and InvITs, irrespective of whether any debt security has been issued by them.



(Source: SEBI notification no. No. SEBI/LAD-NRO/ GN/2023/122 and SEBI/LAD-NRO/GN/2023/123 dated 14 February 2023 and SEBI notification no. SEBI/LAD-NRO/ GN/2023/117 dated 17 January 2023).



## 6. Confidential pre-filing of offer document for an Initial Public Offer (IPO)

On 21 November 2022, SEBI issued a notification to amend SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations) to introduce pre-filing of an offer document as an optional alternative mechanism for the purpose of an IPO of specified securities. The aim is to allow issuers to carry out limited interaction without making any sensitive information public.

The key considerations from the regulations are as follows:

### Submission of documents

Prior to an IPO, the issuer is required to file the following documents with SEBI and the stock exchange along with the prescribed fees:

- Three copies of the pre-filed draft offer document
- Certificate confirming the agreement entered into between the issuer and the lead manager(s)
- Due diligence certificate in the specified format

- An undertaking from the issuer and the lead manager stating that they shall not conduct marketing or advertisement for the intended issue.

### Public Announcement

The issuer is required to make a public announcement disclosing the fact of filing the pre-filed draft offer document and no other details within two days of pre-filing of the draft offer document.

### Filing of Draft Red Herring Prospectus (DRHP) and Red Herring Prospectus (RHP)

The regulation provides the time limits and guidance for addressing the observations of SEBI on the pre-filing of the offer document and DRHP. It also prescribes the time limit for which the DRHP should be made available for public comments and addressing the observations of the public and filing of the RHP.

### Interaction with Qualified Institutional Buyers (QIBs)

An issuer is permitted to have an interaction with QIBs to the extent of information contained in the pre-filed draft offer document. A list of QIBs along with the

confirmation of closure of interaction should be submitted to SEBI by the issuer and the lead manager.

### Monitoring Agency

A monitoring agency should be appointed if the issue size exceeds INR100 crore to monitor the use of proceeds. The issuer should receive a quarterly report from the monitoring agency till 100 per cent of the proceeds of the issue have been utilised. The report should be uploaded on an issuer's website and should be submitted to the stock exchange within 45 days from the end of each quarter.

### Due Diligence formats

The amendment has prescribed formats for filing the following due diligence certificates

- To be filed along with pre-filed draft offer document
- At the time of filing the updated draft red herring prospectus
- In the event of disclosure of material events after the filing of the offer document.





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## 6. Confidential pre-filing of offer document for an Initial Public Offer (IPO)

### Key takeaway

- Pre-filing of offer document helps in maintaining confidentiality of sensitive information and the prescribed process would enable a company to test the market and analyse investor demand.



(Source: SEBI notification no. No. SEBI/LAD-NRO/GN/2022/107 dated 21 September 2022)



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## 7. Amendment to Non-Convertible Securities (NCS) Regulations

On 2 February 2023, SEBI issued amendments to certain provisions of the NCS Regulations.

Following is the overview of the key amendments.

**1. Expansion of the definition of green debt security:** The amendment to the NCS Regulations expands the scope of the existing definition of green debt security and includes, *inter alia*:

- Projects/activities under pollution prevention and control sectors (including reduction of air emissions, greenhouse gas control, soil remediation, waste prevention, waste reduction, waste recycling and energy efficient or emission efficient waste to energy) and sectors mentioned under the India Cooling Action Plan launched by the Ministry of Environment, Forest and Climate Change
- Circular economy adapted products, production technologies and processes

- Blue bonds i.e. funds raised for sustainable water management including clean water and water recycling, and sustainable maritime sector including sustainable shipping, sustainable fishing, fully traceable sustainable seafood, ocean energy and ocean mapping
- Yellow bonds which comprise funds raised for solar energy generation and the upstream industries and downstream industries associated with it
- Transition bonds which comprise funds raised for transitioning to a more sustainable form of operations, in line with India's Intended Nationally Determined Contributions<sup>3</sup>.

SEBI also issued a circular on 3 February 2023 to address the concerns of market participants with respect to greenwashing i.e. making false, misleading, unsubstantiated, or otherwise incomplete claims about the sustainability of a product, service, or

business operation by an issuer of green debt securities. The circular advises the dos and don'ts that an issuer of green debt securities should ensure to avoid greenwashing.

- 2. Recall or redemption prior to maturity:** An issuer of NCS has the right to recall or redeem the securities prior to the maturity date subject to certain conditions stipulated in the regulation. The provisions with respect to dissemination of information regarding recall or redemption of securities prior to the maturity date has been amended. As per the amendment, issuers are now required to send notice for recall or redemption prior to maturity of NCS to all eligible holders and the debenture trustee at least 21 days prior to the date on which such a right is exercisable in the prescribed manner.



3. Intended Nationally Determined Contributions (INDCs) refer to the climate targets determined by India under the Paris Agreement at the Conference of Parties 21 in 2015, and at the Conference of Parties 26 in 2021, as revised from time to time.



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## 7. Amendment to Non-Convertible Securities (NCS) Regulations

**3. Appointment of a director:** The Articles of Association (AOA) and trust deed should include a provision that the Debenture Trustee(s) (DTs) are required to nominate a person as a director on the board of directors of the issuer. However, an issuer whose debt securities are already listed should ensure compliance with this provision by 30 September 2023 by amending AOA and trust deed. In case the issuer has defaulted in the payment of interest or repayment of principal amount, then such a director should be appointed within one month from the date of receipt of nomination from the

DTs or within one month from 2 February 2023, whichever is later.

**4. Period of subscription:** The NCS public issue should be kept open for a minimum period of three working days and a maximum of 10 working days. In case of revision in the price band or yield, the issuer should extend the bidding issue period disclosed in the offer document for a minimum period of three working days subject to a maximum cap of 10 working days.

**5. Regulatory fee:** The amended regulations also prescribe a regulatory fee required

The amendments are applicable from 2 February 2023.

(Source: SEBI notification no. No. SEBI/LAD-NRO/ GN/2023/119 dated 2 February 2023 and circular no. SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2023/020 dated 3 February 2023)





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## 8. Option to conduct board meeting through video conferencing or other audio-visual means

The SEBI (Procedure for Board Meetings) Regulations, 2001 lays down the regulatory provisions and procedure for conducting board meetings. On 9 December 2022, SEBI amended the Regulation 4 to allow a member to participate in the meeting through video conferencing or any other audio-visual means provided the same is communicated to the chairperson or the secretary of the board in advance so that suitable arrangements can be made. Additionally, SEBI prescribed a procedure relating to members attending board meetings through video conferencing or other audio-visual means including requirements relating to quorum, rights and obligations, minutes of meetings etc.



(Source: SEBI (Procedure for Board Meetings) (Amendment) Regulations, 2022 dated 9 December 2022)



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## 9. SEBI issues insider trading regulations for units of mutual funds

On 24 November 2022, SEBI issued amendments to SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations). The amendments introduced Chapter II-A to the PIT Regulations which prescribes guidelines for prohibition of insider trading applicable to units of a mutual fund. This regulation is applicable to all insiders i.e. a connected person as defined under Regulation 5B(1)(b) of Chapter II-A or any person who has access to UPSI with respect to the mutual fund scheme.

The key considerations are as follows:

**a) Obligations of insiders:** An insider should not communicate, provide, or allow access to any UPSI to any person except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. Further, an insider in possession of UPSI should not trade in units of a scheme of a mutual fund which may have a material impact on the net

asset value of a scheme or may have a material impact on the interest of the unit holders of the scheme.

**b) Confidentiality for sharing UPSI:** The board of directors of an Asset Management Company (AMC) with the approval of the trustees shall formulate a policy for determination of 'legitimate purposes' for sharing of UPSI in the ordinary course of business by an insider with trustees, registrars and share transfer agents, custodians, valuation agencies, fund accountants, Association of Mutual funds of India, credit rating agencies, legal advisors, auditors or other advisors or consultant. Such a person with whom UPSI has been shared for legitimate purposes is required to maintain confidentiality and is required to comply with the regulation. Further, the board of directors are required execute a non-disclosure agreement for maintaining confidentiality.

**c) Maintenance of structured database:** The board of directors should maintain a structured database which contains the nature of UPSI, the names of the persons who have shared such an information and with whom such an information is shared along with the Permanent Account Number (PAN) or any other identifier authorised by law where PAN is not available. The database should be maintained internally along with adequate internal controls and checks, There should also be a feature for maintaining audit trails and the database should not be tampered and should be preserved for a minimum period of eight years after completion of relevant transactions.

**d) Disclosures to be made by the AMC:** The AMC is required to disclose the details of holdings in the units of its mutual fund schemes held by the designated persons of the AMC, trustees and their immediate relatives on the stock exchanges on a quarterly basis.

**e) Code of Conduct:** A code of conduct should be formulated to regulate, monitor and report trading by designated persons and their relatives.

**f) Identification of a 'designated person':** The board of directors of the AMC, after consultation with the compliance officer, should appoint a designated person on the basis of their role in the organisation who would be covered by the code of conduct.

**g) System of internal control and policy for leak of UPSI:** The Chief Executive Officer (CEO)/Managing Director (MD) of the AMC, after the approval of the trustee or such other analogous person of an intermediary or fiduciary, should formulate and execute an adequate and effective system of internal controls in order to ensure the requirements of the regulation are complied with.



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## 9. SEBI issues insider trading regulations for units of mutual funds

- h. Whistleblower policy and policy for leak of UPSI:** The AMC, with the approval of the trustees, should formulate written policies and procedures for an inquiry in case of leak of UPSI or suspected leak of UPSI. Appropriate inquiries should be undertaken and SEBI should be promptly informed regarding such leaks, inquiries and result of such inquiries. Also, whistleblower policy should be formulated, which should be brought to the notice of the employees to enable them to report instances of leak of such unpublished price sensitive information.
- i. Reviews by an audit committee:** The audit committee of an AMC or such other analogous body of an intermediary or fiduciary, should undertake reviews at least once in a financial year to verify the compliance with the provisions of the regulations and to verify that the systems for internal control are adequate and are operating effectively.

The above regulations are effective from 24 November 2022.

(Source: [SEBI \(Prohibition of Insider Trading\) \(Amendment\) Regulations, 2022 dated 24 November 2022](#))





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## 1. Guidelines on digital lending

To provide an innovative and inclusive digital lending system and to protect the data of borrowers using digital lending apps from being misused, the Reserve Bank of India (RBI) on 2 September 2022, issued guidelines for digital lending.

These guidelines are applicable to all Regulated Entities (REs) (i.e. all commercial banks, primary (urban) cooperative banks, district central cooperative banks and non-banking financial companies (including housing finance companies) providing loans through the digital lending platforms. The guidelines reiterate that the compliances to be followed by REs while entering into outsourcing arrangements with a Lending Service Provider (LSP)/Digital Lending App (DLA) should be in accordance with the master guidelines on outsourcing<sup>4</sup>. The REs

should ensure that the service providers engaged by them should comply with the guidelines contained in this circular.

The main focus areas of the guidelines are:

- i. Customer protection and conduct requirements
- ii. Technology and data requirement
- iii. Regulatory framework.

Subsequently in February 2023, RBI issued Frequently Asked Questions (FAQs) on the guidelines on digital lending. The FAQs aim to provide certain clarification relating to digital lending norms. The key considerations addressed in the FAQs are with respect to:

- Appointment of nodal grievance redressal officer by Lending Service Providers (LSPs).

- Disclosure of Annual Percentage Return (APR) in case of floating rate loans and changes to the floating rate.
- If APR is disclosed in Key Fact Statement (KFS), then the annualised rate of interest should be disclosed to the borrowers as required under Fair Practices Code applicable to NBFCs.
- If the customer exits the loan during cooling-off period, then reasonable one-time processing fee can be retained. Further, the processing fee has to be mandatorily included for the computation of APR.
- Compliance of digital lending guidelines by Payment Aggregators (PAs) performing the role of LSP.
- The flow of funds between the bank

accounts of borrower and lender in a lending transaction cannot be controlled directly or indirectly by a third-party including LSP.

- Exemption to REs from the requirement of direct repayment of loans in the REs bank account in case of delinquent loans.
- In case of co-lending transactions, grant of exemption from direct disbursement to the bank account of the borrower to the extent of flow of money between REs.
- Penal charges such as cheque bounce/mandate failure charges, which are necessarily levied on a per instance basis may not be annualised but must be disclosed separately in the KFS under 'Details about Contingent Charges'.

4. Para 2.6 of the Master Circular on "Loans and Advances – Statutory and Other restrictions" dated July 01, 2015; Guidelines on Managing Risks and Code of Conduct in Outsourcing of Financial Services by Banks issued vide Circular dated November 03, 2006 as amended from time to time; Para 120 and 120 A of "Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016" dated September 01, 2016, as amended from time to time; Para 106 and 106A of the 'Master Direction - Non-Banking Financial Company – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016' both dated September 01, 2016, as amended from time to time; 'Guidelines for Managing Risk in Outsourcing of Financial Services by Co-operative Banks', dated June 28, 2021; Circular on 'Outsourcing of Financial Services - Responsibilities of regulated entities employing Recovery Agents' dated August 12, 2022, and other related instructions issued by the Reserve Bank from time to time.



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# 1. Guidelines on digital lending

## Key takeaway

The digital lending guidelines have a significant impact on digital lending companies and REs. The main focus of RBI through these guidelines is to protect the customer interest. These guidelines reiterate that the ultimate responsibility of customer protection, data protection, lending policies, etc. would lie with the RE. This move will lead to transparency in the system by discouraging ambiguity and bad practices leading to sector growth.



Also refer to KPMG in India's First Notes – Digital lending guidelines applicable to banks and NBFCs dated 30 September 2022 which provides a detailed overview of the guidelines.

(Source: RBI Notification no. RBI/2022-23/111 DOR.CRE.REC.66/21.07.001/2022-23 dated 2 September 2022 and RBI notification dated February 2023).



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## 2. Guidelines on unhedged foreign currency exposure

On 11 October 2022, the RBI issued the Unhedged Foreign Currency Exposure (UFCE) Directions, 2022 (UFCE Directions 2022) after receiving references from banks seeking clarification on various aspects pertaining to UFCE.

The UFCE Directions, 2022 are applicable from 1 January 2023 to all commercial banks (excluding payments banks and regional rural banks). The UFCE Directions, 2022 are also applicable to overseas

branches/subsidiaries of banks incorporated in India.

The key amendments in the UFCE Directions 2022 are as follows:

- **Revised definition of 'entities' and 'smaller entities':** As per the revised definition, an entity means a counterparty to which a bank has an exposure in any currency. Further, smaller entities are defined as those entities on which total exposure of the banking system is INR50

crore or less (*earlier INR25 crore or less*).

- **Exposure to smaller entities:** The UFCE Directions state that an alternate method would be applicable for exposure to 'smaller entities' which have Foreign Currency Exposure (FCE), instead of UFCE and are unable to provide information on their UFCE.
- **Exemption of UFCE transactions:** As per the UFCE Directions 2022, banks' exposures to an entity arising from

derivative transactions and/or factoring transactions (*previously only derivative transactions*) are to be excluded from the purview of UFCE guidelines.

- **Incremental capital requirement:** Banks are required to provide incremental capital and provisioning requirements for certain exposures as follows:

Potential Loss/EBID <sup>5</sup> (%)	Incremental provisioning requirement	Incremental capital requirement
Up to 15 per cent	0	0
More than 15 per cent and up to 30 per cent	20bps	0
More than 30 per cent and up to 50 per cent	40bps	0
More than 50 percent and up to 75 per cent	60bps	0
More than 75 per cent	80bps	25 percentage increase in the risk weight

The UFCE Directions, 2022 clarified that the incremental capital requirement for exposures falling in the last bucket is provided as 25 percentage points increase in risk weight. For example, if an entity which otherwise attracts a risk weight of 50 per cent falls in the last bucket then, the applicable risk weight would be 75 per cent (i.e. 50 per cent +25 per cent). This is because the exposures falling in the same bucket will have equal increase in their riskiness irrespective of the original risk weight applicable.

5. Earnings Before Interest and Depreciation – EBID is computed as Profit after tax + Interest on debt + Depreciation + Lease rentals (if any)

(Source: RBI notification no. RBI/2022-23/131 DOR.MRG.REC.76/00-00-007/2022-23 dated 11 October 2022)



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## 3. Amendments related to presentation and disclosures of financial statements by banks

The RBI (Financial Statements - Presentation and Disclosures) Directions, 2021 (Master Directions) provides guidelines/instructions/directives to the banks on the presentation of financial statements, regulatory clarification on compliance with accounting standards and disclosures in notes to accounts.

RBI has issued the following amendments with respect to presentation and disclosure requirements in the financial statements:

### a. Asset classification and provisioning

As per the Master Directions, all commercial banks (excluding Regional Rural Banks (RRBs)) are required to disclose details of divergence in asset classification and provisioning if the divergence assessed by RBI exceeds certain specified thresholds.

RBI has revised the specified thresholds for commercial banks and has introduced similar disclosure requirements for Primary Urban Co-

operative Banks (UCBs). The amendment is applicable for disclosures in the notes to the annual financial statements for the year ended 31 March 2024 and onwards.

The disclosure should be provided if either or both of the following conditions are satisfied:

- a. The additional provisioning for Non-Performing Assets (NPAs) assessed by the RBI exceeds 5 per cent (*earlier 10 per cent*) of the reported profit before provisions and contingencies<sup>1</sup> for the reference period, and
- b. The additional Gross NPAs identified by the RBI exceed 5 per cent (*earlier 10 per cent*) of the reported incremental Gross NPAs for the reference period.

In case of UCBs, the threshold for reported incremental Gross NPA as specified in paragraph (b) above shall be

15 per cent which would be reduced progressively in a phased manner, after review.

### b. Disclosure of material items

On 13 December 2022, RBI issued instructions for commercial banks for disclosure of material items in the notes to the annual financial statements for the year ended 31 March 2023 and onwards.

Key considerations are as follows:

- **Miscellaneous income and other expenditure:** If items under 'Schedule 14-Other Income' and 'Schedule 16-Operating Expenses' exceeds one per cent of total income and expense respectively, then it should be disclosed in the notes to accounts under the subhead 'Miscellaneous Income' and 'Other expenditure' respectively.

- **Other liabilities and assets:** Disclosure is required in the notes to accounts for any item under the head 'Schedule 5(IV)-Other Liabilities and Provisions- Others (including provisions)' or 'Schedule 11(VI)-Other Assets-Others' if it exceeds one per cent of the total assets.

- **Commission, Exchange and Brokerage:** With respect to Payment Banks (PBs), disclosure is required in the notes to accounts for all such items that exceed one per cent of the total income disclosed under the head 'Schedule 14(I)-Other Income-Commission, Exchange and Brokerage'.

In addition, the banks should provide comprehensive disclosures than the minimum required disclosures, if such disclosures significantly aid in understanding the financial position and performance of banks.

(Source: RBI notification no. RBI/2022-23/154 DOR.ACC.REC.No.91/21.04.018/2022-23 dated 13 December 2022 and RBI notification no. RBI/2022-23/130 DOR.ACC.REC.No.74/21.04.018/2022-23 dated 11 October 2022)



## 4. Amendments related to NBFCs

### Clarification related to revised Scale Based Regulation for NBFCs

In October 2021, RBI had introduced the Scale Based Regulation (SBR) framework for NBFCs, which stated that the level of regulation and supervision of an NBFC should be a function of their size, activity, and perceived riskiness. NBFCs that have large size and complexity, and which pose a higher risk for the financial system would be made subject to a higher degree of regulation, and NBFCs that pose a lower risk for the financial system would be made subject to a lower degree of regulation.

SBR framework comprises of the following four layers of NBFCs:

- NBFC-Base Layer (NBFC-BL)
- NBFC-Middle Layer (NBFC-ML)
- NBFC-Upper Layer (NBFC-UL)
- NBFC-Top Layer (NBFC-TL).

Consequently, during the period April 2022 to June 2022, RBI issued various circulars

providing clarifications on regulatory revisions. An overview of the clarifications issued are as follows:

### Capital requirements for NBFC-UL

As per the SBR framework, every NBFC-UL (except core investment companies CICs) should maintain, on an on-going basis, Common Equity Tier 1 (CET1) capital of at least 9 per cent of Risk Weighted Assets (RWA). In addition, RBI has stated the elements that should comprise CET 1 Capital and total RWAs.

### Disclosures in Financial Statements – Notes to accounts of NBFCs

In April 2022, RBI issued certain additional disclosure requirements for NBFCs in line with the SBR framework. The disclosure categories have been bifurcated into the following three sections:

- *Section I: Applicable for annual financial statements of NBFC-BL, NBFC-ML and*

### NBFC-UL

- Includes direct and indirect exposure to the real estate sector, capital market, detailed disclosures on sectoral exposures, intra-group exposures and unhedged foreign currency exposure.
- Disclose transactions entered into with related parties during the year along with amounts outstanding during the year and at year end
- Provide a summary of the complaints received from the customers with a description of top five grounds of complaints received.
- *Section II: Applicable for annual financial statements of NBFC-ML and NBFC-UL*
  - Corporate governance disclosures for non-listed NBFCs are required to give such as composition of the Board and its committees, general body meetings, details of non-compliance under the 2013 Act and details of penalties imposed by RBI or any other statutory body

- Disclose all instances of breach of a covenant of loans availed or debt securities issued
- Disclose details of divergence in asset classification and provisioning when thresholds are exceeded.
- *Section III: Applicable for annual financial statements of NBFC-UL*

NBFCs in the upper layer should be mandatorily listed within three years of identification as NBFC-UL and will be subject to enhanced regulatory framework. They should develop a Board approved policy and an implementation plan to comply with the new set of regulations.

**Effective date:** These guidelines are effective for annual financial statements for the year ending 31 March 2023, and onwards.



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## 4. Amendments related to NBFCs

### Regulatory restrictions on lending to NBFC-ML and UL

RBI has provided detailed guidelines on regulatory restrictions on lending in respect of NBFCs across different layers as per the SBR framework. Some of the key provisions mentioned are:

*Loans and advances to directors* - NBFCs should ensure appropriate approvals are taken for granting any loans or advances aggregating to INR5 crore and above to:

- Their directors (including the Chairman/Managing Director) or relatives of directors
- Any firm in which any of their directors or their relatives is interested as a partner, manager, employee or guarantor
- Any company in which any of their directors, or their relatives is interested as a major shareholder, director, manager, employee or guarantor

An NBFC is required to obtain a declaration and provide disclosures regarding loans sanctioned to directors or their relatives in the annual financial statements in a prescribed format.

*Loans and advances to senior officers of the NBFC:* Loans and advances sanctioned to senior officers are required to be reported to the Board of Directors and appropriate approvals are required to grant any credit to a relative of the senior officer.

*Loans and advances to real estate sector –* Government/other statutory authority clearance is mandatory prior to obtaining a loan for borrowers from the real estate sector.

### Lending to NBFC-BL

A board approved policy should be developed prescribing thresholds beyond which loans to directors, senior officers and relatives of directors and entities where directors or their relatives have major shareholding should be reported to the Board. A disclosure of the loan amount is required in the annual financial statements.

These guidelines are effective from 1 October 2022.





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## 4. Amendments related to NBFCs

### Large Exposure Framework

The guidelines issued by RBI focus on identifying and managing large exposures which refers to the sum of all exposure values of an NBFC-UL to a counterparty and/or a group of connected counterparties, if it is equal to or above 10 per cent of the NBFC-UL's eligible capital base. It refines the criteria of grouping for counterparties and sets out reporting norms for large exposures.

The limits outlined by the Large Exposure Framework (LEF) are summarised below:

Particulars	NBFC-UL (Other than IFC)	NBFC-UL (IFC)
<b>Single counterparty</b>	<ul style="list-style-type: none"> <li>• 20 per cent</li> <li>• Additional 5 per cent with Board of Director's approval</li> <li>• Additional 5 per cent if exposure towards infrastructure loan/investment (Singly counterparty limit shall not exceed 25 per cent in any case.)</li> </ul>	<ul style="list-style-type: none"> <li>• 25 per cent</li> <li>• Additional 5 per cent with Board of Director's approval</li> </ul>
<b>Group of connected counterparties</b>	<ul style="list-style-type: none"> <li>• 25 per cent</li> <li>• Additional 5 per cent with Board of Director's approval</li> </ul>	35 per cent





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## 4. Amendments related to NBFCs

### Aggregation of NBFC's assets for middle layer classification (forming part of group)

On 11 October 2022, RBI clarified that the assets of NBFCs forming a part of a group should be consolidated to determine the threshold for their classification in the middle layer. Therefore, if the consolidated asset size of the group is INR1,000 crore and above, then each Investment and Credit Company (NBFC-ICC), Micro Finance Institution (NBFC-MFI), NBFC Factor and Mortgage Guarantee Company (NBFC-MGC) lying in the group would be classified as an NBFC in the middle layer and consequently all regulations applicable to the middle layer should be applicable to them.

The statutory auditors are required to certify the asset size of all the NBFCs in a group as on 31 March of every year. The certificate shall be furnished to the Department of Supervision of the RBI under whose jurisdiction the NBFCs are registered.

### Circular prescribing role of Chief Compliance Officer (CCO) and Compliance Function

Compliance function has a critical part in the overall corporate governance structure. It is essential to monitor and mitigate compliance risk. Accordingly, as per the Scale Based Regulation (SBR), NBFC-UL and NBFC-ML are required to have an independent Compliance Function and a Chief Compliance Officer (CCO). RBI, on 11 April 2022, issued certain principles, standards and procedures for Compliance Function in NBFC-UL and NBFC-ML, keeping in view the concept of proportionality.

According to the guidelines introduced, NBFC (UL) and (ML) shall put in place a Board approved policy and a Compliance Function. Senior management should submit an annual report to the Board/Board Committee of the compliance failures identified, consequential losses, regulatory actions taken, etc.

**Effective date:** NBFC-UL and NBFC-ML should put in place a Board of Directors approved policy and a compliance function, including the appointment of a CCO latest by 1 April 2023 and 1 October 2023 respectively.

### Compensation of Key Managerial Personnel (KMP) and Senior Management

Following the revised scale-based framework introduced in October 2021, the Reserve Bank of India issued guidelines on compensation of key managerial personnel and senior management in NBFCs.

The compensation policy of an NBFC should have the following characteristics:

- **Nomination and Remuneration Committee (NRC):** The applicable NBFCs should constitute an NRC which will be responsible for the implementation of the board approved compensation policy. It will have to work in liaison with the Risk Management Committee in order to align

compensation and risks. The NRC may also ensure 'fit and proper' status of the proposed /existing directors and that there is no conflict of interest in appointment of directors in the Board of Directors of the NBFC.

- **Fixed and variable pay structures:** The components of fixed and variable pay in the compensation packages should be in line with the risk-taking profile of the KMP/senior management.
- **Malus/clawback provisions:** The deferred compensation to directors/KMP/members of senior management may be subject to malus/clawback arrangements in the event of subdued or negative financial performance of the company and/or the relevant line of business or employee misconduct in any year.

**Effective date:** These guidelines would come into effect from 1 April 2023.



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## 4. Amendments related to NBFCs

### Key takeaway

- SBR framework introduced by the RBI intends to bridge the regulatory gap between the banks and large NBFCs, whose size of operations is more or less in line with that of banks. It also aims to address the risks faced by NBFCs, enhance their capacity to absorb such risk, and protect the interest of depositors who have placed their deposits with NBFCs.



(Source: RBI circular no RBI/2022-23/24 dated 11 April 2022; circular no RBI/2022-23/26, RBI/2022- 23/29, RBI/2022-23/30 and RBI/2022-23/32 dated 19 April 2022 and circular no RBI/2022-23/36 dated 29 April 2022, RBI circular on Large Exposures Framework for Non-Banking Financial Company - Upper Layer, issued on 19 April 2022 and RBI/2022-23/129 DOR.CRE.REC.No.78/03.10.001/2022-23 dated 11 Oct 2022)



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## 1. IRDAI prescribed accounting for premium on estimation basis

The Insurance Regulatory and Development Authority of India (IRDAI) provides the specific guidelines for recognition of premium. However, IRDAI observed that some of the reinsurers are accounting for the premium on an 'actual' basis, while some others are recognising it on an 'estimation' basis due to lag or delay in receiving the statement of accounts from the insurer(s) or alignment of accounting practices with parent organisation.

Considering that a significant part of premium is currently being accounted on an estimation basis, IRDAI through its circular dated 15 June 2022, prescribed the guidelines with respect to accounting and disclosures of premium recognised on an estimation basis in the annual report. In order to achieve uniform accounting, the guidelines have prescribed reinsurers to ensure that no premium is accrued/accounted on an estimate basis at least up to third quarter of each financial year in the annual financial statements.

However, for the fourth quarter ending on 31 March, where the statement of accounts has not been received in time, the premium, losses and related expenses may be accounted on an estimation basis, subject to the conditions as specified by the IRDAI.

(Source: IRDAI circular no. IRDA/F&A/CIR/MISC/123/6/2022 dated 15 June 2022).

## 2. IRDAI prescribed profit related commission to non-executive director

On 30 January 2023, IRDAI issued a circular permitting an issuer to pay profit related commission to non-executive director(s) including the non-executive director(s) appointed under Section 48A of the Insurance Act, under a deemed approval

mechanism subject to certain stipulated conditions. Earlier requirement was IRDAI approval required to pay any remuneration to non-executive directors.

(Source: IRDAI circular IRDAI/F&I/CIR/MISC/26/01/ 2023 dated 30 January 2023).





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## 3. Non-Compliance with Laws and Regulations (NOCLAR)

The Code of Ethics (the Code) issued by ICAI lays down the professional obligations and ethical responsibilities of the members whether in practice or in service. The 12 edition of the Code of Ethics (Code of Ethics, 2019) introduced requirements relating to NOCLAR for both members in service as well as in practice (professional accountants), coming into effect from 1 July 2020. However, the applicability was deferred due to COVID-19 pandemic.

On 29 September 2022, ICAI announced the applicability of NOCLAR requirements with effect from 1 October 2022.

A professional accountant, who is a member of the ICAI, may encounter instances of NOCLAR or suspected NOCLAR, while rendering professional services to a client, or carrying out professional activities for an employer. However, professional accountant is responsible to act in the public interest and should comply with principles of integrity and professional behaviour.

The provisions of NOCLAR in the Code provide detailed guidance in assessing the implications of NOCLAR instances encountered or suspected NOCLAR, while rendering professional services to a client or carrying out professional activities for an employer and provides the possible course of action for addressing the same. Section 260 of the Code provides guidance for professional accountants in employment with listed entities whereas Section 360 of the Code provide guidance for professional accountants undertaking audit engagements for listed entities.

*Also refer to KPMG in India's Accounting and Auditing Update, Chapter 3, October 2022, which provides an overview of the key requirements pertaining to NOCLAR.*

*(Source: ICAI's Ethical Standard Board announcement dated 29 September 2022).*





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## 4. Standard on Assurance Engagement 3410

In February 2021, ICAI issued Standard on Assurance Engagements (SAE) 3410 in order to strengthen assurance framework for non-financial information. SAE 3410 deals with assurance engagements to report on an entity's Greenhouse Gas (GHG) statement. It is equivalent to ISAE 3410 *Assurance Engagements on Greenhouse Gas Statements* issued by the IAASB of IFAC.

The effective date of application of SAE 3410 as follows:

- Voluntary basis for assurance reports covering periods ending on 31 March 2023
- Mandatory basis for assurance reports covering periods ending on or after 31 March 2024.

(Source: ICAI notification dated 2 May 2022).

## 5. Standard on sustainability assurance engagement

On 10 January 2023, ICAI issued Standard on Sustainability Assurance Engagements (SSAE) 3000, *Assurance Engagements on Sustainability Information* for providing assurance on sustainability information provided by the reporting entity. The standard draws reference from International Standard on Assurance Engagements (ISAE) 3000 (Revised), *Assurance Engagements Other than Audits or Reviews of Historical Financial Information* issued by the International Auditing and Assurance Standards Board (IAASB).

The standard is applicable to a practitioner being a professional accountant in public practice conducting the assurance engagement on sustainability information. The effective date for application of the standard is as follows:

- Voluntary basis for assurance reports covering periods ending on 31 March 2023
- Mandatory basis for assurance reports covering periods ending on or after 31 March 2024.

(Source: ICAI announcement dated 10 January 2023).





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## 6. ICAI publications

The table below provides an overview of some important publications released by ICAI during the year:

Publications	Particulars
<b>Implementation guides</b>	
<b>Implementation guide on reporting requirement under Rule 11(g) of the Companies (Audit and Auditors) Rules, 2014</b>	The Rule 11(g) of Audit Rules requires auditors to report on the use of accounting software by a company for maintaining its books of account which has a feature of recording audit trail.
<b>Implementation guide on reporting requirement under Rule 11(e) and Rule 11(f) of Audit Rules</b>	The Rule 11(e) requires an auditor to report on lending or receiving of funds via pass through entities marked for ultimate beneficiary and Rule 11(f) requires the auditor to report on the payment/declaration of dividend. The implementation guide contains a detailed guidance on various aspects of reporting under Rule 11(e) and 11(f) such as analysis of the Rules, management's responsibilities in respect of disclosures in financial statements under the Schedule III to the 2013 Act, various audit procedures to be performed, reporting requirements, illustrative formats of confirmation letters and management representations.
<b>Implementation Guide to Standard on Auditing (SA) 230, Audit Documentation (Revised 2022 Edition)</b>	The 'Implementation Guide to SA 230, Audit Documentation' provides implementation guidance to auditors but also provide guidance with respect to assembly of the final audit file. The revised edition of the implementation guide contains summary of the standard, introduction to the standard, Frequently Asked Questions (FAQs) on SA 230, checklist and an illustrative working paper format.
<b>Implementation Guide to SA 580, Written Representations</b>	The implementation guide will help auditors to effectively comply with the requirements of the SA 580. The guide provides an overview of SA 580, guidance on various aspects of the standard in a Question-Answer format, illustrative checklist and appendices on the illustrative format for a written representation letter.
<b>Education material</b>	
<b>Education material on Ind AS 34, Interim Financial Reporting</b>	The educational material explains the principles enunciated in the standard in the form of Frequently Asked Questions (FAQs). It provides guidance to stakeholders on content of an interim financial report, application of the recognition and measurement principles to an interim financial report and various other aspects related to such report.
<b>Education material on Ind AS 21, The Effects of changes in Foreign Exchange Rates</b>	The educational material provides guidance in the form of FAQs on various practical issues relating to application of Ind AS 21 while preparing financial statements.



Updates relating to the Companies Act, 2013



Updates relating to Ind AS



Updates relating to SEBI regulations



RBI updates



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Publications	Particulars
<b>Guidance notes</b>	
<b>Guidance note on the Companies (Auditor's Report) Order, 2020 (Revised 2022 Edition) (July 2022)</b>	Revised guidance has been issued to include revised disclosure requirements of Schedule III amended by MCA and include other revised guidance and regulatory updates relating to CARO 2020.
<b>Guidance note on tax audit under Section 44AB of the IT Act</b>	The revised guidance note incorporates all the changes in provisions in the law which have taken place in the form of amendments, judicial pronouncements, circulars etc. This guidance note is for the audits to be conducted for Assessment Year (AY) 2022-23.
<b>Guidance note on the report issued under Section 92E of the IT Act (Ninth Edition)</b>	As per Section 92E of the IT Act, every person who has entered into an international transaction or a specified domestic transaction is required to obtain a report from a chartered accountant pertaining to international transactions and specified domestic transactions, ICAI has issued a guidance note for its members with respect to this report. The guidance note incorporates all the amendments brought by the Finance Act, 2022.
<b>Guidance note on audit of banks (2023 version)</b>	The Guidance Note is divided into two sections i.e. Section A – Statutory Central Audit and Section B – Bank Branch Audit. It also contains various appendices like illustrative formats of engagement letter, auditor's report both in case of nationalised banks and banking companies, management representation letter and the text of master directions, master circulars and other relevant circulars issued by the RBI.
<b>Technical guide</b>	
<b>Technical guide on Digital Assurance</b>	The technical guide aims to help the members to adopt enhanced use of technology in audit by implementing the use of digitally available audit evidence and information. The guide provides awareness to the members about the online sources of audit evidence and explains them through various illustrations as to how to put them to better use while conducting audit.
<b>Technical guide on financial statements of non-corporate entities</b>	The objective of this technical guide is to deal with applicability of Accounting Standards (AS) to the non-corporate entities and to prescribe format of the financial statements for the non-corporate entities. It has been clarified that Limited Liability Partnerships (LLPs) form of entities are not required to follow this technical guide.
<b>Technical guide on Financial Statements of Limited Liability Partnerships (LLPs)</b>	The technical guide prescribes the format for the preparation and presentation of the financial statements of LLPs. Additionally, it provides the format for the balance sheet, cash flow statement and profit and loss account.
<b>Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961</b>	The technical guide provides guidance with respect to the responsibilities of the institution and the auditor, nature and scope of audit procedures to be performed, compliance with the Accounting Standard (AS) and Standards on Auditing (SAs) issued by ICAI.



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Publications	Particulars
<b>Technical guide on valuation of business in the telecom tower industry</b>	The technical guide aims to provide guidelines for valuation of business in telecom tower industry. It includes the study of overall telecom industry including telecom operators and telecom tower industry, business valuation methodology, industry's history and future outlook and the key drivers impacting the valuation in this indus.
<b>Technical guide on valuation of assets in the extractive industry</b>	The technical guide addresses the major issues that have an impact on the valuation of an asset in extractive industry and tries to provide instructions for doing so. It includes a study of the entire mineral properties, including various activities related to the extraction and valuation methodology, the industry's history and future prospects, and the major factors affecting this sector's valuation.
<b>Others</b>	
<b>Compendium of Indian Accounting Standards (Ind AS) (Year 2022-2023)</b>	This compendium is a comprehensive up-to-date version of Ind AS which encompasses of all the amendments issued by MCA till 5 July 2022 that are effective as of 1 April 2022.
<b>Ind AS disclosure checklist</b>	The checklist aims to help entities identify the relevant disclosures required under Ind AS to prepare and present financial statements. It contains all the amendments made in Ind AS up to March 2022 and which are effective from 1 April 2022.
<b>Financial Reporting Review Board (FRRB) - Study on compliance of financial reporting requirements (Ind AS Framework) –Volume II</b>	The publication highlights the instances of non-compliance with the financial reporting requirements observed by the FRRB during its review of the general-purpose financial statements and auditor's report of various entities. The observations are with respect to assets, equity, liabilities, statement of profit and loss, statement of cash flows, other disclosures, auditor's report and CARO, 2016.
<b>Emerging role of Auditors and CFOs in addressing Risk Management: A New Perspective</b>	The Research Committee of ICAI has published a publication on the topic of the emerging role of auditors and CFOs in addressing risk management.
<b>Report on audit quality review by the Quality Review Board (QRB)</b>	The report summarises the approach for selection of audit firms for review, QRB's expectations, key findings observed in the audit quality reviews and key takeaways for audit firms. The major observations covered in the review report are with respect to Standards on Auditing (SAs), Accounting Standards (AS) and Indian Accounting Standards (Ind AS) and compliance with relevant laws and regulations.
<b>FAQs on auditors' opinion and audit sampling</b>	This publication provides FAQs on important principles enunciated in SA 700(Revised) and SA 705(Revised) with respect to auditor's opinion and in SA 530 with respect to audit sampling.

(Sources: Implementation guide on reporting requirement under Rule 11(g) of the Companies (Audit and Auditors) Rules, 2014 (March 2023 Edition), Implementation guide on reporting requirement under Rule 11(e) and Rule 11(f) of Audit Rules (April 2022 Edition), Implementation Guide to Standard on Auditing (SA) 230, Audit Documentation (December 2022 Revised Edition), Implementation Guide to SA 580, Written Representations (February 2023 Edition), Education material on Ind AS 34, Interim Financial Reporting (June 2022 Edition), Education material on Ind AS 21, The Effects of changes in Foreign Exchange Rates (February 2023 Edition), Guidance note on the Companies (Auditor's Report) Order, 2020 (July 2022 Edition), Guidance note on tax audit under Section 44AB of the Income-tax Act, 1961 (IT Act) (Revised Eighth Edition 2022), Guidance note on the report issued under Section 92E of the Income-Tax Act, 1961 (IT Act) (Revised Ninth Edition October 2022), Guidance note on audit of banks (2023 Edition), Technical guide on Digital Assurance (January 2023 First Edition), Technical guide on financial statements of non-corporate entities (June 2022 First Edition), Technical guide on Financial Statements of Limited Liability Partnerships (LLPs) (June 2022 First Edition), Technical Guide on Audit of Charitable Institutions under Section 12A of the Income-tax Act, 1961 (September 2022 First Edition), Technical guide on valuation of business in the telecom tower industry (July 2022 First Edition), Technical guide on valuation of assets in the extractive industry (February 2023 Edition), Compendium of Indian Accounting Standards (Ind AS) (Year 2022-2023), Ind AS disclosure checklist (November 2022 Revised Edition), Financial Reporting Review Board (FRRB) - Study on compliance of financial reporting requirements (Ind AS Framework) –Volume II (2022 Edition), Emerging role of Auditors and CFOs in addressing Risk Management: A New Perspective (June 2022 Edition), Report on audit quality review by the Quality Review Board (September 2022 issue), FAQs on auditors' opinion and audit sampling issued on 25 March 2023)



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## 7. EACs issued by ICAI during the year ended 31 March 2023

Topic	Month
Accounting treatment for advance payment made towards way leave charges as a part of laying city gas distribution network under Ind AS	March 2023
Disclosure of changes in inventory of scrap in the statement to profit and loss under Ind AS	February 2023
Classification of PPE under refurbishment, depreciation thereon and its impairment under Ind AS	January 2023
Timing of capitalisation of transmission lines and sub-stations as an item of property, plant and equipment from capital-work-in-progress and also in case of modernisation work under Ind AS 16, <i>Property, Plant and Equipment</i>	December 2022
Adoption of 'net book value' method as one of the valuation techniques to measure the fair value of investments in equity instruments that do not have a quoted market price in an active market under Ind AS	November 2022
Applicability of Ind AS 108, <i>Operating Segments</i> on Section 25 company of the Companies Act, 1956 (now, Section 8 of the Companies Act, 2013)	October 2022
Classification of 'stock of track' as inventory or property, plant and equipment under Ind AS	September 2022
Presentation of accrued interest in the statement of cash flows in accordance with Ind AS 7, <i>Statement of Cash Flows</i>	August 2022
Non-reversal of impairment in respect of investment in subsidiary in separate financial statements on account of non-reversal of impairment in underlying goodwill under Ind AS 36, <i>Impairment of Asset</i> .	July 2022
Estimation of Final Mine Closure Plan and treatment of the same in the books of account on year-on-year basis under Ind AS	June 2022
Classification of business activity as operating activity or investing activity under Ind AS 7, <i>Statement of Cash Flows</i>	May 2022
Accounting treatment of borrowing costs incurred by parent company in respect of borrowings made for acquisition of investments in subsidiary company under Ind AS	April 2022

(Source: The Chartered Accountant – ICAI Journal for the period April 2022 to March 2023)



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## Our publications

### First Notes

#### SEBI consultation paper on ESG disclosures, ratings and investing

As there has been a growing emphasis towards the significant economic and financial impact of Environmental, Social and Governance (ESG) related risks and opportunities, ESG investing is becoming increasingly popular among the investors and other stakeholders. Consequently, there is a growing expectation from the companies to make comprehensive, accurate and reliable ESG related disclosures.

Considering the relevance of ESG information to stakeholders, it is important that such information is complete, comparable and relevant to the extent possible. In order to address this, on 20 February 2023, SEBI issued a 'Consultation Paper on ESG disclosures, ratings and investing'. Subsequently, on 22 February 2023, SEBI issued a consultation paper to propose a regulatory framework for ERPs (ERP consultation paper).

This issue of the First Notes provides an overview of the key proposals of the consultation papers issued by SEBI relating to regulatory framework of ESG disclosures by listed entities, ESG ratings in securities market (including regulatory framework for ERPs) and ESG investing by mutual funds.

To access the First Notes, please click [here](#).



### Accounting and Auditing Update

#### Issue No. 81 – April 2023

Many companies are undertaking supplier financing arrangements as a means to improve their working capital position. Reverse factoring is a common form of supply chain financing involving three parties: an entity that purchases a good or service, a supplier providing those goods or services and a financial institution. The arrangement typically allows the supplier to be paid by the financial institution at a date earlier than the entity pays the financial institution. As the terms of reverse factoring arrangements would vary depending on the agreement between the three parties, the presentation in the balance sheet and statement of cash flows may also change. At present, there is no explicit guidance in Ind AS or IFRS on presentation of reverse factoring arrangements in the financial statements. This edition of Accounting and Auditing Updated (AAU) contains an article which aims to provide the key considerations for presentation of reverse factoring arrangement in the balance sheet, statement of cash flows and notes to the financial statements.

Over the years, the impact of climate change has intensified and as a result investors and regulators are increasingly seeking greater transparency of climate-related information in financial statements. Considering growing implications of climate risk and lack of sufficient disclosure of climate-related information in financial statements, the regulators around the globe such as Securities Exchange Commission (SEC), the European Union (EU) and the International Sustainability Standards Board (ISSB) are working on developing the disclosure requirements relating to climate risk.

The publication carries an article which aims to provide an overview of climate related risks and its disclosures. As is the case each month, we have also included a regular round-up of some recent regulatory updates in India and internationally.

To access this publication, please click [here](#)





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**30 years**  
and beyond

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