Year end considerations

March 20201

Reporting and regulatory updates

Contents

Companies Act, 2013

Key amendments to Companies Act, 2013

Amendment to definition of 'Listed company'

Public companies which have listed their non-convertible debentures or preference shares or private companies which have listed non-convertible debt securities on private placement basis are excluded.

Relief from several stricter compliance norms applicable to equity listed companies such as filing of annual returns, maintenance of records, appointment of auditors, appointment of independent directors & woman director, constitution of board committees, filing reports of annual general meetings, etc.

Periodical financial results of unlisted companies

A new section has been inserted to enable central government to specify class of unlisted companies to prepare periodic financial results and file with registrar of companies.

The intention is to force unlisted companies with significant debt obligations, to report results more frequently.

Amendments relating to CSR provisions

- Unspent amount of ongoing CSR projects to be transferred to a separate account within 30 days from the financial yearend and to be spent within next three years as per it's CSR policy. After three years, any unspent amount should be transferred to a fund specified in Schedule VII.
- Where there are no ongoing CSR projects, the unspent amount of CSR should be transferred to the Fund, within six months from the end of financial year.
- CSR definition is now made exclusive, specifying the activities that are not considered as CSR. Amounts spent on normal course of business, political contributions, sponsorships and statutory compliances are excluded from CSR activities.
- Surplus from CSR activities should not be added to the profits of the Company. It should be spent as per CSR policy or unspent amounts shall be dealt with the above provisions.

Relaxations due to COVID-19

Holding EGMs through Video Conferencing:

In continuation of MCA circular dated 8 April 2020, MCA in September 2020 had further extended the relaxation (i.e. from 30 September 2020 to 31 December 2020) for the companies to conduct the shareholders' extra ordinary general meetings through video conferencing or through other audio/visual means without compromising on the other requirements. The period for such relaxation has now been further extended as follows:

Earlier: 31 December 2020 → Now: 30 June 2021

Relaxations due to COVID-19

Waiver of minimum residency in India:

Requirement of the Companies Act, 2013

- minimum residency in India for a period of at least 182 days in a year, by at least one director in every company, under section 149 of the Companies Act, 2013
- If not fulfilled it shall be treated as non-compliance

MCA had clarified in March 2020 that non-compliance of such minimum residency shall not be treated as a non-compliance for FY 2019-20

MCA has extended this waiver to FY 2020-21 as well

Deferment of CARO 2020

CARO 2020 Applicability

Earlier : FY commencing 1 April 2020

Now: FY commencing 1 April 2021

MCA has deferred the applicability of Companies Auditor’s Report Order, 2020 (CARO 2020) from financial years commencing on or after **1 April 2020** to financial years commencing on or after **1 April 2021**
CARO 2016 will continue to be applicable for financial year 2020-21

Other amendments to Companies Act, 2013

- **Decriminalization of the Companies Act:** The amendments have removed imprisonment for various offences, substituted fine by penalty and reduced amount of penalty across the board. In case of OPC, small companies etc. the maximum amount of penalty would be INR 2 lakhs in case of a company and INR 1 lakhs in case of an officer who is in default.
- **Remuneration to Independent director:** If a company has no profits or its profits are inadequate, a non-executive director/ independent director can now receive remuneration, in accordance with the provisions of Schedule V.
- **Direct listing in foreign jurisdictions:** The Act now permits specified public companies may issue such class of securities for the purposes of listing on permitted stock exchanges in permissible foreign jurisdictions or such other jurisdictions, as may be prescribed.
- **Penalty provision regarding reporting of fraud:** If the auditor, Company Secretary and Cost Accountant do not comply with the provisions regarding reporting of fraud, the penalty to be imposed is INR 5 lakhs and INR 1 lakhs in case of listed companies and other companies, respectively.

SEBI updates

Schemes of Arrangement by Listed Entities

Key amendments effective from 17 November 2020

Report of **audit committee** recommending the draft scheme on need for such arrangement including the rational after taking into consideration the valuation report.

Report of committee of independent directors recommending the draft scheme including that the scheme is not detrimental to the shareholders of the listed entity.

Requirement to submit the valuation report from the registered valuer.

Listed entities should ensure that the steps for listing of specified securities are completed and trading in securities commences within sixty days of receipt of the order of HC/NCLT

Non-compliance with provisions related to continuous disclosures

In order to ensure effective enforcement of continuous disclosure obligations by issuers of following listed securities, SEBI has laid down uniform structure for imposing fines for various non-compliances with continuous disclosure requirements

- Non-Convertible Debt Securities
- Non-Convertible Redeemable Preference Shares (NCRPS)
- Commercial Papers

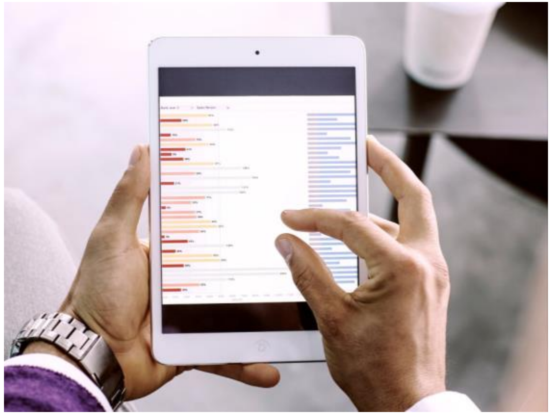
Such structure is similar to that applicable for the issuers of equity shares and convertible securities

The provisions of this circular will be applicable for compliance period ending on or after 31 December 2020.

Amendments to SEBI LODR Regulations

Key amendments include

1. Entities which have listed NCDs to always maintain 100% asset cover or asset cover as per terms of offer document for its debt securities
2. Requirement of furnishing half yearly statutory auditor certificate regarding maintenance of aforementioned asset cover and compliance with the covenants
3. Equity listed entities are required to disclose details of initiation of forensic audit within 24 hours of its initiation to stock exchange



Key considerations for the year end Financial Reporting

Key financial reporting considerations

Revenue recognition	▪ Evaluate key terms and conditions from contracts with customers and performance obligations ▪ Review terms of delivery for revenue recognition and cut off ▪ Review DSO and monitor credit limits and exposure with customers and assess collectability ▪ Review impact on hedging positions and hedge accounting
Key contracts and arrangements	▪ Significant changes if any, to contracts arising during COVID and post COVID era ▪ Contractual commitments or compensations payable or receivable, if any ▪ Changes to lease arrangements and resultant evaluation under applicable GAAP

Key financial reporting considerations

Financing arrangements

- Review of financing arrangements including facilities with banks
- Changes including moratorium obtained during COVID times
- Changes if any, to loan covenants – temporary vs long term
- Interest and other costs arising from such changes

Property, plant and equipment and intangible assets

- Plant shut down during lockdown
- Temporary delays, cancellation or other changes to capital projects
- Impact of borrowing cost during temporary suspension

Key financial reporting considerations

Companies may need to assess the carrying value of assets including goodwill and other intangible assets on the balance sheet and may need to consider if these are impaired.

Evaluate triggers

- Significant changes to the economic environment in which the entity operates
- External / internal market factors having impact on the net assets of specific cash generating units or the Company as a whole

Revisit cash flows

- Update budgets and cash flow projections which are agile, robust and reliable to reflect recent changes to sensitivities
- Consider multiple, probability-weighted cashflow projections rather than single cash flow projection

Refresh discount rates

- Update discount rates to reflect current risk environment at reporting date
- Consider risk premiums to reflect overall uncertainty in forecasting inputs, credit risk and liquidity risk
- Consider CGU and asset specific adjustments

Manage disclosure obligations

- Align with overall business and communication strategy
- Consider enhanced sensitivity, key assumptions and major sources of estimation uncertainty
- Determine different scenario information and sensitivities details
- Determine CGU specific risks (e.g. discount rate, operational and other sector issues

Key financial reporting considerations

Provision for doubtful debts and evaluation of impairment under Ind AS may result in companies facing numerous challenges such as:

- Change in segmentation of portfolio based on stress faced
- Impact of time value of money due to overdue receivables, change in terms on negotiation etc
- Macro economic factors and correlation with credit risk parameters
- Additional disclosures and explanations for impact on computations and assumptions

Companies can use similar approach under both Ind AS and Indian GAAP to reassess the provisions:

Revise portfolio segmentation + Revise cash flows, update default rates + Forward looking and other information = Recalculate loss rate

Key financial reporting considerations

Inventory valuation	▪ Evaluate normal capacity considering lockdown period ▪ Evaluate fixed overheads and expenses incurred specifically during lockdown / restart for inclusion and exclusion in inventory valuation ▪ Evaluate impact of change in product mix, demand, subsequent changes in pricing on inventory valuation and obsolescence provisioning
Other matters	▪ Consider impact of mergers, acquisitions, divestures, sale etc. ▪ Performance evaluations and provision for employee benefits including increments and bonuses. Validating assumptions for actual valuation ▪ Internal controls reporting, where applicable – approach, testing strategy, discussions with auditors, especially impact during lockdown

Companies Auditors Report Order 2020

Key reasons for changes to CARO

- Loans and advances given
- Evergreening of loans
- Role of Internal Auditor
- Going concern issues
- Last minute Auditor Resignations
- Whistle blower complaints/ Frauds
- Corporate Social Responsibility

Investments, guarantees, loans and advances

New reporting under CARO 2020 –

- Reporting to also include **investments in, guarantees or security provided** in addition to loans or advances in the nature of loans to companies, firms, LLPs or any other parties (as against those parties covered under Section 189 of the Act in the erstwhile clause)
- Additional reporting required for loans or advances in the nature of **loans granted, guarantees provided or security given** to any other entity **(Applicable to all companies other than those who are in the principal business of giving loans**); if so,
  - Reporting required for aggregate amount during the year and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security **to subsidiaries, joint ventures and associates**
  - Reporting required for aggregate amount during the year and balance outstanding at the balance sheet date with respect to such loans or advances and guarantees or security **to parties other than subsidiaries, joint ventures and associates**
- Whether **investments made, guarantees provided, security given** and the terms and conditions of the grant of all loans and advances in the nature of loans and guarantees provided are not prejudicial to the company's interest **(earlier required reporting limited to rate of interest and other terms and conditions of loans given by company)**

Investments, guarantees, loans and advances

New reporting under CARO 2020 –

- **Renewal/extension of loans which has fallen due during the year or fresh loans granted to settle overdues of existing loans given to same parties;** reporting required for
  - aggregate amount of such dues renewed/extended or settled by fresh loans and
  - Percentage of aggregate to the total loans or advances in the nature of loans granted during the year

  [not applicable to companies whose principal business is to give loans]
- Reporting on **loans and advances granted without stipulating any terms or period of repayment or repayable on demand;** reporting required for
  - aggregate amount, percentage thereof to the total loans granted, aggregate amount of loans granted to Promoters, related parties as defined in 2 (76) of the Act is required to be made

Working capital requirements

- **Sanctioned working capital limits > INR 5 crores in aggregate** from banks or financial institutions (FIs) taken on the basis of security of current assets during **any point of time of the year**

- **Quarterly returns /statements (stock statements, book debt statements, ageing analysis etc.) submitted** to banks or FIs for availing such limits are in agreement with the books of account of the company.

- Requirement to report **in case of discrepancies** between the books of account and the quarterly statements / returns submitted to the banks or Financial institutions.

Inventory verification

Additional reporting required on the appropriateness of the coverage & procedure for inventory physical verification

Whether discrepancies of 10% or more in aggregate for each class of inventory were noticed and if yes, whether they have been properly dealt with in the books of account

Internal audit requirement

New reporting under CARO 2020 –

- Auditor is required to **comment on the internal audit system** of the company and if the same is commensurate with the size and nature of the company's business
- Additional reporting on **whether the reports of the Internal auditors for the period under audit were considered by the statutory auditor**

Default in repayment of loans/borrowings or payment of interest

1

New reporting requirements in CARO, Auditor to additionally report on:

- If **terms loans were applied** for the purpose for which the loans were obtained by the company; if not, amount of loan so diverted & purpose for which it is used to be reported
- If **short term funds were utilised for long term purposes**, the nature and amount to be indicated
- If the Company has **taken any funds** from any entity/person on account of or **to meet the obligations of its subsidiaries, associates or joint ventures**, the details thereof with nature of such transactions and the amount in each case
- If the Company has **raised loans during the year on the pledge of securities** held in its subsidiaries, joint ventures or associate companies, the details and also report where the company has defaulted in repayments of such loans
- If the company has been declared a **wilful defaulter** by any bank/ FI/ other lender

2

Enhanced reporting requirements: **Additional reporting on defaults in repayment of loans or other borrowings** or has defaulted in the payment of interest thereon to **any lender** and, the period and the amount of default to be reported in the specified format

3

A **wilful** defaulter is a company/ individual that has an ability to repay the loan but has failed to do so (refer RBI guidelines for definition)

Fraud and Whistle Blower Complaints

Revised reporting –

Any fraud **by the company or any fraud on the company** noticed or reporting during the year; fraud committed by third parties outside the company like vendors, agents etc. also included for reporting under this clause. Nature and amount involved to be reported

New reporting –

Whether auditor has filed **any report under Section 143(12) in Form ADT-4** with the Central Government?

New Reporting –

Auditor required to **consider whistle-blower complaints, if any,** received during the year by the Company

Thank You

Shashi Tadwalkar

Shashi.Tadwalkar@walkerchandiok.in