

Corporate Law Update – September 2020

By CA.Chinnsamy Ganesan

This month's corporate law update deals with the major amendments brought in by the Companies (Indian Accounting Standards) Amendment Rules, 2020 and various circulars and rules issued by the Ministry of Corporate Affairs.

I. Companies (Indian Accounting Standards) Amendment Rules, 2020

Vide GSR 463 (E) dated July 24, 2020, in exercise of the powers conferred by section 133 read with section 469 of the Companies Act, 2013 (18 of 2013), the Central Government, in consultation with the National Financial Reporting Authority, issued Companies (Indian Accounting Standards) Amendment Rules, 2020. The complete text of the Companies (Indian Accounting Standards) Amendment Rules, 2020 can be accessed by clicking the link [Companies \(Accounting Standards\) Amendments Rules 2020.pdf](#)

The Companies (Indian Accounting Standards) Amendment Rules, 2020 makes the following rules further to amend the Companies (Indian Accounting Standards) Rules, 2015:

- (a) Ind AS 1 "Presentation of Financial Statements"
- (b) Ind AS 10 "Events occurring after the reporting date"
- (c) Ind AS 34 "Interim Financial Reporting"
- (d) Ind AS 37 "Provisions, Contingent Liabilities and Contingent Assets"
- (e) Ind AS 103 "Business Combination"
- (f) Ind AS 107 "Disclosure of interest in other entities"
- (g) Ind AS 109 "Financial Instruments"
- (h) Ind AS 116 "Leases"

The major amendments are given below:

Amendments to Ind AS 1 "Presentation of Financial Statements"

The term definition of the "Material" is now amended. Information is material if omitting, misstating or obscuring it could reasonably be expected to influence decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity.

Materiality depends on the nature or magnitude of information, or both. An entity assesses whether information, either individually or in combination with other information, is material in the context of its financial statements taken as a whole.

Information is obscured if it is communicated in a way that would have a similar effect for primary users of financial statements to omitting or misstating that information.

An entity shall apply these amendments prospectively for annual periods beginning on or after the 1st April, 2020.

Amendments to Ind AS 37 "Provisions, contingent liabilities and contingent assets"

The major change is the guidance on accounting for constructive obligations in respect of restructuring plans. Para 75 of the old Standard is substituted with the following:

A management or board decision to restructure taken before the end of the reporting period does not give rise to a constructive obligation at the end of the reporting period unless the entity has, before the end of the reporting period-

- (a) started to implement the restructuring plan; or

- (b) announced the main features of the restructuring plan to those affected by it in a sufficiently specific manner to raise a valid expectation in them that the entity will carry out the restructuring.

If an entity starts to implement a restructuring plan, or announces its main features to those affected, only after the reporting period, disclosure is required under Ind AS 10 Events after the Reporting Period, if the restructuring is material and non-disclosure could reasonably be expected to influence decisions that the primary users of general purpose financial statements make on the basis of those financial statements, which provide financial information about a specific reporting entity

Amendments to Ind AS 103 “Business Combination”

The definition of business is substituted with the new definition “Business is an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing goods or services to customers, generating investment income (such as dividends or interest) or generating other income from ordinary activities”

An entity shall apply these amendments to business combinations for which the acquisition date is on or after the beginning of the first annual reporting period beginning on or after the 1st April, 2020 and to asset acquisitions that occur on or after the beginning of that period.

Para B7A and Para B7B has been included to prescribe the – Optional test to identify concentration of fair value

An entity may elect to apply, or not apply, the test. An entity may make such an election separately for each transaction or other event.

The concentration test has the following consequences:

- (a) if the concentration test is met, the set of activities and assets is determined not to be a business and no further assessment is needed;
- (b) if the concentration test is not met, or if the entity elects not to apply the test, the entity shall then perform the assessment set out in paragraphs B8–B12D.

According to Para B7B, the concentration test is met, if substantially all of the fair value of the gross assets acquired is concentrated in a single identifiable asset or group of similar identifiable assets. It also gives elaborate guidance to determine concentration of fair value.

Amendments to Ind AS 116 “Leases”

Para 46A is inserted to provide as a practical expedient, a lessee may elect not to assess whether a rent concession that meets the conditions in paragraph 46B is a lease modification. A lessee that makes this election shall account for any change in lease payments resulting from the rent concession the same way it would account for the change applying Ind AS 116 if the change were not a lease modification.

Per Para 46B, the practical expedient in paragraph 46A applies only to rent concessions occurring as a direct consequence of the covid-19 pandemic and only if all of the following conditions are met:

- (a) the change in lease payments results in revised consideration for the lease that is substantially the same as, or less than, the consideration for the lease immediately preceding the change;
- (b) any reduction in lease payments affects only payments originally due on or before the 30th June, 2021 (for example, a rent concession would meet this condition if it results in reduced lease payments on or before the 30th June, 2021 and increased lease payments that extend beyond the 30th June, 2021); and

(c) there is no substantive change to other terms and conditions of the lease.

II. Application to be made by Companies seeking for extension time to hold Annual General Meeting. No automatic extension given by Ministry of Corporate Affairs

Ministry of Corporate Affairs vide General Circular No.28/ 2020 dated August 17, 2020 informed that the companies which are unable to hold their AGM for the financial year ended on 31.03.2020, despite availing the relaxations provided in the G.C. 20/2020 ought to file their applications in form No. GNL-1 for seeking extension of time in holding of AGM for the financial year ended on 31.03.2020 with the concerned Registrar of Companies on or before 29.09.2020.

It may be noted from the above that there is no automatic extension time to hold AGM but every company shall apply in Form GNL1 with the concerned Registrar of Companies for extension of time on or before 29.09.2020.

The Registrars of Companies are advised to consider all such applications (filed in Form No. GNL-1) liberally in view of the hardships faced by the stakeholders and to grant extension for the period as applied for (upto three months) in such applications.

Please click here to access the complete circular [AGM Extension - General Circular No.28_17082020.pdf](#)

III. Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013 (General Circular No.23/ 2020 dated June 17, 2020)

On account of the pandemic caused by the COVID-19, representations have been received in this Ministry, requesting that the timelines related to filing of certain charge related forms may be suitably relaxed so as to provide a window of compliance for the registration of charges. Under the Companies Fresh Start Scheme, 2020 as laid out in the General Circular No. 12 / 2020, dated 30.03.2020, the benefit of waiver of additional fees was not extended to the charge related documents. Therefore, it has been suggested that some dispensation may be provided for filing of charge related documents as well.

In view of the above, the Central Government in exercise of its powers under section 460 read with section 403 of the Act and the Companies (Registration Offices and Fees) Rules, 2014 (Fees Rules) has decided to introduce a Scheme, namely "Scheme for relaxation of time for filing forms related to creation or modification of charges under the Companies Act, 2013" for the purpose of condoning the delay in filing certain forms related to creation/ modification of charges.

Please click here to access the complete circular [Circular23_17062020.pdf](#)

IV. Extension of the last date for creation of Deposit Repayment Reserve of 20% u/s 73 (2) (c) of the Companies Act, 2013 and to invest or deposit 15% of amount of debentures u/r.18 of Companies (Share capital and Debentures) Rules 2014 (General Circular No.24/ 2020 dated June 19, 2020)

In continuation to General Circular No. 1112020 dated 24th March 2020 and keeping in view the requests received from various stakeholders seeking extension of time for compliance of the subject requirements on account of covid-19, it has been decided to further extend the time in respect of matters referred to in paras V, VI of the aforesaid circular, from 30th June 2020 to 30th September 2020. All other requirements shall remain unchanged.

Please click here to access the complete circular [Circular24_20062020.pdf](#)

V. Extension of the last date of filing of Form NFRA-2 (General Circular No.26/ 2020 dated July 6, 2020)

In continuation of the Ministry's General circular No. 19/ 2020 dated 30th April, 2020 the time limit for filing of Form NFRA2, for the reporting period FY 2018-19, will be 270 days from the date of deployment of this form on the website of National Financial Reporting Authority (NFRA).

Please click here to access the complete circular [GeneralCircularNo.26_06072020.pdf](#)

VI. Report of the Committee on Business Responsibility Reporting

The Securities and Exchange Board of India has mandated top 500 listed companies by market capitalisation to make disclosures on business responsibility and sustainability indicators contained in the National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business (NVEGs) since 2012 through Business Responsibility Reporting (BRRs).

The Committee on Business Responsibility was constituted under the Chairmanship of Mr. Gyaneshwar Kumar Singh, the Joint Secretary to Government of India, for finalising Business Responsibility Reporting formats for listed and unlisted companies under the NGRBC. The Committee comprised SEBI, MCA, the three professional institutes, and two eminent professionals who had worked on developing the NGRBCs. The Committee and its sub-committees extensively and minutely deliberated over each and every element of the proposed formats to give them their current form. Deliberations with NITI Aayog, sustainability heads of large businesses, and representatives from the MSME sector contributed to the process. The Committee examined the NGRBC-BRR framework within the broader context of UNGPs, SDGs, and other widely accepted non-financial/sustainability reporting frameworks.

The Committee submitted its report titled "Report of the Committee on Business Responsibility Reporting" on May 8, 2020.

To better reflect the intent and scope of reporting requirement, the Committee recommends that the Business Responsibility Report be called the Business Responsibility and Sustainability Report (BRSR). The Committee also proposes two formats for disclosures: a comprehensive format and a Lite version

The Committee is of the view that implementation of the reporting requirements should be done in a gradual and phased manner. With regard to listed entities, reporting may be done by top 1000 listed companies (by market capitalisation) as applicable presently, or as prescribed by SEBI. The reporting requirement may be extended by MCA to unlisted companies above specified thresholds of turnover and/or paid-up capital. Further, the Committee recommends that smaller unlisted companies below this threshold may, to begin with, adopt a lite version of the format, on a voluntary basis.

The Committee recommends that the BRSR be integrated with the MCA21 portal. This would ensure that all information already filed on the MCA21 portal by companies would be automatically filled while filing the BRSR.

The Committee also recommends that a Guidance Note on BRSR should be prepared to enable companies to disclose their actions on the principles in a more meaningful manner. As a long term measure, the Committee envisions that the information captured through BRSR filings be used to develop a Business Responsibility-Sustainability Index for companies.

The proposed formats in this report are an update on the existing BRR to incorporate the current global practices in non-financial sustainability reporting based on the NGRBCs.

Please click here to access the complete report [BRR_11082020.pdf](#)