

KNOWLEDGEWARE

OCTOBER 2016

REGULATORY

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Editorial:

Dear Esteemed Readers,

It's our pleasure to share with you October 2016 Newsletter with key regulatory updates in India.

Once again we wish all our readers on the occasion of Diwali and the New Year!

Following recent trend, last month ended with the release of three important Master Directions 2016 from country's banking regulator-Reserve Bank of India (RBI), addressed to Non-banking Financial Companies (NBFCs) relating to Monitoring of Frauds, NBFC returns, and NBFC's Auditors' Directions. Additions/modifications of past circulars incorporated in Master Directions which have been covered in this edition.

RBI has also:

- issued Operating Guidelines for Payment Banks (PBs), supplementary to the Guidelines for Licensing of Payment Banks ('Licensing Guidelines) dated November 27, 2014 to take place with an immediate effect
- allowed extension for matured and unpaid External Commercial Borrowing (ECB) subject to fulfilment of certain conditions
- with the help of Central Government reviewed the FDI Policy on various sectors and made amendments in the Consolidated FDI Policy Circular 2015 driving towards more simplification and clarity
- decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are regulated by any financial sector regulators including RBI, SEBI, IRDAI, NHB etc.

From the desk of the Ministry of Corporate Affairs (MCA), Companies (please check exact title of rules) (Incorporation) Forth Amendment Rules, 2016 is now in force with an aim to reduce paperwork and make process of incorporation of a company easier and faster especially in case of effecting conversion of Public limited Company into Private Limited Company, conversion of company limited by guarantee into company limited by Shares etc.

The Institute of Chartered Accountants of India (ICAI) has already constituted an 'Ind AS Transition Facilitation Group' (ITFG) of Ind AS (IFRS) Implementation Committee for providing clarifications on timely basis on various issues related to the applicability and /or implementation of Ind AS under the Companies (Indian Accounting Standards) Rules, 2015, raised by preparers, users and other stakeholders. Fifth clarification was issued in the last month covering various practical applications.

B.K. KHARE & Co

CHARTERED ACCOUNTANTS

With things generally moving in the right direction on all fronts - policy moves and clarifications on how these are to be implemented as summarised above, the expected introduction of GST, India's firm and decisive actions in dealing with terrorism and garnering global support, the recent events in India's premier industrial house somehow cast a blemish on all things going right. However, viewed from a different perspective this episode being played out in public is transparency in a manner of speaking instead of being done opaquely behind closed boardroom doors.

Thank you.

Happy reading!

Yours Sincerely,
Knowledgeware Team
B. K. Khare & Co.

Reserve Bank of India (RBI)

Reserve Bank of India (RBI) issues circular on Import Data Processing and Monitoring System (IDPMS)

1. The Reserve Bank of India has issued circular on Import Data Processing and Monitoring System (IDPMS), which will be applicable to AD Category I banks. The circular has been issued with reference to A.P. (DIR Series) Circular No.65 dated April 28, 2016 read with Section 5 of the Foreign Exchange Management Act 1999 (42 of 1999), Government of India Notification No. G.S.R. 381(E) dated May 3, 2000 viz., Foreign Exchange Management (Current Account Transaction) Rules, 2000 on import of goods and A.P. (DIR Series) Circular No. 9 dated August 24, 2000 which outlines the procedure, mode/manner of payment for imports and submission of related returns.
2. IDPMS, which has been developed to enhance ease of doing business, facilitate efficient data processing for payment of import transactions and effective monitoring thereof, will go live from 10th October, 2016.
3. Customs department has modified the Bill of Entry (BOE) format to capture the AD Code of bank and SEZ. Primary import transaction data will be made available to respective AD banks through IDPMS, to log subsequent activities and monitor import transactions.
4. The circular provides detailed operational directions / guidelines for the use of IDPMS, including conditions for extension of time for submission of BOE and write off of import payables.
5. The directions contained in this circular have been issued under Section 10(4) and 11(1) of the FEMA, 1999 (42 of 1999) and are without prejudice to permissions / approvals, if any, required under any other law.

RBI Circular no: RBI/2016-17/78 dated October 6, 2016.

Reserve Bank of India (RBI) issues circular on Priority Sector Lending – Revised Reporting System

1. The Reserve Bank of India has revised the formats for Banks to be used for quarterly and annual reporting of Priority Sector Lending. The banks will be required to furnish the information in the revised formats within fifteen days from the end of the quarter or one month from the end of the financial year, as the case may be.

RBI Circular no: RBI/2016-17/79 dated October 6, 2016.

Operating Guidelines for Payment Banks

RBI has issued Operating Guidelines for Payment Banks (PBs), supplementary to the Guidelines for Licensing of Payment Banks ('Licensing Guidelines) dated November 27, 2014 and will take immediate effect.

The Guidelines cater to the Prudential and Governance issues, including Risk management, CRR/SLR disclosures, Ownership and control regulations and Banking Operations issues. Following are some of the major highlights from the Guidelines, which provide much needed clearer insights into these areas:

- Para 7 (i) Bank Deposits: Under the current Guidelines, PBs can accept only Savings and Current deposit and the aggregate limit per customer shall not exceed Rs. 100,000. Now however, the RBI will have no objection to the PBs making arrangements with any other scheduled commercial bank/SFB, for amounts in excess of the prescribed limits, to be swept into an account opened for the customer at that bank. This arrangement should be activated with the prior written consent of the customer.
- Para 8 KYC Requirements: At their discretion, PBs may (like all other banks) decide not to take the wet signature while opening accounts and instead rely upon the electronic authentication/confirmations. However, all the extant regulations concerning KYC including those covering Central KYC Registry and any subsequent instructions in this regard, as applicable to commercial banks, would be applicable to PBs. PBs should also ensure that every customer comply with the KYC regulations, which could include simplified account opening procedures
- Para 9 Foreign Exchange Business: PBs shall
 - a. Comply with all the conditions attached with the AD Cat II license that will be issued by the FED, CO
 - b. Implement the provisions of Foreign Contribution (Regulations) Act, 2010 (As applicable to Commercial Banks)
- Para 10 Other Banking Services: PBs may, at their option, exchange mutilated and defective notes at their branches, subject to compliance with RBI norms.
- Para 12 Implementation of Ind AS: Implementation of Ind AS would be applicable to PBs once they become scheduled banks.

Source: RBI/2016-17/80 DBR.NBD.No.25/16.13.218/2016-17 dated October 6, 2016

Operating Guidelines for Payment Banks

RBI has issued Operating Guidelines for Small Finance Banks (SFBs), supplementary to the Guidelines for Licensing of Small Finance Banks ('Licensing Guidelines) dated November 27, 2014 and will take immediate effect.

The Guidelines cater to the Prudential and Governance issues, including Risk management, CRR/SLR disclosures, Ownership and control regulations and Banking Operations issues. Following are some of the major highlights from the Guidelines, which provide much needed clearer insights into these areas:

- Para 7 (i) Bank Deposits: All RBI and BR Act provisions and RBI directions relating to minimum balance, inoperative accounts and unclaimed deposits including transfer of such deposits to the Depositors Education and Awareness Fund maintained by RBI on regular basis, nominations, cheques/drafts, etc., will be applicable to SFBs.
- Para 8 KYC Requirements: At their discretion, SFBs may (like all other banks) decide not to take the wet signature while opening accounts and instead rely upon the electronic authentication/confirmations of the terms and conditions of the banking relationship/account relationship keeping in view their confidence in the legal validity of such authentications/confirmations. However, all the extant regulations concerning KYC including those covering Central KYC Registry and any subsequent instructions in this regard, as applicable to commercial banks, would be applicable to SFBs.
- Para 9 Foreign Exchange Business: SFBs shall
 - c. Comply with all the conditions attached with the AD Cat II license that will be issued by the FED, RBI. SFBs may conduct some additional foreign exchange businesses as may be specifically permitted by the Reserve Bank.
 - d. Implement the provisions of Foreign Contribution (Regulations) Act, 2010 (As applicable to Commercial Banks)
- Para 10 Other Banking Services:
 - Currency Distribution: SFBs may, at their option, exchange mutilated and defective notes at their branches, subject to compliance with RBI norms.
 - Credit Information Reporting:
 - (i) SFBs should become members of all the four credit information companies (CICs) and report all credit data to them as per current RBI directions.
 - (ii) SFBs should also follow the RBI directions regarding declaration and reporting of large defaulters' and willful defaulters' data to the CICs.
- Para 12 Implementation of Ind AS: Implementation of Ind AS would be applicable to SFBs once they become scheduled banks.

Source: RBI/2016-17/81 DBR.NBD.No.26/16.13.218/2016-17 dated October 6, 2016

Reserve Bank of India (RBI) issues circular on Review of sectoral caps and simplification of Foreign Direct Investment (FDI) Policy

2. The Reserve Bank of India has issued circular on Review of sectoral caps and simplification of Foreign Direct Investment (FDI) Policy.
3. The Central Government has reviewed the FDI Policy on various sectors and has made amendments in the Consolidated FDI Policy Circular 2015 vide the press notes issued from time to time.
4. The present circular provides the salient features of the amendments, specifically relating to –
 - i. Sectoral Cap i. e. the maximum amount which can be invested by foreign investors in an entity;
 - ii. "Total foreign investment" in an Indian company;
 - iii. Portfolio investment;
 - iv. Onus on compliance with Sectoral / Statutory Caps to be on the investee company;
 - v. Conditions for treating a company or an LLP as owned by resident Indian citizens;
 - vi. Meaning of "Control";
 - vii. FDI investment in LLP through automatic route;
 - viii. Foreign investment by swap of shares;
 - ix. Investment by NRI;
 - x. Foreign investment up to 100% through automatic route in Plantation Sector;
 - xi. Meaning of "Real Estate Business";
 - xii. Permission for investment up to 100% through automatic route in "Manufacturing" and permission to sell the products;
 - xiii. Permission to the entity engaged in single brand retail trading to undertake trading through e-commerce;
5. To effect these changes the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 have been amended through the Foreign Exchange (Transfer or Issue of Security by a Person Resident outside India) (Tenth Amendment) Regulations, 2015 notified vide Notification No. FEMA.354/2015-RB dated October 30, 2015, (c.f. G.S.R No.823 (E) dated October 30, 2015), the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Amendment) Regulations, 2016 notified vide Notification No. FEMA 361/2016-RB dated February 15, 2016 (c.f. G.S.R No 165(E) dated February 15, 2016) and Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016 notified vide Notification No. FEMA 362/2016-RB dated February 15, 2016, (c.f. G.S.R No. 166 (E) dated February 15, 2016).

RBI Circular no: RBI/2016-17/88 dated October 20, 2016.

Reserve Bank of India (RBI) allows 100% Foreign Direct Investments (FDI) in other financial services

The extant FEMA regulations updated in 2000 namely Principal Regulations permitted foreign investment up to 100%, under the automatic route, in Non-Banking Finance Companies (NBFCs) engaged in the 18 activities listed therein and subject to the conditions specified thereon including minimum capitalisation norms.

On a review, in consultation with the Government of India, it has been decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are regulated by any financial sector regulators including RBI, SEBI, IRDAI, NHB etc.

Key features of the circular are:

- for financial services activities which are not regulated or partly regulated by any financial sector regulator or where there is lack of clarity regarding regulatory oversight, foreign investment will be allowed up to 100% under the Government approval route.
- Foreign investment in an activity which is specifically regulated by an Act, will be restricted to foreign investment levels/limits, if any, specified in that Act.
- Downstream investment by any entity engaged in 'Other Financial Services' will be subject to extant sectoral regulations and provisions of Principal Regulations.
- decided to allow foreign investment up to 100% under the automatic route in 'Other Financial Services'. Other Financial Services will include activities which are regulated by any financial sector regulators including RBI, SEBI, IRDAI, NHB etc.

Now the latest Principal Regulations will be referred as Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Thirteenth Amendment) Regulations, 2016

Circular reference: RBI/2016-17/90.dated October 20, 2016

Reserve Bank of India (RBI) issues circular on External Commercial Borrowings (ECB) – Extension and conversion

6. The Reserve Bank of India has issued circular on External Commercial Borrowings (ECB) – Extension and conversion, in order to simplify the process of dealing with matured but unpaid ECB.
7. Accordingly, AD Category – I banks have been empowered to approve requests from the borrowers for extension of matured but unpaid ECBs subject to the following conditions –
 - i. No additional cost is incurred.

- ii. Lender's consent is available.
- iii. Reporting requirements are fulfilled.
8. AD Category – I banks can also approve conversion of such ECBs into equity, subject to the same conditions as above and provided conversion is within the terms mentioned in paragraph C.14 of Annex to A.P. (DIR Series) Circular No.32 dated November 30, 2015.
9. In case the borrower has availed credit facility from Indian banking system, the extension or conversion into equity shall be made subject to applicable prudential guidelines issued by the Department of Banking Regulation of RBI, including guidelines on restructuring. In case of conversion into equity, consent of, or at-least information to the other lenders, if any shall also be required.

RBI Circular no: RBI/2016-17/92 dated October 20, 2016.

Master Direction - Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016

In supersession of the Master Circular Frauds – Future Approach towards Monitoring of Frauds in NBFCs, RBI has issued the Master Direction - Monitoring of Frauds in NBFCs (Reserve Bank) Directions, 2016. The Master direction is in line with the erstwhile Master Circular except following additions have been carried out.

- All NBFCs have been advised to extend possible assistance to the Police/CBI/Court for investigation/trial. Vigorous follow up is needed with the police authorities and / or court for final disposal of fraud cases.
- Annual review of Frauds by NBFCs and reporting to the Board should cover the aspect whether timely reporting of frauds to the concerned authorities has been done or not.

Notification No.RBI/DNBS/2016-17/49 Master Direction DNBS. PPD.01 /66.15.001/ 2016-17 dated 29 September 2016

Master Direction – NBFC Returns (Reserve Bank) Directions, 2016

In supersession of the Master Circular on returns submitted by the NBFCs, RBI has now issued NBFC Returns (Reserve Bank) Directions, 2016. In addition to the various returns that are required to be submitted by the NBFCs based on their classification/ categories, the direction also provides for the purpose/rationale for each return/ certificate that needs to be filed. The following additions/ changes have been introduced from the earlier circular:

- All NBFCs to put in place a reporting system for filing various returns within the prescribed timeframe. Delay in filing would be liable for penal action as prescribed under the provisions of Chapter V of the RBI Act.

- Submission of return not to be delayed for reasons such as finalization/completion of the Audit of the annual accounts.
- All returns to be filed on-line by an official of the NBFC specifically authorised by the Board of Directors.
- Any information/particulars furnished by an NBFC if found incorrect, would be viewed as serious matter by the RBI
- Formats for certain certificates/ Returns have been introduced to ensure uniformity across NBFCs as under:
 - Statutory Auditor's Certificate: Annual certificate that the NBFC is engaged in the business of NBFC requiring it to hold a certificate of registration (CoR) granted under Section 45-IA of the RBI Act;
 - Quarterly return to be submitted by NBFC having overseas investment;
 - Half-yearly statement of interest rate futures transactions entered into for the purpose of hedging by NBFC.
- Timelines defined / modified for certain Returns as under:

Name of the Return	Periodicity	Reference date	Reporting Time	Due On	Applicable to
Statutory Auditor Certificate	Annual	31 st March	One month from date of finalisation of Balance Sheet.	Not later than 31 st Dec.	All NBFCs
Reporting to Central Repository of Information on Large Credits (CRILC)	Quarterly	31 st March/ 30 th June/ 30 th Sept/ 31 st Dec.	21 days	21 st April/ 21 st July/ 21 st Oct/ 21 st Jan	NBFC-D NBFC- ND-SI
Reporting of Special Mention Account status (SMA-2)	Weekly	On Every Friday			NBFC-D NBFC- ND-SI

Name of the Return	Periodicity	Reference date	Reporting Time	Due On	Applicable to
return)					
Overseas Investments	Quarterly	31st March/ 30th June/ 30th Sept/ 31st Dec.	Within 15 days (Changed from 30 days)	21st April/ 21st July/ 21st Oct/ 21st Jan	All NBFCs having overseas Investment

Notification No.RBI/DNBS/2016-17/47 Master Direction DNBS.PPD.02 /66.15.001 / 2016-17 dated September 29, 2016

RBI issues NBFC Auditor's Report (Reserve Bank) Directions, 2016

In supersession of the NBFC Auditor's Report (Reserve Bank) Directions, 2008, RBI has issued NBFC Auditor's Report (Reserve Bank) Directions, 2016. The key changes/ modifications as compared to earlier directions are as under:

Sr.No	Old Clause in Directions, 2008	New Insertion/ Modified Clauses in Directions, 2016
In the case of all NBFCs, the auditor's report should include a statement on:		
1	Whether the company is engaged in the business of non-banking financial institution and whether it has obtained a Certificate of Registration (CoR) from the Bank.	<p><u>Modified Point:</u></p> <p>In the case of all NBFCs, the auditor's report should include a statement on:</p> <p>Conducting Non-Banking Financial Activity without a valid Certificate of Registration (CoR) granted by the Bank is an offence under chapter V of the RBI Act, 1934.</p> <p>Therefore, if the company is engaged in the business of non-banking financial institution as defined in section 45-I (a) of the RBI Act and meeting the Principal Business Criteria (Financial asset/income pattern) as laid issued by DNBR, auditor shall examine whether the company has obtained a Certificate of Registration (CoR) from the Bank.</p>
2	In the case of a company holding CoR issued by the Bank, whether that company is entitled to continue to hold such CoR in terms of its asset/income pattern as on March 31 of the applicable year.	<p><u>Modified Point:</u></p> <p>In case of a company holding CoR issued by the Bank, whether that company is entitled to continue to hold such CoR in terms of its Principal Business Criteria (Financial asset/income pattern) as on March 31 of the applicable year.</p>
3		<p><u>New Insertion:</u></p> <p>Whether the non-banking financial company is meeting the required net owned fund requirement as laid down in Master Direction - NBFC-Non-SI- ND Directions, 2016 and Master Direction - NBFC - SI- ND and Deposit taking</p>

Sr.No	Old Clause in Directions, 2008	New Insertion/ Modified Clauses in Directions, 2016
		Company, Directions 2016
4	Statutory Auditor Certificate in terms of Para 15 of the Prudential Norms needs to be provided for: <ul style="list-style-type: none"> ▪ NBFC Deposit Accepting or Holding Directions 2007, ▪ NBFC-ND-SI, Directions, 2015 and ▪ NBFC- Non SI- ND Directions, 2015 	<u>New Insertion:</u> A standardised format for the said Statutory Auditor's Certificate (SAC) to be submitted by NBFCs has been issued vide DNBS.PPD.02/66.15.001/2016-17 Master Direction-Non-Banking Financial Company Returns (Reserve Bank) Directions, 2016.
5	Based on the criteria set forth by the Bank in Company Circular No. DNBS.PD.CC No.85/03.02.089/2006-07 dated December 6, 2006 for classification of NBFCs as Asset Finance Company (AFC), whether the NBFC has been correctly classified as AFC as defined in NBFC Acceptance of Public Deposits (Reserve Bank) Directions, 1998 with reference to the business carried on by it during the applicable financial year.	<u>Deleted</u>
6	Based on the criteria set forth by the Bank in the Notification viz. NBFC-Micro Finance Institutions (Reserve Bank) Directions, 2011 dated December 02, 2011 for classification of NBFCs as NBFC-MFIs, whether the NBFC has been correctly classified as NBFC-MFI as defined in the said Directions with reference to the business carried on by it during the applicable financial year.]	<u>Deleted</u>
In the case of NBFC accepting/holding public deposits		
7	Whether an <i>Asset Finance Company having Capital to Risk Assets Ratio (CRAR) less than 15% or an Investment Company or a Loan Company</i> as defined in paragraph 2(1) (ia), (vi) and (viii) respectively of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 1998 is accepting "public deposit"	<u>Modified Point</u> Whether the <i>non banking financial company</i> is accepting "public deposit" without minimum investment grade credit rating from an approved credit rating agency as per the provisions of Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016.

Sr.No	Old Clause in Directions, 2008	New Insertion/ Modified Clauses in Directions, 2016
	without minimum investment grade credit rating from an approved credit rating agency;	
8		<p><u>New Insertion</u> Whether the company has violated any restriction on acceptance of public deposit as provided in Non-Banking Financial Companies Acceptance of Public Deposits (Reserve Bank) Directions, 2016</p>
9	<p>In case of NBFCs having Net Owned Funds of Rs. 25 lakh and above but less than Rs. 200 lakhs, whether the public deposit held by the companies is in excess of the quantum of such deposit permissible to it in terms of Notification No. DNBS. 199/CGM (PK) - 2008 dated June 17, 2008 and whether such company:</p> <p>(a) has frozen its level of deposits as on the date of that Notification; or</p> <p>(b) has brought down its level of deposits to the level of revised ceiling of deposits in terms of that Notification.</p>	<p><u>Deleted</u></p>
In the case of a NBFC not accepting public deposits		
10		<p><u>New Insertion</u> Whether the NBFC has been correctly classified as NBFC Micro Finance Institutions (MFI) as defined in the NBFC – Non-Systemically Important Non-Deposit taking Company (Reserve Bank) Directions, 2016 and Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016</p>

Notification no.RBI/DNBS/2016-17/48 Master Direction DNBS. PPD.03/66.15.001 / 2016-17 dated September 29, 2016

Securities and Exchange Board of India (SEBI)

Exclusively listed companies (ELC) of De-recognized/Non-operational/exited Stock Exchanges placed in the Dissemination Board (DB)

To safeguard investors of companies listed on non-operational bourses, SEBI on October 11, 2016 allowed such companies to raise capital through preferential allotment route to meet listing requirements. Also SEBI issued a new framework to provide an exit mechanism to investors of such companies.

SEBI vide circular dated April 17, 2015 had asked ELC to get listed on the nation-wide stock exchanges within eighteen months.

The new directive comes as ELC of De-recognised, non-operational or exited stock exchanges have sought time clarifications on raising of further capital and the process of exit of such firms from the DB.

The ELC which fails to list on the nation-wide stock exchanges under the mechanism would provide exit opportunity to its investors.

SEBI will take action against companies that will continue to be on the DB.

The Company, its directors, promoters and the companies which are promoted by any of them shall not directly or indirectly associate with the securities market or seek listing of any shares for 10 years from the exit from DB.

SEBI will freeze shares of the promoters and directors and attach the bank accounts and other assets of promoters and directors to compensate investors.

SEBI/HO/MRD/DSA/CIR/P/2016/110 Dated: October 10, 2016

Ministry of Corporate Affairs (MCA)

The Companies (Incorporation) Fourth Amendment Rules, 2016

The Central Government, on 1st October 2016, has amended the Companies Incorporation Rules 2014 and introduced the Companies (Incorporation) Fourth Amendment Rules, 2016.

- Under amended rule 33(2), for effecting conversion of Public limited Company into Private Limited Company, a copy of order of the Tribunal approving the alteration, shall be filed with the Registrar in Form INC-27 with fee together with printed copy of articles within 15 days from the date of receipt of the order from the Tribunal. Here, Central Government has replaced the word “competent authority to Tribunal” and “Central Government to Tribunal”.
- Rule 38 has been inserted w.e.f 2nd October 2016. Simplified Proforma for Incorporating Company Electronically (SPICE) has been introduced in Form no- INC 32 along with e-Memorandum of Association (MOA) in Form no INC-33 and e- Articles of Association (AOA) in form no INC- 34. Form no. INC-29, INC-30 and INC-31 shall be substituted with new form no INC-32 (SPICE), INC-33(e-MOA) and INC-34 (e-AOA) respectively.
- Rule 39 has been inserted w.e.f 1st November 2016 to enable conversion of company limited by guarantee into company limited by Shares other than section 25 of Companies Act 1956 or section 8 of Companies Act 2013 based on following terms and conditions:
 - Share capital shall be equivalent to the guarantee amount.
 - Special resolution shall be passed authorizing such a conversion omitting the guarantee clause in its MOA and altering the AOA to provide for the articles as are applicable for a company limited by shares.
 - Copy of special resolution to be filed with the Registrar of Companies (ROC) in Form no. MGT-14 within 30 days from the date of passing of the same along with fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.
 - Application in Form No. INC-27 to be filed with ROC within 30 days from date of the passing of the special resolution enclosing the altered MOA and altered AOA and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee provided by its members.

ROC shall issue certificate of incorporation in Form No INC-11B within thirty days from the date of receipt of application complete in all respects and upon approval of Form No INC-27.

Introduction of SPICE will reduce paperwork and will make incorporation of a company easy and fast. The rules also entail the provision to apply for company incorporation with a pre-approved company name.

These Rules shall come into force on the date of its publication in the Official Gazette.

Notification No: G.S.R...(E) dated 1st October 2016

Institute of Chartered Accountants (ICAI)

Ind AS Transition Facilitation Group' (ITFG) of Ind AS (IFRS) Implementation

'Ind AS Transition Facilitation Group' (ITFG) of Ind AS (IFRS) Implementation Committee has been constituted for providing clarifications on timely basis on various issues related to the applicability and /or implementation of Ind AS under the Companies (Indian Accounting Standards) Rules, 2015, raised by preparers, users and other stakeholders.

The Group after due deliberations decided to issue following clarifications on the issues considered at the meeting held on September 19, 2016:

1. A listed company, whose net worth is less than Rs. 500 crores but more than Rs. 200 crores, has formed subsidiary having share capital more than Rs. 500 crore on Mar 2015 for divestment purpose.

As per Rule 4(2)(b) of the Companies (Indian Accounting Standards) Rules, 2015, " for companies which are not in existence on 31st March, 2014 or an existing company falling under any of thresholds specified in sub-rule (1) for the first time after 31st March, 2014, the net worth shall be calculated on the basis of the first audited financial statements ending after that date in respect of which it meets the thresholds specified in sub-rule (1)."

In the given case, Ind AS will be mandatorily applicable to subsidiary company from financial year, 2016-

17 since it's net worth as on 31st March, 2015 is more than Rs. 500 crores.

As already clarified in Issue No. 5 of ITFG Clarification Bulletin 3, consistent approach would be followed to consider the definitions given in Ind AS both for the purpose of preparing financial statements and determining the relationship with another entity (i.e. subsidiary, associate, joint venture etc.) for the purpose of applicability of Ind AS. Therefore, the relationship between a listed company and it's subsidiary company incorporated for divestment should be determined in accordance with Indian Accounting Standards (Ind AS) 110 Consolidated Financial Statement.

If holding - subsidiary relationship is established in accordance with Ind AS 110 as at 31st March, 2015, then that listed company should comply with Ind AS from the financial year 2016-17, since Ind AS are applicable to it's subsidiary from financial year 2016-17 irrespective of the fact that such company gets covered in Phase II of transition.

2. In case of electricity companies, they collect security deposit at the time of issue of electricity connection, which is refundable when the connection is surrendered. It is expected that most of the customers will not surrender their connection and the deposit need not be refunded, however surrendering of the connection is a condition that is not within the control of the entity. Hence, the electricity company does not have a right to defer the refund of deposit. The expectation of the company that it will not be settled within 12 months is not relevant to classify the liability as a non-current liability.

Accordingly, the said security deposits should be classified as a current liability in the books of the electricity company.

3. If a first time adopter chooses the option to consider previous GAAP carrying value of property, plant and equipment (PPE) as deemed cost for assets acquired before the transition date , then the option of applying this on selective basis to some of the items of property, plant and equipment and using fair value for others is not available.

4. The company had obtained a loan prior to April 1, 2015. The processing fees on the loan were capitalised as part of the relevant fixed assets as per the previous GAAP. The company is now required to adopt Ind AS from financial year 2016-17. It has chosen to avail deemed cost exemption provided in paragraph D7AA of Ind AS 101, i.e., to continue with carrying value of property, plant and equipment as per the previous GAAP. The loan needs to be accounted for as per amortised cost method in accordance with Ind AS 109, Financial Instruments.
 In this case , with respect to property, plant and equipment, the company shall continue the carrying amount of PPE as per previous GAAP on the date of transition to Ind AS since it has availed the deemed cost option provided in paragraph D7AA of Ind AS 101 for PPE and no adjustment to the carrying value can be made.
 However it needs to apply the requirements of Ind AS 109, Financial Instruments, retrospectively for loans outstanding on the date of transition to Ind AS at amortised cost. The adjustments related to the outstanding loans to bring these in conformity with Ind AS109 shall be recognised in the retained earnings on the date of transition.

5. An entity has received government grant for purchase of fixed asset which is adjusted in the cost of fixed asset as per AS 12 Government Grants. On transition date, that entity has availed the deemed cost option provided in paragraph D7AA of Ind AS 101 for PPE.
 An entity shall recognise the asset related government grants outstanding on the transition date as deferred income retrospectively on the date of transition to Ind AS, i.e. on 1st April, 2015, in accordance with the requirements of Ind AS 20, Accounting for Government Grants and Disclosure of Government Assistance, with corresponding adjustment to retained earnings as Ind AS 101, First-time Adoption of Indian Accounting Standards, does not provide any exemption with regard to the retrospective application of provisions of Ind AS 20.

6. If an item of spare part meets the definition of 'property, plant and equipment' as mentioned above and satisfies the recognition criteria as per paragraph 7 of Ind AS 16, such an item of spare has to be recognised as property, plant and equipment. If that spare part does not meet the definition and recognition criteria as cited above that spare is to be recognised as inventory [Refer - Issue 9 of ITFG Clarification Bulletin 3]. However, the deemed cost exemption cannot be used for such spare parts which were not recognised as fixed assets, i.e., PPE, in the previous GAAP.
 Spare parts are generally available for use from the date of its purchase. Accordingly, spare parts recognised as property, plant and equipment shall be depreciated when the same are available for use.
 As per Ind AS 16, 'property, plant and equipment', the definition of tangible items include those that are expected to be used during more than one period. The term 'more than one period' is not defined in Ind AS. Ordinarily, the accounting policies are determined for preparing and

presenting financial statements on annual basis. Accordingly, the term 'period', should ordinarily be construed to be the annual period.

7. As per paragraph 33 of Ind AS 17, lease payments shall be straight-lined over the period of lease unless, inter alia, the payments to the lessor are structured to increase in line with expected general inflation to compensate for the lessor's expected inflationary cost increases.

Judgement would be required to be made as per the facts and circumstances of each case to determine whether the payments to the lessor are structured to increase in line with expected general inflation. Therefore, it is required to evaluate the lease agreement to ascertain the real intention and attributes of escalation in lease payments, i.e., whether the intention of such escalation is to compensate for expected general inflation or any other factors.

It is not necessary that the rate of the escalation of lease payments should exactly be equal to the expected general inflation. If the actual increase or decrease in the rate of inflation is not materially different as compared to the expected rate of inflation under the lease agreement, it is not required to straight-line the lease payments.

8. The company has joint control over the LLP and has assessed that investment in LLP as joint venture. Accordingly, the entity shall account for its investment in the joint venture in its separate financial statements as per paragraph 10 of Ind AS 27, i.e. at cost or in accordance with Ind AS 109.

Therefore, adjustment of profit share from LLP to the carrying amount of the investment in LLP in its separate financial statements is not permitted.

The accounting of return on investment (i.e. profit share from LLP) will depend on the terms of contract between that company and LLP. The share in profit in LLP shall be recognised as income in the statement of profit and loss as and when the right to receive its profit share is established.