

Regulatory updates for the month of March 2024

17 April 2024

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Introduction

The regulatory updates publication issued by the Foundation for Audit Quality (FAQ) highlights the latest developments in accounting, auditing and regulatory space in India and internationally. This month's edition covers important updates on accounting and regulatory matters and other discussion/consultation papers from regulators for the period from 1 March 2024 to 31 March 2024.

Some of the key topics covered in this edition include:

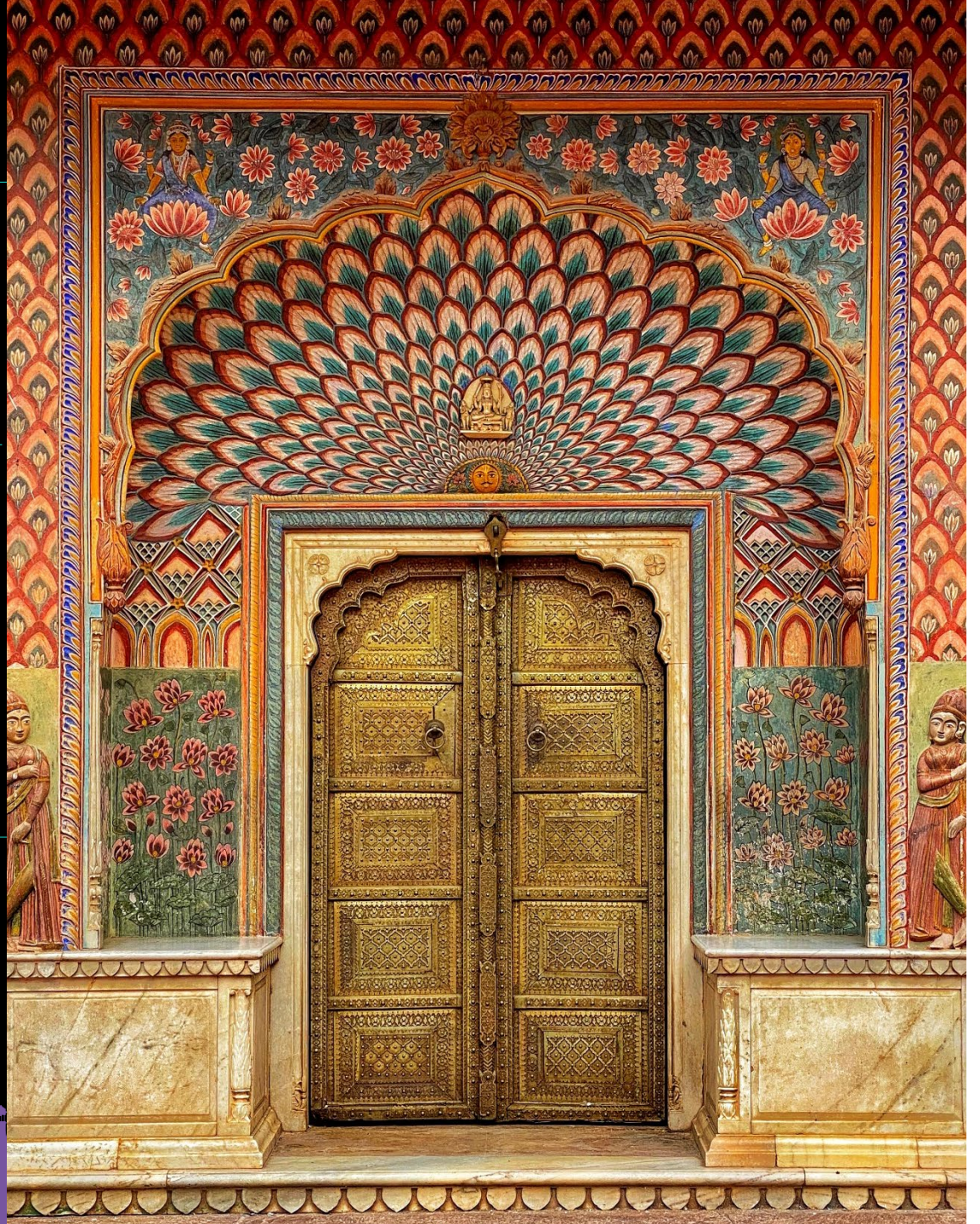
- Proposals approved at the March 2024 Securities and Exchange Board of India (SEBI) Board Meeting
- Guidelines on investments in Alternative Investment Funds (AIFs) issued by the Reserve Bank of India (RBI)
- Education material on Ind AS 12, *Income Taxes*, issued by the Institute of Chartered Accountants of India (ICAI)



India updates

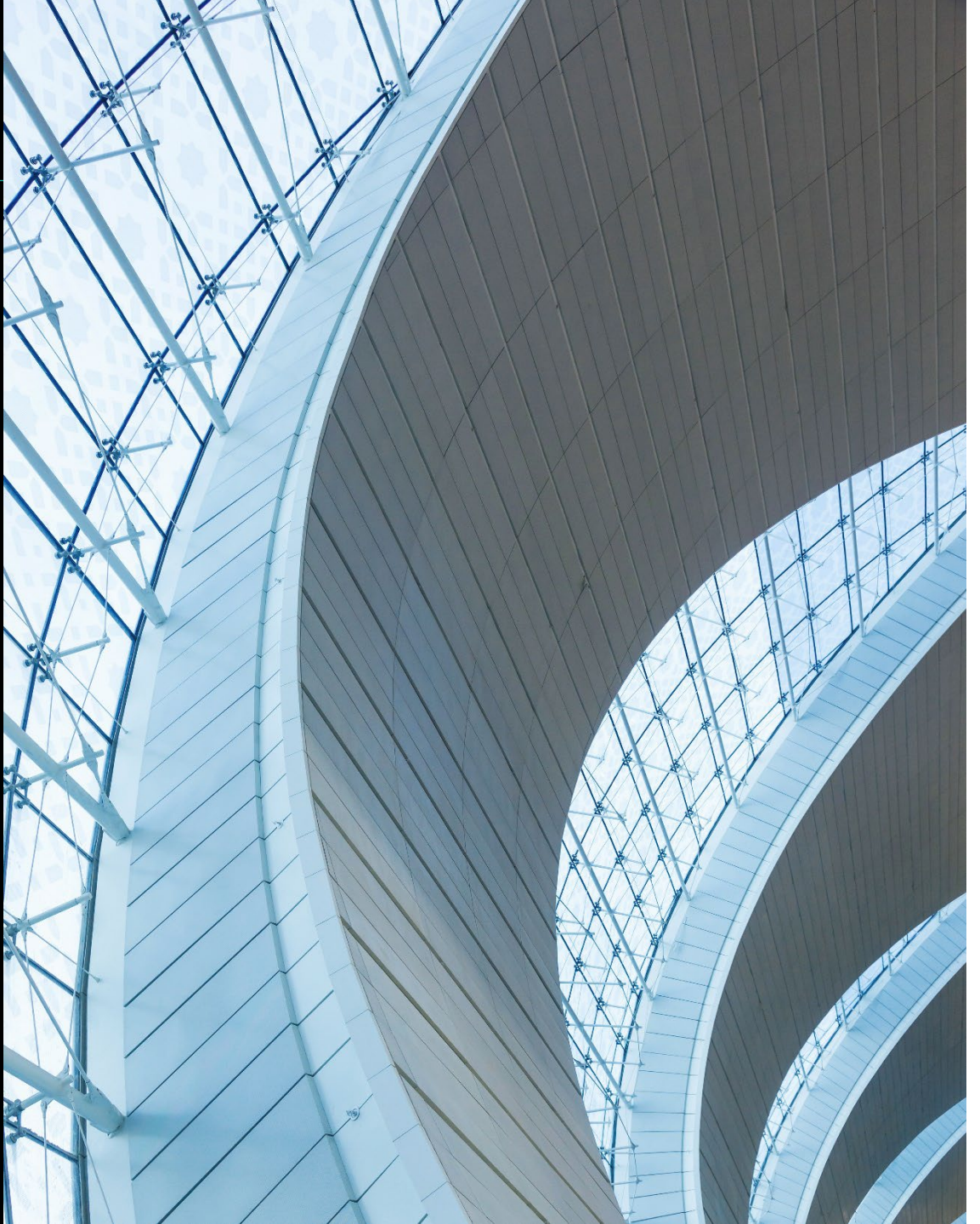
International updates

**Discussion/Consultation
papers and Publications**



India updates

Regulatory updates



Regulatory updates

India updates

Regulatory updates

International Updates

Accounting Updates

Discussion/Consultation Papers
and Publications

EDs/consultation papers

India Publications

Matters for consideration



Updates from SEBI

SEBI Board Meeting

SEBI held its Board Meeting on 15 March 2024. Some of the key proposals which got approved are discussed below:

a. Facilitating ease of doing business for companies

desirous of raising funds/IPO: SEBI approved following amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (the ICDR Regulations):

- Doing away with the requirement of **one per cent security deposit** in public/rights issue of equity shares
- Promoter group entities and non-individual shareholders holding more than five per cent of the post-offer equity share capital to be permitted to contribute towards **Minimum Promoters' Contribution (MPC)**, without being identified as a promoter
- Equity shares from the **conversion of compulsorily convertible securities** held for a year before filing the Draft Red Herring Prospectus (DRHP), to be considered for meeting the MPC requirement
- The **increase or decrease in the size of Offer For Sale (OFS)** requiring fresh filing should be based on only one of the criteria, i.e., either issue size in rupees or number of shares, as disclosed in the draft offer document
- Flexibility in extending the bid/offer closing date on account of **force majeure events** by minimum one day instead of the present requirement of minimum three days.

b. Proposals for on-going compliance requirements for listed companies:

SEBI approved certain amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (the LODR Regulations) with respect to:

- Market capitalisation-based compliance requirements for listed entities should be determined on the basis of average market capitalisation of **six months ending 31 December**, instead of single day's (31 March) market capitalisation. Further, a **sunset clause of three years for cessation of applicability of market capitalisation-based** provisions has also been approved.
- The timeline for filing up vacancies of Key Managerial Personnel (KMP) (requiring approval of statutory authorities) to be extended **from three months to six months**.
- Timeline for prior intimation of Board Meetings to be reduced to **two working days**.
- The maximum permitted time gap between two consecutive meetings of the Risk Management Committee to be increased **from 180 days to 210 days**, so as to provide flexibility to listed entities to schedule the meetings.



Regulatory updates

India updates

Regulatory updates

International Updates

Accounting Updates

Discussion/Consultation Papers
and Publications

EDs/consultation papers

India Publications

Matter for consideration



c. Uniform approach to verification of market rumours by equity listed entities: SEBI approved the following approach for verification of market rumours by equity listed entities:

- Specifying an objective and uniformly assessed criteria for rumour verification in terms of material price movement of equity shares of the listed entity
- Considering unaffected price for transactions, wherever pricing norms have been prescribed under the SEBI Regulations (provided that the rumour pertaining to such transaction has been confirmed within 24 hours from the trigger of material price movement)
- Promoters, directors, KMP and senior management to provide timely response to the listed entity for verifying market rumour
- Unverified event or information reported in print or electronic media not to be considered as 'generally available information' under the SEBI (Prohibition of Insider Trading) Regulations, 2015.

d. Extension of timeline for mandatory applicability of listing norms for High Value Debt Listed Entities (HVDLEs): SEBI approved the proposal to extend the timeline for mandatory applicability of listing norms (i.e., Regulation 16 to 27 of the LODR Regulations) for HVDLEs till **31 March 2025**.

e. Ease of business for Foreign Portfolio Investors (FPIs): The following proposals have been approved by SEBI for ease of business for FPIs:

- **Additional disclosure requirements exempted for certain FPIs:** In August 2023, SEBI vide a circular had mandated FPIs fulfilling certain criteria to disclose on a granular basis details of all entities holding any ownership, economic interest, or exercising control in the FPI, on a full look through basis, up to the level of all natural persons, without any threshold. However, for ease of doing business, SEBI in its board meeting has now approved a proposal to exempt additional disclosure requirements for FPIs having:
 - More than 50 per cent of their India equity Asset Under Management (AUM) in a single corporate group, after excluding its holding in the parent company with no identified promoter, and
 - The composite holding of all such FPIs (that hold greater than the 50 per cent concentration criteria and are not exempted) in the company with no identified promoter, is less than three per cent of its total equity share capital.



Regulatory updates

India updates

Regulatory updates

International Updates

Accounting Updates

Discussion/Consultation Papers
and Publications

EDs/consultation papers

India Publications

Matter for consideration



- **Relaxed timelines for disclosures of material changes:** Earlier (prior to this change), FPIs were required to disclose any material change in its structure or ownership or control or investor group within seven working days. However, SEBI, in its board meeting now requires FPIs to notify changes in two buckets:

Type of change	Time-period for informing	Time-period for providing supporting documents
Type I ¹	7 working days of change	30 days of change
Type II ²	30 days of change	30 days of change

- **Flexibility in dealing with securities post expiry of registration:** SEBI has approved flexibility measures for FPIs in dealing with the securities post expiry of their registration, which includes providing timeline for reactivating registration within 30 days of expiry if it is due to non-payment of registration fee and providing for additional time period for disposal of securities.
- f. **Amendments for ease of doing business for Alternative Investment Funds (AIFs):** SEBI has accepted the following proposals for ease of doing business for AIFs:
 - **Encumbrance on equity of investee companies in the infrastructure sector:** SEBI approved the proposal to allow Category I and Category II AIFs to create an encumbrance on the equity of its investee companies in the infrastructure sector³, in order to facilitate raising of debt/loan by such investee companies.
 - **Due diligence process:** SEBI also approved a proposal to require AIFs, their managers and KMPs, carry out specific due diligence of their investors and investments. This has been done to ensure that the verifiable compliance with such due-diligence requirements provide the regulatory comfort necessary for the introduction of other ease of doing business proposals relating to AIFs.
 - **Guidelines for unliquidated investments:** AIFs have now been allowed to deal with unliquidated investments (which are not sold due to lack of liquidity during the winding up process), by continuing to hold such investments in the same scheme of the AIF and entering into a **dissolution period**. The new facility of entering into dissolution period has been introduced in place of the existing option of launching a new scheme, i.e., the liquidation scheme.

To access the text of the proposals approved, please [click here](#)



¹ Type I material changes are those which require FPIs to seek fresh registration, or which affect any privileges/exemptions available to them.

² Type II material changes are all other changes.

³ Companies in the infrastructure sector are such companies which are engaged in the business of development, operation or management of projects in any of the infrastructure sub-sectors listed in the Harmonised Master List of Infrastructure sub-sectors, as issued by the Government of India.

Regulatory updates

India updates

Regulatory updates

International Updates

Accounting Updates

Discussion/Consultation Papers
and Publications

EDs/consultation papers

India Publications

Matter for consideration



Updates from RBI

Investments in Alternate Investment funds

On 19 December 2023, RBI had issued a circular, wherein certain instructions were issued to address the regulatory concerns relating to investment by Regulated Entities (REs) in the AIFs.

In order to ensure uniformity in the implementation of the aforesaid instructions among the REs, RBI, vide a notification dated 27 March 2024 has stated that:

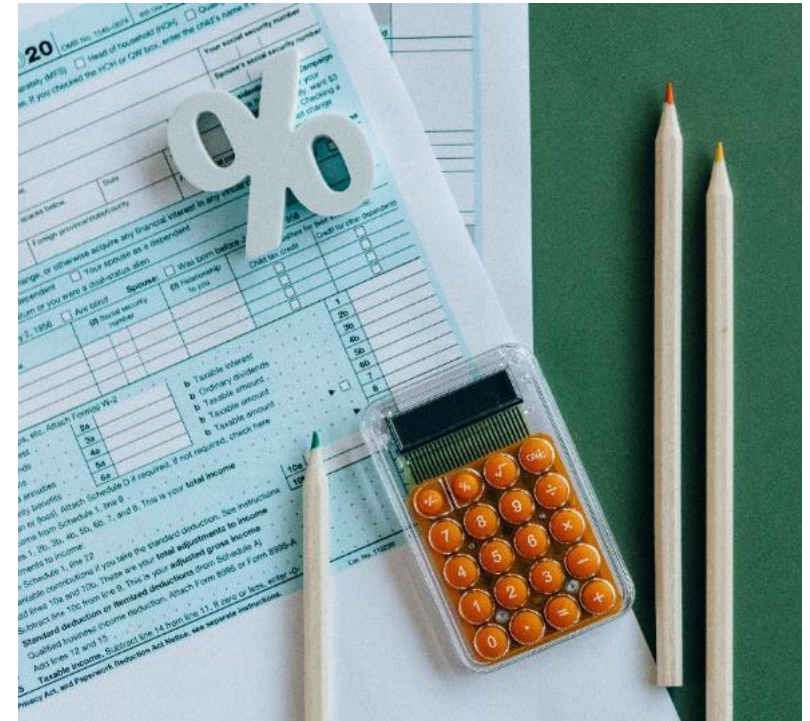
- Downstream investments should exclude investments in equity shares of the debtor company⁴ of the RE, but must include all other investments (including investment in hybrid instruments)
- Provisioning⁵ should be required only to the extent of investment by the RE in the AIF scheme which is further invested by the AIF in the debtor company, and not on the entire investment of the RE in the AIF scheme
- Paragraph 3⁶ of the circular dated 19 December 2023 would only be applicable in cases where the AIF does not have any downstream investment in a debtor company of the RE
- Proposed deduction from capital should take place equally from both Tier-1 and Tier-2 capital and reference to investment in subordinated units of the AIF scheme includes all forms of subordinated exposures, including investment in the nature of sponsor units

- Investments by REs in AIFs through intermediaries such as fund of funds or mutual funds are not included in the scope of the RBI circular dated 19 December 2023.

To access the text of the notification, please [click here](#)

Action points for auditors

- It is to be noted that the exemption is currently only given for equity shares and not convertible instruments (i.e., investments convertible into equity shares).
- This notification could have a significant impact on an RE's impairment computation. Accordingly, auditors should check whether the management of REs has ensured compliance with the circular dated 19 December 2023 read with this notification when performing the impairment loss computation on investment in AIFs.
- REs that have fully provided for their investments in AIFs in a particular quarter, would need to assess the impact of the circular on the provision computation, and disclosure of the reversal of provision (if any) in the March'24 quarterly results.



⁴ The debtor company of the RE means any company to which the RE currently has or previously had a loan or investment exposure anytime during the preceding 12 months

⁵ In case REs are not able to liquidate their investments within the prescribed time limit, they should make 100 per cent provision on such investments

⁶ Paragraph 3 of the RBI circular dated 19 December 2023 discusses investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model'

Updates from The Ministry of Environment, Forest and Climate Change

Amendment to Plastic Waste Management Rules, 2016

The Plastic Waste Management Rules, 2016 lay down the regulatory requirements with respect to collection, segregation, processing, treatment and disposal of plastic waste in an environmentally sustainable manner. On 14 March 2024, the Ministry of Environment, Forest and Climate Change (MOEFCC) notified the Plastic Waste Management (Amendment) Rules, 2024 (the Amendment Rules). Some of the key amendments introduced relate to:

- **Definitions:** Rule 3 of the Plastic Waste Management Rules, 2016 defines certain key terms. The Amendment Rules have issued the revised definitions of the following:
 - Biodegradable plastics
 - Importer
 - Manufacturer
 - Producer
 - Seller.
- **Revised conditions:** Certain amendments have been introduced to Rule 4 of the Plastic Waste Management Rules, 2016 with respect to conditions for manufacture, importer stocking, distribution, sale and use of carry bags, plastic, etc. It has now been specified that the manufacture

of carry bags and other commodities would be permitted to be made from compostable or biodegradable plastics, subject to **mandatory marking and labelling regulations**. Also, the manufacturers of compostable or biodegradable plastic carry bags or commodities must obtain a certificate from the Central Pollution Control Board (CPCB) before marketing or selling their products.

- **New category for biodegradable plastics:** A new category for biodegradable plastics (category V) has been introduced, with specific labelling requirements and separate markings to be designated.
- **Annual report:** The Amendment Rules have laid down the requirement of preparation of mandatory annual report by a person engaged in recycling or processing of plastic waste and its submission to the concerned local body, the State Pollution Control Board (SPCB) or the concerned pollution control committee by **30th April** every year.
- **Compliance with EPR targets:** It has been specified that the manufacturers/importers must meet the minimum recycling levels for plastic packaging waste as specified in the Extended Producer Responsibility (EPR) targets.

Effective Date: The Amendment Rules came into force from the date of publication in the Official Gazette, i.e., 14 March 2024.

To access the text of the Amendment Rules, please [click here](#)



Updates from other regulatory judgements

Supreme court judgement on contributions to political parties

The Finance Act, 2017 prescribed certain amendments, which inter alia include amendment to Section 182 of the Companies Act, 2013⁷. These amendments included:

- **No limits to contribution:** Prior to the Finance Act, 2017, there was a monetary limit up to which companies could contribute to the political parties. This monetary limit was seven and a half (7.5) per cent of the average net profit for the three immediately preceding financial years.

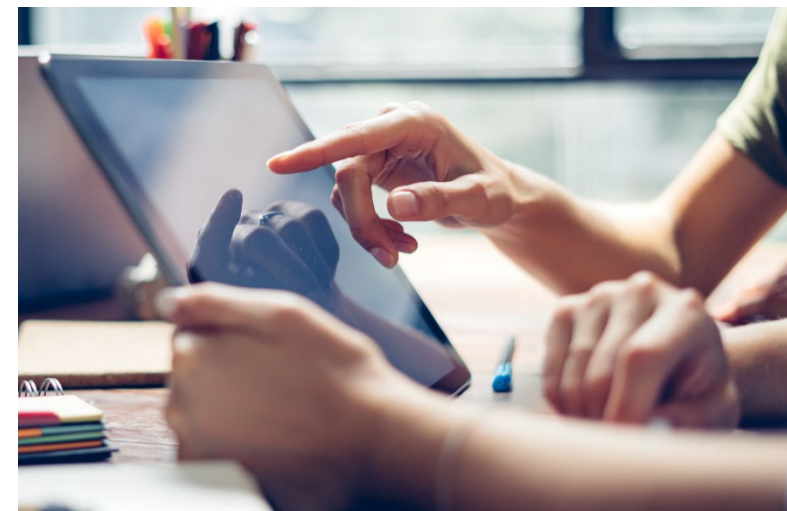
However, the Finance Act, 2017 deleted this requirement, thereby removing any limits for contributions that could be made to political parties.

- **Disclosure of contributions made:** Prior to the Finance Act, 2017, every company had to provide details of amounts contributed by it to any political party during the financial year, by disclosing the following details:
 - The total amount contributed during the year
 - Name of the party to which the amount is contributed.

However, the Finance Act, 2017 deleted this requirement, thereby no separate disclosure of amounts of political contributions made by companies during the year were to be made.

Supreme court judgement

On 15 February 2024, the Supreme Court passed a judgement, and declared the changes made by the Finance Act, 2017 to inter alia the Companies Act, 2013 as 'unconstitutional' (Supreme Court judgement). This is because non-disclosure of information regarding the funding of political parties is violative of the right to information of citizens under Article 19(1)(a) of the Constitution⁸. The amendments which were introduced by the Finance Act 2017 to the provisions of the Companies Act 2013, permitting unlimited funding of political parties by corporate entities were held to be arbitrary and violative of Article 14 of the Constitution⁹.



⁷ Section 182 of the Companies Act, 2013 deals with Prohibitions and Restrictions Regarding Political Contributions

⁸ Article 19(1)(a) of the Constitution provides citizens of India the freedom of speech and expression. This right also includes the **right to access information** because this right is meaningless when others are prevented from knowing/listening. It is according to this interpretation that the Right to Information (RTI) is a fundamental right

⁹ Article 14 of the Constitution is clearly in two parts – while it commands the State not to deny to any person 'equality before law', it also commands the State not to deny the 'equal protection of the laws'. Equality before law prohibits discrimination. It is a negative concept. The concept of 'equal protection of the laws' requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally. However, by removing the limits on contributions to political parties, no distinction was being made between profit-making and loss-making companies for the purposes of political contributions.

International updates

Accounting updates



Accounting updates

India updates

Regulatory updates

International Updates

Accounting Updates

Discussion/Consultation Papers
and Publications

EDs/consultation papers

India Publications

Matter for consideration



Updates from FASB

Accounting Standards Update (ASU) on Compensation – Stock Compensation (Topic 718)

Certain entities provide employees or non-employees with ‘profits interest’ awards to align compensation with an entity’s operating performance and provide the holders with the opportunity to participate in future profits and/or equity appreciation of the entity.

Since ‘profits interest’ holders only participate in future profits and/or equity appreciation and have no rights to the existing net assets of the partnership, stakeholders indicated to the Financial Accounting Standards Board (FASB), that it can be complex to determine whether a ‘profits interest’ award should be accounted for as a share-based payment arrangement (Topic 718), or similar to a cash bonus or profit-sharing arrangement (Topic 710, Compensation—General). Thus, the stakeholders highlighted the existing diversity in practice.

Accordingly, in March 2024, the Financial Accounting Standards Board (FASB) issued the ASU on Compensation – Stock Compensation (Topic 718), *Scope Application of Profits Interest and Similar Awards*. The ASU has added an illustrative example that includes four fact patterns to demonstrate how an entity should apply the guidance to determine whether a ‘profits interest’ award should be accounted for in accordance with Topic 718.

Effective Date: For Public Business Entities (PBEs), the amendments would be effective for annual periods beginning after 15 December 2024, and interim periods within those annual periods.

For all other entities, the amendments would be effective for annual periods beginning after 15 December 2025, and interim periods within those annual periods.

To access the text of the ASU, please [click here](#)



Discussion/Consultation papers and Publications

Exposure Drafts/consultation papers – India and international

India Publications

Matter for consideration



EDs/Consultation papers

[India updates](#)[International Updates](#)[Discussion/Consultation Papers and Publications](#)[Regulatory updates](#)[Accounting Updates](#)[EDs/consultation papers](#)[India Publications](#)[Matter for consideration](#)

The table below provides an overview of some important exposure drafts/consultation papers released by various regulators during this month:

Regulator	Publication	Particulars
SEBI	Draft circular - Audiovisual representation of disclosures made in the public issue offer documents	<p>Companies raising capital through public issues are required to file a Draft Red Herring Prospectus (DRHP) with the SEBI and stock exchange(s). The disclosures in DRHP are appropriately updated, in line with the observations highlighted by SEBI and stock exchange(s) and thereafter the Red Herring Prospectus (RHP) is filed by the companies.</p> <p>SEBI, vide a draft circular dated 19 March 2024 has proposed that the disclosures made in DRHP and RHP of public issues should also be made available in Audiovisual (AV) format by the issuer companies. Further, the AV needs to be in bilingual version, i.e., English and Hindi and made available in public domain.</p> <p>The comment period ended on 9 April 2024.</p> <p>To access the text of the draft circular, please click here</p>
IASB	Proposals to improve reporting of acquisitions	<p>Recently, the International Accounting Standards Board (IASB) issued certain proposals aimed at enhancing the information companies provide to investors about acquisitions. The proposals respond to stakeholder feedback that reporting on acquisitions poses difficulties for both investors and companies:</p> <ul style="list-style-type: none">- Investors lack sufficient and timely information about the acquisitions and post-acquisition performance- Companies seek to provide useful information to investors but see risks and costs in providing some information, particularly commercially sensitive information that could be used by the competitors. <p>Accordingly, the IASB has proposed amendments to IFRS 3, <i>Business Combinations</i>. The proposed amendments would require companies to report the objectives and related performance targets of their most important acquisitions, including whether these are met in subsequent years. Companies would also be required to provide information about the expected synergies for all material acquisitions.</p> <p>Further, the IASB has also proposed related amendments to IAS 36, <i>Impairment of Assets</i> to make targeted improvements to the impairment test.</p> <p>The comment period is open up to 15 July 2024.</p> <p>To access the text of the exposure draft, please click here</p>

The table below provides an overview of some important publications released by various regulators during this month:

Regulator	Publication	Particulars
ICAI	Education material on Ind AS 12, <i>Income Taxes</i>	<p>Ind AS 12, <i>Income Taxes</i> provides a structured framework for recognising and measuring income taxes, to ensure that the financial statements accurately reflect an entity's tax obligations and the associated impacts on its financial performance and position.</p> <p>Recently, ICAI issued the education material on Ind AS 12, <i>Income Taxes</i> (the education material). The education material offers a comprehensive assessment of Ind AS 12 along with its practical implications in the form of various Frequently Asked Questions (FAQs).</p> <p>To access the text of the education material, please click here</p>
ICAI	Compendium of opinions	<p>ICAI has issued the 42nd volume part II of the compendium of opinions issued by EAC. This volume now contains opinions on important issues which include:</p> <ul style="list-style-type: none"> Accounting for advance payment made towards way leave charges as a part of laying city gas distribution network Accounting for securitisation arrangement and investments in PTC securities Principal vs. agent relationship for recognition of revenue Accounting of export incentives Revenue recognition in case of an implementing agency of the State Government. Recognition of interest on mobilisation advance against project contracts under Ind AS Framework <p>To access the text of the compendium of opinions, please click here</p>

India Publications

[India updates](#)[International Updates](#)[Discussion/Consultation Papers
and Publications](#)[Regulatory updates](#)[Accounting Updates](#)[EDs/consultation papers](#)[India Publications](#)[Matter for consideration](#)

Regulator	Publication	Particulars
ICAI	Publications by the committee on Insolvency and Bankruptcy Code of ICAI	<p>Publication 1- Liquidation Process - A Handbook for the Guidance of Insolvency Professionals. This handbook was released to help professionals appreciate the practical aspects and understand clearly the provisions related to orderly conduct of Liquidation Process under IBC, which is crucial in performing the task of liquidation effectively and efficiently as mandated under the Insolvency & Bankruptcy Code, 2016.</p> <p>Click here to access the publication.</p> <p>Publication 2- Voluntary Liquidation Process - A Handbook for the Guidance of Insolvency Professionals. This handbook was released to facilitate professionals understand the intricacies and provisions related to conduct of Voluntary Liquidation Process under IBC and to know about the practical aspects thereunder.</p> <p>Click here to access the publication.</p>

Matters for the consideration of Chartered Accountants

India updates

Regulatory updates

International Updates

Accounting Updates

Discussion/Consultation Papers
and Publications

EDs/consultation papers

India Publications

Matter for consideration



The table below provides an overview of some important matters for the consideration of Chartered Accountants:

Regulator	Topic	Particulars
ICAI	Revised applicability of peer review mandate (Phase II & III)	<p>ICAI, vide an announcement dated 16 March 2024 has extended the applicability of peer review mandate for the practice units covered under Phase II and III as follows:</p> <p>a. Practice units which propose to undertake statutory audit of unlisted public companies having paid-up capital of not less than INR500 crores or having annual turnover of not less than INR1000 crores or having, in aggregate, outstanding loans, debentures and deposits of not less than INR500 crores as on 31 March of the immediately preceding financial year</p> <p>OR</p> <p>Practice units rendering attestation services and having five or more partners</p> <p>(Grace period has been allowed up to 30 June 2024 and peer review would become mandatory w.e.f. 1 July 2024)</p> <p>b. Practice units which propose to undertake the statutory audit of entities which have raised funds from public or banks or financial institutions of over INR50 crores during the period under review, or of any body corporate including trusts which are covered under public interest entities</p> <p>OR</p> <p>Practice units rendering attestation services and having four or more partners</p> <p>(Peer review would become mandatory w.e.f. 1 January 2025).</p>



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