



## Thought Leadership Update

May 2014



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Dear Readers,

Welcome to the First issue of the “Thought Leadership Update” for 2014! We hope you will find this a useful update on matters important to you and would like to thank every one who has supported this edition by providing useful information.

A central component of this Thought Leadership update is a round up on events and latest in finance, accounting and auditing world, direct & indirect taxes, capital markets, corporate and economic laws.

We are looking forward to continuing this productive channel of information sharing with you. The future success of the Thought Leadership Update depends on your comments, contribution and ideas! We do encourage our readers to try their utmost best in enriching the upcoming Thought Leadership Update!

We hope you enjoy this First issue of the Thought Leadership Update for 2014!

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### *Regulatory Notifications*

- The Reserve Bank of India (RBI) has decided to withdraw all the existing guidelines relating to valuation in case of any acquisition/sale of shares.
- RBI relaxed some of the forex hedging rules for importers and exporters to allow greater operational flexibility, now they can cancel up to 75% of their hedged foreign exposures, as against 25% earlier.
- The government of India has cleared a long pending bailout policy for financially stressed highway developers which would allow them to defer the premium that they have committed to pay to government.
- RBI made changes to guidelines to pre-paid payment instruments. Some of the changes include increasing the minimum paid-up capital to Rs. 500 Lakh from Rs. 100 Lakh and having a minimum positive net worth of Rs. 100 Lakh at all times.
- Customers may soon be spared penalties for non-maintenance of minimum balances in saving accounts with RBI asking banks to cut down services on low-balance accounts and do away with fines.
- **The securities market regulator is training its gun on debt schemes with low assets under management (AUM). At least 80 debt schemes have AUM of less than Rs. 20 crores. SEBI might ask these to merge or shut.**
- The wait might get longer for corporate groups, which were keen on acquiring a bank licence. Several aspirants not getting the nod from RBI is being seen as a sort of closure to the current round of debate over corporate groups being allowed to enter banking.
- RBI has recently said that non-compete clauses will not be allowed for foreign direct investment (FDI) in the pharmaceuticals sector, except in special circumstances.

### *Companies Act 2013 Rules*

- The financial statement in relation to one person company (OPC), small company and dormant company not to include cash flow statement. It is the responsibility of the CFO to maintain financial statement.
- If a company has a subsidiary/associate/joint venture, consolidated financial statements (CFS) to be prepared and laid before an Annual General Meeting (AGM) in addition to stand- alone financial statements. A separate format has been prescribed for the preparation of CFS in the Act.
- Minority interest to be presented separately with in equity in the CFS.
- For CFS purposes, the term significant influence has been re-defined as “control” of at-least 20% of total share capital or of business decision under an agreement.
- Audited accounts of all subsidiaries are required to be prepared and provided to the shareholders on request.
- Audited accounts of the listed companies along with the subsidiaries to be placed on the website.
- For a class of companies, to be prescribed, the Companies Act 2013 removes the minimum thresholds and provides indicative useful lives and residual values under Part C of Schedule II. If a company uses a different useful life or residual value, then it shall disclose the justification for the same. No transition period provided for this change and the change needs to be applied prospectively.
- For other companies the useful life of an asset may not be longer than the indicated/prescribed useful life, and the residual value shall not be higher than that prescribed in Part C, i.e. 5%.

### *Companies Act 2013 Rules*

- Members of the company may require the audit process to be conducted by more than one auditor, as per section 139 of the Companies Act 2013.
- **Limited Liability Partnership (LLP) can be appointed as auditor of a company. Only the partners who are chartered accountants in a firm (including LLP) shall be authorised to act and sign on behalf of the firm, as per section 141 of the Companies Act 2013.**
- Auditors appointed in the AGM shall hold office from the conclusion of that meeting until the conclusion of the ensuing sixth AGM (subject to ratification by members at every AGM).
- The transition period is 3 years for mandatory rotation as per the Rules.
- Auditor/Audit firm in case of listed companies should mandatorily rotate after completion of 5/10 years tenure.
- **An audit firm cannot be re-appointed for more than two five-year terms.**
- The class of companies to which mandatory rotation applies are:
  - all unlisted public companies having paid up share capital of Rs. 10 crores or more;
  - all private limited companies having paid up share capital of Rs. 20 crores or more; and
  - all companies not included above, but having public borrowings from financial institutions, banks or public deposits of Rs. 50 crores or more.
- **The Companies Act 2013 restricts the number of audits to 20 companies for an individual/partner irrespective of their nature/size. The private limited companies are also included in the limit. However CA. K. Raghu, President, ICAI, has made a representation to Minister of State for Corporate affairs to remove the private limited companies, small companies and one person companies from audit limit restriction of 20 companies.**

# Indian Auditing Updates

## *Companies Act 2013 Rules*

- Such class or classes of companies as may be prescribed under the Companies Act 2013 need to compulsorily appoint Internal Auditor to conduct the internal audit of functions and activities of the Company.
- Internal audit shall be done either by a chartered accountant (CA) or a cost accountant, or such other professional as may be decided by the board of directors.
- The prescribed classes of companies are listed companies; and public companies with paid up capital of Rs. 10 crores or more, with outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 25 crores or which have accepted deposits of Rs. 25 crores or more at any point of time during the last financial year (FY).

*Key on going projects- IFRS 14, IFRS 9*

- International Accounting Standards Board (IASB) has published Discussion Paper (DP) on accounting for macro hedging.
- IASB has issued interim standard on rate-regulated activities- IFRS 14. Many countries have industry sectors that are subject to rate regulation, where by governments regulate the supply and pricing of particular types of activity by private entities. This can include utilities such as gas, electricity and water. Rate regulation can have a significant impact on the timing and amount of an entity's revenue.
- IASB has published proposals for narrow-scope amendments to IAS 27. The proposed amendments to IAS 27 would allow entities to use the equity method to account for investments in subsidiaries, joint ventures and associates in their separate (parent only) financial statements. The IASB expects the proposed change will reduce compliance costs for many entities, while providing information helpful to an assessment of the investor's net assets and profit or loss.
- IASB has completed important steps in reform of financial instruments accounting (IFRS-9). The amendments will:
  - bring into effect a substantial overhaul of hedge accounting that will allow entities to better reflect their risk management activities in the financial statements.
  - allow the changes to address the so-called 'own credit' issue that were already included in IFRS 9 Financial Instruments to be applied in isolation without the need to change any other accounting for financial instruments.
  - remove the January 01, 2015 mandatory effective date of IFRS 9, to provide sufficient time for preparers of financial statements to make the transition to the new requirements.



*Time to focus on ERM, ICFs, Performance & Governance*

- The Committee of Sponsoring Organizations of the Treadway Commission (COSO) has recently announced the release of a new thought paper, “Improving Organizational Performance and Governance”, how the COSO frameworks can help, developed to illustrate how the enterprise risk management (ERM) and internal control frameworks (ICFs) can contribute to enhancing organizational performance and governance for sustainable success.
- “COSO’s fundamental premise is that effective risk management and internal controls are crucial to sustaining an organization,” COSO Chairman Robert Hirth said. Throughout the paper, the authors demonstrate how the COSO frameworks can contribute value to governance, strategy setting, business planning, execution, monitoring, and adapting processes of any organization. This is because these two important frameworks are designed to provide reasonable assurance that objectives will be met and risk reduced to an acceptable level.
- The Institute of Internal Auditor’s of America (IIA) International Conference is scheduled to be held in London from July 6-9, 2014. Themed “Time to Make the Connection,” the 2014 International Conference positions you as a vital component of a far-reaching network of professionals while connecting in the international trade, finance, and cultural capital of Britain.
- The 2014 Governance, Risk and Control (GRC) Conference is scheduled to take place from August 18-20, 2014 at Palm Beach Florida. The 2014 GRC Conference will be more informative and valuable for professionals in the IT audit and governance, risk, and control disciplines.

### *Supreme Court Ruling*

- The Supreme Court of India (SC) has ruled in favour of Black Money Probe by Special Investigation Team (SIT). The SC has rejected the plea of the outgoing UPA and insisted that the government make efforts to trace and recover black money stashed abroad.
- The Income Tax department (IT) is set to ink accords on advance pricing with MNC's. This will send the right signal to MNC's that they can mitigate transfer pricing adjustment risks through the Advance Pricing Agreements (APA's).
- Central Board of Direct Taxes (CBDT) has clarified to field officers that the requirement of deducting tax at source when a person makes payment to non-residents or foreign companies should be enforced only on that part of the remitted amount that accounts for the recipient's income chargeable to tax in India.
- Central Board of Direct Taxes (CBDT) in a recent directive dated April 11, 2014 required all Chief Commissioner of Income Tax (CCIT) to offer their objections upon-  
receipt of notice of proposed scheme of amalgamation or reconstruction of companies under the Companies Act, for ascertaining whether the scheme is framed to defraud the Revenue or the public at large, within the stipulated period of 15 days of receipt of notice. The directive is in consonance to a recent circular issued by Ministry of Corporate Affairs (MCA) on January 15, 2014 to all Regional Directors to issue notices to the Income Tax Department for their comments/objections on receipt of schemes of amalgamation or reconstruction.

### *RBI attracts FIIs and QFIs*

- A new “Foreign Portfolio Investment” (FPI) scheme for Foreign Institutional Investors (FIIs) and Qualified Foreign Investors (QFIs) has been registered in accordance with SEBI guidelines. The scheme commences w.e.f June 1, 2014.
- The registered FPI may purchase and sell shares and convertible debentures.
- The individual and aggregate investment limits for the RFPIs shall be below 10% or 24 % respectively of the paid-up value of each series of convertible debentures issued by an Indian company. Further, where there is composite sectoral cap under FDI policy, these limits for RFPI investment shall also be within such overall FDI sectoral caps.
- RFPI shall be eligible to open a Special Non- Residential Rupee (SNRR) account and a foreign currency account with Authorised Dealer Bank.
- RFPI can invest in government securities and corporate debt, and also trade in exchange traded derivative contracts.
- RBI has extended the deadline for banks to complete implementation of Basel-III capital norms by a year to March 31, 2019.
- RBI has proposed setting up of a trade receivables and credit exchange (TCE) for financing micro, small and medium enterprises (MSMEs). In the primary segment, once an MSME delivers goods as per requirement to a corporate buyer along with a bill, the buyer on acceptance of the goods post the bill on the TCE. These receivables of the MSME from the buyer become available to the third parties for bidding. The MSME can access fresh funds through the bidding process.

## *MOCA/SEBI/Companies Act 2013 updates*

- So far the government has notified 283 of the 470 sections. The first notification, of 99 sections, was in 2013. The provisions on corporate social responsibility (CSR) were notified on February 27, 2014. **In a circular dated March 26, 2014, the Ministry of Corporate Affairs (MCA) notified 183 new sections.**
- The Corporate Affairs ministry has made changes in the depreciation schedule under the new company law to avoid confusion among stakeholders and introduce consistency among stakeholders in its recent guidance.
- **Securities Exchange Board of India (SEBI) has released circular CIR/CFD/POLICY CELL/2/2014 dated April 17, 2014 specifying Corporate Governance Norms ("norms") for all listed companies providing strict disclosure and compliance from October 01, 2014.** It has instructed to carry out amendments in Clause 35B and Clause 49 of Listing Agreement with measures to enhance the protection of investor rights and to promote-
  - equitable treatment for minority and foreign shareholders. This all is done to align with the requirements of Companies Act, 2013 which is presently in effect.
- The norms cover broad points such as establishing a whistle blower policy, disclosures on pay packages to senior management, inducting at least one women director on the Board. It further provides that in case of material related party transactions any transaction which is carried out before October 01, 2014 and it is likely to carry forward beyond March 31, 2015 then the Company will require to obtain shareholders approval in the first general meeting held before or after October 01, 2014.
- The norms also restrict the appointment of Independent directors in listed companies. The maximum number of listed entities where an Independent director can serve at a time shall not exceed seven and where an Independent Director is a whole time director in any listed company he is restricted to act as an independent director in not more than three listed companies.

# Corporate and Economic Laws Updates

## *MOCA/SEBI/Companies Act 2013 updates*

- As per Companies Act, 2013 the tenure of Independent Directors prior to enactment of 2013 Act is not required to be considered for counting fresh term of independent directors from April 01, 2014 and can be appointed for two consecutive terms of five years. It means a person can be Independent Director for 10 years starting from April 01, 2014 in a Company. But taking more restrictive view SEBI has not allowed persons who has already completed five years or more on the Board before October 01, 2014 to be appointed for more than one term of five years after the expiration of their current term. Nomination Committee is entrusted to evaluate the performance of Independent director based on which his term of service will be decided by the Board.
- The Department of Industrial Policy and Promotion (DIPP) had in 2011 issued the Policy on Foreign Direct Investment (FDI) in Limited Liability Partnership (LLP) however, since then the same was under consideration and reviews by Ministry of Commerce & Industry (MOCI) and Reserve Bank of India- (RBI) and Reserve Bank of India had not approved FDI in LLP citing practical issues arising due to constitutional structure of LLP. Now, the stance has been cleared by RBI where it has permitted FDI in LLP formed and registered under the LLP Act, 2008 vide circular RBI/2013-14/566 A.P. (DIR Series) Circular No. 123 dated April 16, 2014. **The circular is applicable retrospectively i.e. from May 20, 2011.**

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