

Assurance Gazette

May 2022



Foreword

India's corporate sector witnessed momentous surge over the past decades necessitating the authorities to ensure the rules and regulations are fulfilled in letter and spirit.

To provide insights on key amendments and ensure compliance to safeguard the stakeholders interest, we are pleased to bring our issues covering the key updates announced in the month of April, 2022 and the ones relevant for the current period.

We attempt to encapsulate the implementation guide by the Institute of Chartered Accountants of India (ICAI), with respect to the new Rule 11(e) and new Rule 11(f) in the Companies (Audit and Auditors) Rules, 2014 introduced through Companies (Audit and Auditors) Amendment Rules, 2021, emphasising various aspects of reporting under Rule 11(e) and Rule 11(f) such as management's responsibilities in respect of disclosures in financial statements under Schedule III to the Companies Act, 2013, simultaneously the audit procedures to be performed, reporting considerations.

We have also highlighted the Clarification on applicability of regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with respect to Related Party Transactions with an aim to ensure enhanced Transparency, accountability.

We aim to provide an overview of the endeavours by the regulatory bodies in a simplified manner along with highlighting the additional responsibility to be consummated by the Management along with the Auditors to assist with enhanced financial reporting and audits. We believe that our publication will be beneficial to you enabling adherence to compliances and ensuring better corporate governance

Hope you will find it useful and informative. Wishing your health and happiness!!

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Amendment in Other Matters para of Auditor's Report

Ministry of Corporate affairs (MCA) has amended the Rule 11- Other Matters to be included in Auditors' report of Companies (Audit and Auditors) Rules, 2014 which is effective in respect of financial years which are commencing on or after 1 April 2021. MCA has omitted rule 11(d) and introduced rules 11(e) and 11(f).

Rule 11(d) was in relation to the Specified Bank Notes (SBNs) which has now been omitted.

Rule 11(e) is in relation to funds given/received by the company for making further loans or investments.

Management responsibility: Ensure and provide **representation to the auditors** for following:

No funds have been advanced/loaned/invested by the company to or in any other person/entity including foreign entities and such person/entity, whether directly or indirectly lend/invest in other persons/entities identified in any manner whatsoever by or on behalf of the company or provide any guarantee, security, or the like on behalf of the Ultimate Beneficiaries.

In other words, the company has not used an Intermediary for advancing /loaning/ investing funds to or in an ultimate beneficiary or has not provided any guarantee/ security or the like on behalf of the ultimate beneficiary.

These are such transactions which are required to be reported in notes to accounts of the financial statements as per revised Schedule III, so here management is required to represent on transactions other than those reported in financial statements.

Purpose: Company has not used any intermediary for the purpose of transferring funds to ultimate beneficiary.



On similar grounds, the management has to represent that no funds have been received by the company from any person or entity, including foreign entities and such company shall, whether directly or indirectly lend or invest in other persons or entities identified in any manner whatsoever by or on behalf of the Funding Party or provide any guarantee, security, or the like on behalf of the Ultimate Beneficiaries.

Purpose: Company is not acting as intermediary for purpose of receiving funds from funding entity and transferring same to ultimate beneficiary.



Note: It is pertinent to point out that even if the terms of funding and subsequent utilization may not be in writing, but substantial transactions is carried out in above manner, it is required to be reported.

Auditor's responsibility: Auditor is required to apply reasonable and appropriate audit procedures to conclude the reliability of the management representation. This reflects additional responsibility casted on auditors for reporting & highlighting such transactions to stakeholders.

Rule 11(f) deals with reporting on the payment/declaration of dividend as defined below: There is no change in the objective and scope of an audit of financial statements due to the inclusion of Rule 11(f), since auditors, pursuant to the requirements of SA 250 are required to make an assessment regarding compliance with provisions of various laws & regulations. By virtue of this new reporting requirement, auditors are now specifically required to comment on compliance with provisions of section 123 of the Companies Act 2013 with respect to the dividend declared or paid during the year by the company in their audit report.

The reporting under Rule 11(f) will cover reporting for dividend (including interim dividend) which is declared or paid or proposed for the financial year under reporting but remaining unpaid as at the Balance Sheet date. When performing procedures for testing compliance with the provisions of section 123 of the Act, the principles of materiality would not be applicable since the reporting under Rule 11(f) is towards specific compliance with the provisions of the Act and section 123 of the Act does not prescribe any threshold for materiality.

Nangia's Take

Due to introduction of above rule 11(e) and revised schedule III there is an additional requirement on management to provide representation and make disclosure of transactions in relation to funds given/received by the company for making further loans or investments. Thereby management need to be cautious while indulging in any investing or loan activity as they need to ensure that movement of funds, whether directly or indirectly are not used in similar activities, in order to avoid any reporting as funding entity or intermediary.

Further, as per Rule 11(f) any kind of non-compliance to section 123 shall now directly reflect in the auditor's report. Management should take enough measures to adhere to the compliance and avoid negative reporting.

Auditor is required to understand the appropriateness of disclosure done in financial statement, management representation, compliance of Section 123 of the company's act and apply additional audit procedures accordingly. ICAI has further released "implementation guide on reporting under Rule 11(e) of Companies (Audit & Auditors) Rules, 2014".

02

Clarification on applicability of regulation 23 of SEBI

Mar 30, 2022 Clarification on applicability of regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions.

The Securities Exchange Board of India (SEBI) has issued a clarification on applicability of regulation 23 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in relation to Related Party Transactions which was amended vide notification dated November 9, 2021, inter alia, enhancing the scope of related party, related party transactions (RPTs) and the materiality threshold for seeking shareholder approval. This notification shall come into force with effect from April 1, 2022

Following clarifications and guidance for smooth implementation of the amended Regulation 23 of the LODR Regulations:

- For an RPT that has been approved by the audit committee and shareholders, prior to 1 April 2022, there shall be no requirement to seek fresh approval from the shareholders.
- For RPT approved by the audit committee prior to 1 April 2022 and it becomes material as per the revised materiality threshold, it shall be placed before the shareholders in the first General Meeting held after 1 April 2022.
- The Circular reiterates that RPT for which the audit committee has granted omnibus approval shall continue to be placed before the shareholders if it is material in terms of Regulation 23(1) of the LODR Regulations.

- It is also clarified that the explanatory statement contained in the notice sent to the shareholders for seeking approval for an RPT shall provide relevant information to enable the shareholders to take a view of whether the terms and conditions of the proposed RPT are not unfavorable to the Company, compared to the terms and conditions, had the similar transaction been entered into between two unrelated parties.

Circular also emphasizes that Transparency, accountability, and shareholder empowerment are the bedrock of robust corporate governance and listed entities, therefore, shall ensure to comply with the spirit of the law and endeavor to provide relevant and detailed information to enable and empower shareholders for taking an informed decision.

Nangia's Take

With the amended regulations in place, the scope of an RPT has been widened. The transactions undertaken by Indian listed companies and their subsidiaries shall now be under rigorous scanning with various approvals from shareholders and the Audit Committee, which comes with a lot of practical challenges and complications for a lot of listed companies. Furthermore, the increased burden of approvals to be taken from shareholders and the Audit Committee may make things tedious and complicated due to the linkage to the size of the company in terms of its turnover.

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