ACCOUNTING AND COMPANY LAW

N. A. SHAH BULLETIN

August 2018

N. A. SHAH ASSOCIATES LLP
Chartered Accountants

INDEX

The contents provided in this newsletter are for information purpose only and are intended, but not promised or guaranteed, to be correct, complete and up-to-date. The firm hereby disclaims any liability to any person for any loss or damage caused by errors or omissions, whether such errors or omissions result from negligence, accident or any other cause.

EXECUTIVE SUMMARY:

- **Accounting and auditing**

  - **Expert Advisory Opinion**

    As per recent expert advisory opinion, long term interest free sub-ordinate debt funds received from holding company should be recognized as financial liability at fair value on initial recognition and subsequent measurement at amortized cost. Further, resulting gain (i.e. difference between transaction value and fair value) should be recognized as equity contribution from the holding company and should be appropriately disclosed under 'other equity' in the financial statements considering the requirements of Schedule III to the Companies Act, 2013.

  - **Education material on Ind AS 115**

    Ind AS implementation group of ICAI has released an education material on Ind AS 115 'Revenue from Contracts with Customers' to broadly cover summary of the Standard and Frequently Asked Questions (FAQs) which are being/expected to be encountered while implementing the Standard.

  - **Clarification on implementation of Ind AS 115 for Real Estate Sector**

    The ICAI has given further clarification in regard to recognition of revenue over the period of real estate projects.

  - **Implementation guide to SA 610 (Revised)**

    The ICAI has issued implementation guide to Standard on Auditing (SA) 610 (Revised) 'Using the work of Internal Auditors'.

  - **Valuation Standards issued by the ICAI made effective from 1st July 2018**

    The ICAI has issued eight valuation standards to set up concepts, principles and procedures which are generally accepted internationally having regard to legal framework and practices prevalent in India which will be on recommendatory basis for the members of the Institute. These Valuation Standards are mandatory on or after 1st July, 2018 for the valuation reports issued under the Companies Act, 2013.

- **Company Law**

  - **Sections of the Companies (Amendment) Act, 2017 notified**

    Amendments to the Companies Act, 2013 are notified mainly in regard to (a) subscription of securities on private placement (b) Financial Statements, Board Report, etc.

  - **Extension of due date for e-Form DIR-3 KYC and relaxation in late filing fees**

    Due date for filing form DIR-3 KYC have been extended to 15th September 2018. Further, late filing fees of Rs. 500 is payable for filings during the period 16th September to 5th October 2018 and thereafter late filing fees is Rs. 5,000.

1 Accounting and auditing

1.1 Expert Advisory Opinion

Treatment of financial liability under Ind AS 32 Financial Instruments: Presentation and Ind AS 109 Financial Instruments

a) Fact of the case

As per the facts of the case, the company executed metro rail project in Mumbai and actual cost incurred exceeded the estimated project cost. Based on the arrangement agreed upon between the parties involved in the project, deficit was funded by its holding company. Funding was in the form of interest free non-convertible 'sub-ordinated-debt' repayable after 22 years. The company has sought this opinion in regard to appropriate accounting treatment under the Indian Accounting Standard (Ind AS) for receiving such funds from its holding company. The company's transition date to Ind AS is 1st April 2015.

The company has treated the sub-ordinate debt received as financial liability and following accounting classification / treatment was given by the company under Ind AS:

Particulars	Accounting classification treatment given by the company
Fair value of liability (sub-ordinate debt from holding company) at initial recognition	Financial liability recognized in regard to sub-ordinate debt
Difference between the fair value and transaction value at initial recognition i.e. amount of sub-ordinated debts funds received	Excess amount over the fair value on day 1 is classified as "Other Equity" [part of shareholder's funds]
Recognizing finance cost for unwinding of fair value of sub-ordinate debt	Finance cost on sub-ordinate debt measured at amortized cost is charged to Statement of Profit and Loss

b) Query

Whether the above accounting treatment and presentation is in line with Ind AS 32 / Ind AS 109?

c) Point considered by Committee

- The company has the obligation to repay the subordinated-debt to holding company and hence it is not in nature of equity or compound financial instrument.

- Initial recognition of financial liability to be measured at fair value and subsequent measurement at amortized cost. Resulting gain / loss on initial recognition i.e. difference between transaction price and fair value to be recognized in Profit and Loss unless that Ind AS specifies otherwise [Para 60 of Ind AS 113]. Similar principles are also laid down in Ind AS 109 [para B5.1.1. and B5.1.2A.]

- Interest shall also be accrued in each reporting period, on such amortised cost calculated on the basis of effective interest rate.

- The Committee notes the definitions of 'Income' and 'Expense' given in the 'Framework for the Preparation and Presentation of Financial Statements in accordance with Indian Accounting Standards'. Income or expense is any increase or decrease in economic benefits during the accounting period, other than those relating to contributions from or distributions to equity participants, respectively. Accordingly, the committee is of the view that difference between the fair value of interest free subordinate debts and book value of subordinate debts should be recognized as equity contribution from holding company and the same should be disclosed under "other equity".

d) Opinion

- Difference between fair value and book value (transaction price) of interest free subordinate debt at the date of initial recognition shall be taken to other equity.

- Interest expense from the date of initial recognition of liability till Ind AS transition date (i.e. 1st April 2015) that would have been recognised using effective interest rate method shall be debited to retained earnings as on 1st April 2015.

1.2 Education material on Ind AS 115 Revenue from contracts with customers

The ICAI has issued an Educational Material on Ind AS 115 'Revenue from Contracts with Customers'. It includes (a) brief summary of the Standard (b) Frequently Asked Questions (FAQs) (c) differences between Ind AS 115 & IFRS 15 and (d) differences between Ind AS 115 & IGAAP standards on revenue recognition and contract revenue i.e. AS 9 / AS 7.

1.3 Valuation Standards made effective from 1st July 2018

The Institute of Chartered Accountants of India (ICAI) had issued eight Valuation Standards in order to have consistent, uniform and transparent valuation policies and to harmonize the diverse practices in use in India. These standards would be effective for the valuation reports to be issued on or after 1st July 2018. It will be applicable for all valuation engagements on mandatory basis under the Companies Act, 2013 and on recommendatory basis for the valuation engagements under other statues like Income Tax, the Securities and Exchange Board of India (SEBI), the Foreign Exchange Management Act (FEMA) etc.

1.4 Clarification on revenue recognition as per Ind AS 115 for Real Estate Sector

The Institute of Chartered accountants of India (ICAI) had issued a press release on Implementation of Ind AS 115 'Revenue from Contracts with Customers' wherein it clarified that Indian Accounting Standard 115 also permits recognition of revenue using Percentage of Completion Method (POCM) and has explicit and specific requirements to recognize revenue, where performance obligation is satisfied over a period of time. Now, with respect to that press release, the ICAI has issued a further clarification, wherein it has clarified that the recognition of revenue as the construction progresses is possible based on careful evaluation for each contract as to rights and obligations of the parties to the contract and having regard to applicable laws and regulations (including legal jurisprudence in India) while arriving at a conclusion on the criteria listed out in paragraph 35 'Performance Obligations satisfied over time' and related application guidance of the Standard.

1.5 Implementation Guide to Standard on Auditing 610 (Revised)

The Auditing and Assurance Standards Board of the ICAI has issued Implementation Guide to Standard on Auditing 610 (Revised) 'Using the work of internal auditors'. It contains frequently asked questions (FAQs) with respect to the standard and the response to those FAQs.

2 Company Law

2.1 Subscription of securities on private placement

Section 42 of Companies Act, 2013 (corresponding Section 10 of the Companies (Amendment) Act, 2017) for "offer or invitation for subscription of securities on private placement" is notified effective from 7th August 2018. Corresponding changes are also made in rules and clarifications issued to bring rules in line with notified sections. The key amendments are:

Earlier	Amended
Utilization of such funds restricted only till allotment of shares.	Restriction to use monies extended till the return of allotment is filled with the Registrar
Restriction to issue fresh offer unless allotment for earlier offer is completed or the offer has been withdrawn or abandoned.	Proviso is added that where the number of persons to whom the offer is made does not exceeds identified persons i.e. (select group of persons who have been identified by the board of directors) as may be prescribed, the Company may, at any

Earlier	Amended
	time, make more than one issue of securities to such class of identified persons
Investment size per person shall not be less than Rs. 20,000	Such requirement is now omitted
The time period for filing of return of allotment (e-form PAS 3) is 30 days from date of allotment	Time limit reduced to 15 days
There was no specific penal provision for non-compliance in filing return of allotment.	If the Company defaults in filing the return of allotment within fifteen days, then the Company, its promoters and directors shall be liable to a penalty for each default of Rs. 1,000 for each day during which such default continues but not exceeding Rs. 25 lakhs
No such restriction	Specifically restricts right of renunciation of the private placement offer

2.2 Financial statements, Boards Report, etc.

Amendment to Section 134 of the Companies Act, 2013 are effective from 31st July 2018. The amendments comprises of the following:

- Chief Executive Officer (CEO) shall sign the standalone and consolidated financial statements. Prior to amendment, CEO signature was required only if appointed as director.

- It clarifies that the disclosures made in the financial statements are to be referred in the board's report in order to avoid duplications.

2.3 Extension of due date for filing Form DIR-3 KYC and relaxation in late fee

The Central Government has extended due date of filing Form DIR-3 KYC from 31st August 2018 to 15th September 2018 and after 15th September 2018 fee of Rs. 5,000 would be payable for delay in filing of Form DIR-3 KYC. Further, late filing fees of Rs. 500 is payable for filings during the period 16th September to 5th October 2018 and thereafter late filing fees is Rs. 5,000.

From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400 013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com