



Regulatory Insights

21 June 2023

SEBI amends SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 – Highlights

In brief

The Securities and Exchange Board of India (SEBI) has published the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 (Amendment Regulations)¹. The Amendment Regulations have introduced several key amendments *inter alia* pertaining to the approvals for the continuation of tenure of directors and appointment of key managerial personnel along-with prescribing the additional disclosure requirements in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR).

In detail

The details of the amendments introduced through the Amendment Regulations have been discussed below.

1. Induction of definition of 'Mainstream media'

A new sub-clause 'ra' has been inserted in regulation 2(1) of the SEBI LODR, defining the term mainstream media which includes the print or electronic mode of the following –

- i. Newspapers registered with the Registrar of Newspapers for India;
- ii. News channels permitted by the Ministry of Information and Broadcasting under the Government of India;
- iii. Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; and
- iv. Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India.

2. Timeline for filling the vacancy of compliance officer of a listed company

As per regulation 6 of the SEBI LODR, a listed entity has to appoint a qualified Company Secretary as the Compliance Officer. Prior to the Amendment Regulations, no timeline was prescribed in SEBI LODR with respect to filling of vacancy to the position of the Compliance Officer.

¹ Notification No. SEBI/LAD-NRO/GN/2023/131 dated 14 June 2023

Through the Amendment Regulations, a new sub-regulation '1a' has been inserted after regulation 6(1) of the SEBI LODR, which stipulates that any vacancy in the office of the Compliance Officer will be filled by the listed entity at the earliest within three months. It also clarifies that any appointment of a person in interim capacity will not be allowed unless such appointment is made in accordance with the laws applicable in case of a fresh appointment of a Compliance Officer and the obligations under such laws are made applicable to such person.

3. Additional timeline for high-value debt listed entities to comply with the provisions of regulations 15 to 27 of SEBI LODR

As per regulation 15 of the SEBI LODR, a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of INR5bn and above is considered as high-value debt listed entities. Moreover, any entity which has listed high-value debt will ensure that it complies with the provisions of regulations 15 to 27 of the SEBI LODR or within six months from the date of reaching the above threshold.

SEBI has now extended the period for one year till 31 March 2024, wherein the provisions of Regulations 15 to 27 will be applicable on high-value debt listed entities on a 'comply or explain' basis, and thereafter, on a mandatory basis.

4. New criteria requiring approval of the shareholders for continuation of directors' terms

SEBI, in the recent past, has made several amendments with respect to the provisions regarding the appointment or reappointment of any person on the Board of Directors including the manager.

In the same parlance, through the Amendment Regulations, sub-regulations 17(1D) and 17(1E) have been inserted after regulation 17(1C) of the SEBI LODR to provide that –

- With effect from 1 April 2024, continuation of the term of the director in a listed entity will be subject to the approval of the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment. Continuation of the term of any director of a listed entity as on 31 March 2024 for which the shareholders have sought no approval during the last five years or more will be subject to the approval of the shareholders in the first general meeting to be held after 31 March 2024.
- Moreover, the Amendment Regulations provide exemption from the above provision *inter alia* in case of Whole Time Director, Managing Director, Manager, Independent Director and Director retiring by rotation, provided the approval of the shareholders in this case has been duly sought as required under the other provisions of the Companies Act, 2013 and SEBI LODR.
- Any vacancy in the office of the director will be filled by the listed entity at the earliest within three months from the date of such vacancy. Moreover, if due to such vacancy, the listed entity becomes non-compliant to the provisions ascribed in regulation 17(1) of the SEBI LODR, such vacancy will be filled not later than the date of vacancy.

Moreover, the above provisions will not apply –

- In case the listed entity continues to comply with the provisions of regulation 17(1) of the SEBI LODR even after such vacancy.
- To the below directors on the board of listed entities:
 - director appointed pursuant to the order of a court or a Tribunal;
 - nominee director of the government other than a public sector company;
 - nominee director of a financial sector regulator;
 - nominee director of a financial institution registered with or regulated by the RBI under a lending arrangement in its normal course of business;
 - nominee director of Debenture Trustee registered with SEBI under a subscription agreement for the debentures issued by the listed entity.

5. Timeline of filling the vacancies in the offices of KMP

SEBI has inserted regulation 26A after regulation 26 of the SEBI LODR, thereby prescribing the timeline for filling the vacancy in the office of KMP in a listed entity.

As per the Amendment Regulations, any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director, Manager or Chief Financial Officer will be filled at the earliest within three months. It also clarifies that any appointment of a person in interim capacity will not be allowed unless such appointment is made in accordance with the laws applicable in case of a fresh appointment of a KMP and the obligations under such laws are made applicable to such person.

6. Additional reporting requirement in quarterly Corporate Governance Report

The listed entity is required to submit the quarterly Corporate Governance Report (CGR) within 21 days from the end of the quarter to the stock exchanges containing, *inter alia*, the details of the board meeting attendance of the directors therein, board of directors, related party transaction(s).

The Amendment Regulations have inserted an additional clause '(ba)' after regulation 27(2)(b) of the SEBI LODR stipulating additional disclosure requirement with respect to details of cyber security incidents or breaches or loss of data or documents of the listed entity.

7. Amendments with respect to regulation 30 of the SEBI LODR

Regulation 30 of the SEBI LODR deals with the provisions with respect to the identification of any event or information as material and its disclosure to the stock exchanges. It also lays down the timeline within which the disclosure of the events must be made to the stock exchanges. In this regard, the Amendment Regulations have made few significant changes in regulation 30 of the SEBI LODR, which have been provided below.

- The Amendment Regulations have provided an additional criterion for categorising any event or information as material. Now, an event or information will be considered as material if the value or the expected impact in terms of value due to the omission of such an event or information, exceeds the lower of the following –
 - 2% of turnover, as per the last audited consolidated financial statements of the listed entity;
 - 2% of net worth, as per the last audited consolidated financial statements of the listed entity;
 - 5% of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity.
- Moreover, any continuing event or information which becomes material pursuant to the notification of the Amendment Regulations should be disclosed by the listed entity within 30 days from the date of coming into effect of the Amendment Regulations.
- As per regulation 30(6) of the SEBI LODR, a listed entity should make a disclosure of event covered under Part A of Schedule III to the regulations within 24 hours of occurrence of such event, whereas after the Amendment Regulations, the said provisions stand amended. Post amendment, the listed entity will disclose the material event or information to the stock exchanges as soon as possible but not later than –
 - 30 minutes from the conclusion of the board meeting in which decision pertaining to the event has been taken;
 - 12 hours from the occurrence of the event in case it is emanating from within the listed entity;
 - 24 hours from the occurrence of the event in case it is not emanating from within the listed entity.
- However, disclosure with respect to events for which timelines have been specified in Part A of Schedule III will be made within such timelines.
- Moreover, the top 100 listed entities (with effect from 1 October 2023), and thereafter, the top 250 listed entities (with effect from 1 April 2024) will confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific

material event or information in terms of the provisions of regulation 30 of the SEBI LODR are circulating among the investing public, as soon as reasonably possible, and not later than 24 hours from the reporting of the event or information.

8. Approval of the shareholders in case of any special right granted to them

A new regulation (regulation 31B) will be inserted after regulation 31A of the SEBI LODR. Post amendment, any special right granted to the shareholders of a listed entity will henceforth be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every five years starting from the date of grant of such special right. Special rights available to the shareholders of a listed entity as on the date of coming into force of the Amendment Regulations will be subject to the approval by shareholders by way of a special resolution within a period of five years from the date of coming into force of this regulation.

9. Submission of financial results subsequent to listing

Regulation 33 of the SEBI LODR prescribes the timeline and manner for the submission of quarterly, half yearly or annual financial results to the stock exchanges. Moreover, post the Amendment Regulations, the listed entity will, subsequent to its listing, submit its financial results for the quarter or the financial year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified for the submission of quarterly and yearly financial results in regulation 33 of the SEBI LODR, as the case may be, or within 21 days from the date of its listing, whichever is later.

10. Amendment with respect to business responsibility report

As per the Amendment Regulation, the annual report of the top 1,000 listed entities based on market capitalisation will consist of a business responsibility and sustainability report on environmental, social and governance disclosures. Moreover, listed entities will obtain assurance as per the Business Responsibility and Sustainability Report Core consisting of specific key performance indicators for their value chain in the manner as may be specified by SEBI.

11. Provision relating to sale, lease or disposal of an undertaking outside the scheme of arrangement

A new regulation (regulation 37A) has been inserted by the Amendment Regulations in the SEBI LODR, which lays down provisions with respect to sale, lease or disposal of the undertaking of the listed entity. The intent of the law maker here is to lay down the procedures with respect to the transactions which is covered under section 180(1)(a) of the Companies Act, 2013 and are otherwise not covered under the Scheme of Arrangement.

Pursuant to the amendment, any sale, lease or otherwise disposal of the whole or substantially the whole of the undertaking of the listed entity or, if in case it owns more than one undertaking, then of the whole or substantially the whole of any of such undertakings, will henceforth require prior approval of shareholders by way of Special Resolution, wherein the votes cast by the public shareholders in favour of the resolution should exceed the votes cast by such public shareholders against the resolution.

Moreover, the above provisions will not be applicable to the transaction between holding company and its wholly owned subsidiary. However, if the wholly owned subsidiary intends to sell, lease or otherwise dispose of the whole or substantially the whole of the undertaking received from a listed entity, whether in whole or in part, to any other entity, the listed entity should take prior approval from the shareholders as per the above provisions.

12. Stock exchange intimation regarding the status of payment of interest, dividend, repayment or redemption of non-convertible securities

Regulation 57 of the SEBI LODR prescribes the intimations required to be done at various intervals of time in the event of any interest or dividend or principal amount becoming due on non-convertible securities. Moreover, with the Amendment Regulations coming into force the entire regulation 57 stands amended, and henceforth, a listed entity will submit a certificate to the stock exchange regarding status of payment of interest or dividend or repayment or redemption of principal of non-convertible securities, within one working day of it becoming due, in the manner and format as specified by SEBI periodically.

13. Amendments in Schedule III to the SEBI LODR

Certain major amendments have been made in the Schedule III to the SEBI LODR to ensure more transparency and uniformity with the regulations. A summary of the amendments introduced in Schedule III is mentioned below.

- In line with regulation 37A inserted in the SEBI LODR through the amendments, a listed entity will henceforth have to disclose the event or information with respect to the sale of whole or substantially the whole of the undertaking of the listed entity, including the sale of a stake in the associate company of the listed entity.
- The term 'acquisition' ascribed in the Schedule has been assigned a wider scope.
- Stock exchange intimation will be required in case of a New Credit Rating being issued to the listed entity.
- The listed entity will disclose to the stock exchange details of all the agreements entered into by the shareholders, promoter, directors, KMP, etc. which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or impose any restriction or create any liability upon the listed entity, including disclosure of any rescission, amendment or alteration of such agreements thereto, whether or not the listed entity is a party to such agreements.
- Disclosure requirements have become more specific with respect to fraud or defaults by a listed entity, its promoter, director, KMP, senior management or subsidiary or arrest of key managerial personnel, senior management, promoter or director of the listed entity.
- Post amendment, the listed entity will henceforth have to give prior intimation of the Schedule of Investor Calls at least two working days in advance (excluding the date of the intimation and the date of the meet), which will also be uploaded on the website of the listed entity.

The takeaways

The Amendment Regulations prescribe additional compliance and disclosure requirements on the part of the listed entity with a view to ensure greater transparency and governance. The amendments aim to ensure that the listed entity makes the adequate disclosures of information for it to be available to the wider audience.

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