

CHAPTER 3

Amendments to Listing Regulations and an action plan

This article aims to:

Summarise recent amendments made by SEBI to Listing Regulations.

The Securities and Exchange Board of India (SEBI) on 2 September 2015 notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations). The Listing Regulations comprises of detailed regulations covering post listing obligations relating to different segments of the capital market.

On 5 May 2021, SEBI issued various amendments to Listing Regulations with an aim to strengthen corporate governance practices and disclosure requirements, ease compliance burden on listed entities and realign it with recent regulatory developments. The amendments were approved by SEBI in its board meeting dated 25 March 2021.

This article aims to provide an overview of key recommendations to the Listing Regulations.

**Overview of the amendments**

The following sections discusses the key amendments to Listing Regulations:

A. Amendments to strengthen corporate governance practices

Regulation	Amendment
Applicability (Regulation 3(2))	Regulation 3 deals with applicability requirements of the Listing Regulations and it has been amended. The amendment provides that once any of the provisions of the Listing Regulations become applicable to a listed entity on the basis of market capitalisation, then they would continue to apply to such entities even if they fall below such thresholds.
Corporate governance provisions applicability (Regulation 15(2))	<p>Currently, every listed entity that satisfies certain conditions is required to comply with the corporate governance provisions. The conditions are to be met as on the last day of the previous financial year and they are:</p> <ul style="list-style-type: none"> • Paid up equity share capital INR10 crore or more and • Net worth INR25 crore or more. <p>SEBI amended Regulation 15(2) relating to applicability of corporate governance provisions under Listing Regulations. The amendment provides that once corporate governance provisions become applicable to a listed entity, then these provisions would continue to remain applicable till such time the equity share capital or the net-worth of such an entity reduces and remains below the specified threshold for a period of three consecutive financial years.</p>
Corporate governance requirements with respect to subsidiary of listed entity (Regulation 24(5))	<p>As per the amendments, a listed entity has to pass a special resolution in its general meeting when it intends to dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than or equal to 50 per cent or cease the exercise of control over the subsidiary.</p> <p>Earlier the requirement of passing special resolution was applicable in case the shareholding falls below 50 per cent.</p>



<p>Disclosure of events or information (Regulation 30(6) and Schedule III)</p>	<p>There is an amendment to Regulation 30(6) which provides that the disclosure of discussion held in a board meeting such as disclosure relating to financial results, dividends, buy back of securities to stock exchange should be made within the timelines specified therein, rather than within 30 minutes from the conclusion of the board meeting.</p> <p>Additionally, Schedule III has been amended to provide in case of board meetings being held for more than one day, the financial results should be disclosed within 30 minutes of end of the meeting for the day on which it has been considered.</p>
<p>Business Responsibility and Sustainability Report (BRSR) (Regulation 34(2))</p>	<p>Currently, top 1,000 listed companies¹ in India are required to furnish a Business Responsibility Report (BRR) to the stock exchanges as a part of their annual reports. The BRR should describe the initiatives taken by the listed companies from an Environmental, Social and Governance (ESG) perspective, in the format as specified by SEBI. Other listed companies may submit the BRR voluntarily under Regulation 34 of the Listing Regulations.</p> <p>SEBI issued following amendments relating to BRR:</p> <ul style="list-style-type: none"> • The BRR would be applicable to the top 1,000 listed entities (by market capitalisation) until financial year 2021-22 • With effect from financial year 2022-23, top 1,000 listed entities would be required to submit Business Responsibility and Sustainability Report (BRSR) instead of BRR in the format prescribed by SEBI • The top 1,000 listed entities (by market capitalisation), can report BRSR on a voluntary basis for financial year 2021-22.
<p>Dividend distribution policy (Regulation 43A)</p>	<p>There is an amendment to Regulation 43A which provides that the requirement relating to dividend distribution policy would be applicable to top 1,000 listed entities based on market capitalisation instead of current applicability to top 500 entities (by market capitalisation).</p> <p>The dividend distribution policy should list the circumstances under which the shareholders may expect dividend, the financial parameters, internal and external factors that would be considered for declaring dividend.</p>

<p>Dividend distribution policy (cont.)</p>	<p>Additionally, a listed entity is required to formulate a dividend distribution policy which should be disclosed on its website and a web-link should also be provided in its annual report. Before this amendment, the policy was provided in the annual report and on the website of the listed entity.</p> <p>The listed entities other than top 1,000 listed entities based on market capitalisation may disclose their dividend distribution policies on a voluntary basis on their websites and provide a web-link in their annual report.</p>
<p>Role of an audit committee (Schedule II - Part C)</p>	<p>In addition to their current responsibilities, the audit committee would be required to consider and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation, etc. on the listed entity and its shareholders.</p>



1. Based on market capitalisation calculated as on 31 March of every financial year.

B. Amendments relating to compliance requirements

Regulation	Amendment
Compliance certificate (Regulation 7(3))	<p>Currently, a listed entity is required to submit a compliance certificate to the stock exchange certifying that all the activities in relation to share transfer facility are maintained either in house or by a registrar to an issue and share transfer agent registered with SEBI.</p> <p>Now, the amendments require a listed entity to submit such compliance certificate within 30 days from the end of the financial year. Before the amendment, the requirement was to submit such compliance certificate within one month of end of each half of the financial year.</p>
Secretarial Audit and Secretarial Compliance Report (Regulation 24A)	<p>Currently, SEBI circular (no. CIR/CFD/CMD1/27/2019) dated 8 February 2019 requires a listed entity to submit secretarial compliance report to the stock exchanges within 60 days of the end of the financial year. The circular also prescribes the format for the annual secretarial compliance report.</p> <p>Now the amendments have incorporated this requirement in Regulation 24A to provide that every listed entity shall submit a secretarial compliance report in a prescribed format to the stock exchanges, within 60 days from the end of each financial year.</p>
Disclosure of beneficial ownership (Regulation 26 and 36)	<p>Currently, both Regulation 26(4) and Regulation 36(3)(e) require non-executive directors to disclose their shareholding (in the listed entity) at the time of their appointment. While Regulation 26(4) additionally requires disclosure of shareholding held on a beneficial basis, there is no such requirement in Regulation 36(3)(e).</p> <p>Therefore, the amendment omitted Regulation 26(4) and amended regulation 36(3) to include the requirement of disclosure of shareholding held on a beneficial basis by non-executive directors at the time of their appointment.</p>
Quarterly compliance report (Regulation 27(2))	<p>The amendment requires a listed entity to submit a quarterly compliance report on corporate governance under Regulation 27(2) in the prescribed format to the recognised stock exchange(s) within 21 days from the end of each quarter. Before the amendment, there was a requirement to file this certificate within 15 days from the close of the quarter.</p>

Certificate from practicing company secretary (Regulation 40(9))	<p>As per Regulation 40(9), a listed entity is required to submit a certificate from a practicing company secretary to stock exchange within one month of the end of each half of the financial year, certifying that all certificates relating to transfer, transmission or transposition of securities have been issued within 30 days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies.</p> <p>The amendment provides that a listed entity should submit such compliance certificate within one month from the end of the financial year instead of filing it on a half yearly basis.</p>
Disclosure of voting results (Regulation 44(3))	<p>The amendment requires a listed entity to submit to the stock exchange, within two working days of conclusion of its general meeting, details regarding the voting results in the prescribed format. Before the amendment, the requirement was to submit the results within 48 hours.</p>
Change in name of the listed entity (Regulation 45(3))	<p>The amendments omit the requirement of seeking an approval from a stock exchange relating to the change of name of an entity. Additionally, the amendment requires a listed entity to seek shareholders' approval for change in the name of the entity by submitting a certificate from a practicing chartered accountant stating compliance with the requirements of the Listing Regulations relating to change in the name of a listed entity.</p>
Exemption relating to foreign subsidiary (Regulation 46(2)(s))	<p>Currently Regulation 46(2)(s) requires listed entities to upload separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, at least 21 days prior to the date of the annual general meeting which has been called to, <i>inter alia</i>, consider accounts of that financial year.</p> <p>In relation to this provision, the amendment provides that a listed entity which has a subsidiary incorporated outside India (foreign subsidiary) would not be required to present separate financial statements where:</p> <ol style="list-style-type: none"> A foreign subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, and the consolidated financial statements of such a foreign subsidiary is placed on the website of the listed entity

Exemption relating to foreign subsidiary (cont.)	b. A foreign subsidiary is not required to get its financial statements audited under any law of the country of its incorporation and which does not get such financial statements audited, the holding Indian listed entity may place such unaudited financial statements on its website and where such financial statements are in a language other than English, a translated copy of the financial statements in English should also be placed on the website.
Additional disclosure requirements on website (Regulation 46)	<p>The amendments require additional disclosures on a listed entity's website. These disclosures have to be provided in a separate section on its website. Additional disclosures are as follows:</p> <ul style="list-style-type: none"> • Secretarial compliance report under Regulation 24A(2) • Policy for determination of materiality of events or information under Regulation 30(4)(ii) • Contact details of key managerial personnel who are authorised for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s) under Regulation 30(5) • Disclosures under Regulation 30(8) relating to material events or information • Statements of deviation(s) or variation(s) under Regulation 32 • Dividend distribution policy by listed entities based on market capitalisation under Regulation 43A • Annual return as prescribed under Section 92 of the Companies Act, 2013 and the rules made thereunder.
Advertisements in newspapers (Regulation 47(1))	<p>The amendments remove the requirements relating to newspaper advertisement in following cases:</p> <ul style="list-style-type: none"> • Notice of meeting of the board of directors where financial results to be discussed • Statements of deviation(s) or variation(s) under Regulation 32(1) on quarterly basis, after review by audit committee and its explanation in directors report in annual report.

C. Amendments relating to applicability and role of a Risk Management Committee (RMC)

SEBI issued following amendments to Regulation 21 of the Listing Regulations relating to the applicability and role of the RMC:

- **Applicability extended:** RMC should be constituted by top 1,000 listed entities (on the basis of market capitalisation as at the end of the immediate previous financial year). Before amendment, it was applicable to top 500 listed entities.
 - **Membership of RMC:** The RMC should have minimum three members with majority of them being members of the board of directors, **including at least one independent director**. Additionally, in case of a listed entity with outstanding SR equity shares, at least two thirds of the RMC shall comprise independent directors.
 - **Number of meetings:** The RMC to meet at least **twice** a year (before amendment, once a year).
 - **Quorum of the meeting:** The quorum for a meeting of the RMC should be either two members or one-third of the members of the committee, whichever is greater, including at least one member of the board of directors in attendance (this is a new requirement).
- **Time lag between two meetings:** The meetings of RMC should be conducted in such a manner that on a continuous basis not more than 180 days shall elapse between any two consecutive meetings (this is a new requirement).
 - **Enhanced role and responsibility:** A new section has been added to Part D of Schedule II that defines role of the RMC. Following are the key aspects:
 - RMC would need to formulate a detailed risk management policy which should include following:
 - A framework for identification of internal and external risk specifically faced by the listed entity, in particular including financial, operational, sectoral, sustainability (particularly, ESG related risks), information, cyber security risks or any other risk as may be determined by the committee
 - Measures for risk mitigation including systems and processes for internal control of identified risks
 - Business continuity plan
 - To ensure that appropriate methodology, processing and systems are in place to monitor and evaluate risks associated with the business of the company

- To monitor and oversee implementation of the risk management policy, including evaluating the adequacy of risk management systems
- To periodically review the risk management policy, at least once in two years, including by considering the changing industry dynamics and evolving complexity
- To keep the board of directors informed about the nature and content of its discussions, recommendations and actions to be taken
- The appointment, removal and terms of remuneration of the Chief Risk Officer (if any) would be subject to review by the RMC.
- **Additional powers:** The RMC would have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

D. Revision of provisions relating to reclassification of promoter/promoter group entities

Currently, Regulation 31A of the Listing Regulations permits reclassification of promoters of listed entities as public shareholders in different scenarios, subject to the specified conditions. The reclassification scenarios, *inter alia*, include the following:

- When a promoter is replaced by a new promoter
- Where a company ceases to have any promoters (i.e. becomes professionally managed).

Relaxation from this requirement was given by SEBI on a case to case basis.

Difficulties were faced by the entities in cases where promoters have desired reclassification but have experienced challenges. Therefore, SEBI had issued following revisions to the existing provisions of the Listing Regulations.

- The board of directors would be required to analyse the reclassification request immediately in the next board meeting or within three months from the date of receipt of the request from its promoter(s), whichever is earlier. Before the amendment there was no definitive timeline for the board of directors to analyse such requests.

- Current time gap of a minimum of three months and maximum six months between the date of board meeting and the shareholders' meeting for considering the request of the promoter(s) seeking reclassification has been reduced to a minimum of one month and maximum three months.
- The requirement of seeking approval of shareholders would not apply in cases where the promoter seeking reclassification and persons related to the promoter(s) seeking reclassification, together holds shareholding of less than one per cent, subject to the promoter not being in control.
- The current relaxations applicable to the companies whose resolution plans have been approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 would be extended to reclassification pursuant to an order of any regulator under any law subject to the condition that such promoter(s) seeking reclassification should not remain in control of the listed entity.
- Exemption from the procedure for reclassification would be granted in cases where reclassification is pursuant to an open offer or a scheme of arrangement and if the intent of the erstwhile promoter(s) to reclassify has been disclosed in the letter of offer or scheme of arrangement. Additionally,

the requirement relating to minimum public shareholding requirements would also not be applicable in case of reclassification pursuant to an open offer.

E. Disclosures pertaining to analyst and investor meet and conference calls

Under Listing Regulations, a listed entity is required to disclose the schedule of analyst or institutional investor meet and the presentations made to them on its website under Regulation 46 and on the website of the stock exchange under Schedule III. The SEBI has amended Regulation 46 and Schedule III to strengthen the disclosure framework with respect to analyst and institutional investors' meetings and conference calls. The amended provision explains the term 'meet' to mean the group meetings and calls, whether digitally or by physical means.

Additionally, Listing Regulations have been amended to include following requirements relating to audio or video recordings and transcripts of post earnings/quarterly calls:

- **Audio/video recordings on website:** Audio/video recordings to be uploaded on the website of a listed company and the stock exchanges immediately after the conclusion of the earnings conference call, before the commencement of the next trading day or within 24 hours from the conclusion of such calls, whichever is earlier.

- **Written transcript on website:** Written transcript of such calls to be uploaded on the website of the listed entity and stock exchanges within five working days of the conclusion of such calls.
- **Period to retain:** The audio/video recordings to be uploaded on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website. Further, the written transcript of such calls should be preserved permanently as per the requirements under Regulation 9(a) of the Listing Regulations.

The requirement for disclosure(s) of audio/video recordings and transcript would be applicable on a voluntary basis from 1 April 2021 and on a mandatory basis from 1 April 2022.

Action plan

The following table summarises important actions that listed entities need to focus on due to amendments to Listing Regulations:

Provision	Next steps
Requirement to furnish BRSR in place of BRR to the stock exchanges as a part of annual reports	<ul style="list-style-type: none"> • Mandatory from FY2022-23: For top 1,000 listed entities by market capitalisation (calculated as on 31 March of every FY) • Voluntary for FY2021-22: For top 1,000 listed entities by market capitalisation (calculated as on 31 March of every FY) • Voluntary for other companies: Listed entities (other than top 1,000) and entities which have listed their specified securities on the Small and Medium Enterprises (SME) exchange may voluntarily submit BRSR in place of BRR effective FY2021-22 onwards.
Mandatory constitution of RMC and enhanced role of RMC	Date of publication in the official gazette - 6 May 2021 Applicability - Top 1,000 listed entities (basis market capitalisation as at the end of immediate previous FY)
Provisions relating to re-classification of promoter/promoter group entities: <ul style="list-style-type: none"> • Analyse reclassification request immediately in the next board meeting or within three months from the date of receipt of the request from promoter(s), whichever is earlier • Reduction in time gap between the date of board meeting and the shareholders' meeting for considering the request of the promoter(s) seeking reclassification to minimum one month and maximum three months. 	Date of publication in the official gazette - 6 May 2021



Provision	Next steps
<p>Amendments relating to certain compliances to be made by listed entities:</p> <ul style="list-style-type: none"> • Compliance certificate in relation to share transfer facility • Secretarial compliance report • Quarterly compliance report on corporate governance • Compliance certificate from practicing Company Secretary relating to transfer/transmission/transposition of securities • Details of voting result 	<p>Date of publication in the official gazette - 6 May 2021</p> <p>Within 30 days of the end of FY</p> <p>Within 60 days from the end of each FY</p> <p>Within 21 days from the end of each quarter</p> <p>Within one month from the end of FY</p> <p>Within two working days of conclusion of an entity's general meeting</p>
<p>Disclosure of dividend distribution policy on the entity's website and web-link in the annual report</p>	<p>Date of publication in the official gazette - 6 May 2021</p> <p>Applicability:</p> <ul style="list-style-type: none"> • Mandatory for top 1,000 listed entities (basis market capitalisation calculated as on 31 March of every FY) • Voluntary for other listed entities (other than top 1,000).
<p>Disclosures pertaining to analyst and investor meet and conference calls:</p> <ul style="list-style-type: none"> • Upload of audio/video recordings on an entity's website and the stock exchanges • Upload of written transcript of calls on an entity's website and the stock exchanges. 	<ul style="list-style-type: none"> • Voluntary from 1 April 2021 • Mandatory from 1 April 2022.