

Chapter 1

SEBI issued FAQs on Listing Regulations

This article aims to:

Discuss the key clarifications issued by SEBI with respect to the provisions of the Listing Regulations applicable to listed entities.

Introduction

On 2 September 2015, the Securities and Exchange Board of India (SEBI) notified the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations). The Listing Regulations lay down broad principles for periodic disclosures to be given by the listed entities operating in different segments of the capital markets such as equity shares, non-convertible debt securities, non-convertible redeemable preference shares, Indian Depository Receipts (IDRs), securitised debt instruments and units issued by mutual funds. Since the date of notification of the Listing Regulations, significant amendments have been made to the relevant provisions through issuance of various notifications and clarifications to help streamline its implementation by companies.

In September 2021, SEBI has issued clarifications in the form of Frequently Asked Questions (FAQs) and provided guidance to certain important requirements under the Listing Regulations. Those mainly relate to:



In this article, we aim to summarise the key clarifications issued by SEBI under the Listing Regulations.

Overview of the clarifications

Definitions

Under the Listing Regulations, an associate company and a related party has been defined as follows:

a. Associate company (Regulation 2(1)(b)): An associate company means any entity which is an associate under Section 2(6) of the Companies Act, 2013 (2013 Act) or under the applicable Accounting Standards (AS) or Indian Accounting Standards (Ind AS).

b. Related party (Regulation 2(1)(zb)): Related party means a related party as defined under Section 2(76) of the 2013 Act or under the applicable AS or Ind AS. Further, any person or entity belonging to the promoter or promoter group of the listed entity and holding 20 per cent or more of shareholding in the listed entity shall be deemed to be a related party.

Clarification

As per the clarification, if either of the given conditions are met (i.e., an entity/related party is covered under the 2013 Act or under the applicable AS or Ind AS), then such an entity/party would be classified as an associate company/related party¹.

¹ SEBI through a notification dated 9 November 2021 has issued certain amendments to the Listing Regulations which, *inter alia*, included amendments to the definition of related party. In accordance with the amendments, related party would include:

- Any person or entity forming a part of the 'promoter' or promoter group' of the listed entity (effective from 1 April 2022)
- Any person or any entity, holding equity shares in the listed entity either directly or on a beneficial interest basis as prescribed under Section 89 of the 2013 Act at any time during the immediately preceding financial year:
 - Of 20 per cent or more, or (effective from 1 April 2022)
 - Of 10 per cent or more (effective from 1 April 2023).

Corporate governance

Chapter IV of the Listing Regulations lays down the provisions relating to the corporate governance to be complied by a listed entity that has listed specified securities² and non-convertible debt instruments. SEBI has issued following clarifications relevant to the corporate governance norms under the Listing Regulations:

- **Compliance certificate (Regulation 17(8)):** Currently, the Chief Executive Officer (CEO) and the Chief Financial Officer (CFO) of a listed entity are required to furnish a compliance certificate to their board of directors. Schedule II (Part B) of the Listing Regulations specifies the minimum information to be included as part of the compliance certificate. Those, *inter alia*, include:
 - a. Quarterly results for the listed entity and its operating divisions or business segments
 - b. Minutes of meetings of audit committee and other committees of the board of directors
 - c. Show cause, demand, prosecution notices and penalty notices, which are materially important
 - d. Any material default in financial obligations to and by the listed entity, or substantial non-payment for goods sold by a listed entity

- e. Non-compliance of any regulatory, statutory or listing requirements and shareholders service such as non-payment of dividend, delay in share transfer, etc.

The issue relates to whether such a certificate can be certified by a Managing Director (MD) or Whole Time Director (WTD) in case a listed company has not designated a CEO.

Clarification

SEBI has clarified that such compliance certificates may be signed by the officials who hold powers, duties and responsibilities of a CEO/CFO irrespective of their designations.

- **Approval of material RPTs (Regulation 23(4)):** Currently, all material Related Party Transactions (RPTs) entered into by a listed entity are required to be approved by the shareholders through a resolution. Further, no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

In this regard, the issue relates to whether those related parties who are related to the concerned transaction/contract should not vote to approve or whether related parties should altogether not vote to approve such transaction.

Clarification

As per the clarification, the requirement to obtain shareholders' approval for material RPTs under Regulation 23(4) of the Listing Regulations is applicable to the specified listed entities covered under Section 15 of the Listing Regulations (i.e., entities to whom corporate governance norms are applicable under the Listing Regulations)³. Accordingly, for applicable entities, it has been clearly provided that all material RPTs require approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party for the particular transaction or not.

- **Corporate governance requirements with respect to subsidiary of a listed entity (Regulation 24):** Regulation 24 of the Listing Regulations specifies certain corporate governance requirements to be complied by a listed entity with respect to its unlisted subsidiary (including material subsidiary)⁴. Those, *inter alia*, include the following:
 - a. At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted material subsidiary, whether incorporated in India or not

- b. An audit committee of the listed entity shall also review the financial statements, in particular, the investments made by the unlisted subsidiary.
- c. The minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity.
- d. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements⁵ entered into by the unlisted subsidiary.

Clarification

SEBI has clarified that wherever the term 'unlisted material subsidiary' and 'unlisted subsidiary' have been distinctly mentioned under any sub-regulation of Regulation 24 of the Listing Regulations, such sub-regulation shall be applicable to material unlisted subsidiaries or all unlisted subsidiaries as the case may be. Accordingly, the requirement to furnish a statement of significant transactions and arrangements is applicable with respect to all unlisted subsidiaries of a listed entity. On the other hand, a listed entity is required to ensure that at least one independent director on its board of directors is a director on the board of directors of each of its unlisted material subsidiaries.

2. Equity shares and convertible securities defined under Regulation 2 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

3. Entities with listed specified securities and non-convertible debt securities.

4. Material subsidiary shall mean a subsidiary, whose income or net worth exceeds 20 per cent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

5. Significant transaction or arrangement mean any individual transaction or arrangement that exceeds or is likely to exceed 10 per cent of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.

- **Maximum limit for membership in a committee (Regulation 26):** A director could be a member in 10 committees or could act as a chairperson of five committees across all listed entities in which he/she is a director.

While determining the limit of a director to act as a chairperson, following inclusion/exclusions are required:

- a. Include the limit of the committees on which a director could serve in all public limited companies (listed or unlisted)
- b. Exclude all other companies including private limited companies, foreign companies, high value debt listed entities and companies formed under Section 8 of the 2013 Act.

The issue relates to whether a director can be a committee member for 10 listed entities only or the same includes unlisted public companies as well.

Clarification

As per the clarification, a director of a listed entity can be a member in maximum 10 committees and chairperson of more than five committees of listed entities and unlisted public limited companies put together.

Financial results

Regulation 33(3) of the Listing Regulations requires an entity with listed specified securities to submit audited standalone financial results for the financial year along with an audit report and a statement on impact of audit qualifications (in case of an audit report with modified opinion) with the stock exchange(s), within 60 days from the end of the financial year.

Additionally, the listed entity should submit the audited or limited reviewed financial results in respect of the last quarter along with the results for the entire financial year, with a note stating that the figures of last quarter are the balancing figures between audited figures in respect of the full financial year and the published year-to-date figures upto the third quarter of the current financial year.

Clarification

In accordance with above, SEBI has clarified that the financial results for the last quarter shall necessarily be audited.

Disclosures with the stock exchange(s)

In accordance with Regulation 30 of the Listing Regulations, every entity with listed specified securities is required to make disclosures of any events or information which, in the opinion of the board of directors of a listed company, is material to the stock exchange(s). Further, certain events or information are deemed to be material and are to be disclosed as soon as reasonably possible and not later than 24 hours from the occurrence of an event or information (Part A of Schedule III). Those, *inter alia*, include:

- Fraud/defaults by promoter or key managerial personnel or by a listed entity, or arrest of key managerial personnel or promoter
- Detailed reasons for resignation of an auditor of a listed entity
- Letter of resignation along with detailed reasons for the resignation of independent directors.

The events or information which has been disclosed to stock exchange(s) should also be hosted 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.

Clarification

Following clarifications have been issued with respect to the disclosure requirements specified under the Listing Regulations:

- a. Disclosure on website:** The listed entity shall disclose on its website all such events or information which have been disclosed to stock exchange(s) under Regulation 30(8) of the Listing Regulations on or after 1 December 2015. Such disclosures shall be hosted on the website of the listed entity for a minimum period of five years from the date of disclosure to the stock exchange.
- b. Disclosure with respect to subsidiary:** Regulation 30(9) of Listing Regulations requires listed entities to provide disclosure of all events or information with respect to subsidiaries which are material for the listed entity.

In case both the parent and subsidiary are listed entities, then the parent and material subsidiary in their own right as listed entities have to provide disclosure separately under the Listing Regulations.

Further, Regulation 30(9) of the Listing Regulations places emphasis on materiality of the events or information. Therefore, disclosure would be required in cases where the event or information originating from a subsidiary is material to the

listed entity, irrespective of whether such a subsidiary is material or not as defined under Regulation 16(1)(c)⁶ of the Listing Regulations.

- c. Disclosure regarding acquisition by a listed entity:** Every listed entity is required to disclose information relating to acquisition or agreeing to acquire shares or voting rights, a company, whether directly or indirectly, such that the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company without application of the guidelines for materiality as such an event is considered as 'deemed to be material'.

SEBI has clarified that the disclosure is required with respect to a listed entity's acquisition of shares or voting rights in the company wherein such target company can be listed or unlisted.

- d. Disclosure regarding proposed fund raising:** A listed entity is required to disclose within 30 minutes of the closure of the meeting the decision with respect to fund raising proposed to be undertaken. As per the clarification, fund raising by way of Further Public Offer (FPO), rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue and any other method are to be disclosed to the stock exchange(s).

Disclosures on the website

- **Agreements with media companies (Regulation 46(2)(n)):** Regulation 46(2) of the Listing Regulations provides the list of information to be disseminated by an entity with listed specified securities and non-convertible securities on its website. Those, *inter alia*, include:
 - a. Terms and conditions of appointment of independent directors
 - b. Policy on dealing with RPTs and policy for determining 'material' subsidiaries
 - c. Details of establishment of vigil mechanism/whistle blower policy
 - d. Details of agreements entered into with the media companies and/or their associates, etc.

Clarification

With respect to disclosure of details of agreements with the media companies and/or their associates, SEBI has clarified that only such agreements that are not in the normal course of business should be disclosed by a listed entity on its website.

- **Update to the content on website (Regulation 46(3)):** Every listed entity is required to:
 - a. Ensure that the contents of its website are correct

6. Material subsidiary shall mean a subsidiary, whose income or net worth exceeds 10 per cent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

b. Update any change in the content of its website within two working days from the date of such change in content.

Clarification

In accordance with the clarification, Regulation 46(3) refers to the update of any change in the content which is provided as per the requirements of Regulation 46(2) of the Listing Regulations.

Others

- **Transfer or transmission of securities (Regulation 40(3)):** In case of transfer of securities by an entity with listed specified securities, the listed entity shall register transfer of its securities in the name of the transferee(s) and issue certificates or receipts or advices, as applicable, of transfers or issue any valid objection or intimation to the transferee or transferor, as the case may be, within a period of 15 days from the date of such receipt of request for transfer.

Further, it provides that a listed entity should ensure that the transmission requests are processed for securities held in dematerialised mode and physical mode within seven days and 21 days respectively, after receipt of the specified documents. Also, proper verifiable dated records of all correspondences with the investor shall be maintained by the listed entity.

The issue relates to how a listed entity would ensure compliance where companies have no role to play in processing of transmission of securities held in dematerialised mode.

Clarification

As per the clarification, the provision in Regulation 40(3) may be read in context with Regulation 7(1) of the Listing Regulations which requires a listed entity to appoint a share transfer agent or manage the share transfer facility in-house. In cases where the listed entity is managing the share transfer in-house, such compliance may be ensured. In this regard, the share transfer agent is an agent of the listed entity and it is imperative that the listed entity as a principal should supervise the activities of its agent.

Further, in terms of Regulation 8 of the Listing Regulations, the listed entity, wherever applicable, should cooperate with and submit correct and adequate information to the intermediaries registered with SEBI including registrar to an issue and share transfer agents.

In case the listed entity has not effected transfer of securities within 15 days or where the listed entity has failed to communicate to the transferee(s) any valid objection to the transfer, within the stipulated time period of 15 days, then the listed entity is required to compensate the aggrieved party for

the opportunity losses caused during the period of the delay in terms of Regulation 40(8) of the Listing Regulations. Additionally, a listed entity should ensure that the share transfer agent and/ or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within 30 days from the end of the financial year, certifying that all certificates have been issued within 30 days of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/ allotment monies.

In this regard, it has been clarified that the listed entity may seek such reports from share transfer agents, so as to ensure compliance within the time period of 15 days for transfer of securities as stipulated in Regulation 40(8) of the Listing Regulations.

- **Preservation of documents (Regulation 9):** Every listed entity is required to formulate a policy for preservation of documents approved by its board of directors, classifying them in at least two categories as follows:
 - a. Documents whose preservation shall be permanent in nature
 - b. Documents with preservation period of not less than eight years after completion of the relevant transactions.

Clarification

As per the clarification, the documents preserved under Regulation 9 include documents which are required to be preserved by a listed entity in terms of securities laws defined under Regulation 2(1) (zf)⁷ of the Listing Regulations and other laws and statutes applicable to such a listed entity.

Conclusion

Listed entities should take cognisance of the clarifications issued by SEBI, in particular those relating to related party, disclosures with the stock exchanges and disclosures on the website to ensure effective compliance with the requirements of the Listing Regulations. With the recent amendments to the Listing Regulations, many corporate governance related provisions applicable to an entity with listed equity and convertible equity shares have been aligned with that of high-value debt listed entities. Accordingly, these clarifications are timely and would also be relevant for such high value debt listed entities.

7. The SEBI Act, the Securities Contracts (Regulation) Act, 1956, the Depositories Act, 1996, and the provisions of the Companies Act, 2013, and the rules, regulations, circulars or guidelines made thereunder.