

Chapter 3

Regulatory updates

SEBI issued clarification regarding related party disclosures for High Value Debt Listed Entities (HVDLEs)

Background

On 7 September 2021, the Securities and Exchange Board of India (SEBI) had made Regulations 15 to 27 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) applicable to High Value Debt Listed Entities (HVDLEs)¹ on a 'comply or explain' basis up to 31 March 2023. Further, on 9 November 2021, SEBI amended Regulation 23 of the Listing Regulations which, *inter alia*, mandated entities with listed specified securities (i.e., equity shares and convertible securities) to submit to the stock exchanges disclosure of Related Party Transactions (RPTs) in the format specified by SEBI as per the following timelines:

- a. Within 15 days from the date of publication of the standalone and consolidated financial results (effective 1 April 2022)
- b. On the date of publication of its standalone and consolidated financial results (effective 1 April 2023).

The HVDLEs are required to submit these disclosures along with the standalone financial results for the half year².

Accordingly, on 22 November 2021, SEBI through a circular had specified the following disclosure obligations of listed entities in relation to RPTs with respect to specified securities³:

- a. Information to be reviewed by the audit committee for approval of RPTs
- b. Information to be provided to shareholders for consideration of RPTs
- c. Format for reporting of RPTs to the stock exchange.

The provisions of the circular are effective from 1 April 2022.

1. HVDLEs are those entities which have listed non-convertible debt securities and have an outstanding value of listed non-convertible debt securities of INR500 crore and above.

2. This is applicable on a 'comply or explain' basis from 8 September 2021 to 31 March 2023, and on mandatory basis from 1 April 2023.

3. SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2021/662

New development

As the provisions of Regulation 23 of the Listing Regulations (relating to RPTs) would be applicable to HVDLEs, SEBI through a circular dated 7 January 2022 has clarified that the provisions of SEBI circular dated 22 November 2021¹ which specifies disclosure obligations of listed entities in relation to RPTs will be applicable to HVDLEs.

(Source: SEBI circular no. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/0000000006 dated 7 January 2022)

Amendments to SEBI Regulations

ICDR Regulations

On 14 January 2022, SEBI has notified various amendments to the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations).

Some of the key amendments are as follows:

- **General conditions for initiating an IPO (Regulation 7(2)):** In accordance with the amendments:
 - a. Where the issuer company has not identified acquisition or investment target as mentioned in objects of the issue in the draft offer document and the offer document, the amount for such objects and amount for General Corporate Purpose (GCP) should not exceed 35 per cent of the total amount being raised by the issuer.
 - b. Where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, the amount raised for such objects should not exceed 25 per cent of the amount being raised by the issuer.

These limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

- **Additional conditions for an offer for sale (Regulation 8A):** For issues where draft offer document is filed by an issuer without track record i.e., under Regulation 6(2) of the ICDR Regulations:
 - a. Shares offered for sale by selling shareholders, individually or with persons acting in concert, holding more than 20 per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than 50 per cent of their pre-issue shareholding on fully diluted basis.
 - b. Shares offered for sale by selling shareholders, individually or with persons acting in concert, holding less than 20 per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than 10 per cent of pre-issue shareholding of the issuer based on fully diluted basis.
 - c. For shareholder(s) holding, individually or with persons acting in concert, more than 20 per cent of pre-issue shareholding of the issuer

based on fully diluted basis, provisions of lock-in as specified under Regulation 17 of ICDR Regulations shall be applicable, and relaxation from lock-in as provided under Regulation 17(c) of ICDR Regulations shall not be applicable.

- **Monitoring agency (Regulation 41):** Credit Rating Agency (CRAs) registered with SEBI, shall henceforth be permitted to act as a monitoring agency instead of Scheduled Commercial Banks (SCBs) and Public Financial Institutions (PFIs). Monitoring shall continue till 100 per cent (earlier 95 per cent) of utilisation of issue proceeds.
- **Price band (Regulation 127):** The cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less than or equal to 120 per cent of the floor price.
As per the amendments, the cap of the price band shall be at least 105 per cent of the floor price.
- **Revised allocation methodology for non-institutional investors ((Regulation 129(3A)):** In an issue made through book building process, the allocation in the non-institutional investors' category shall be as follows:
 - a. One third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than INR2 lakh and up to INR10 lakh

- b. Two third of the portion available to non-institutional investors shall be reserved for applicants with application size of more than INR10 lakh.

The provision is applicable from 1 April 2022.

- **Lock-in for anchor investors (Schedule XIII):** There shall be a lock-in of 90 days on 50 per cent of the shares allotted to the anchor investors from the date of allotment, and a lock-in of 30 days on the remaining 50 per cent of the shares allotted to the anchor investors from the date of allotment. This is applicable for all issues opening on or after 1 April 2022.
- **Determining the floor price (Regulation 164A and 165):** In case of frequently traded shares, the price of the equity shares to be allotted pursuant to the preferential issue shall not be less than 10 trading days' average price of the related equity shares quoted on a recognised stock exchange preceding the relevant date.
In case of infrequently traded shares, the valuation report by a **registered** independent valuer shall be required.
(Emphasis added to highlight the change)
- **Valuation report (Regulation 166A):** An additional requirement for a valuation report from a registered

independent valuer shall be required in case of change in control/allotment of more than five per cent of post issue fully diluted share capital of the issuer company to an allottee or to allottees acting in concert.

- **Committee of Independent Directors (IDs) (Regulation 166A):** Any preferential issue, which may result in a change in control of the issuer, shall only be made pursuant to a reasoned recommendation from a committee of IDs of the issuer after considering all the aspects relating to the preferential issue including pricing, and the voting pattern of the said committee's meeting shall be disclosed in the notice calling the general meeting of shareholders.
- **Pledge of locked-in specified securities (Regulation 167A):** Specified securities, except SR equity shares, held by the promoters and locked-in under the provisions of ICDR Regulations, may be pledged as collateral for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company provided if the loan has been granted to the issuer or its subsidiary(ies) for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the conditions for sanction of the loan.

- **Disclosure in the offer document - certification of financial statements and issue of audit report (Schedule VI):** Currently, an issuer is required to incorporate in its offer document:

- a. Consolidated Financial Statements (CFS) prepared in accordance with Ind AS for three years and the stub period (if applicable) audited and certified by the **statutory auditor(s)** who holds a valid certificate issued by the Peer Review Board of the Institute of Chartered Accountants of India (ICAI) in the offer document.
- b. Proforma financial statements, as certified by the **statutory auditor**, of all the subsidiaries or businesses material to the CFS where the issuer or its subsidiaries have made an acquisition or divestment including deemed disposal after the latest period for which financial information is disclosed in the offer document but before the date of filing of the offer document.

In case of non-material acquisitions/divestments disclosures in relation to the fact of the acquisition/divestment, consideration paid/received, and mode of financing shall be certified by the **statutory auditor** of the issuer company.

Further, an **auditor** shall issue an examination report on the restated and audited financial information in accordance with the guidance note issued by the ICAI from time to time.

Amendment

As per the amendment, audit and certification of mentioned financial statements can be done by the statutory auditor(s) or **Chartered Accountants** who holds a valid certificate issued by the Peer Review Board of ICAI.

Effective date: The amendments are effective from the date of their publication in the official gazette i.e., 14 January 2022.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/ 2022/63 dated 14 January 2022)

Listing Regulations

On 24 January 2022, SEBI notified certain amendments to the Listing Regulations. The key amendments are as follows:

- **Appointment of directors (Regulation 17):** As per the amendments, the listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors (BoD) **or as a manager** is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.

Further, the amendments require that the appointment or re-appointment of a person, including as a managing director, whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders.

Also, the statement annexed to the notice to the shareholders under Section 102(1) of the Companies Act, 2013 (2013 Act), for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee (NRC) and the BoD for recommending such a person for appointment or re-appointment.

(Emphasis added to highlight the change)

- **Statement of deviation(s) or variation (Regulation 32):** Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on a **quarterly** basis (earlier required on an annual basis), promptly upon its receipt.

(Emphasis added to highlight the change)

- **Transfer or transmission or transposition of securities (Regulation 40):** Transmission or transposition of securities held in physical or dematerialised form shall be effected only in dematerialised form.

Effective date: The amendments are effective from the date of their publication in the official gazette i.e., 24 January 2022.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2022/66 dated 24 January 2022)

AIF Regulations

On 24 January 2022, SEBI made certain amendments to the SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations). The amendments have introduced Special Situation Funds (SSF), a sub-category under Category I AIF, which

shall invest only in 'stressed assets' such as:

- Stressed loans available for acquisition in terms of the Reserve Bank of India (RBI) (Transfer of Loan Exposures) Directions, 2021 or as part of a resolution plan approved under Insolvency and Bankruptcy Code, 2016 (IBC)
- Security receipts issued by Asset Reconstruction Companies (ARCs) registered with RBI
- Securities of companies in distress such as companies against whose borrowings, security receipts have been issued by an ARC and companies whose borrowings are subject to corporate insolvency resolution process under Chapter II of the IBC.

Additionally, the amendments specified important features of the regulatory framework for SSF which, *inter alia*, include:

- Each scheme of a SSF shall have a corpus as may be specified by SEBI
- SSF shall not accept investments from any other AIF other than a SSF
- SSF shall accept from an investor, an investment of such value as may be specified by SEBI.

Effective date: The amendments are effective from the date of their publication in the official gazette i.e., 24 January 2022.

(Source: SEBI notification no. SEBI/LAD-NRO/GN/2022/68 dated 24 January 2022)



SEBI issued a clarification on scheme of arrangement by listed entities

Background

In November 2021⁴, SEBI had issued certain amendments to its master circular (no. SEBI/HO/CFD/DIL1/CIR/ P/2020/249) dated 22 December 2020 which laid down the framework of schemes of arrangement by listed entities. The amendments mainly prescribe additional documents to be submitted with the stock exchanges before the scheme is sanctioned by the National Company Law Tribunal (NCLT). The documents, *inter alia*, included a No Objection Certificate (NOC) from lending scheduled commercial banks/financial institutions/debenture trustees.

Further, Regulation 37(1) of the Listing Regulations requires a listed entity desirous of undertaking a scheme of arrangement or involved in a scheme of arrangement to file the draft scheme of arrangement with the stock exchange(s) for obtaining the no-objection letter, before filing such scheme with any Court or Tribunal, in terms of requirements specified by the SEBI or stock exchange(s) from time to time.

Clarification

SEBI through a circular dated 3 January 2022 has clarified that the NOC required from lending scheduled commercial banks/financial institutions/

debenture trustees should be submitted before the receipt of the no-objection letter from the stock exchange in terms of Regulation 37(1) of the Listing Regulations.

Uniform structure for non-compliance with provisions related to continuous disclosures by issuers with listed non-convertible securities and commercial paper

SEBI through a circular dated 13 November 2020 had issued a uniform structure for imposing fines and taking action for non-compliance with continuous disclosure requirements specified under the Listing Regulations by the issuers of listed Non-Convertible Securities (NCS) and/or Commercial Papers (CPs).

Consequent to the recent amendments to Listing Regulations, on 29 December 2021, SEBI has issued a revised circular with certain new/modified fines and actions to be taken in case of non-compliance with continuous disclosure requirements by the issuers of listed NCS and/or CPs.

Revised key norms in case of non-compliance by an entity with listed NCS are as follows:

Regulation	Particulars	Fine payable and/or action taken for non-compliance by an entity with listed NCS
Regulation 50(1)	Delay in furnishing intimation about board meeting	INR5,000 per instance of non-compliance per item
Regulation 52(7)/(7A)	Non-submission of statement indicating the utilisation of issue proceeds/material deviation in the use of proceeds	INR1,000 per day ⁵
Regulation 53(2)	Non-submission of annual report within the specified period	INR2,000 per day per ISIN
Regulation 57(1)	Non-disclosure of information related to payment obligations	INR2,000 per day per ISIN (previously earlier INR1,000 per day per ISIN)
Regulation 57(4)	Non-submission of details of payable interest/dividend/principal obligations during the quarter	INR1,000 per ISIN
Regulation 57(5)	Non-submission of certificate confirming the payment of interest/dividend/principal obligations due in the quarter or non-submission of details of all unpaid interest/dividend/principal obligations at the end of the quarter	INR1,000 per ISIN

4. SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000657 dated 16 November 2021 and SEBI circular no. SEBI/HO/CFD/DIL2/CIR/P/2021/0000000659 dated 18 November 2021.

5. International Securities Identification Number.

The fines specified would continue to accrue till the time of rectification of the non-compliance and to the satisfaction of the concerned recognised stock exchange. Such accrual would be irrespective of any other disciplinary/enforcement action(s) initiated by recognised stock exchange(s)/SEBI.

Effective date: The provisions of the circular would be effective for the due dates of compliances falling on or after 1 February 2022. It should be noted that the circular dated 13 November 2020 would be applicable till the time current circular comes into force.

(Source: SEBI circular no. SEBI/HO/DDHS_Div2/P/CIR/2021/699 dated 29 December 2021)

SEBI board meeting

SEBI in its board meeting dated 28 December 2021 has approved certain amendments to the SEBI (Mutual Funds) Regulations, 1996 (MF Regulations). Those are as follows:

- Mutual Fund schemes are required to follow Indian Accounting Standard (Ind AS) from Financial Year (FY)2023-24 onwards.
- Removal of redundant provisions with respect to accounting related regulatory provisions.
- Trustees are mandated to obtain the consent of

the unitholders when the majority of the trustees decide to wind up a scheme or prematurely redeem the units of a close ended scheme.

(Source: SEBI press release PR No. 38/2021 dated 28 December 2021)

Guidance notes on Schedule III

ICAI through an announcement dated 24 January 2022 has issued guidance notes relating to the following divisions of Schedule III to the 2013 Act:

- **Division I:** Applicable to companies whose financial statements are required to comply with Companies (Accounting Standards (AS)) Rules, 2006
- **Division II:** Applicable to companies whose financial statements are required to comply with Companies Indian Accounting Standards (Ind AS) Rules, 2015
- **Division III:** Applicable only to Non-Banking Financial Companies (NBFCs) whose financial statements are required to comply with Companies (Ind AS) Rules, 2015.



Some of the key guidance provided is as follows:

Category	Guidance
Guidance applicable to Division I, II and III	
Balance sheet	
Disclosure of shareholding of promoter in a specified format	<ul style="list-style-type: none"> Companies should also disclose number and percentage of shares at the beginning of the year as additional columns in order to facilitate an understanding of the percentage change during the year.
Trade payables and trade receivables ageing schedule	<ul style="list-style-type: none"> Two additional columns with heading 'Unbilled' and 'Not due' shall be added before the ageing columns to tie-up the amounts presented in the 'total' column with the amounts presented in the financial statements or notes.
Property, Plant and Equipment (PPE)	<ul style="list-style-type: none"> Separate presentation of the amount of change due to revaluation should be continued, irrespective of whether such a change is 10 per cent or more, in order to comply with a broader presentation requirement of AS 10 (revised)/Ind AS 10. Such presentation should be followed consistently.
Capital work-in-progress (CWIP) ageing schedule/completion schedule	<ul style="list-style-type: none"> A company's 'original plan' shall be considered as that plan which is approved by the relevant approving authority and on the basis of which implementation progress is evaluated. Such an original plan shall include management's estimates and assumptions with respect to future business, economy/industry and regulatory environments and such assumptions shall be subject to change from time to time resulting in a 'revised plan'. Management shall apply judgement in determining whether such revisions in the plans are in the nature of a fresh 'original plan' or simply an update of estimates and assumptions such that the original plan is revisited and revised. For the purpose of this disclosure, projects that are not considered as material at an individual level can be aggregated and disclosed under the relevant category.

Category	Guidance
<p>Additional regulatory information</p> <p>Loans or advances in the nature of loans granted to promoters, directors, Key Managerial Personnel (KMPs) and related parties</p>	<ul style="list-style-type: none"> • An advance is in the nature of a loan would depend upon the facts and circumstances of each case. • A stipulation regarding interest may normally be an indication that the advance is in nature of a loan but this by itself is not conclusive and there may also be advances which are not in the nature of loan and which carry interest. • Relationship should be considered on the date of loan and the amount should be outstanding as at the balance sheet date (gross amount without netting off). • Disclosure to be provided for previous period as well.
<p>Wilful defaulter</p>	<ul style="list-style-type: none"> • The disclosure requirement applies to any company that has been declared as a wilful defaulter by any lender who has powers to declare a company as a wilful defaulter at any time during the financial year or after the end of reporting period but before the date when financial statements are approved or in an earlier period and the default has continued for the whole or part of the current year. • Such lenders shall include any bank or financial institution or any other lender in which such powers shall be vested pursuant to relevant regulations. • RBI identified certain events that would be considered as a wilful default. • The term 'lender' as per RBI circulars issued in this regard, covers all banks/financial institutions to which any amount is due, provided it is arising on account of any banking transaction, including off balance sheet transactions such as derivatives, guarantee and letter of credit.
<p>Disclosure of details of transactions with struck-off companies</p>	<ul style="list-style-type: none"> • If any transaction with a struck off company has happened during a financial year and settled/reversed/squared off, etc., during the same financial year such that the balance outstanding is nil as at the end of the reporting period, the company is required to disclose those transactions as well in the format specified in the guidance note (refer para 8.9.9.3).
<p>Utilisation of borrowed funds and share premium</p>	<ul style="list-style-type: none"> • The disclosure requires a company to cover transactions that do not take place directly between the company and the ultimate beneficiary but are camouflaged by including a pass-through entity in order to hide the ultimate beneficiary. • The pass-through entity acts on the instructions of the company for channeling the funds to the ultimate beneficiary as identified by the company. It might be noted that the reporting obligation includes inbound as well as outbound funding transactions.

Category	Guidance
	<ul style="list-style-type: none"> Advances given or received in the ordinary course of business (e.g., advance to employees, advance to customers or suppliers against provision of goods or services, etc.) shall not be covered as part of this disclosure requirement.
Details of benami property held	<ul style="list-style-type: none"> In case if there is any benami proceeding initiated against any associate company, then the company should disclose in case the proceeding is material to the group.
Borrowings not used for the specific purpose	<ul style="list-style-type: none"> It is not necessary to establish a one-to-one relationship with the amount of borrowings and its utilisation. Amount deposited in common account and subsequent withdrawal from the account for the said purpose does not tantamount to non-utilisation.
Title deeds of immovable property not held in the name of the company	<ul style="list-style-type: none"> Details of immovable property whose title deeds are not held in the name of the company have to be disclosed in the specified format. Immovable properties presented under 'PPE', 'investment property' or classified as 'PPE retired from active use and held for disposal' would be covered in the scope of this disclosure. Items presented as inventory by companies carrying on real estate business will not fall under this disclosure.
Borrowings from banks or financial institutions on the basis of security of current assets	<ul style="list-style-type: none"> Disclosure requirement shall apply if the company has borrowings 'during any point of time of the year' from banks or financial institutions on the basis of security of current assets. Company shall provide this disclosure considering the sanctioned borrowings (fresh or renewed) even if the same is unutilised during the period or as at the end of the reporting period. It should cover both fund and non-fund-based credit facilities availed by the company.

Category

Guidance

Statement of profit and loss

Undisclosed income

- It covers transactions that were unrecorded in the books of account and which were surrendered or disclosed as income in the tax assessments under the Income Tax Act, 1961 in the form of returns filed by the company.
- In case the company has not recorded/disclosed income in the books of account/financial statements, as applicable, reasons for same shall be disclosed.

Details of crypto currency or virtual currency

- The guidance note has defined the term 'virtual currency' and 'crypto currency'.
- 'Virtual currency' is a digital representation of value, other than a representation of the INR or a foreign currency that functions as a unit of account, a store of value, and a medium of exchange.
- 'Crypto currency' is a form of digital/virtual currency generated through a series of written computer codes that rely on cryptography which is encryption and is thus independent of any central issuing authority per se.

Category

Guidance

Guidance applicable to Division II and III

General instructions for preparation of financial statements

- A company may not present a third balance sheet as at the beginning of the preceding period when preparing financial statements in line with the amended requirements of Ind AS Schedule III.

Category

Guidance

Balance sheet

Equity share capital- Notes	<ul style="list-style-type: none"> The statement of changes in equity would require disclosure for the current reporting period as well as the previous reporting period in the specified format. The disclosure would also include changes in equity share capital due to prior period errors.
Other equity	<ul style="list-style-type: none"> Disclosure related to remeasurement of defined benefit plans and fair value changes relating to own credit risk of financial liabilities designated at fair value through profit or loss can be shown as a separate column under 'Reserves and Surplus' or recognised as a part of retained earnings.

(Source: Guidance notes on Schedule III issued by ICAI on 24 January 2022)

CBDT extended timelines for filing income-tax returns and reports of audit for AY2021-22

The Central Board of Direct Taxes (CBDT) through a circular dated 11 January 2022 has further extended the timelines for various compliances under the Income-Tax Act, 1961 (IT Act). Those are as follows:

Particulars	Due date	Revised timeline
Report of audit under any provision of the IT Act for the Previous Year (PY) 2020-21	30 September 2021/31 October 2021	15 February 2022
Report from an accountant by persons entering into international transaction or specified domestic transaction under Section 92E of the IT Act for PY2020-21	31 October 2021	15 February 2022
Return of income under Section 139(1) of the IT Act for Assessment Year (AY) 2021-22	31 October 2021/30 November 2021	15 March 2022

(Source: CBDT circular no. 01/2022 dated 11 January 2022)