

# Article



## Material Events and disclosure thereof: the provisions under Listing Obligations, 2015

Munmi Phukon  
[munmi@vinodkothari.com](mailto:munmi@vinodkothari.com)  
Corporate Law Division  
[corplaw@vinodkothari.com](mailto:corplaw@vinodkothari.com)

October 1, 2015

Check at:  
<http://india-financing.com/staff-publications.html>  
for more write ups.

### Copyright:

This write up is the property of Vinod Kothari & Company and no part of it can be copied, reproduced or distributed in any manner.

### Disclaimer:

This write up is intended to initiate academic debate on a pertinent question. It is not intended to be a professional advice and should not be relied upon for real life facts.



## ***Material Events and disclosure thereof: the provisions under Listing Obligations, 2015***

### ***Article***

#### **INTRODUCTION**

SEBI had issued an approach paper last year on the draft Listing Obligations and Disclosure Requirements Regulations ('Draft Regulations') seeking public comments thereon. Thereafter, on 2<sup>nd</sup> September, 2015, SEBI has come up with the final version of the Listing Obligations and Disclosure Requirements Regulations, 2015 ('Regulations'). These Regulations shall come into effect on 90<sup>th</sup> day of its publication in the official gazette i.e. on 1<sup>st</sup> December, 2015, except sub-regulation (4) of Regulations 23 and 31A. It is evident from the text of the aforesaid Regulations that the whole Regulations are a compilation of the existing listing requirements and consummation of previous discussion papers on materiality and on promoter and promoter group. However, vide these Regulations, SEBI has provided some amount of clarity on the requirements to be observed by listed entities which was not so clear in the earlier listing requirements. One of those is about determination of material events and disclosure thereon.

Regulation 30 of the aforesaid Regulations provide for disclosure of material events/information to be made by the listed entities having its specified securities<sup>1</sup> listed. With this regard, SEBI has also issued a circular CIR/CFD/CMD/4/2015 on 9<sup>th</sup> September, 2015 ('SEBI Circular') in order to provide guidance on timely, adequate and complete disclosure of such material events by the listed entities. The Regulations have provided some of the events/ information which is to be treated as deemed material and some of the events/ information are to be treated material subject to application of some materiality test. This write up, deals with the same, in detail.

#### **PROVISIONS UNDER THE REGULATIONS**

Till date, Clauses 20, 22, 27, 29, 30, 31 and 36 of the Equity Listing Agreement have been dealing with the various disclosures to be made by the listed companies. However, there was no lucid meaning or clarity provided to the concept of materiality. However, SEBI had, in last year come out with a discussion paper on material events ('discussion paper') soliciting comments from public for alteration of existing Clause 36, whereby it had proposed to provide two criteria i.e. qualitative and quantitative criteria for determination of materiality and two types of test i.e. price impact test and reasonable investor test for determination of price sensitivity of an event or information. Although, SEBI did not come out with any amendment to the aforesaid clause of Listing Agreement thereafter as it was being proposed, however, it was provided in the discussion paper itself that that same will be incorporated in the listing agreement itself or in these Regulations, which were in draft form at that point of time.

---

<sup>1</sup> 'equity shares' and 'convertible securities' as defined under clause (zi) of sub-regulation (1) of regulation 2 of the SEBI (ICDR) Regulations, 2009



## *Material Events and disclosure thereof: the provisions under Listing Obligations, 2015*

### *Article*

On a combined reading of the aforesaid discussion paper and the Regulations, it is pertinent to note here that the quantitative criteria that was earlier proposed to be provided, has not been incorporated in the Regulations, and instead of that, the Regulations has provided some events to be deemed material without applying any test of materiality and some events to be treated as material subject to the applicability of the guidance provided thereon.

#### **THE KEY PRINCIPLES IN DETERMINING MATERIALITY**

In general parlance, information or event concerning a company can be treated as material or market sensitive when a reasonable person or a selective group of person would expect to have a material effect on the price or value of its securities or information which causes the market to maintain the price of security at or about its current level when it would otherwise be expected to move materially in a particular direction, given price movements in the market generally or in the Company's sector<sup>2</sup>.

#### **EVENTS WHICH ARE DEEMED MATERIAL**

Part A of Schedule III of the Regulations have provided the following events which shall be deemed material without any application of guidelines for testing of materiality:

- A. Acquisition(s) (including agreement to acquire) Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the Company or any other restructuring;
- B. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc.;
- C. Revision in rating(s);
- D. Outcome of Meetings of the Board of the Company held to consider the following:
  - a. declaration of dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched;
  - b. any cancellation of dividend with reasons thereof;
  - c. the decision on buyback of securities;

---

<sup>2</sup> <http://www.asx.com.au/documents/about/guidance-note-8-clean-copy.pdf>



*Material Events and disclosure thereof: the provisions under  
Listing Obligations, 2015*

*Article*

- d. the decision with respect to fund raising proposed to be undertaken
  - e. increase in capital by issue of bonus shares through capitalization including the date on which such bonus shares shall be credited/dispatched;
  - f. reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to;
  - g. short particulars of any other alterations of capital, including calls;
  - h. financial results;
  - i. decision on voluntary delisting by the Company from stock exchange(s).
- E. Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the Company), agreement(s)/treaty (ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof;
- F. Fraud/defaults by Promoter or KMP or by the Company or arrest of KMP or Promoter;
- G. Change in directors, KMP, auditor and Compliance Officer;
- H. Appointment or discontinuation of share transfer agent;
- I. Corporate debt restructuring;
- J. One time settlement with a bank;
- K. Reference to Board of Industrial and Financial Reconstruction and winding-up petition filed by any party / creditors;
- L. Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the Company;
- M. Proceedings of Annual and extraordinary general meetings of the Company;
- N. Amendments to memorandum and articles of association of Company, in brief;
- O. Schedule of analyst or institutional investor meet and presentations on financial



*Material Events and disclosure thereof: the provisions under  
Listing Obligations, 2015*

## *Article*

results made by the Company to analysts or institutional investors;

### **GUIDELINES FOR DETERMINATION OF MATERIALITY**

For determination of the materiality of the events or information enumerated under Para B of Schedule III, sub- regulation (4) of Regulation 30 of the Regulations has provided the following guidelines such as-

- a. The omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or
- b. The omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date; or
- c. In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the Board, the event / information is considered material.

### **EVENTS THOSE ARE MATERIAL SUBJECT TO THE ABOVE GUIDELINES**

The following events as enumerated in Part B of Schedule III shall be considered material subject to the application of the guidelines mentioned above—

- A. Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division;
- B. Change in the general character or nature of business brought about by arrangements for strategic, technical, manufacturing, or marketing tie-up, adoption of new lines of business or closure of operations of any unit/division (entirety or piecemeal);
- C. Capacity addition or product launch;
- D. Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business;
- E. Agreements (viz. loan agreement(s) (as a borrower) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof;
- F. Disruption of operations of any one or more units or division of the Company due to natural calamity (earthquake, flood, fire etc.), force majeure or events such as strikes, lockouts etc.;



*Material Events and disclosure thereof: the provisions under  
Listing Obligations, 2015*

## *Article*

- G. Effect(s) arising out of change in the regulatory framework applicable to the Company;
- H. Litigation(s) / dispute(s) / regulatory action(s) with impact;
- I. Fraud/defaults etc. by directors (other than key managerial personnel) or employees of Company;
- J. Options to purchase securities including any ESOP/ESPS Scheme;
- K. Giving of guarantees or indemnity or becoming a surety for any third party;
- L. Granting, withdrawal, surrender, cancellation or suspension of key licenses or regulatory approvals.

### **OTHER EVENTS/ INFORMATION**

Any other information/event viz. major development that is likely to affect business of a company may also be treated as material which may include but not restricted to the following:

- a. Emergence of new technologies;
- b. Expiry of patents;
- c. Any change of accounting policy that may have a significant impact on the accounts, etc.;
- d. Any other information which is exclusively known to the Company which may be necessary to enable the holders of securities of the Company to appraise its position and to avoid the establishment of a false market in such securities;
- e. Any Market Sensitive Information as may be determined the Committee/ Board from time to time;
- f. Any event which in the view of the Board is material.

### **THE ADMINISTRATIVE MEASURES**

Sub- regulations (4) and (5) of Regulation 30 requires the Board of Directors of a listed entity to frame and approve a Policy for the purpose of determination of materiality (the



## *Material Events and disclosure thereof: the provisions under Listing Obligations, 2015*

### *Article*

‘Policy’) and to authorize one or more Key Managerial Personnel (KMPs) for such determination of materiality and for making disclosure to the stock exchange(s).

Since the Regulations will be coming into effect from 1<sup>st</sup> December, 2015, the listed entities are required to frame a policy and get it approved by the Board so that the policy is in hand by the aforesaid date. Also, since the sub – regulation (5) is very specific about giving authority to one or more KMPs for the purpose of determination of materiality, one may take a contention that the Board shall have its own discretion whether to give such authority to a single person or to a committee of two more KMPs constituted for the same. Hence, unless otherwise decided by the Board, the authorized KMP or the Committee of the KMPs shall be authorized for the purpose of determining materiality of an event or information and making disclosures to the stock exchange.

Also, it is not veracious to contend here that the authorized person(s) shall only have to refer these Regulations for determination purpose but may also be guided by previous guidance of SEBI or comparable international Regulators about materiality, while expressing a view on whether the information is material or not.

In order to enable the listed entities to make timely, adequate and accurate disclosure of information on an ongoing basis so that such proper disclosure helps the investors to take an informed decision, the Circular dated 9th September, 2015 issued by SEBI has provided the guidance on when an event or information is deemed to be occurred. The aforesaid guidance provided that some events or information shall be said to have occurred upon approval by the Board and in certain cases after approval of both i.e. Board and shareholders that is to say, after the approval of the shareholders of the Company. However, considering the price sensitivity of an event or information that may affect the price of the securities or affect the market such as matter involving declaration of dividend etc., in such case, disclosure is required to be made at the time of approval of the Board which may be pending shareholder’s approval. The guidance also provided that in the events/information such as natural calamities, disruption etc. can be said to have occurred when the Company becomes aware of the events/information, or as soon as, an officer of the entity has, or ought to have reasonably come into possession of the information in the course of the performance of his duties.

#### **WHEN TO DISCLOSE**

The person authorized or the Committee constituted by the Board under Regulation 30 may make a reference to the Policy framed as aforesaid and the provisions of these Regulations. The Policy may provide for some quantitative measures as followed by entities globally for determination of materiality. The Policy may also provide for the manner of responding to the rumours which may affect the price of securities or the market and to provide specific and adequate reply to any query that may be raised by the stock exchange(s) from time to time. In terms of the SEBI Circular on materiality a listed



*Material Events and disclosure thereof: the provisions under  
Listing Obligations, 2015*

## *Article*

entity shall have to observe the following for proper and timely disclosure of any material events/ information as defined hereon:

- ✓ Disclosure of the events enumerated above in Point D under the deemed material events, shall be made within 30 minutes of the conclusion of the Board Meeting at which such events were discussed along with the time of commencement and conclusion of the meeting.
- ✓ All other events mentioned under the category of deemed material events, other than those mentioned in the foregoing clause shall be disclosed by the Company as soon as reasonably possible but not later than 24 hours from the occurrence of a particular event.
- ✓ The details with regard to any fraud/ default by Directors, Promoter or KMP or by the Company or arrest of any Promoter or KMP shall be disclosed at the time of unearthing of the fraud or occurrence of default/ arrest.
- ✓ The Stock Exchange shall also be intimated further details regarding the same including actual amount of fraud/ default, actual impact of such fraud/ default on the Company and its financials and corrective measures taken thereon.
- ✓ Disclosure of any material development shall be made on a regular basis of any event, till the time the event is resolved/ closed.
- ✓ The disclosure shall be made with respect to the Company, its KMPs, or Promoters, or ultimate person in control at the time of becoming party to any litigation assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the Company, the outcome of which can reasonably be expected to have an impact.
- ✓ The Stock Exchange shall also be regularly intimated details of any change in the status and/ or any development thereon till the litigation or dispute is concluded and/ or is resolved
- ✓ All the disclosures made to the Stock Exchange under this Policy shall also be disclosed on the Website of the Company and the same shall be hosted for a minimum period of five years.
- ✓ All the disclosures hosted on the Website as aforesaid will be kept in the archive of the Company after expiry of 5 years for a further period of 3 years. However, the Company is not responsible for answering any query with regard to the disclosures kept under archive.





## *Material Events and disclosure thereof: the provisions under Listing Obligations, 2015*

### *Article*

- ✓ The Company shall also disclose all the events or information with respect to its Subsidiaries which are material for the Company.

#### **WEBSITE DISCLOSURE**

The regulations require a listed entity to place the aforesaid Policy, the contact details of any of the authorised KMPs on its website. The Regulations also requires all the disclosures made by the listed entity to stock exchange(s) to be hosted on its website for a minimum period of five years. The Policy may also include a provision for placing the documents on its archive and manner thereon.

#### **CONCLUSION**

Seemingly, the Regulation 30 is applicable to all the entities whose specified securities are listed no matter what is the size of such entities. Further, in terms of Regulation 51(2), the entities who has issued or proposing to issue non- convertible debt securities and/ or non- convertible redeemable preference shares shall also require to disclose those events mentioned in Para B of Schedule III. Since the Regulations will come into effect 1st December, 2015, not much time left for the applicable listed entities to have the Policy as aforesaid handy, get it approved by the Board positively before the said date and ensure compliance with the aforesaid provisions, otherwise, the Board is also required to clarify the reason for not disclosing within the time.