

SEBI issues SEBI (LODR) (Second Amendment) Regulations, 2021

Effective from May 6, 2021

- ❑ SEBI, vide notification dated [May 05, 2021](#) has amended SEBI(LODR)Regulations, 2015
- ❑ These regulations shall be applicable from the date of their publication in the official gazette i.e May 06, 2021
- ❑ We have covered all the major amendments in the forthcoming slides

Additional definition (reg. 2 (zn))

- ❑ **Working days**
 - Shall mean working days of the stock exchange where securities of an entity are listed

Applicability of the Regulations (reg. 3)

- ❑ **Applicability of certain regulations based on market capitalization**
 - Shall continue to apply once applicable, even if the listed entity falls below the thresholds subsequently.
 - SEBI to consider aligning with the timeline of 3 years under Reg 15.
 - Listed Cos not meeting requirement for 3 consecutive financial years should be exempted from complying with the requirement.

Compliance certificate (reg. 7 and reg. 40)

- ❑ **Compliance Certificate** w.r.t.
 - maintenance of share transfer facility under reg 7(3) and
 - provisions related to transfer and transmission under reg. 40(9)
 - To be submitted within 30 days from the end of financial year
 - Requirement made annual instead of semi –annual previously.

Applicability of Corporate Governance (reg. 15)

- ❑ **Applicability of Corporate Governance Provisions**
 - Shall continue to apply unless
 - Paid up capital and net worth falls; **and**
 - Remains below threshold limit for 3 consecutive years.
 - The overriding effect of specific statute in case of conflict w.r.t. corporate governance related provisions, will stand omitted w.e.f. September 01, 2021
 - **Major change.** Public sectors banks will be required to represent as there exists conflicting provisions in terms of Board and Committee composition under specific statute.

Role of Audit Committee [reg. 18 r.w. schedule II (c)]

- ❑ **Role of Audit committee shall include:**
 - to consider and comment on:
 - rationale,
 - cost-benefits and
 - impact on the listed entity and its shareholders of schemes involving merger, demerger, amalgamation etc.
 - Aligns the same with the requirements provided under SEBI Circular November 03, 2020 and not a newly inserted requirement

Risk Management Committee (reg. 21) – 1/2

❑ Applicability:

- Now applicable to top 1000 listed entities based on market capitalization instead of top 500 listed entities

❑ Constitution:

- **Erstwhile reqt:** Risk Management Committee (**RMC**) was required be constituted with majority members of the BoD and incase of entities with SR equity, atleast 2/3rds members to be IDs
- **Present reqt:** Constitution of RMC has now been prescribed as:
 - Minimum 3 members
 - Majority to be members of BoD (*continues to be management committee*)
 - *In case of Banks, [RBI](#) prescribes majority NEDs.*
 - Atleast 1 ID (incase of SR equity atleast 2/3rd members to be IDs)

❑ Contents of Risk Management Policy:

- A framework for identification of internal and external risks 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

❑ Meetings:

- RMC to meet atleast twice in a year (*earlier once in a year*)
- Gap between 2 meetings shall not exceed 180 days.
 - *In case of Banks, [RBI](#) prescribes 1 meeting in each quarter.*
- Quorum of the meetings
 - 2 members or 1/3rd of the members, which ever is higher
 - Atleast one member of the BoD
 - *In case of Banks, [RBI](#) prescribes at least half of the members attending the meeting of the RMCB shall be independent directors of which at least one member shall have professional expertise/ qualification in risk management*

Risk Management Committee (reg. 21) - 2/2

❑ Power, Role and Responsibility

- Functions as specified under part D of schedule II which include:
 - Formulate detailed risk management policy. It shall *inter alia* include:
 - Framework for identifying internal and external risks
 - Measures for mitigating risk
 - Business continuity plan
 - Ensure processes are in place to monitor and evaluate risks
 - Oversee implementation of policy & evaluate adequacy of risk management systems
 - Periodically review the policy – minimum once in 2 years
 - Inform BoD of discussions, recommendations & actions required
 - Appointment/removal & terms of remuneration of Chief Risk Officer wherever applicable i.e in case of banks, specified NBFCs, Insurance companies etc.
- Power to seek information from and seek attendance of outsiders with relevant expertise, if necessary
- To coordinate activities with other committees, incase of any overlap – majorly with the Audit Committee

❑ Actionable:

- Companies (501 to 1000) will have to constitute RMC. Existing companies to ensure composition in line with revised requirement
- Terms of reference to be amended in line with quorum, minimum number of meetings, gap between two meetings of RMC and powers and responsibilities of the committee..
- Risk Management Policy to be amended in line with amendments made.

❑ Timelines to comply with the actionable:

- No specific timeline provided. Ideally, should be ensured by June 30, 2021 as confirmation on the composition of RMC will be required to be furnished in the CG return filed quarterly under Reg. 27.
- Companies should take it up in next meeting.

Reclassification of promoter/ promoter group entities (reg. 31A)

❑ Reduction in time gap:

- Time gap between board meeting and shareholders meeting for consideration of reclassification request should be minimum of 1 month and maximum 3 months.
- Previous requirement: time gap of at least 3 months but not exceeding 6 months

❑ Exemptions:

- Approval of BoDs and shareholders exempted where:
 - Promoters/persons related to promoters seeking reclassification, together, do not hold more than 1% of the total voting rights
 - reclassification is pursuant to a divorce
- Exemptions from the following provisions extend to reclassification pursuant to an order of a regulator under any law
- subject to the condition that the promoters seeking reclassification do not remain in control of the listed entity:
 - reg. 31A (3) - approval of BODs and shareholders and conditions to be fulfilled by promoters and the listed entity before reclassification

- reg. 31A (4) - conditions to be fulfilled by promoters after reclassification
- reg. 31A (8) (a) & (b) – disclosures to be made to stock exchanges (SEs)
- In case of reclassification pursuant to an open offer or a scheme of arrangement, exemptions from the following provisions have been extend
- subject to the condition that the intent of the erstwhile promoters to reclassify has been disclosed in the letter of offer or scheme of arrangement:
 - reg. 31A (3) (a) - approval of BoDs and shareholders
 - reg. 31A (3) (c) (i) – compliance by the listed entity to the requirement for minimum public shareholding under reg. 38 (only in case of open offer)
 - reg. 31A (8) (a) & (b) – disclosures to be made to SEs
 - **Rationale:** In cases where intent of reclassification has already been mentioned in the letter of offer/scheme of arrangement, the requirement of promoter making an application merely procedural since the fact of re-classification is already present in public domain.

Disposing shares of Material Subsidiary (reg. 24(5))

- ❑ **Material Subsidiaries**
 - Shares shall not be disposed resulting in shareholding to fall to 50% unless Special Resolution passed.
 - Earlier it stated 'less than' 50%.

Secretarial Audit (reg. 24A)

- ❑ **Annual secretarial compliance report**
 - to be submitted within 60 days from end of each financial year
 - in the format as prescribed
- ❑ Aligning the regulations with requirement as prescribed under SEBI circular dated February 08, 2019 .

Meeting of Independent Directors (reg. 25)

- ❑ IDs shall meet once in every **financial** year
 - Previous requirement: once every year
- ❑ Aligns the provisions with the requirement of meeting of IDs as given under clause VII of schedule IV to CA, 2013

Statement on Impact of Audit Qualification (reg. 33(6))

- ❑ Earlier, the statement was required to be reviewed by the Ses.
- ❑ This requirement has now been done away with.

Business Responsibility Report (reg. 34(2))

- ❑ Reg. 34(2)(f) required top 1000 listed by market capitalization to submit a business responsibility report.
 - This requirement has been discontinued from FY 2021-22 onwards
- ❑ From FY 2022-23 i.e for the annual report pertaining to FY 2022-23 the entities shall submit a Business Responsibility and Sustainability Report
- ❑ Same can be submitted by the entities on voluntary basis for FY 2021-22

Documents & Information to shareholder (reg. 36)

- ❑ Shareholding as a beneficial owner to be provided by person proposed to be appointed as NED to be provided to shareholder in case of appointment/re-appointment of director
- ❑ However, the same is not newly inserted. Reg 26(4) which provided for the same has been omitted and inserted under this reg.

Scheme of Arrangement (reg. 37)

- ❑ Requirement of obtaining Observation Letter from SEs is done away with
- ❑ SEBI Circular dated November 3, 2020 on Schemes of arrangement has empowered the Stock Exchanges to issue No-Objection letter only to such schemes that are in compliance with securities laws. The earlier practice of issuing observation letters to schemes non-compliant with securities laws has been dispensed with.

Dividend Distribution Policy(reg. 43A)

- ❑ Applicable to top 1000 listed entities based on market capitalization
 - Prior to amendment: Top 500 entities
- ❑ Requirement to provide policy in Annual Report – done away with
 - Policy to be placed on the website &
 - Weblink to be provided in Annual report

Stock exchange approval for name change (reg. 45(3))

- ❑ Requirement of SE approval for change in name has been done away with
- ❑ Certificate of compliance with reg 45(1) to be attached with explanatory statement of the notice seeking shareholder approval for the same

Website (reg. 46)

- ❑ Additional disclosures shall be made on the website of the company:
 - Schedule of analyst/institutional investors meet & the presentations to be placed on the website
 - Same has been covered in-depth in the next slide
 - Financials of foreign subsidiary
 - Complied even if prepared as per law of country of incorporation
 - Aligns the requirement under this reg. with provisions of CA, 2013
- ❑ Compilation of disclosures under various other regulations undertaken:
 - Secretarial compliance report
 - Policy for determination of materiality of events/information
 - Details of KMP authorized to determine materiality of events
 - Disclosures required under 30(8)
 - statements of deviation(s) or variation(s)
 - Dividend distribution policy
 - Annual return provided under sec. 92 of CA, 2013
- ❑ This brings the above disclosures under the ambit of the penalties as given under SEBI Circular dated January 22, 2020
 - In the absence of such inclusion, penalties on non-compliance with the same couldn't be levied.

Analyst/institutional Investor Meets and Presentations

- ❑ The word 'meet' has been defined as:
 - group meetings or group conference calls
 - conducted physically or through digital means
- ❑ **What about one-on-one meets?**
 - Consultation paper provided for listed companies to provide number of such meetings as part of corporate governance report submitted by them to stock exchanges on a quarterly basis along with affirmation that no UPSI was shared by any official of the company in such meetings.
 - Record of such one-to-one meetings were to be preserved for a period of 8 years.
 - The said requirement has been excluded in final amendment.
 - Rationale not explained in [agenda placed in SEBI BM](#).
- ❑ Additional compliance requirements prescribed:
 - The following disclosure shall be made to the SEs and shall simultaneously be placed on the **website** of the company:
 - Schedule of analyst/institutional investors meet & the presentations
 - Presentation & audio video recording - before the next trading day/ within 24 hours from the conclusion of the call, whichever is earlier
 - To be hosted on the website for atleast 5 years & thereafter as per archival policy
 - Transcripts – within 5 working days from conclusion of the call
 - To be hosted on the website as per the preservation policy of the company (as under reg. 9)
 - Voluntary from April 01, 2021 & mandatory from April 01, 2022

Change in name (reg. 45)

- ❑ **Chartered Accountant's Certificate**
 - To be obtained under reg. 45(3)
 - Attached to explanatory statement of the notice seeking approval of shareholders
 - Additional approval of stock exchange done away with.

Newspaper Advertisement (reg. 47)

- ❑ **Non-Applicability**
 - Notice of BOD Meeting where Financial results Discussed
 - Quarterly Statement of deviation or variation
- Reduces additional burden of sending separate advertisement

Intimation of outcome of Board meetings (reg. 30 (6) and schedule III Part A)

- ❑ In cases where the board meeting in which financial results are considered continue for more than 1 day
- ❑ financial results must be disclosed to the SEs within 30 minutes of end of the meeting for the day on which the same have been considered.

Disclosures w.r.t resolution plan/restructuring (schedule III Part A)

- ❑ The words 'Corporate debt restructuring' have been substituted with 'Resolution plan/ restructuring in relation to loans/borrowings from banks/financial institutions'
- ❑ The following disclosures are to be made:
 - Decision to initiate resolution of loans/borrowings
 - Signing of Inter-Creditors Agreement by lenders
 - Finalization of resolution plan;
 - Implementation of resolution plan;
 - Salient features of the resolution/restructuring plan (not including commercial secrets)

Corporate Governance Report (schedule V para C)

- ❑ Disclosures w.r.t the RMC are to be made in the corporate governance report to be annexed to the Annual Report:
 - brief description of terms of reference;
 - composition, name of members and chairperson;
 - meetings and attendance during the year

Board meeting for declaration of bonus securities

- ❑ Prior intimation of board meeting for considering the proposal of declaration of bonus (under reg. 29(f))
- ❑ To be given to SEs
- ❑ Irrespective of whether the same is a part of the agenda papers of the BM.

Timelines

- ❑ Quarterly Corporate Governance Compliance Report under reg. 27(2) within 21 days.
- ❑ Report from Monitoring Agency to be submitted to stock exchange under reg. 32(6) within 45 days.
- ❑ Disclosure of voting results to be given within 2 working days from the conclusion of General meeting.
 - Reg. 30 read with Para A of Part A of Schedule III provides submission of proceedings of the AGM/EGM within 24 hours
 - The voting results are crux of the General Meeting.
 - Amendment provides no change

Miscellaneous

- ❑ Regulations aligned with SEBI (ICDR) Regulations, 2018.
- ❑ Innovators Growth Platform substitutes Institutional Trading Platform.
- ❑ Interchangeability in Vigil Mechanism and Whistle Blower Policy.
- ❑ Harmonization of SEBI (LODR) Regulations, 2015 with CA, 2013.
- ❑ Reiteration of Gender neutrality by adding 'her' along with 'his'.

Actionables in a nutshell

- ❑ Risk management committee and regulations thereof:
 - Top 1000 listed entities to ensure RMC is constituted and reconstitution of the RMC, wherever required to meet the regulatory requirements
 - Risk management policy and the terms of reference of RMC to be formulated in line with Schedule II part D
 - Ensure RMC related disclosures are made in the corporate governance report
 - Ensure RMC meets twice in a year with gap between 2 meetings does not exceed 180 days
 - No specific timeline has been prescribed in the amendments to ensure such compliance. Companies to endeavor to comply with the same earliest possible.
- ❑ Body corporate to take adequate steps to ensure compliance with the corporate governance regulations by September 01, 2021
- ❑ Top 1000 listed entities to ensure BRSR is provided for the FY 2022-23. They may provide the same voluntarily for FY 2021-22.
- ❑ Top 1000 listed entities to ensure dividend distribution policy is uploaded on the website and weblink of the same is provided in the annual report
- ❑ Website to be updated with the additional disclosures as required under reg. 46