

RECENT AMENDMENTS IN SEBI (LODR) REGULATIONS, 2015

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 - Based out of Kolkata, New Delhi & Mumbai
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Outline of presentation

- Flow of changes under LODR provisions
- Snapshots of the amendments
- Applicability of CG related provisions
- Risk Management Committee- Scope and constitution
- Amendments related to Independent Directors
- Analyst Meetings
- Reclassification of promoter/ promoter group entities
- Disclosure requirement under CG Report
- Analysis of what is covered and who is covered under new CG disclosures
- Actionable and exclusions for disclosure under CG Report
- Brief discussion on BRSR and MPS requirements

Flow of Events w.r.t. LODR related amendments

Particulars	Link	Date
Consultation Paper on the format for Business Responsibility and Sustainability Reporting (BRSR)	Click here	August 18, 2020
Consultation Paper on review of LODR Regulations	Click here	September 11, 2020
Consultation Paper on Applicability and Role of RMC	Click here	November 10, 2020
Consultation Paper on Analyst meet	Click here	November 20, 2020
Consultation Paper on Reclassification of Promoter/ Promoter Group	Click here	November 25, 2020
Consultation Paper on review of regulatory provisions related to Independent Directors	Click here	March 01, 2021
SEBI Board meeting approving amendments	Click here	March 25, 2021
Date of Gazette Publication	Click here	May 05, 2021
SEBI Circular on BRSR	Click here	May 10, 2021
SEBI Circular on format of compliance report on CG	Click here	May 31, 2021
NSE FAQ's - LODR amendments dated May 05, 2021 (only for assistance purpose)	Click here	June 28, 2021
BSE's Guidance Note on Analyst/ Institutional Investors meet	Click here	June 29, 2021
SEBI Board meeting approving amendments related to IDs	Click here	June 29, 2021
SEBI (LODR) (Third Amendment) Regulations, 2021 (Effective from January 01, 2022 <i>vide</i> Notification dated August 06, 2021)	Click here	August 03, 2021

Snapshot of amendments in LODR – 1/3

- Definitions [Reg. 2]
- Applicability of provisions based on market capitalization [Reg. 3 (2), 21(5), 34 (2) (f), 43A (1)]
- Applicability/ grounds for exemption w.r.t. CG related provisions [Reg. 15]
- Risk Management Committee [Reg. 21 r/w Para C of Part D of Schedule II]
- Material events [Reg. 29 and 30 r/w Para A of Part A of Schedule III]
- Promoter reclassification [Reg. 31A.]
- Timelines relating to certain periodic filings with Stock Exchange [Reg. 7 (3), 27 (2) (a), 32 (6), 40(9), 44(3)]
- Audit qualification related [Reg. 33(6) & 52 (3)]
- Business responsibility reporting related [Reg. 34 (2) (f)]
- Scheme of arrangement related [Reg. 37. Reg. 94 and Para A (22) of Part C of Schedule II]
- Change of name [45 (3)]
- Website related [Reg. 46]

Snapshot of amendments in LODR – 2/3

- Newspaper advertisement related [Reg. 47 (1)]
- Contents of CG report [Para C of Schedule V]
- Corrective changes
 - Consistency in usage of term [Reg. 4 (2) (d) (iv) & Reg. 22 (1)]
 - Alignment with reqt under CA, 2013 [Reg. 25 (3)]
 - Language correction in line with intent of law [Reg. 24 (5)]
 - Shifting requirement from circular to regulation [Reg. 24A]
 - Shifting provisions within LODR [Reg. 27 (4) shifted to Reg. 36 (3) (e)]
 - Language correction to ensure gender neutrality [Reg. 6, Reg. 18(1)(d), Reg. 25(5) & (8), Reg. 26(1) & (6), Reg. 31A(4), Reg. 33(1)(d), Reg. 36(3)(b), Schedule II Part E Para A & Schedule V Para C (2)(j)]
 - Grammatical corrections [Reg. 3(1) & Reg 15 (2)(a) & (b)]
 - Institutional Trading Platform substituted with Innovators Growth Platform [Reg. 3(1)(a), Reg 15(1) & Reg 38]
 - Reference of corresponding provisions of ICDR, 2018 instead of 2009 regulations. [Reg. 2(1)]

Snapshot of amendments in LODR – 3/3

- Independent directors related [(LODR) (Third Amendment)]
 - Eligibility criteria of IDs [Reg. 16]
 - Regularization of appointment of directors [Reg. 17 (1C)]
 - Corrective change in composition of audit committee [Reg. 18(1)(b)]
 - Stricter composition of NRC [Reg. 19(1)(c)]
 - Approval of RPT [Proviso to Reg. 23(2)]
 - Manner of approval for appointment, re-appointment, removal of ID [Reg. 25(2A)]
 - Timeline for filling of casual vacancy of ID [Reg. 25(6)]
 - D&O Insurance of IDs [Reg. 25(10)]
 - Restriction on appointment as ED/ WTD after resignation as ID [Reg. 25(11)]
 - Disclosure in case of appointment/ re-appointment of directors [Reg. 36(3)(d),(f)]
 - Role of NRC in case of appointment of ID [Schedule II, Part D, Para A, clause (1A)]
 - SE intimation on resignation of ID [Schedule III, Part A, Para A, clause (7B)]

Insertion of 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.
 - Requirements like – Woman ID, minimum 6 directors, separation of Chairperson and MD, quorum of Board meetings, Risk Management Committee, D & O Insurance, BRR/ BRSR, Dividend Distribution Policy, AGM within 5 months from end of financial year, one way live webcast.
 - **The cut off date for considering market cap. will be March 31, 2021 (NSE Circular of Jun 28, 2021)**

Applicability of CG related provisions (reg. 15)

- ❑ **Applicability of Corporate Governance Provisions**
 - Reg. 17 to 27, 46 (2) (b) to (i) & (t) and Para C, D and E of Schedule V;
 - Shall continue to apply unless
 - Paid up capital **or** net worth falls; **and**
 - Remains below threshold limit for 3 consecutive years.

Conflict between SEBI v/s specific law (reg. 15)

- 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.
- **Corporate Governance provisions will be applicable to public sector bank from September 1, 2021. (NSE Circular of Jun 28, 2021)**

Applicability of CG provisions – Regulation 15

- Conditions for initial exemption – CG provisions shall not apply to listed entities having
 - Paid-up share capital not exceeding Rs. 10 crores **and**
 - Net-worth not exceeding Rs. 25 crores
 - As on the last day of previous financial year
- Conditions for subsequent exemption, once provisions become applicable:
 - Until such time
 - Paid-up share capital **or** net-worth
 - Remains below the thresholds
 - For consecutive 3 financial years
- Not provided in the consultation paper.

- Whether initial exemption requires satisfaction of both conditions?
 - **'and'** to be read as **'or'**?
- Subsequent exemption requires satisfaction of any of the two conditions?
 - **'or'** is to be read as **'and'** ?

Applicability of CG provisions: SEBI v/s Specific Law

- Corporate Governance guidelines for insurers in India – Click [here](#)
- Guidelines for Corporate Governances of CPSEs – Click [here](#)
- Corporate Governance in Banks - Appointment of Directors and Constitution of Committees of the Board – Click [here](#)
- Chapter IX of Master Direction – Non-Banking Financial Company – Housing Finance Company (Reserve Bank) Directions, 2021 – Click [here](#)
- Chapter XI of Master Direction - Non-Banking Financial Company - Systemically Important Non-Deposit taking Company and Deposit taking Company (Reserve Bank) Directions, 2016 – Click [here](#)

Particulars	Requirement under LODR	Requirement under Specific Law
Composition of Audit Committee	Minimum 2/3 rd of the members will be independent directors.	RBI Circular of September, 1995 provided for following composition in case of public sector banks: (a) Executive Director of the Bank (Wholetime director in case of SBI) (b) two official directors (i.e. nominees of Government and RBI) and (c) Two non-official, non-executive directors (at least one of them should be a Chartered Accountant). Directors from staff will not be included in ACB.

Role of Audit Committee [Reg. 18 r.w. Schedule II (c)]

- **Matters to be placed before 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.
 - New requirement. Not just aligning with the requirements provided under SEBI Master Circular on Schemes of Arrangement by listed entity dated December 22, 2020

Risk Management Committee (RMC) –existing requirement

- Requirement under the Companies Act, 2013
 - Section 134(3)(n) – Board Report shall include a statement indicating development and implementation of a risk management policy, along with identification of risk elements which may threaten the existence of the company
 - Requires risk management policy to be framed
 - Requires identification of key risk elements
 - Section 177(4)- ToR of Audit Committee shall include –
 - Evaluation of internal financial controls and risk management systems
 - Schedule IV – Role of Independent Directors (ID)
 - ID shall help in bringing an independent judgement to bear on the Board’s deliberation especially on issues of risk management
 - satisfy themselves on the integrity of financial information and that financial controls and the systems of risk management are robust and defensible
- Requirement under LODR
 - Reg 21 – applicable on top 500 listed companies based on market capitalisation (pre-amendment)
 - Required to constitute risk management committee (RMC)
 - Roles and responsibilities as defined by the Board
 - Schedule II – Role of Audit Committee
 - Requirements similar to that under the Companies Act
 - Reg 4(2)(f) – Key functions of Board of Directors
 - Review and guiding risk policy
 - Ensuring systems for risk management are in place
 - Reg 17(9) – Responsibilities of Board
 - Lay down procedure for informing board members about risk assessment and minimisation procedures
 - Shall be responsible for framing, monitoring and implementing risk management plan

Implementation status of consultation paper on RMC

Serial No.	Proposed amendment	Rationale	Whether implemented?
1	Extend the requirement of constituting RMC to top 1000 listed entities	<p>Considering the multitude of risks faced by listed entities, risk management has emerged as a very important function of the board.</p> <p>The Covid-19 pandemic has also reinforced the need for a robust risk management framework.</p> <p>While role of other Committees are specified, role of RMC was left to be defined by the Board</p>	Yes
2	Define the roles and responsibility of RMC		Yes
3	Furnish power to seek information in line with that provided to Audit Committee.		Yes
4	Increase frequency of meetings		Yes
5	Define the quorum for a meeting of RMC		Yes

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

❑ **Applicability [Reg. 21 (5)]:**

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

❑ **Constitution [Reg. 21 (2)]:**

- **Pre-amendment:** Risk Management Committee (**RMC**) was required be constituted with majority members of the BoD and in case of entities with SR equity, at least 2/3rds members to be IDs
- **Post amendment:** 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.*
 - At least 1 ID (in case of SR equity at least 2/3rd members to be IDs)

❑ **Meetings [Reg. 21 (3A) (3B) & (3C):**

- RMC to meet at least 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
 - At least 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 – contd..

❑ Powers, Roles 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 and Timelines to comply (NSE Circular of Jun 28, 2021):

- Companies (501 to 1000) will have to constitute RMC.
 - within 6 months from date of notification or next BM, whichever is later.
- Existing companies to ensure composition in line with revised requirement.
 - within 3 months from date of notification or next BM, whichever is later.
- RMC to meet twice in a year.
 - Companies having FY ending after Sept 30, 2021 i.e. Dec 31, 2021 or March 31, 2022 – 2 RMC meeting to be conducted.
 - Companies having FY ending on June 30, 2021 – new provision shall not apply for this financial year.
- Risk Management Policy to be amended in line with amendments made.
 - Same time as available for constituting/ re-constituting the RMC (stated above).
- ToR to be amended in line with quorum, min. no. of meetings, gap between 2 meetings of RMC and powers & responsibilities of RMC.
 - No timeline provided in NSE Circular. Ideally, it should be the same as permitted for constituting/ re-constituting the RMC (stated above).



Independent Directors related amendments
notified on Aug 3, 2021 w.e.f. January 1, 2022



Implementation status of consultation paper on regulatory provisions related to Independent Directors (1/4)

Sr. no	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation/ partial or modified implementation
1.	KMPs, their relatives, employees of promoter group companies, cannot be appointed as IDs, unless there is a cooling-off period of 3 years.	In order to establish the independence, KMPs (incl. their relatives) or employees of promoter group companies should be excluded from acting as ID.	Yes	-
2.	Increasing cooling-off period to 3 years in case of a material pecuniary relationship between person/ his relative and the listed entity/ its holding/ subsidiary/ associate company	To harmonize the cooling-off period.	Yes	-
3.	<p>Appointment/ re-appointment/ removal of IDs to be approved by:</p> <p>i. Shareholders (special resolution for second term)</p> <p>ii. Majority of the minority shareholders.</p> <p>If any of the above resolution fails, either propose new ID or put for second vote by passing special resolution after a cooling period of 90 days but within 120 days</p>	The “dual approval” model is in line with the legislative requirements of Israel and UK, especially in interest of the minority shareholders.	<p>No</p> <p>Now, the appointment, re-appointment, removal will require special resolution.</p>	There could be difficulties in implementation, delays in appointment of IDs in case of a deadlock, etc. Thus, SEBI took a balanced view and introduced a process which is simpler to implement and covers greater set of shareholders.

Implementation status of consultation paper on regulatory provisions related to Independent Directors (2/4)

Sr. No	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation/partial or modified implementation
4.	<ul style="list-style-type: none"> Prior approval of the shareholders at a general meeting for appointment of IDs. In case of casual vacancy, shareholders approval to be taken within next 3 months. 	To eliminate the time gap between Board and Shareholder approvals to give more say to shareholders in the appointment process.	Point (a) – yes, with modification – approval can be taken earlier of 3 months of date of appointment or next GM. Point (b) – Yes.	Since, it would increase the compliance burden without any corresponding benefit, it was proposed to prescribe a time frame for shareholders’ approval. It was also proposed to apply the same time frame for other directors as well.
5.	<ul style="list-style-type: none"> NRC shall to prepare a description of skills, knowledge and experience required by ID and identify candidates based on this criteria Disclose to the Shareholders how the candidate meets aforesaid criteria and channels used for searching appropriate candidates 	To increase transparency in the process followed by NRC for selection of candidates for the post of ID.	Yes. Disclosure of channel used for searching candidate - not implemented.	In order to avoid unintended consequences of shareholders getting biased based on the source of search/recommendation, it was proposed to not go ahead with the disclosures on the channels used for searching. Further, use of search agencies is an option that can be explored by the NRC for identifying suitable candidates and is not mandatory.
6.	NRC will comprise of 2/3 rd IDs instead of 50%.	To increase independence of the NRC	Yes	-

Implementation status of consultation paper on regulatory provisions related to Independent Directors (3/4)

Sr. no	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation/ partial or modified implementation
7.	Audit committee to comprise of atleast 2/3 rd IDs and 1/3 rd NEDs who are not related to the promoter.	To increase independence of Audit Committee with regard to related party transactions and financial matters,	Partially implemented. Atleast 2/3 rd will be IDs.	It would reduce the flexibility on selecting 1/3 rd members. Further, the company may not have NEDs who are not related to promoters.
8.	Resignation of ID - <ol style="list-style-type: none"> The resignation letter of ID to be disclosed along with a list of present directorships and membership in board committees. Mandatory cooling-off period of 1 year before ID can join another board, in case ID resigns stating reasons such as pre-occupation, personal reasons, etc, Cooling-off period of 1 year before a director can transition from an ID to a whole-time director in the same company. 	To strengthen the disclosures around resignation of ID and ensure that there is no compromise in their independence. While there may be valid reasons for transition from an ID to executive director, such instances where an ID knows that he/she may move to a larger role in the company in the near future, may practically lead to a compromise in independence.	Point (a) – Yes Point (b) – No Point (c) – Yes with further restriction. Same company +its holding, subsidiary or associate company or on the board of a company belonging to its promoter group	There could be genuine reasons for citing ‘personal reasons’ for resignation, such ID not getting along with other Board members or unable to contribute to the Board. Thus, it would be unfair to undergo cooling off period.

Independent Directors related

❑ Eligibility criteria of IDs (Reg. 16(1)(b)) :

Particulars	Amendment	Comparison with CA, 2013
Alignment with CA, 2013	<p>Relative cannot:</p> <ul style="list-style-type: none"> ▪ hold securities or interest in the listed entity/its holding/ subsidiary /associate company of face value exceeding Rs. 50 lakh or 2% of paid-up capital during the last 3 FYs or current FY. ▪ be indebted, give guarantee or provide security to the listed entity or its holding/subsidiary/associate company/their promoters or directors in excess of Rs. 50 lakh or 2% of gross turnover or total income, whichever is lower, during the last 3 FYs or current FY. ▪ have any other pecuniary transaction with the listed entity / its holding/subsidiary/associate company of 2% or more of gross turnover or total income, during the last 3 FYs or current FY . 	The Act contains similar provision except that the restriction is extended to last 2 Fys
	Cooling-off period increased to 3 years (earlier 2 years) in case of material pecuniary transaction between person/ his relative and the listed entity/ its holding/ subsidiary/ associate company/ Promoters/ Directors.	The Act contains similar provision except that the restriction is extended to last 2 FYs
Additional criteria inserted	KMPs/their relatives or employees of any company belonging to the promoter group of the listed entity cannot be appointed as IDs. In case the relative is an employee other than KMP, this restriction shall not apply.	The extension of the restriction of being in employment of the promoter group entities is not there.

Actionable: Revised declaration of independence to be obtained from IDs in accordance with the revised criteria as on prior to the effective date i.e. 01.01.2022 and the same to be placed in the immediately next Board Meeting after 01.01.2022.

Amendments in LODR

Regularization of appointment of directors [reg 17(1C)]

- Appointment of director to be regularized by shareholders in the next GM or 3 months from the date of appointment, whichever is earlier.

Composition of Audit Committee [reg. 18(1)(b)]

- Committee to have at least 2/3rd IDs.
- The amendment allows companies to appoint more IDs as members of the committee.

Composition of NRC [reg. 19(1)(c)]

- Committee to have at least 2/3rd IDs. (earlier 50%)
- Composition in case of entity having SR equity shares omitted.
 - the composition provided for 2/3rd IDs.
 - Pursuant to the amendment, every listed entity, whether having SR equity shares or not, shall have 2/3rd IDs in its NRC)

Related Party Transactions [Proviso to reg. 23(2)]

- In case of approval of RPT by the Audit Committee, only IDs shall approve the transaction.
 - Non-ID members cannot vote to approve.
 - However, the non-ID members can still disapprove the transaction.
- Impact on RPTs approved before 01.01.2022 – No impact.
- New RPTs or modification to existing RPT after 01.01.2022
 - Listed entities to ensure compliance.

Independent Directors related

Role of NRC [Reg. 19 r.w. Schedule II, Part D, Para A, clause (1A)]

- For appointment of ID, NRC to play an additional role
 - to evaluate balance of skills, knowledge, experience of Board and prepare the roles and capabilities required for ID.
- For the said purpose, NRC to:
 - Use services of external agencies, if required
 - Consider candidates from wide backgrounds
 - Consider time commitments of the candidates

Appointment, re-appointment, removal of ID [Reg. 25(2A)]

- The appointment, re-appointment, removal of ID shall require approval of shareholder by passing special resolution.
- IDs appointed prior to the effective date of amendment – no impact

Disclosure on appointment/ re-appointment of directors [Reg. 36(3)(d) and (f)]:

- In case of appointment/ re-appointment of Directors, the notice of AGM should also disclose:
 - names of listed entities from which the person resigned in the past 3 years;
 - in case of ID, the skills and capabilities required for the role and the manner in which the proposed ID meets such requirements.

D&O insurance of IDs [Reg. 25(10)]:

- Provision now applicable to top 1000 listed entities w.e.f. 01.01.2022
 - Earlier, it was only to top 500. Sr. no 501 to 1000 as on March 31, 2021 required to comply as on effective date.
 - of such quantum and for such risks as may be determined by its board of directors.

SE intimation on resignation of ID [Reg. 30 r.w. Schedule III, Part A, Para A, clause (7B)]:

- Letter of resignation shall also be disclosed to SE.
 - Earlier only detailed reasons for the resignation along-with a confirmation that there is no other material reason for resignation other than those already provided
- Name of listed entities in which such ID holds directorships, indicating category of directorship, membership of board committees to be disclosed.

Restriction on appointment as ED / WTD [Reg. 25(11)]:

- If an ID resigns, cooling-off period of 1 year to be ensured before getting appointed as ED / WTD in the same company, its holding, subsidiary or associate company, companies belonging to promoter group.
- No cooling off required in case of appointment as NED.
- In case of completion of tenure of ID, the aforesaid provision shall not apply.

Casual vacancy of ID [Reg. 25(6)]:

- In case any ID resigns or is removed, the casual vacancy shall be filled within 3 months by the Board.
 - Earlier, it was to be filled in the next BM or within 3 months, *whichever is later.*
- Once the person is appointed to the Board, in terms of Reg. 17 (1C) approval of shareholders will be required to be obtained at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier

Actionable and Timelines

- Re-constitution of NRC [reg. 19(1)(c)]
 - Companies to reconstitute their NRC before the effective date i.e. 01.01.2022 to enable to affirm compliance in the compliance report on CG for the quarter ended March, 2022.
- Eligibility criteria of IDs [reg. 16(1)(b)]
 - Revised declaration of independence to be obtained from IDs in accordance with the revised criteria as on prior to the effective date i.e. 01.01.2022 and the same to be placed in the immediately next Board Meeting after 01.01.2022.
- Role of NRC in appointment of IDs [Reg. 19 r.w. Schedule II, Part D, Para A, clause (1A)]
 - Compliance with the revised process will not be mandatory upto January 1, 2022. However, since, the revised process for selection and appointment of IDs has already been specified, the appointment of IDs between August 3, 2021 and January 1, 2022 should be in line with the revised process and compliance with the revised role of the NRC.
- D&O insurance of IDs [Reg. 25(10)]
 - Top 501 to 1000 listed entities as on 31.3.2021 to take D&O insurance for all its IDs before 01.01.2022.
 - Board to decide the quantum in the meeting to be held prior to 01.01.2022

Impact of amendments on PSBs

- Composition requirement for Board
 - of PSBs: Section 9(3) & (3A) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (Act).
 - Of SBI – Section 19 of State Bank of India Act, 1955.
- In PSBs, following directors are considered as IDs (practice differs in PSBs):
 - 1 director possessing necessary expertise and experience nominated by CG
 - Directors nominated by RBI in consultation with CG
 - Directors elected by shareholders (on the basis of % capital held)
- Existing procedure to appoint IDs (practice differs in PSBs)
 - Nomination to be provided by shareholders
 - NRC only determines 'fit and proper' criteria
 - In case of only 1 valid nomination, the candidate shall be deemed to be elected without any general meeting. In case of more than 1 valid nomination, election to be conducted for the same.
- Existing procedure to appoint directors nominated by CG
 - Directly appointed by CG without shareholders' approval
- LODR to supersede in case of conflict
 - Pursuant to deletion of proviso to Reg 15 (2) (b) w.e.f September 1, 2021.
- Revised procedure to comply with the amendments in LODR
 - Shareholder directors can be considered as validly appointed IDs subject to adherence to the revised procedure of appointment.
 - Appointment of any person on the Board (including those nominated by CG) to be made as per the revised LODR provisions.
 - NRC to confirm that the candidates proposed to be appointed as IDs possess requisite skills and expertise as per description.
 - The same to be disclosed in the notice to shareholders
 - Shareholders approval to be taken for regularisation of IDs and other directors in accordance with re. 17(1C).
 - Special resolution in case of IDs.

Implementation status of consultation paper on Analyst Meet

Sl No.	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation/ partial or modified implementation
1.	Disclosure requirement w.r.t. schedule of analyst meet to be done away with. (Kotak Committee recommendation)	The disclosure serves no purpose and there have been instances of misuse.	Partially implemented. Meet defined to mean only group meets.	There is merit in disclosure of information pertaining to analyst/ investor meets/ conference calls as it would create a record for the regulatory authorities and stock exchanges for any future references.
2.	<p><u>Disclosure of post earnings/ quarterly calls:</u></p> <p>a. Audio/ video recordings to be disclosed on the company's and SE's website before the next trading day or within 24 hours, whichever is earlier</p> <p>b. Written transcripts to be disclosed on the company's and SE's website within 5 working days</p> <p>c. Information to be hosted for 8 years on company's website.</p>	To enable investors to take informed decisions, to avoid information asymmetry	<ul style="list-style-type: none"> • Point a – yes • Point b- yes • Point c – yes with modification; <p>Recording to be hosted for 5 years and then as per archival policy, written transcripts to be hosted and preserved permanently</p>	The recordings are data heavy and expensive for entities to host. Hence the reduction from 8 years to 5 years.

Implementation status of consultation paper on Analyst Meet

Sl No.	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation/ partial or modified implementation
3.	<p><u>Disclosure of one-to-one investor/ analyst meet:</u></p> <p>a. Disclose in the CG report on quarterly basis along with affirmation that no UPSI was shared</p> <p>b. Company to maintain a record of such meets</p> <p>c. Data to be preserved for atleast 8 years</p>	<p>Rationale for not disclosing immediately:</p> <ul style="list-style-type: none"> • Invasion of privacy of institutional investors; • Allow third parties to take speculative positions for trading decisions; and • Lead to overload of information to investors 	No	-
4.	Amendments to be recommendatory initially for a period of one year and mandatory thereafter for all listed cos.		Yes. Voluntary from April 01, 2021 & mandatory from April 01, 2022.	-

Analyst/institutional Investor Meets and Presentations (BSE's Guidance Note of June 29, 2021)

❑ 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 (mandatory for group meets and not one-to-one meets)
 - Presentation & audio/ video recording of post earning/ quarterly calls (*by whatever name called*) - promptly- 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 calls
 - To be hosted on the website and preserved permanently
 - Audio/ video recordings, transcripts of post earning calls either conducted by company or any other entity to be disclosed
 - Voluntary from April 01, 2021 & mandatory from April 01, 2022

❑ Inserted in Reg. 46 and Schedule III of LODR

❑ The word 'meet' has been defined as:

- group meetings or group conference calls
- conducted physically or through digital means.
- No discussion in SEBI Board meeting on this.

❑ 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.
 - Not implemented.

❑ Disclosure of UPSI

- If UPSI is shared in the meeting, audio/ video recordings or transcripts to be disclosed
- Irrespective of whether it is group meet or one-to-one meet, whether it is organized by company or any other entity
- No timeline provided, ideally should be disclosed promptly to ensure information symmetry.

Disclosure requirements w.r.t. Analyst/institutional Investor Meets

Sl. No.	Cases	Disclose what?	By When?	Other Points to be ensured
1.	Post earning calls/ Quarterly calls, by whatever name called (after disclosure of quarterly financial results)	Schedule of such meeting	As soon as the same is fixed but not later than 24 hours.	<ul style="list-style-type: none"> Mandatory only for group meets.
		Presentation and the audio/ video recordings of such meeting	Before the next trading day or within 24 hours from the conclusion of the meet, whichever is earlier.	<ul style="list-style-type: none"> Mandatory for both group meets and one to one meets. To be disclosed whether conducted by listed entity or any other entity. To be hosted on the website of the company for minimum 5 years and thereafter as per the archival policy of the company. To be disclosed simultaneously to the stock exchange.
		Transcripts of such meeting	Within 5 working days of conclusion of the meet.	<ul style="list-style-type: none"> Mandatory for both group meets and one-to-one meets. To be disclosed whether conducted by listed entity or any other entity. To be hosted on the website of the company and preserved permanently. To be disclosed simultaneously to the stock exchange.
2.	Other Analysts/ Investors meets	Schedule of such meeting	As soon as the same is fixed but not later than 24 hours.	<ul style="list-style-type: none"> Mandatory only for group meets.
		Presentation made in such meeting	As soon as the same is concluded but not later than 24 hours.	<ul style="list-style-type: none"> Mandatory only for group meets. To be disclosed on the website of the company, whether conducted by listed entity or any other entity To be disclosed simultaneously to the stock exchange.
3.	In case any UPSI is shared for legitimate purpose as per the Code of Fair Disclosure	Audio/video recordings or transcripts of such meeting	Promptly	<ul style="list-style-type: none"> Applicable to both group as well as one-to-one meets. To be disclosed on the website of the company, whether conducted by listed entity or any other entity. To be disclosed simultaneously to the stock exchange.

Implementation status of consultation paper on Reclassification of Promoter / Promoter group (1/2)

Serial No.	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation
1.	Maximum voting rights of the promoters seeking reclassification to be increased from 10% to 15%	To enable promoters having shareholding less than 15% but no longer controlling the listed entity to seek reclassification without reducing their share-holding.	No	Current threshold to be maintained since any person holding more than 10% of voting rights has the power to call an EGM, move to the NCLT etc..
2.	Board to consider the reclassification request within 1 month of receiving the request	Reg. 31A did not prescribe the definitive timeline to place such matter before the board. The companies did not place the matter before the Board which led to ceasing the process in its initial phase.	Yes, with modification. Matter to be placed before the Board in immediately next Board meeting or within 3 months, whichever is earlier.	This is in accordance with the timelines of Board Meetings defined in Companies Act, 2013 and will not increase the compliance burden.
3.	Minimum time gap between Board and shareholders' meeting considering the request of promoters seeking reclassification to be reduced from 3 months to 1 month.	The time gap of 3 months was felt to be long which increases the total time taken in the process.	Yes	-
4.	The ambit of exemption from the procedure specified u/r 31A(3), (4) and (8)(a) and (b) to be extended to re-classification pursuant to order/ direction of Government/ regulator and/or as a consequence of operation of law	Re-classification is a natural consequence of the order/direction of the Government/ regulator.	Yes	-

Implementation status of consultation paper on Reclassification of Promoter / Promoter group (2/2)

Serial No.	Proposed amendment	Rationale	Whether implemented?	Reason for non-implementation
5.	<p>Exemption from the procedure for re-classification to be granted, in case where re-classification is pursuant to an open offer under SAST Regulations, subject to foll. conditions:</p> <p>a. The intent to re-classify is disclosed in the letter of offer;</p> <p>b. The promoter to fulfil conditions u/r 31A(3)(b) and listed entity to fulfil conditions u/r 31A(3)(c).</p>	<p>Since the intent of reclassification is mentioned in the Letter of Offer, the requirement of promoter making an application for reclassification is a mere procedural formality.</p>	Yes	-
6.	<p>Exemption from the procedure for re-classification to be granted where, pursuant to open offer, a listed entity intends to re-classify erstwhile promoters but the promoters are not traceable or not co-operative, subject to the following conditions:</p> <p>a. The listed entity to demonstrate that efforts taken to contact the promoters.</p> <p>b. Such promoters shall not remain in control of the listed entity</p>	<p>There were instances where the new management was unable to reclassify the erstwhile promoters because they were un-traceable or non-cooperative. The requirement of promoter making an application for reclassification is a mere procedural formality.</p>	No	Shareholders' approval should be sought prior to such reclassification.
7.	<p>All entities under promoter/ promoter group to be disclosed separately even in case of 'Nil' shareholding. Listed entities to obtain a declaration on a quarterly basis, from their promoters on entities that form part of the 'promoter group'.</p>	<p>Listed companies have not been disclosing names of persons in promoter(s)/ promoter group who hold 'Nil' shareholding.</p>	No	This list may run into hundreds of entities and it may be difficult to keep a track on real-time basis and may add to the compliance burden of listed entities

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

❑ Reduction in time gap (**NSE Circular of Jun 28, 2021**):

- Time gap between BM and shareholders meeting for consideration of reclassification request should be min. 1 month and max. 3 months.
- Previous requirement: time gap of at least 3 months but not exceeding 6 months
- **Where the process of reclassification is initiated before amendment and notice to shareholders is sent – erstwhile Reg. 31A would apply.**

❑ Exemptions:

- Approval of 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.
 - **Application to SE to be made within 30 days of BM, in that case.**
- 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 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 extended;
- 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.

Timeline for periodic filing with Stock Exchanges

AREAS	PARTICULARS OF AMENDMENT	EFFECTIVE DATE
	Timeline for submission to Stock Exchange	05.05.2021
Share Transfer facility	Compliance certificate in respect of share transfer facility maintained with STA to be submitted to stock exchange within 30 days (earlier 1 month) from end of financial year (earlier half year) [Reg. 7 (3)]	
Quarterly compliance report on CG	Report on compliance of corporate governance requirements to be submitted within 21 days from each quarter (earlier 15 days) [Reg. 27 (2) (a)]	
Comments/ report from monitoring agency	Comments or report received from the monitoring agency, appointed to monitor utilization of proceeds of a public or rights issue, to be submitted to the stock exchanges within 45 days from end of each quarter annual (aligned with timeline under ICDR) [Reg. 32 (6)]	
PCS certificate on processing of shareholder requests	Certification certifying that all certificates have been issued within thirty days of the date of lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies to be submitted to stock exchange within 30 days (earlier 1 month) from end of financial year (earlier half year) [Reg. 40 (9) r/w 40 (10)]	
Submission of voting results	Submission of voting results of the general meeting to be made to the stock exchanges within 2 working days (earlier forty eight hours) [Reg. 44 (3)]	

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) & reg. 52 (3)]

- ❑ 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)

- ❑ Companies to mandatorily obtain 'No-objection letter'
 - No scope of proceeding with Observation Letter.
- ❑ 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.

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 has been done away with;
- ❑ Certificate of compliance with reg 45(1) from practicing CA 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.

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

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.

Intimation of outcome of Board meetings (reg. 30 (6) and Schedule III Part A) (NSE Circular of Jun 28, 2021)

- ❑ 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.
- ❑ Outcome to be filed within 30 minutes from the end of BM and not from the end of the day if in case the Board meeting continues to the next day.
- ❑ Examples –
 - BM start date is May 01, 2021 (9 p.m.) and end date is May 02, 2021 (4 a.m.)
 - maximum time to submit financial results will be upto May 02, 2021 (4.30 a.m.)
 - BM continues for 2 days - BM start date is May 01, 2021 (9 a.m.) and break on day 1 at May 01, 2021 (6 p.m.), on day 2 start at May 02, 2021 (9 a.m.) and end date is May 02, 2021 (4 p.m.)
 - If financial results are discussed on day 1 – to be disclosed on May 01, 2021 (6.30 p.m.)
 - If financial results are discussed on day 2 – to be disclosed on May 02, 2021 (4.30 p.m.)

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

PROPOSED AMENDMENTS NOT IMPLEMENTED

Serial No.	Regulation No.	Proposed Amendment	Rationale for amendment	Reason for non-implementation
1.	2(1)(ib)	Insertion of definition 'firm' <i>"Firm' shall have the same meaning as assigned to it under Partnership Act, 1932, and Limited Liability Partnership Act, 2008."</i>	Since the term 'firm' is used in the LODR but not defined in securities laws, the same may be defined by making reference to relevant statutes.	Since 'firm' is a well-understood and commonly used term, it need not be defined.
2.	Proviso to Reg. 12	Modification in first proviso to make issue of 'payable-at-par' warrants or cheques mandatory. Deletion of second proviso: <i>"Provided further that where the amount payable as dividend exceeds one thousand and five hundred rupees, the 'payable-at-par' warrants or cheques shall be sent by speed post."</i>	The benefits arising out of corporate actions are generally credited through electronic means. Very few investors are paid dividend by warrants or cheques. In order to provide flexibility to companies, other modes of sending warrants/ cheques to investors may also be permitted.	Mandating only cheques or payable-at-par warrants in case in case electronic mode is not available can limit the options for mode of payments. Further, sending via speed post is a reliable option for delivering cheques and warrants.
3.	39(3)	Intimation of loss of share certificate or issue of duplicate share certificate to be made on quarterly basis instead of within 2 days of getting information.	Registrar Association of India represented that intimation within 2 days may not be relevant as there is no trading/ transfer in physical shares. However, some shares may still be in physical form, therefore, to ease the compliance burden, the relaxation may be provided.	Since many investors still hold shares in physical form, this is an important compliance requirement to protect their interests.



CORPORATE GOVERNANCE DISCLOSURE



Report on Corporate Governance | Reg 27

Applicability

- Listed entities which have listed their specified securities

Timelines

- Annex-1 : on quarterly basis;
- Annex-II: at the end of a FY;
- Annex-III: at the end of 6 months from the close of FY;
- Annex-IV: on a half yearly basis starting from 1st half year of the FY 21-22 (i.e. for HY ended 30.09.2021)

Authentication

- Annex- I, II, III: by CO or CS or MD or CEO or CFO of the Company
- Annex- IV: CEO or CFO of the Company

New Disclosure Requirement(Annex- IV) - Snapshot

■ Regulation:

- Required under Reg 27(2) of SEBI (LODR)
- Listed entities which have listed their specified securities
 - Not applicable on debt listed companies
- Revised format brought by SEBI Circular dated 31st May, 2021

■ Time of Applicability:

- on Half Yearly basis starting from 1st HY of 2021-22
 - first time filing- for half year ended 30th September, 2021
- Within 21 days from the end of the HY

■ Scope:

- financial transaction undertaken during the HY ended 30th September, 2021; and
- ***all outstanding financial contracts which the entity has entered any time in the past.***

■ Financial transactions (FTs) covered:

- Loan
 - Includes any book debt advanced
 - Guarantee/ Letter of Comfort
 - Security
- } In connection with loan

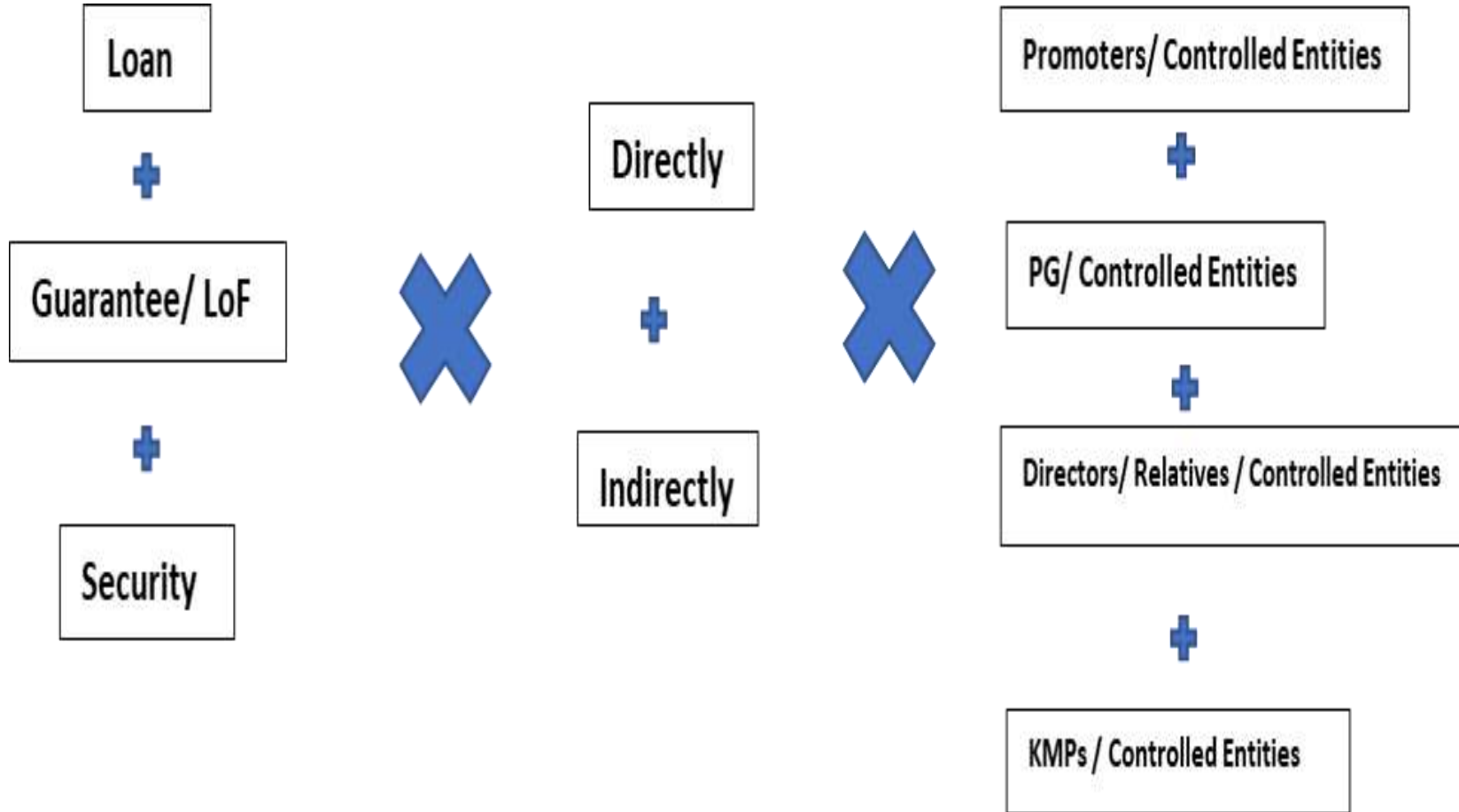
■ Entities/ Person covered:

- Promoter
 - Promoter Group
 - Directors (including relatives)
 - KMPs
- } Any entity controlled by any of them

■ Affirmation of economic interest:

- to be signed by CEO/CFO of the Company.
- justification that FTs is in economic interest of the Company.

Financial Permutations covered by Annex-IV



Minimum no of permutations involved is $3*2*4 = 24$

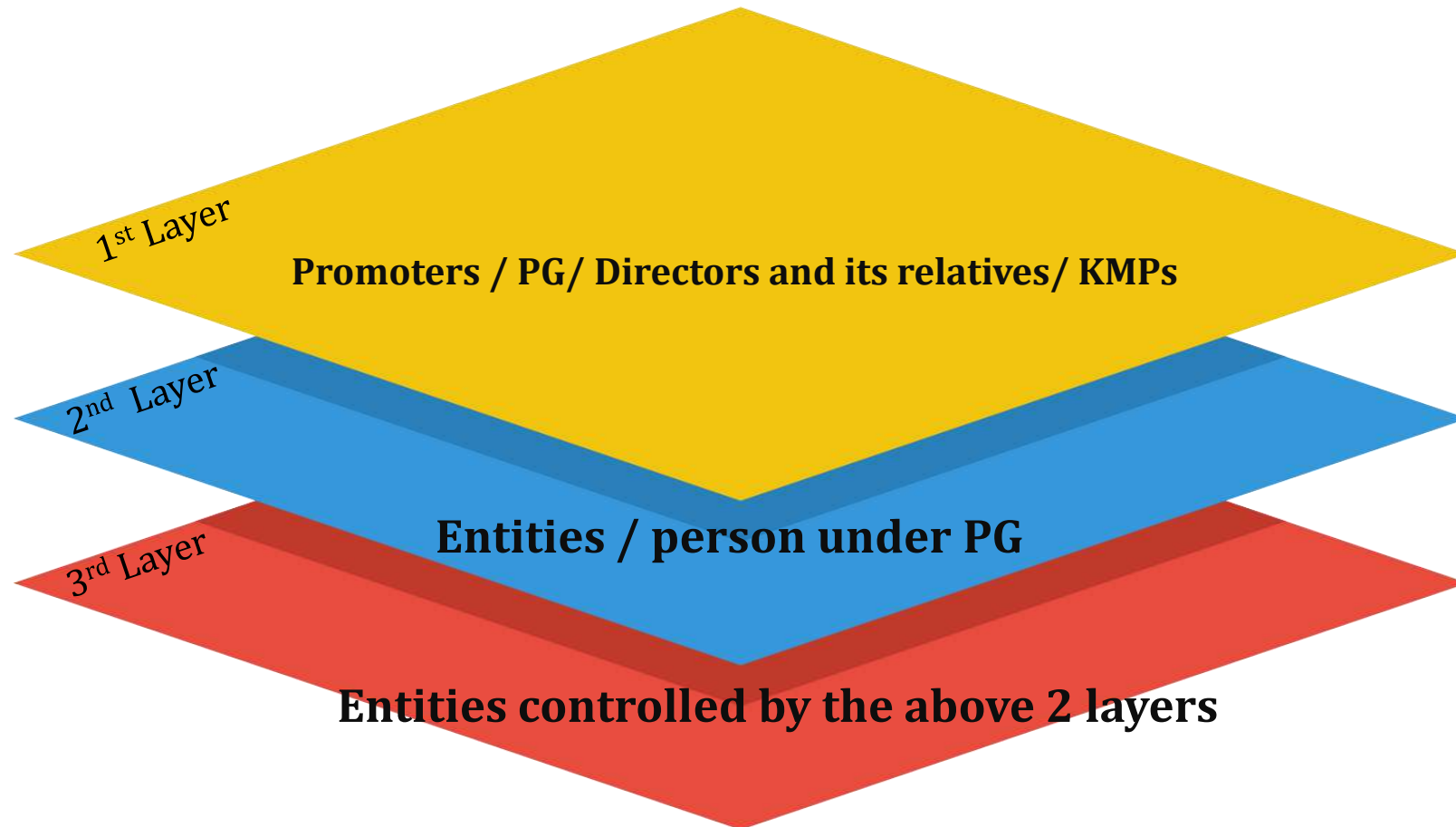
*Minimum no of permutations involved is $3*2*4 = 24$*



ENTITIES COVERED



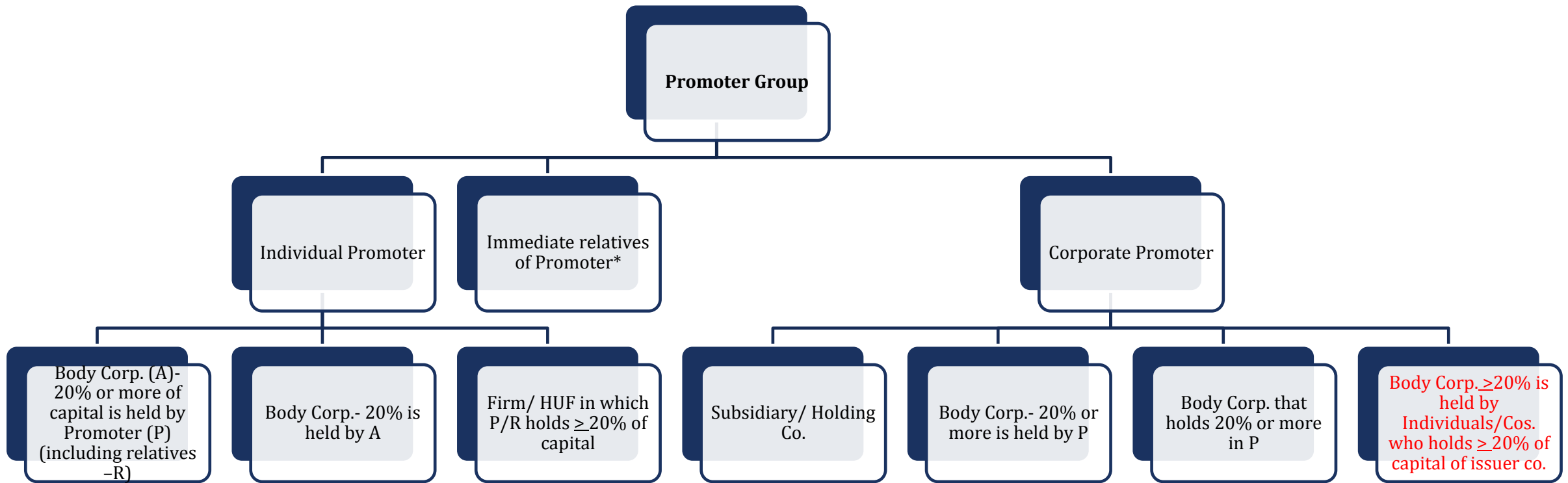
Layers of entities involved



Definition of Promoter

- Promoter:
 - defined under Reg 2(oo) of SEBI (ICDR) Regulations
 - a person
 - who has been named as promoter in a
 - draft offer document or
 - offer document or
 - is identified in Annual Return u/s 92 of Companies Act, 2013; or
 - who has control over the affairs, directly or indirectly, whether as
 - shareholder,
 - director or
 - otherwise
 - with whose advice, directions or instructions the board of directors is accustomed to act:
 - not applicable if merely acting in professional capacity

Definition of Promoter Group



- “Promoter Group” has been defined under regulation 2(pp) of SEBI (ICDR) Regulations.
- Immediate relatives includes spouse of promoter, or any parent, brother, sister or child of the promoter or of spouse.

Entities controlled by first 2 layers

- “Control” has been defined under SEBI Takeover Code
- Control includes:
 - right to appoint majority of the directors or
 - control the management or
 - policy decisions
 - exercisable by a person or PAC, directly or indirectly
 - including by the virtue of their
 - shareholding or
 - management rights or
 - shareholders agreement or
 - voting agreements or
 - any other manner



Definition of KMP

- Defined under Reg 2(o) of SEBI (LODR) Regulations
 - 'KMP' as defined under Section 2(51) of Companies Act, 2013 or

- Sec 2(51) of Companies Act, 2013:
 - CEO or MD or Manager
 - CS
 - Whole time Director
 - CFO
 - such other officer not more than one level below the director who is whole time employment
 - designated as KMP by the Board

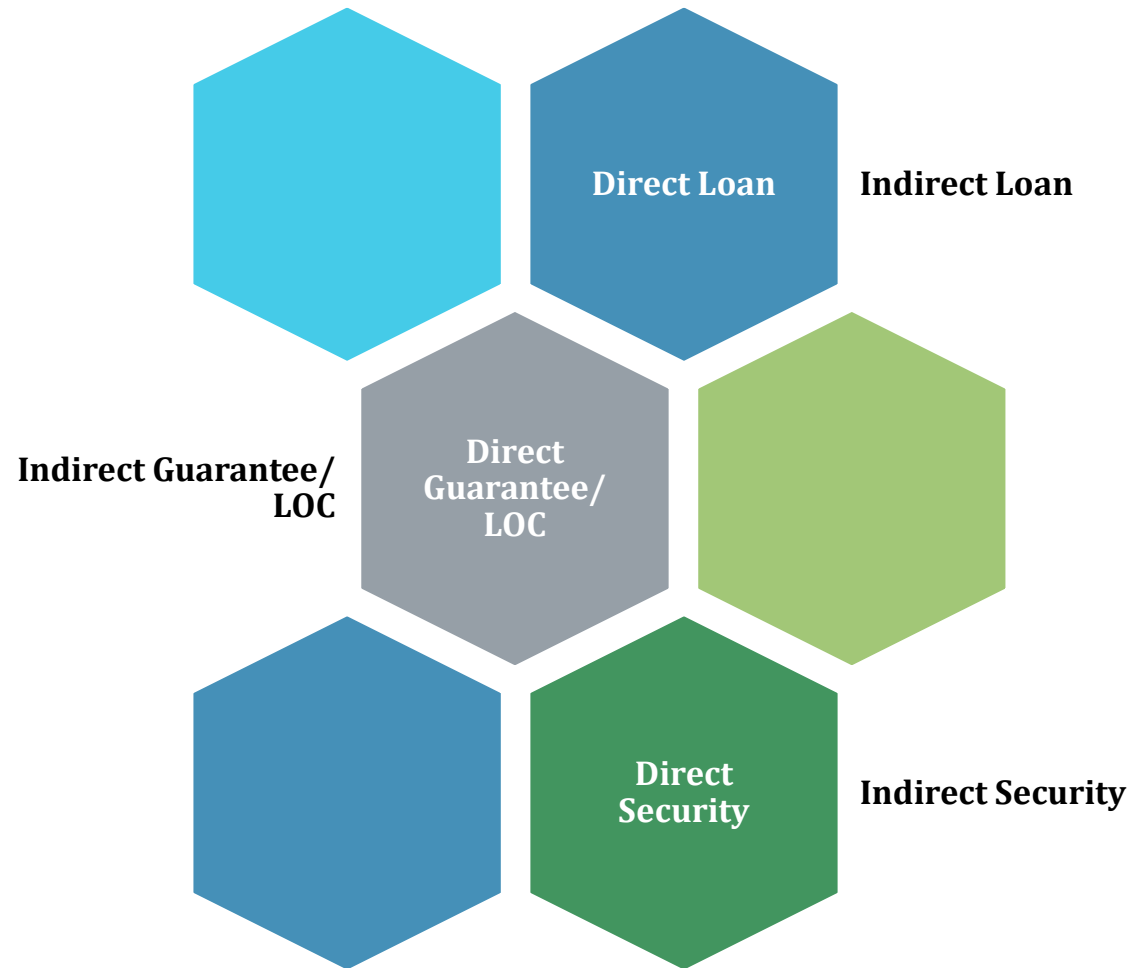




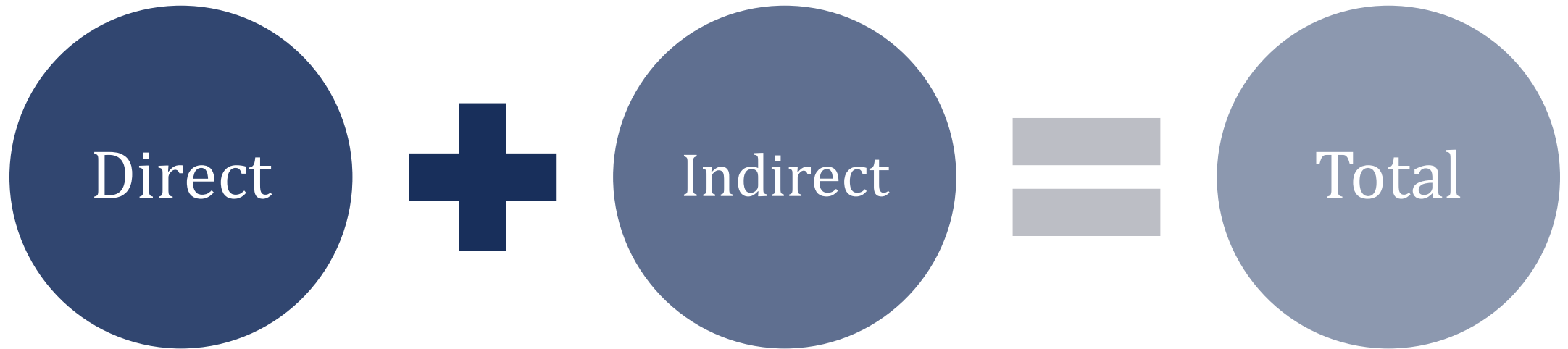
FINANCIAL TRANSACTIONS COVERED



Scope



Direct as well as Indirect Financial Transactions



Challenges:

- to identify **connecting links or conduits** through which interested entities have been benefitted.
- identify camouflaged transactions where there is a **clear and direct nexus** between flow of money from the listed entity to the intermediary and ultimately to the interested party.

For e.g., A company raises preference share capital stating the reason as funding own business operations, however, uses the funds so raised to on-lend *to another entity which is covered under these disclosure requirements*.

Nature of Book Debt

- Any form of debt **advanced** has to be included.
- Mere commercial transaction such as selling of goods on credit should **not** be included.
- Book debt in the **nature of advance** which is an attempt to camouflage financial accommodation **needs** to be included.
 - transactions **not in normal course of business**
 - selling on credit under **unreasonable terms** of understanding
 - Selling on credit for an **unreasonable period of time**.
- Examples:
 - Selling of goods on credit to any entity or person for a period of time and then the entity or person returns back the goods after a period of time.
 - Selling of goods to a director or KMP of the Company on credit who in turns sells the goods further on cash.

LoC vs Co-borrowing arrangement

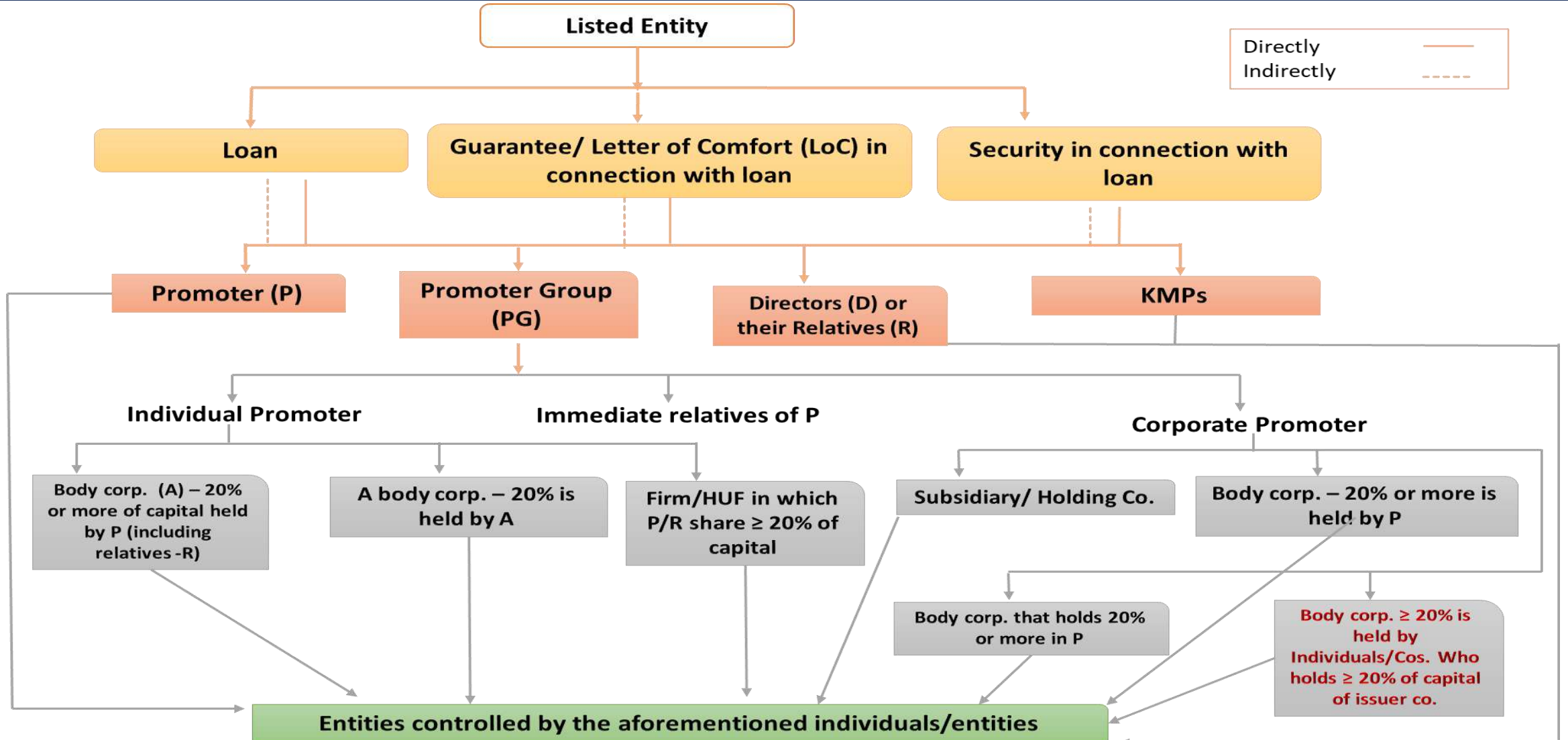
Letter of Credit (LoC)

- Providing guarantee or an LOC amounts to providing financial accommodation to the borrower.
- LOC needs to be disclosed and can not be disguised as a co-borrowing arrangement.

Co-borrowing arrangement

- The entity is a beneficiary of the loan being availed together with an interested party and hence will not come under the purview of disclosure;
- However, being a mere signatory to such arrangement will not exclude the entity from disclosure requirement.

What and who is covered?



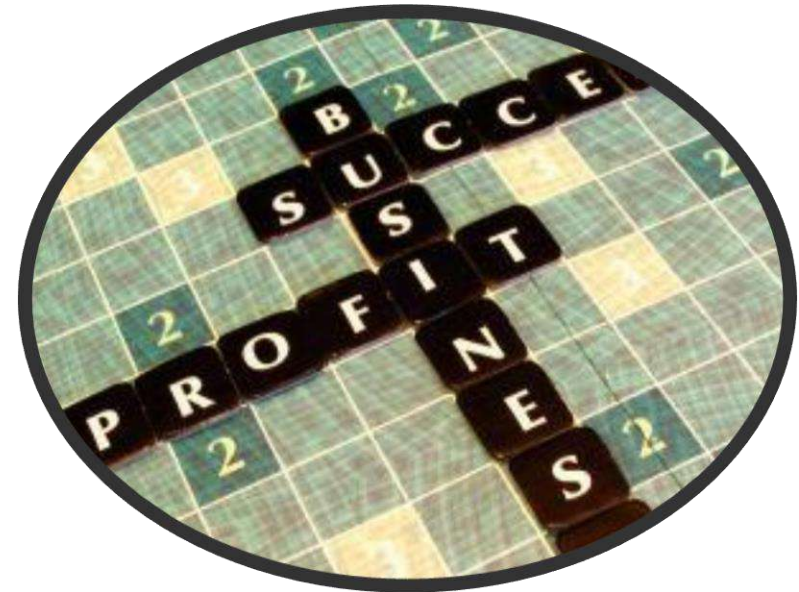


AFFIRMATION OF SERVING ECONOMIC INTEREST



What is economic interest?

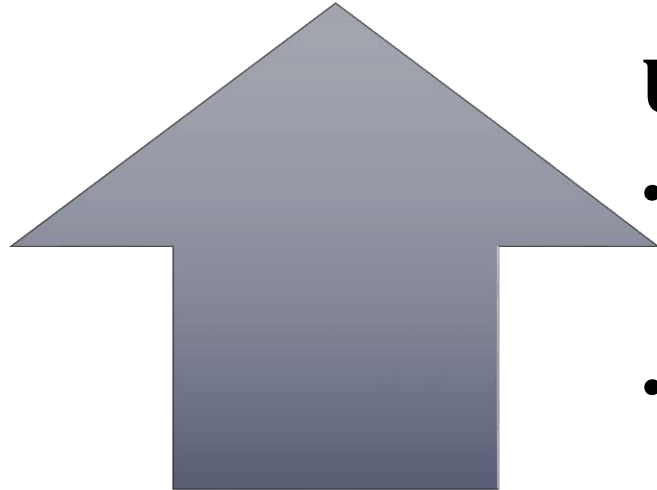
- Economic Interest should mean *shareholder's wealth maximization*
 - Not been defined in the circular issued by SEBI or in any of the SEBI Regulations.
 - Should include any activities in which the company is generally engaged in.
- **Situations:**
 - Earning interest by providing loan can be said to be in the economic interest for Financial Entities such as NBFCs.
 - **Should be comparatively easier for NBFCs to affirm that the financial transaction is in economic interest.**
 - On the other hand, earning interest by providing loan can not said be in the economic interest for a company engaged in trading or manufacturing activities.
 - **Should be comparatively difficult to affirm that the financial transaction is in economic interest.**



What should be covered under review by audit committee?

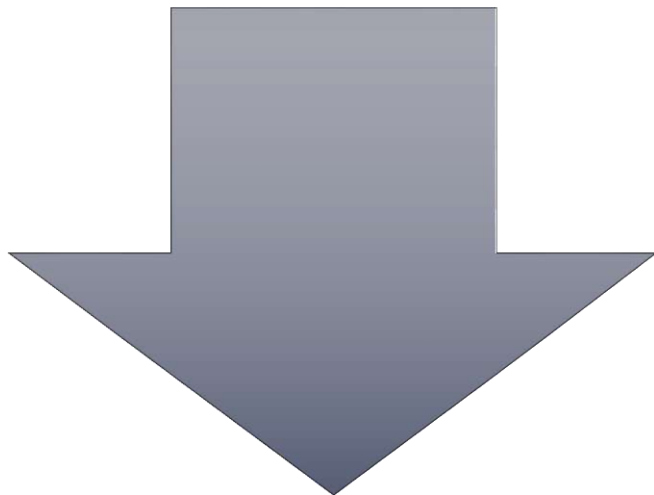
- Requirement under Law
 - Regulation 18 read with Part C of Schedule II
 - Scrutiny of inter-corporate loans and investments
 - *No reason to exclude provision of security or extending guarantee in connection with loan*
 - Similar requirement under the Companies Act, 2013 (Sec 177)
- *AC should satisfy itself on the FTs serving the economic interest of the entity?*
 - *Probably yes*
 - *This disclosure under Annex IV should be placed before the AC*

Justification for affirmation



Upward Entities / Investor

- FTs with Promoter/ Promoter Group, by an entity controlled by them may involve wealth extraction
- Providing justification will be difficult for an entity.



Downward Entities / Investee

- FTs with the investee can be said to be in the economic interest of the listed entity due to consolidation of wealth which in turn implies economic interest.

Illustrations

- **Illustration 1:**

Company A is a listed company, it has 2 subsidiaries (Company A1 and A2). There are no other companies in the group. Company A holds 64% & 55% of the total share capital of Company A1 & Company A2 respectively.

In January, 2021, Company A granted loan to Company A1. Whether disclosure under Annex-IV required?

- **No.**

- **Illustration 2:**

PQR is a listed company in the agriculture export industry. It has 5 promoters who are body corporates engaged in different segments of the export market.

Z LLP is holding 23.5% of the total share capital of PQR Limited. Z LLP obtained a corporate guarantee from PQR Limited for the loan taken from Y Bank Ltd.

Whether the particulars of guarantee will have to be disclosed by PQR

- **Yes**

- **Illustration 3:**

Mr. X is one of the 4 promoters of ABC Limited, a manufacturing company. He along with his spouse holds 55% of the share capital of WE limited.

WE Limited holds 55% of the total share capital of IQ Pvt. Ltd., which is controlled by the Promoters of ABC Limited.

ABC Limited then enters into a sales agreement with IQ Pvt Ltd on terms not limited to;

- ✓ Payments to ABC Limited at will of IQ Limited.
- ✓ No requirement for security deposit
- ✓ Extensive credit period of up to 365 days

Whether the details of this sale contract will be required to be disclosed


- **Terms of the contract are unreasonable, should be disclosed**

CG Power and Industrial Solutions Ltd- Financial Fraud (1/2)


In March 2019, the Board of Directors of CG Power constituted Operations Committee (“Ops Committee”) with aim of improving stakeholders’ value;



The Committee received a letter from a financing company about an interest payment failure, which the Committee was unable to track in CG Power’s books, implying that the defaulted loan was never shown in the balance sheet;



The Ops Committee was also made aware of a letter received by the Company from another financing company regarding a certain interest payment failure which untraceable from the financials of the Company;

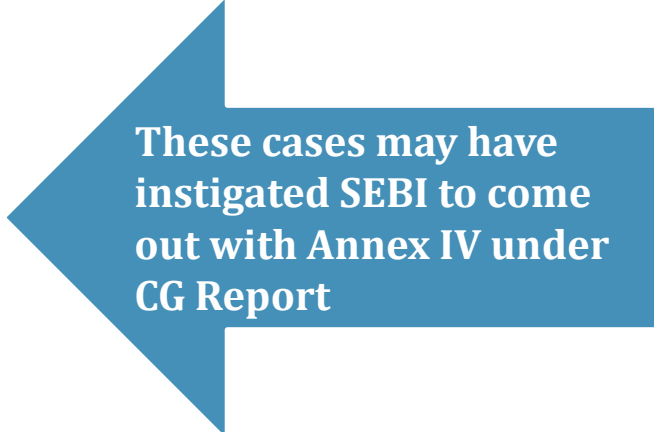


Further, CG Power’s received a request from a bank to replace a cheque whose validity was about to expire. And here, too, the said liability was not shown in the company’s financials.

CG Power and Industrial Solutions Ltd- Financial Fraud (2/2)

■ Key Findings:

- Understatement of advances to related and unrelated parties by Rs 2,807 crore as of March 2018 and of Rs 1,331 crore as of April 2017.
- The company was made co-borrower and guarantor for unrelated third-party loans without due authorization. These funds were immediately routed by the Company to related parties without due authorization.
- Routing transactions through subsidiaries, Promoter-affiliated Companies and other connected parties for the ultimate benefit of companies related to Promoter Group.
- Money was routed to foreign subsidiaries by giving loans to them and then writing off such loans as non-recoverable.



These cases may have instigated SEBI to come out with Annex IV under CG Report

Actionable on the part of listed entity

To identify and prepare the list of persons and entities falling under the scope of the SEBI Circular

To identify the FTs (both direct and **indirect**) entered into or for the benefit of those identified above.

To identify the outstanding balance with the same

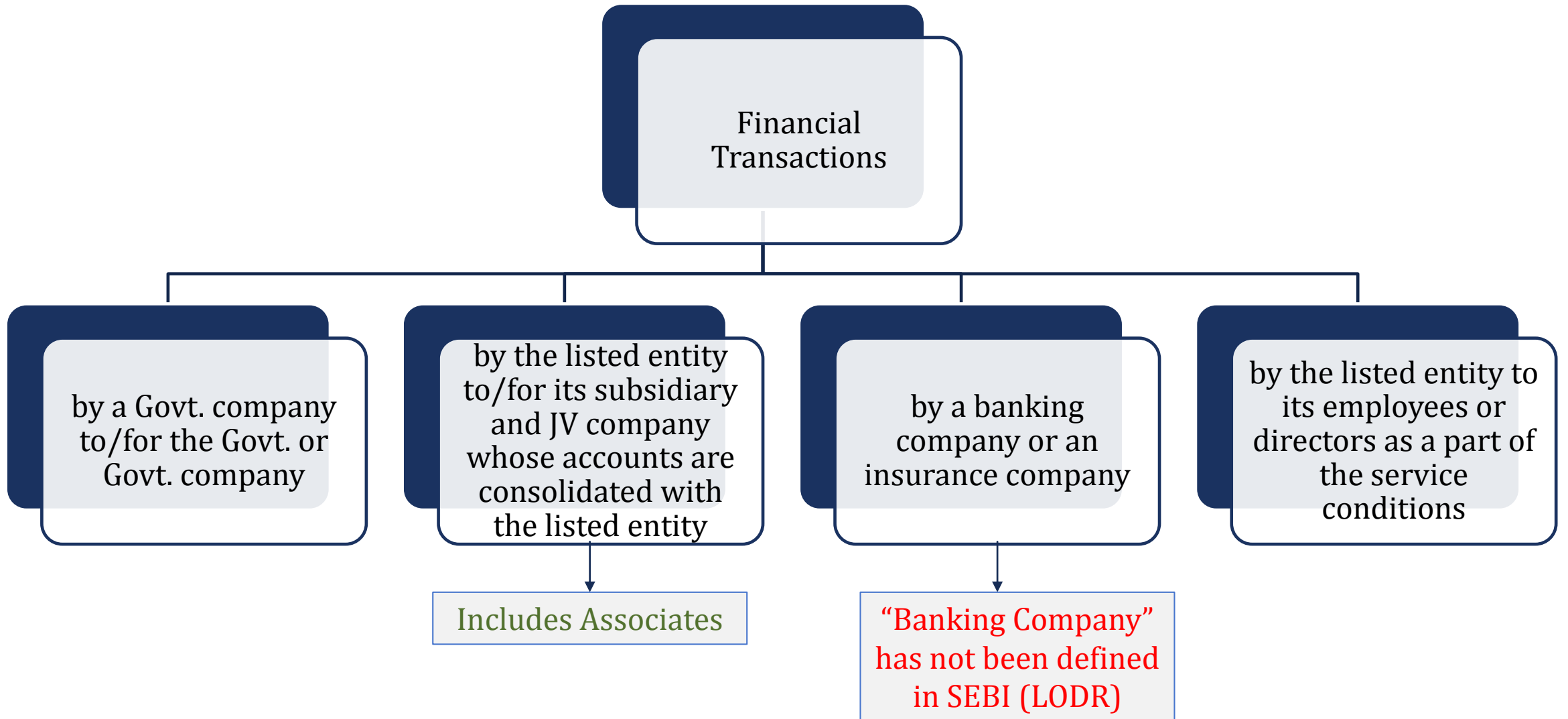
Comparison between Section 185 of CA, 2013 and Annex-IV (1/2)

Basis of comparison	Section 185 of CA, 2013	Annex-IV of compliance report on CG
Services covered	Provision of loan, provision of guarantee or Letter of Comfort and providing security in connection with the loan	Similar
Mode	Direct as well as indirect	Similar
Entities covered	<ul style="list-style-type: none"> • director of company, or its holding company or any partner or relative of such director; • any firm in which any such director or relative is a partner; <p>The aforesaid two bullets are completely prohibited.</p> <ul style="list-style-type: none"> • any private company of which any such director is a director or member; • any body corporate at a general meeting of which not less than twenty-five per cent. of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; • any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company 	<ul style="list-style-type: none"> • promoter • promoter group • directors (including relatives) • KMPs • any other entity controlled by any of the above mentioned person

Comparison between Section 185 of CA, 2013 and Annex-IV (2/2)

Basis of comparison	Section 185 of CA, 2013	Annex-IV of compliance report on CG
Exclusion	<ul style="list-style-type: none"> • giving of any loan to MD or WTD <ul style="list-style-type: none"> • as a part of conditions of service extended by company to all its employees; or • pursuant to any scheme approved by members by SR • granting loan, giving guarantee or providing of security in the ordinary course of business where interest charged not less than prevailing rate of G sec of 1,3,5 or 10 years. • granting of loan, giving guarantee or providing of security by Holding Co. to WOS for its principal business activities. • giving guarantee or providing security in respect of loan made by bank or FIs to subsidiaries for its principal business activities. 	<p>Reporting of following FTs:</p> <ul style="list-style-type: none"> • by a government company to/for the Government/ government company • by the listed entity to/for its subsidiary and JV company whose accounts are consolidated with the listed entity • by a banking company or an insurance company • by the listed entity to its employees or directors as a part of the service conditions

Exclusion List



Anomaly to exclude Banking Companies and not Banks!

- Exclusion list provides that FTs by a **banking company** shall be excluded from disclosure.
- SEBI (LODR) Regulation does not define the term “banking company” but the term “banks”.
- Section 5(c) of the Banking Regulation Act, 1949 (‘BR Act’) defines banking company as:
 - *“banking company” means any company which transacts the business of banking in India;”*
- Further, section 5(d) of the BR Act defines company as:
 - *“company” means any company as defined in section 3 of the Companies Act, 1956 (1 of 1956) and includes a foreign company within the meaning of section 591 of that Act;”*
- Public sector banks like State Bank of India, being a body corporate, do not fall under the aforesaid definition of banking company. However, it is engaged in the business of banking and should therefore, be excluded
- Clarity on the same is still awaited from SEBI.



BUSINESS RESPONSIBILITY AND SUSTAINABILITY REPORTING (BRSR)



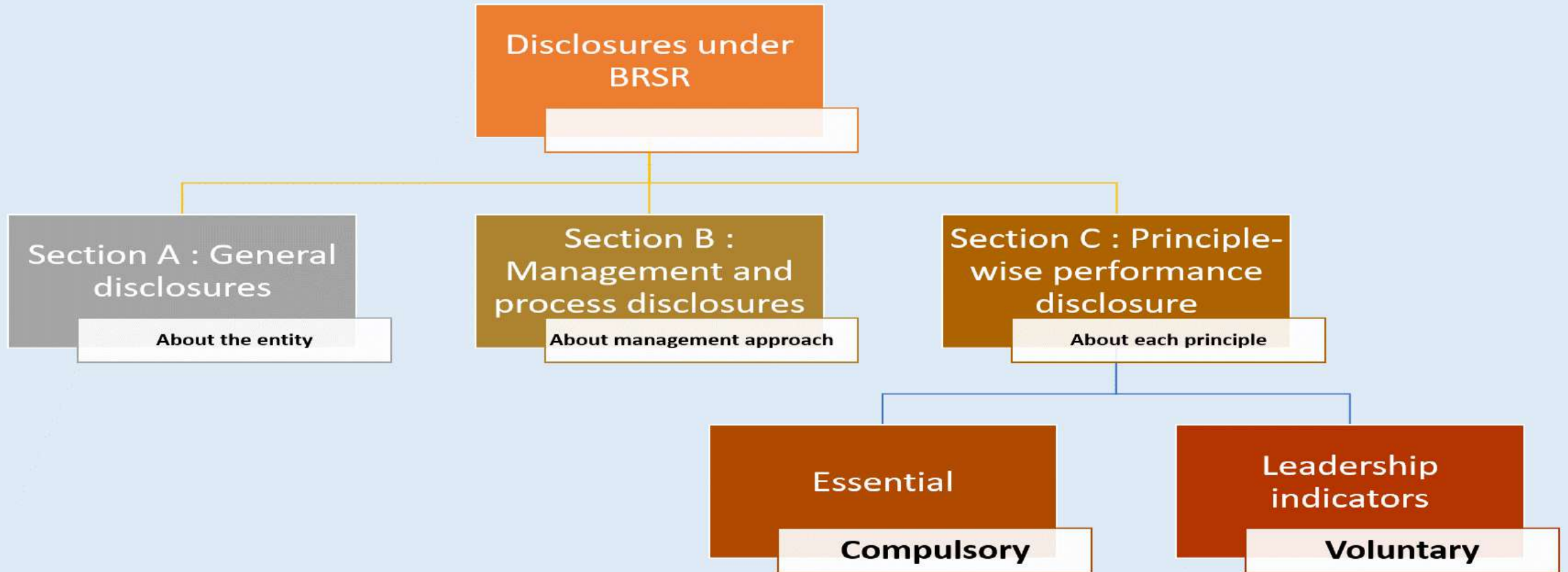
BRSR- Basics

- Required under Reg 34(2)(f) of SEBI (LODR).
- Will replace Business Responsibility Reporting (BRR).
- Notified vide amendment dated 5th May, 2021.
- Reporting format and guidance note notified vide SEBI circular dated 10th May, 2021.
- Suggestions by MCA's Committee on BRR:
 - 2 reporting formats:
 - BRSR comprehensive format- listed and unlisted company
 - BRSR Lite format- smaller unlisted company
 - Extending the scope of applicability to all businesses, irrespective of size or ownership
 - even covering LLPs
 - BRSR filing to be integrated with MCA21 filings preferably in XBRL formats.
 - Top 1000 listed entities as per market cap to report both on MCA21 Portal and Stock Exchanges.
 - Eligibility for other companies to be determined based on combination of paid up capital and/ or turnover.
 - To report only on MCA21 Portal.

BRR vs BRSR

Basis of comparison	Business Responsibility Reporting (BRR)	Business Responsibility and Sustainability Reporting (BRSR)
Scope	Limited to business responsibility	Additional reporting on sustainability reporting
Applicability	Top 1000 listed entities based on market cap.	Top 1000 listed entities based on market cap.
Time	Mandatory for FY 2020-21.	Voluntary for FY 2021-22 and mandatory from FY 2022-23 onwards.
Disclosure	Forms a part of Annual Report	Will form a part of Annual Report
Type of Information	Basic with lesser and limited details	Enhanced and detailed disclosures. Several quantitative and qualitative data.
Coverage	General non-financial disclosures and NGRBC principle-wise performance	General non-financial disclosures with NGRBC principle-wise performance bifurcated into two categories: Essential Indicators (mandatory) and Leadership Indicators (voluntary)

Disclosures under BRSR



Actionable (1/5)

- Making amendments in the existing or adoption of policy(ies) on each of the 9 Principles.
 - Setting goals, commitments, challenges within specific timeline.
 - Setting up of grievance redressal mechanism for stakeholders (such as communities, investors, employees, value chain partners).
 - Identifying and providing the details of risk or opportunities faced from environmental and social matters
- **Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability**
 - Designing training programs on all or any 9 NGRBC principles for BoDs, KMPs, employees and workers.
 - Formulation of Anti- corruption or anti- bribery policy.
 - Implementation of process for avoiding conflict of interest involving BoD.
 - conditions and environment to its employees.

Actionable (2/5)

- **Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle**
 - Whether the company has a policy in place to regularly monitor and review the machines and manufacturing processes in place and to replace the same if it is causing pollution?
 - Investment in Supply chain of the product to reduce the wastage in transportation especially of essential items
 - Undertaking Life Cycle Assessment of the products
 - To adopt Sustainable Sourcing as far as possible.
- **Principle 3: Businesses should promote the wellbeing of all employees**
 - To maintain proper and updated records in respect of various insurance policies and benefits being provided to employees and workers.
 - To provide training on health and safety measures and skill upgradation to employees and workers.
 - To have a proper and robust health and safety management system in place which includes identification and risk assessment of work related hazards.
 - To be a leader and better governed entity, the entity shall also ensure that its value chain partners are providing basic, safe and healthy working conditions and environment to its employees.

Actionable (3/5)

- **Principle 4: Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized**
 - Laying down a process for identification of key stakeholders and listing them.
 - Identify means to engage with the stakeholders and establishing mechanism to address the concerns of vulnerable stakeholders.
- **Principle 5: Businesses should respect and promote human rights**
 - Developing a training system to be provided to employees and workers on human rights issues and policies.
 - Designating an individual or formulation of a Committee for addressing human rights impacts or issues.
 - Formulating an effective grievance redressal mechanism to address human rights concern.
 - Any relevant 'speak-up' procedures or whistle-blowing mechanism to enable and/or encourage individuals to raise concerns internally regarding respect for human rights.
 - Establishing mechanism to protect whistle blower or complainant.
 - Conducting human rights due diligence and assessment of the entity and its value chain partners.

Actionable (4/5)

- **Principle 6: Business should respect, protect, and make efforts to restore the environment**
 - Implement an environmental management system focused on continual improvement to review, prevent, mitigate adverse environmental impacts.
 - Design and plan all operations so that adequate resources are available to meet emergency situations.
 - Focus on sourcing renewables through different methods, such as on-site projects, power purchase agreements and use of renewable energy for plant/office operations.
 - Setting-up solar power plants within factory premises and replacement of fuel/electricity from tidal/nuclear plants.
 - Undertaking Environment Impact Assessments and providing necessary details, if applicable.
 - Identifying whether the entity has operations/ offices in/around ecologically sensitive areas and if yes, whether permission has been sought.
- **Principle 7: Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner**
 - Identification and listing down of trade and industry chambers and associations of which the company is a part.
 - Whether company has advocated any public policy such as matter of child labour, girl education, cleaner environment.

Actionable (5/5)

- **Principle 8: Businesses should support inclusive growth and equitable development**

- Undertaking a Social Impact Assessment (SIA) of project, if required as per law.
- Establishing a mechanism for redressal of grievance of community affected by company's projects.
- Adoption of policy on Rehabilitation and Resettlement of families affected by its projects.

- **Principle 9: Businesses should engage with and provide value to their customers and consumers in a responsible manner**

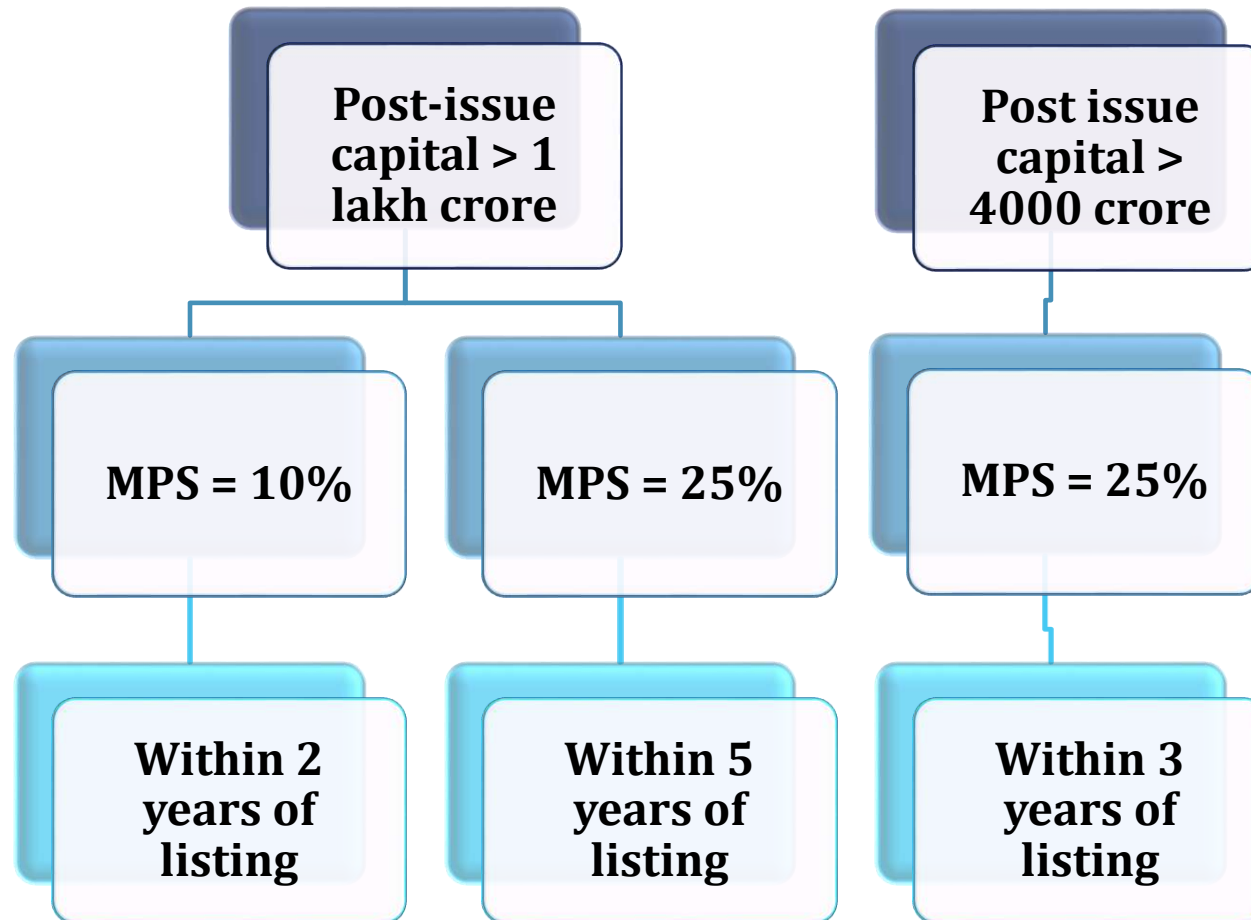
- Establishing a mechanism for redressal of consumer complaints and receiving feedback.
- Formulating and adoption of policy on cyber security and data privacy.
- Establishing or adoption of steps to educate consumers about safe and responsible usage of products.
- Establishing a mechanism to capture information relating to data breaches.
- Ensuring consumers are well informed about the products and risks of disruption/ discontinuation of essential services.



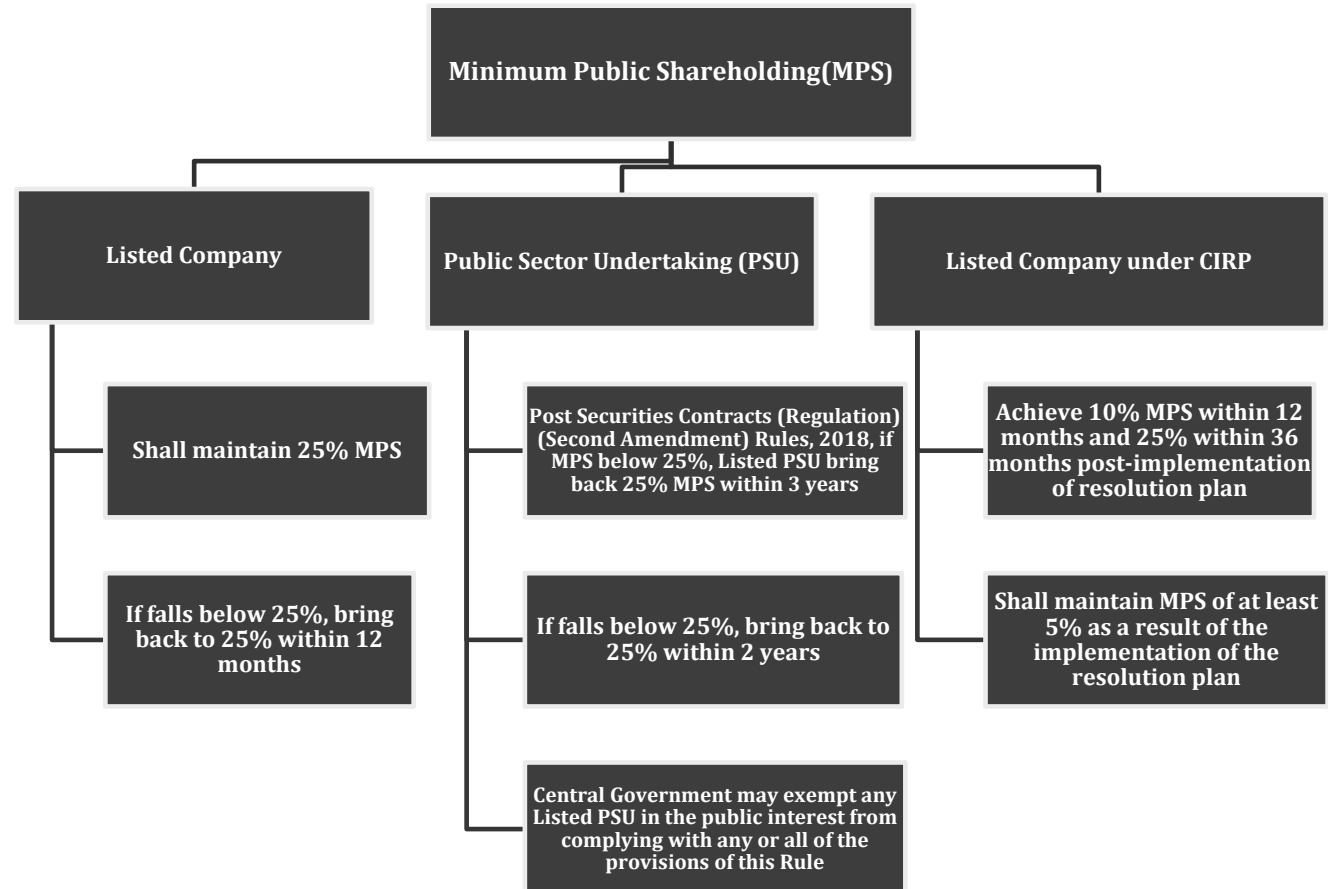
MINIMUM PUBLIC SHAREHOLDING REQUIREMENTS



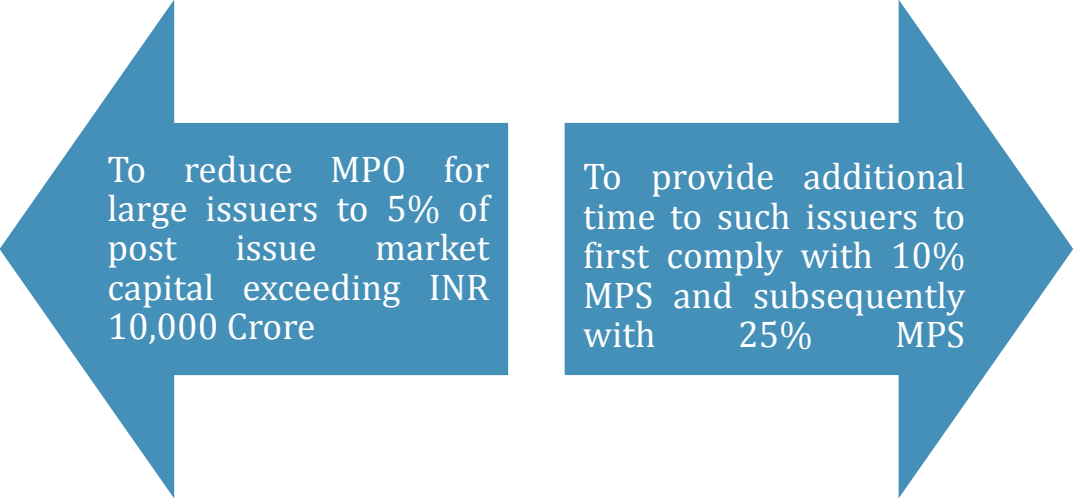
Snapshot of MPS requirements in case of new issuance



Rule 19A - Continuous Listing Requirement



SEBI Consultation Paper on MPO



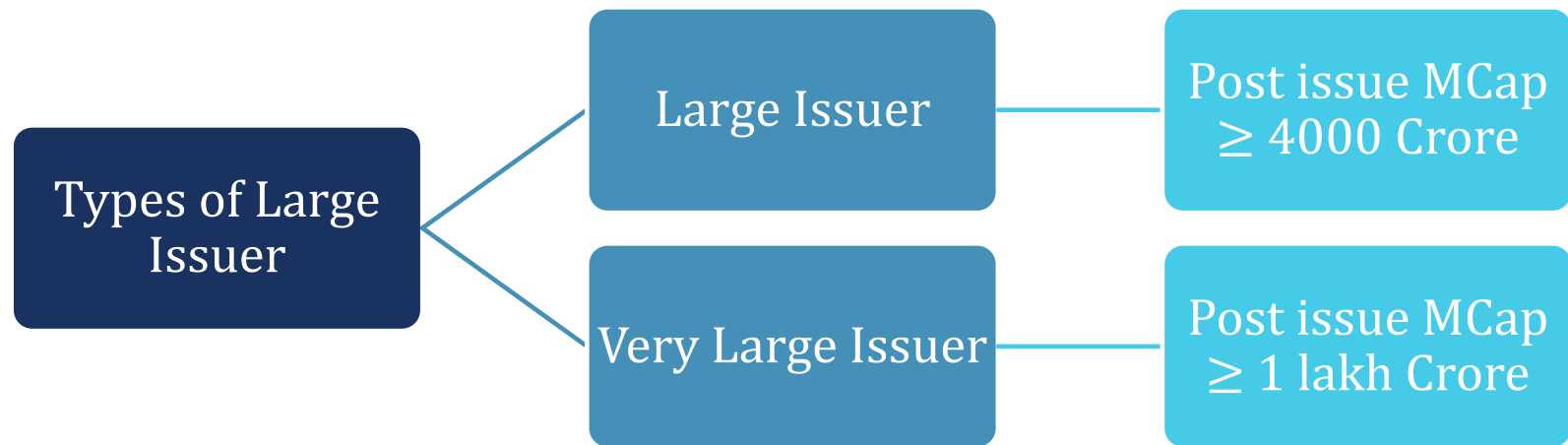
To reduce MPO for large issuers to 5% of post issue market capital exceeding INR 10,000 Crore

To provide additional time to such issuers to first comply with 10% MPS and subsequently with 25% MPS

The reduction in the Minimum Public Offer(MPO) requirements for large issuers was proposed due to the following reasons –

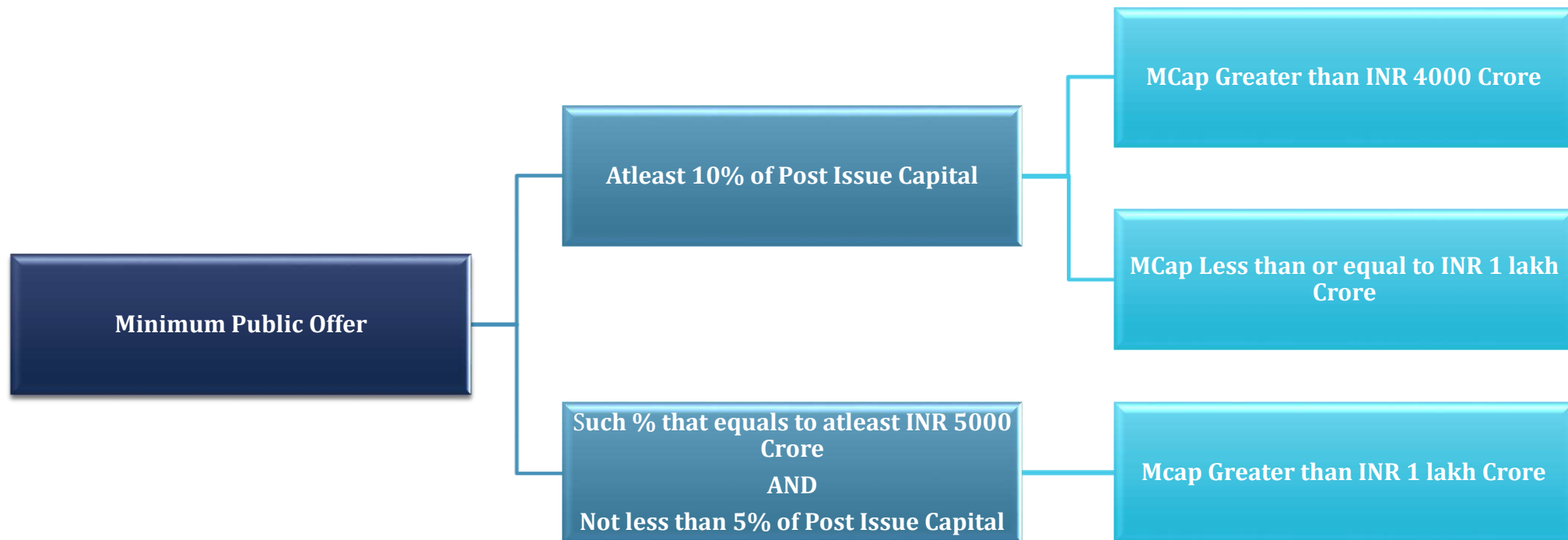
- The compliance of such MPS requirements is cumbersome for the large issuers.
- The large issuers already have investments from strategic investors who are classified as “public shareholders” post listing. Therefore, the requirement of MPO results in unnecessary dilution of control of promoters thereby imposing constraints on issuers.

Large Issuer Classification



Snapshot of MPO requirements

MCap = Post Issue Capital calculated at offer price



Snapshot on the changes in MPO and MPS requirements

Basis	Erstwhile Provisions	Proposal under the Consultation Paper	Current Provisions
MCap > 10000 Crore	10% MPO	1000 Crore MPO + 5% of MCap exceeding 10000 Crore	The limit up to 10000 Crore increased to up to 1 lakh Crore
10,000 Crore < MCap ≤ 1,00,000 Crore	MPS of 25% to be achieved in 3 years from date of listing	MPS of 10% to be achieved in 18 months and 25% within 3 years from the date of listing respectively	Not Implemented
MCap > 1,00,000 Crore	MPS of 25% to be achieved in 3 years from date of listing	MPS of 10% to be achieved within 2 years and 25% within 5 years from the date of listing respectively	MPS of 10% to be achieved in 2 years and 25% within 5 years from the date of listing respectively

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