



CAPITAL MARKETS

N. A. SHAH **BULLETIN**

June 2018

N. A. SHAH ASSOCIATES LLP
Chartered Accountants



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EXECUTIVE SUMMARY

- Radical changes have been made to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR Regulations”)
- With a view to streamline the process and adoption of a uniform approach for levying penalties, SEBI has prescribed a revised manner to levy fines for non-compliance with LODR Regulations.
- Implementation of certain recommendations of the Committee on Corporate Governance.
- Manner for system-driven disclosures in securities market under SAST & PIT Regulations has been prescribed.

1. Radical changes to LODR Regulations

SEBI has made amendments in the Listing Obligations and Disclosure Requirements (LODR) Regulations. SEBI has accepted the propositions set by the committee constituted under the chairmanship of Mr. Uday Kotak which aims at making compliances and disclosures even more transparent. Overview of some of the key amendments are as follows:

a. Stakeholders relationship committee

SEBI has widened the scope of the stakeholders relationship committee which hitherto was limited to redressal of grievances of the shareholders, debenture holders etc. The scope has been enhanced to look into various other aspects of interests of stakeholders such as measures taken for effective exercise of voting rights, services related to R&T agent, review of various measures for reducing the quantum of unclaimed dividends etc.

b. Disclosures related to resignation of independent directors / auditors, related party:

- i. Listed companies are now required to make disclosures for resignation of auditor/ independent director and mention the reasons thereof with the stock exchanges.
- ii. The related party transactions within 30 days of publication of half yearly results as also credit ratings obtained by the company are to be published on website in addition to being intimated to stock exchange.
- iii. "Promoters or promoter group" which hold more than 20% of the listed company will now be considered as related party.

c. Enhanced role of audit committee

- i. The role of the audit committee has been enhanced to include the review of utilization made by the subsidiary company out of loans and/ or advances /investment made by the holding company. The threshold will be applied in cases where the aggregate amount exceeds rupees 100 crore or 10% of the asset size of the subsidiary, whichever is lower & will include existing loans / advances /

investments existing as on the date of coming into force of this provision.

d. Quarterly results and disclosures

- i. In case the company has subsidiaries it will be mandatory to publish quarterly consolidated financial statements with a condition that atleast eighty percent of consolidated revenue, assets and profits should have been audited or reviewed.
- ii. In the last quarter of the financial year, if material adjustments have been made which relate to earlier period will have to be disclosed.
- iii. Cash flow statements are required to be made and disclosed as part of its standalone and consolidated financial results every six months.

e. Secretarial report for material Indian subsidiaries auditor's role

- i. Under the revised regulation, secretarial audit report of its material unlisted Indian companies is required to be annexed along with the annual report.
- ii. SEBI has also amplified auditors responsibilities where by statutory auditor has to undertake limited review for all the subsidiary of the company whose accounts are consolidated with the company.

f. Changes in respect of directors and directorship

- i. Significant changes have been made in regard to directors. An Independent director will not be permitted to appoint an alternate director and after 1st October 2018, the alternate director will be deemed to vacate office.
- ii. For appointment or continuance of any non executive director after such person has attained an age of 75 years or more will have to be approved by shareholders by way of special resolution. Currently as per Companies Act 2013, only appointment of executive directors who are above age of 70 years has to be with special resolution.
- iii. SEBI has also mandated that in respect of top 500 listed entities, chairperson of the board shall be a non-executive director and should not be related to the Managing Director or the Chief Executive Officer.

- iv. Further a person shall not be a director in more than 8 listed entities with effect from April 1, 2019 and in not more than 7 listed entities with effect from April 1, 2020. Currently person is allowed to serve as a director in 10 public companies.
 - v. Atleast one of the Independent director will have to be appointed on board of unlisted material subsidiary.
 - vi. The Board of Directors to list core skills/expertise/competencies required in the context of its business(es) and sector(s) for it to function effectively and those actually available with the board and also name the directors possessing such skills.
- g. Applicability

Though this notification is applicable from April 1, 2019, some items have immediate applicability, some amendments are effective from October 1, 2018 while a few others are applicable from April 2019 / 2020 based on market capitalisation criteria . Some of the key amendments are as follows:

With immediate effect	<ul style="list-style-type: none"> - Accounts to be disclosed in XBRL format to stock exchanges - Additional disclosures on board evaluation - Additional disclosure in the management, discussion and analysis section of the annual report
Oct 1, 2018	<ul style="list-style-type: none"> - Appointment of alternate director for independent director is not permitted - Annual report to be submitted to stock exchange and published on website before dispatching annual report to shareholders along AGM notice - Publish credit ratings for all its instruments on website and immediately update any revision in such credit ratings
April 2019	<ul style="list-style-type: none"> - Listed companies having subsidiaries will have to submit quarterly / year to date consolidated financial results. Earlier it was optional. - Mandatory disclosure of half yearly cashflows - Aggregate number of Directorships to be limited to 8 companies

	<ul style="list-style-type: none"> - Shareholders approval for royalty and brand payments related parties exceeding two percent of the consolidated turnover - Related party transaction to be disclosed on company website and to be intimated to stock exchanges within 30 days of publishing of half yearly statement - Related parties now permitted to cast negative vote - Secretarial Audit report of material unlisted companies to be annexed to the annual report - Limited review/ audit of atleast 80% of the consolidated revenue, assets and profits - List of core skills, competencies to be identified and disclosed by board of directors - Disclosure of reasons to be communicated to stock exchange for resignation of – Auditor within 24 hours & of an Independent Director within 7 days of resignation including confirmation that there are no other - Enhanced role of audit committee, stakeholders relationship committee, nomination and remuneration commiitee - Independent Director to provide annual declaration that he/she is not aware of any circumstances that could impact his/her ability to discharge his/her duties - Disclose by way of note aggregate effect of material adjustments made in the results of last quarter pertaining to earlier period - Recommendations of any committee of the board mandatorily required in a financial year not accepted by the board along with reasons
<p>April 2020</p>	<ul style="list-style-type: none"> - Aggregate number of Directorships to be limited to 7 companies - Identify names of directors who have core competencies identified by the company

2. Penalties prescribed for non-compliance with LODR Regulations

SEBI had issued circular bearing reference number CIR/CFD/CMD/12/2015 dated November 30, 2015 and another circular bearing reference number SEBI/HO/CFD/CIR/P/2016/116 dated October 26, 2016 specifying uniform structure for imposing fines and manner of freezing of holdings of the promoter and promoter group respectively.

To streamline the process and adoption of a uniform approach, the previous circulars are suppressed and the following is outlined in the present circular having reference number SEBI/HO/CFD/CIR/P/2018/77 dated May 3, 2018.

Non-compliance with certain provisions of the Listing Regulations by a listed entity shall lead to the following consequences:

Sr. No.	Regulation	Fine Payable
1.	Non-compliance with requirement to appoint a qualified company secretary as the compliance officer.	Rs. 1,000 per day
2.	Non-compliance with the requirements pertaining to the composition of the Board including failure to appoint woman director.	Rs. 5,000 per day
3.	Non-compliance with the constitution of audit committee.	Rs. 2,000 per day
4.	Non-compliance with the constitution of nomination and remuneration committee.	Rs. 2,000 per day
5.	Non-compliance with the constitution of stakeholder relationship committee.	Rs. 2,000 per day
6.	Delay in furnishing prior intimation about the meeting of the board of directors.	Rs. 10,000 per instance of non-compliance per item
7.	Non-submission of shareholding pattern within the period prescribed.	Rs. 2,000 per day

8.	Non-submission of deviations/ variations in utilization of issue proceeds	Rs. 1,000 per day
9.	Non-submission of the financial results within the period prescribed under this regulation.	Rs. 5,000 per day
10.	Delay in/ non-disclosure of record date/ dividend declaration or noncompliance with ensuring the prescribed time gap between two record dates/ book closure dates.	Rs. 10,000 per instance of non-compliance per item
11.	Non-submission of the voting results within the period provided.	Rs. 10,000 per instance of non-compliance per item

- a. Such non compliances shall be displayed on the website by concerned recognized stock exchange and shall be subject to review with respect to compliance status and shall issue notice to the entity.
- b. In case of any non-compliance with the notice, the concerned stock exchange shall intimate depositories to freeze the entire shareholding of promoter & promoter group and may also lead to enforcement action.
- c. The listed entity shall place before the Board of Directors of the company in the next meeting the subject matter of non-compliance and any subsequent action taken in that regard by the recognized stock exchange.

3. Recommendations on Corporate Governance

Several recommendations are made by the Committee of Corporate Governance and applicable to entities whose shares are listed on a recognized stock exchange. Most of the recommendations are made by amending the SEBI (Listing Obligations and Disclosure Requirements) Regulations dated May 9, 2018 (discussed herein):

- a. Disclosures on Board Evaluations with respect to observations of board evaluations carried out during the year, previous year's observations and actions taken and proposed actions on current year's observations.
- b. In case of a listed entity having large number of unlisted subsidiaries, a group governance unit can be set up to monitor governance of the group,

policy of setting up such a unit shall lie with the board of directors of listed entity.

- c. Under the Management Discussion and Analysis section of the Annual Report, disclosure of medium term and long term strategy based on time frame as decided by the board of directors.
- d. Additionally, the clause of SEBI circular dated May 27, 2016 stating that auditor shall give comments on the management estimate of impact of audit qualifications or provide reasons for inability in providing such estimate, is deleted and shall not be considered.

4. System-driven disclosures in Securities Market

Over time the system is being implemented in phases, the first phase being by way of disclosure by promoter/promoter group under SEBI (Substantial Acquisition of shares and Takeovers) Regulations, 2011 ("SAST Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations"), now some additional disclosures under these Regulations are proposed to be implemented in the next phase.

a. SAST Regulations

- i. Under Regulation 29(1), any acquirer who as a consequence of acquisition of shares or voting rights, holds 5% or more of shares of a target company, shall disclose their shareholding.
- ii. Under Regulation 29(2), any person holds 5% or more shares of a target company, shall disclose the number of shares held even if such holding falls below 5% and exceeds 2% of total shareholding or voting rights.
- iii. Going ahead, the stock exchange shall identify data requiring disclosure on their website with respect to shareholding of non-promoters holding more than 5%, based on the data received by them from the Depositories.

b. PIT Regulations

- i. Under Regulation 7(2), every promoter, director and employee of every company shall disclose to the company within 2 trading days, acquisition or disposal of securities of the company if the aggregate traded value over a calendar quarter exceeds Rs. 10,00,000.
- ii. Listed Companies shall provide information about directors and employees to all depositories (Designated Depository can be selected, and data shall be aggregated by them).

- iii. Such data shall be processed and be sent to respective Stock Exchanges on a daily basis for dissemination on their website.

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From:

N. A. Shah Associates LLP

Chartered Accountants

Address: B 41-45, Paragon Centre, Pandurang Budhkar Marg, Mumbai – 400013.

Tel: 91-022-4073 3000, Fax: 91-022-4073 3090

E-mail Id: info@nashah.com