

LAW & POLICY UPDATE



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Recent Amendments to Sebi (Listing Obligations and Disclosure Requirements), 2015

The Securities and Exchange Board of India (SEBI) on June 14, 2023 amended the SEBI (Listing Obligations and Disclosure Requirements) 2015 (**Principal Regulations**) vide SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 (**Amendment Regulations**).

Key aspects

The amendments introduced by the Amendment Regulation include the following:

- **Definition of 'Mainstream Media':** The term 'Mainstream Media' under Regulation 2(1)(r) of the Principal Regulations has been defined to include the following:
 - Newspapers registered with the Registrar of Newspapers for India
 - News channels permitted by the Ministry of Information and Broadcasting
 - Content published by the publisher of news and current affairs as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021
 - Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated in jurisdictions outside India
- **Provision for filling any vacancy in the office of CEO, CFO, MD, whole time director or manager :**
 - Regulation 6(1A) of the Principal Regulations provides that any vacancy in the office of the Compliance Officer shall be filled by the Listed Entity at the earliest and in any case not later than 3 months from the date of such vacancy. The Listed Entity shall not fill such vacancy by appointing a person in interim capacity, until and unless such appointment has been made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.
 - Similar provision has been enacted by the Amendment Regulations for filling the vacancy in the office of CEO, CFO, managing director, whole time director or manager by insertion of Clause 26A(1) in the Principal Regulations, which provides that any vacancy in the office of the aforesaid officers shall be filled by the Listed Entity at the earliest and in any case not later than 3 months from the date of such vacancy. Further, such vacancy cannot be fulfilled by a person appointed in interim capacity until and unless such appointment is made in accordance with laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.
- **Amendment to Regulation 15(1-A):**
 - Regulation 15 (1-A) of the Principal Regulations provides for the applicability of the provisions contained in Chapter IV of the Principal Regulations to a Listed

Entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of INR 500 crore and above. Such Listed Entity has been defined as ‘**high end value debt Listed Entity**’ and have been directed to ensure compliance with the provisions of Chapter IV of the Principal Regulations within 6 months from the date of such trigger.

- The Amendment Regulations provides that these provisions of Chapter IV shall be applicable to a ‘high value debt Listed Entity’ on a ‘comply or explain’ basis until March 31, 2024, and on a mandatory basis thereafter.

▪ **Insertion of Regulation 17(1D):**

- Regulation 17(1D) inserted vide the Amendment Regulations provides that with effect from April 1, 2024, the continuation of the director serving on the Board of a Listed Entity shall be subject to approval of the shareholders at least once in every 5 years from the date of their appointment or reappointment, as the case maybe. Provided that the continuation of the director serving on the Board of Directors for a Listed Entity as on March 31, 2024 without the approval of the shareholders for last 5 years or more shall be subject to the approval of the shareholder in the first general meeting held after March 31, 2024.
- The exemptions under Regulation 17 (1-D) will be given to the following:
 - Whole-time director, managing director, manager, independent director, or a director retiring as per the Section 152(6) of the Companies Act, 2013, if the approval of the shareholders for the reappointment or continuation of the aforesaid directors or manager otherwise as provided by Companies Act, 2013
 - The director appointed pursuant to the order of a Court or a tribunal
 - Nominee director of the Government on the Board of a Listed Entity other than a public sector company
 - Nominee director of a financial sector regulator on the Board of a Listed Entity
 - Director nominated by a financial institution registered with or regulated by the Reserve Bank of India (RBI) under a lending arrangement in its normal course of business
 - The director nominated by a Debenture Trustee registered with SEBI under a Subscription Agreement for the debentures issued by the Listed Entity.
- Sub-Regulation 17 (1-E) has also been inserted in Regulation 17 which mandates the vacancy in the office of director to be filled by the Listed Entity at the earliest and, in any case, not later than 3 months from the date of such vacancy.

- **Amendment to Regulation 27:** Clause 27 (2)(b)(a) has been added under Regulation 27 wherein the Listed Entity, in addition to the corporate compliance report, shall also submit details of cyber security incidents or breaches or loss of data or documents on a quarterly basis.

- **Substitution of Regulation 30(4)(i)(c) of the Principal Regulations:** This Regulation provides for certain criteria for determination of the materiality of such events or information, and has now been substituted with the following new sub-Clause:

The omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:

(1) two percent of turnover, as per the last audited consolidated financial statements of the Listed Entity;

(2) two percent of net worth, as per the last audited consolidated financial statements of the Listed Entity, except in case the arithmetic value of the net worth is negative;

(3) five percent of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the Listed Entity.

- **Amendment to Regulation 30(4)(i):** A new sub-Clause (d) has been inserted in Regulation 30(4)(i) which states that where the criteria specified in sub-Clauses (a)(b) and (c) is not applicable, an event or information may be treated as being material if in the opinion of the Board of Directors of the Listed Entity, the event or information is considered material. This new amendment further provides that any continuing event



or information becoming material pursuant to the Amendment Regulations, shall be disclosed by the Listed Entity within 30 days from the date of coming into effect of the Amendment Regulations.

- **Amendment to Regulation 30(4)(ii):** In terms of the Regulation 30(4)(ii) of the Principal Regulations, a Listed Entity shall frame a policy for determination of materiality, which shall be based on the criteria specified in Regulation 30(4). Such policy shall be approved by the Board of Directors of the Listed Entity and also published on its website. The Amendment Regulation has inserted a new proviso to this Regulation which provides that such a policy for determination of materiality shall not dilute any requirement specified under the provisions of these Regulations. Provided that such a policy for determination of materiality shall assist the relevant employees of the Listed Entity in identifying any potential material event or information and reporting the same to the authorized key managerial personnel, in terms of sub-Regulation (5) of Regulation 30, for determining the materiality of the said event or information and for making the necessary disclosures to the stock exchanges.
- **Substitution of Regulation 30(6) of the Principal Regulations:** Regulation 30(6) has been substituted by the Amendment Regulation, which provides that the material information as ascertained under Regulation 30 by the Listed Entity shall be submitted to stock exchange within the following timelines:
 - 30 minutes from the closure of the meeting of the Board of Directors in which the decision pertaining to the event or information has been taken
 - 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the Listed Entity
 - 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the Listed Entity

Provided that in case the disclosure is made after the timelines specified above, the Listed Entity shall along with such disclosure provide an explanation for the delay.

- **Amendment to Regulation 30(11):** A new proviso has been inserted to Regulation 30(11) of the Principal Regulations which provides that top 100 listed entities (with effect from October 1, 2023) and thereafter the top 250 listed entities, as (with effect from April 1, 2024) (determined on the basis of market capitalization) shall confirm, deny or clarify any reported event or information in the *mainstream media*, which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of this Regulation which are circulating amongst the investing public, as soon as reasonably possible and not later than 24 hours from reporting of such information.
- **Insertion of Regulation 30(13):** Under the newly inserted Regulation 30(13), the Listed Entity is also required to disclose any event or information pursuant to receipt of a communication from any regulatory, statutory, enforcement or judicial authority unless the same is prohibited by such authority.
- **Insertion of Regulation 30A:**
 - The Amendment Regulation has introduced a new Regulation 30A, which provides that shareholders, promoters, promoter group entities, related parties, key managerial personnel and the employees of a Listed Entity or of its holding, subsidiary, and associate company who are parties to the agreements specified in Clause 5A of Para A of Part A of Schedule III of the Principal Regulations, shall inform the Listed Entity about the agreement to which such a Listed Entity is not a party, within 2 working days of entering into such agreements or signing an agreement to enter into such agreements. The Listed Entity shall then disclose such agreements to the stock exchange and on its website within the timeline as may be specified by SEBI and the same shall also be included in the annual report of the entity for the Financial Year 2022-23 or for the Financial Year 2023-24.
 - Clause 5A of Para A of Part A of Schedule III of the Principal Regulations provides that agreements entered into by the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, employees of the Listed Entity or of its holding, subsidiary or associate company, among themselves or with the Listed Entity or with a third party, solely or jointly, which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the Listed Entity or impose any restriction or create any liability upon the Listed Entity, shall be disclosed to the stock exchanges,



including disclosure of any rescission, amendment or alteration of such agreements thereto, whether or not the Listed Entity is a party to such agreements.

- Provided that such agreements entered into by a Listed Entity in the normal course of business shall not be required to be disclosed unless they, either directly or indirectly or potentially or whose purpose and effect is to impact the management or control of the Listed Entity or they are required to be disclosed in terms of any other provisions of these Regulations.
- The term 'directly or indirectly' includes agreements creating obligation on the parties to such agreements to ensure that Listed Entity shall or shall not act in a particular manner.
- **Insertion of Regulation 31B:** A new Regulation 31B has been inserted after Regulation 31A by the Amendment Regulation which provides that if any special right is granted to a shareholder of a Listed Entity, then the same shall be subject to the approval of other shareholders in general meeting by way of a special resolution once in every 5 years from the date of grant of such special right. Further, the special rights available to the shareholders of a Listed Entity as on the date of coming into force of the Amendment Regulations shall be subject to the approval of the shareholders by way of a special resolution within a period of 5 years from the date of coming into force of the Amendment Regulation. Further any special right given to financial institution registered with or regulated by the RBI or a debenture trustee registered with the SEBI shall be exempted from the requirement specified under this Regulation if such financial institution or the debenture trustee becomes a shareholder of the Listed Entity as a consequence of a lending arrangement or a subscription agreement for the debentures.
- **Insertion of Clause (j) under Regulation 33(3):** Regulation 33 of the Principal Regulations elaborates the manner in which the Listed Entity shall comply while preparing and disclosing the financial results. The Amendment Regulation has inserted the Clause (j) under Regulation 33(3) which provides that the Listed Entity shall, subsequent to the listing, submit its financial results for the quarter or the Financial Year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified in Clause (a) of this sub-Regulation (i.e. within 45 days of end of each quarter, other than the last quarter) or Clause (d) of this sub-Regulation (i.e. the Listed Entity shall submit [annual] audited standalone financial results for the Financial Year, within 60 days from the end of the Financial Year along with the audit report and statement on impact of audit qualifications (applicable only for audit report with modified opinion), as the case may be, or within 21 days from the date of its listing, whichever is later.
- **Amendment to Regulation 34(2)(f):** Under the Principal Regulations, Regulation 34(2)(f) provided for discontinuance of submitting business responsibility report from Financial Year 2021-22 has been substituted by the Amendment Regulation. This new substituted clause provides that a business responsibility and sustainability report on environmental, social and governance disclosures shall be submitted by top 1000 listed entities based on market capitalization and assurance of business responsibility and sustainability report core shall also be obtained by such entities. Further, other entities not covered under the top 1000 entities including the securities listed on Small Medium Enterprise Exchange (**SME Exchange**) can comply with this Regulation voluntarily. The '*Business Responsibility Report*' which earlier just contained environmental, social and governance measures has now been replaced by '*Business Responsibility and Sustainability Report*.'
- **Insertion of Regulation 37A:**
 - The Amendment Regulation has introduced a new Regulation 37A which deals with the sale, lease, or disposal of an undertaking outside the scheme of arrangement. This Regulation provides that a Listed Entity carrying out sale, lease, or the disposal of the whole or substantially the whole of the undertaking of such entity or where it owns more than one undertaking, of the whole or substantially the whole of any of such undertakings, shall:
 - Take prior approval of shareholders by way of special resolution
 - Disclose the object of and commercial rationale for carrying out such sale, lease or disposal and the use of proceeds arising therefrom, in the statement annexed to the notice to be sent to the shareholders



- The special resolution shall be acted upon only if the votes cast by the public shareholders in favour of the resolution are more than votes cast by such public shareholders against the resolution. Further, no such public shareholder shall be entitled to vote on the resolution if he is a party, directly or indirectly, to such sale, lease or otherwise disposal of such undertaking of the Listed Entity.
- The requirement of passing a special resolution or attaching the statement as mentioned above shall not be applicable for any sale, lease or otherwise disposal of the undertaking by a Listed Entity to its wholly owned subsidiary whose accounts are consolidated with such Listed Entity. However, prior to such wholly owned subsidiary selling, leasing or otherwise disposing of such undertaking received from the Listed Entity, whether in whole or in part, to any other entity, such Listed Entity shall comply with the aforesaid requirements. However, the Listed Entity before diluting its share below hundred percent in such wholly owned subsidiary to which such undertaking has been transferred, shall have to comply with the aforesaid requirements as mentioned above.
- Further, the provisions of this Regulation shall not be applicable where sale, lease or otherwise disposal of such undertaking of a Listed Entity is by virtue of a covenant covered under an agreement with a financial institution regulated by or registered with the RBI or with a debenture trustee registered with SEBI.
- **Substitution of Regulation 57:** Regulation 57 of the Principal Regulations has been substituted entirely by Amendment Regulation wherein now a certificate regarding status of payment of interest or dividend or repayment or redemption of principal of non-convertible securities shall be submitted to the stock exchange, within 1 working day of it becoming due, the format and manner again in this case shall be prescribed by the Board from time to time.

Conclusion

The Regulator has taken a cue from some of the recent controversies surrounding India Inc. As an example, the insertion of the new proviso to Regulation 30(11) of the Principal Regulations which mandates certain category of listed entities to confirm, deny or clarify any reported event or information in the *mainstream media*, which is not general in nature, and which indicates that rumours of an impending specific material event or information circulating amongst the investing public can be the outcome of the recent controversy relating to Adani – Hindenburg report. SEBI has taken a rightful step to protect the interest of the public shareholders from such rumours by putting the onus on listed entities to confirm/deny/clarify such rumours.

Similarly, insertion of new Regulation 30A, which mandates the shareholders, promoters, promoter group entities, related parties, key managerial personnel and the employees of a Listed Entity or of its holding, subsidiary, and associate company who are parties to the agreements specified in Clause 5A of Para A of Part A of Schedule III of the Principal Regulations, to inform the Listed Entity about the agreement to which such a Listed Entity is not a party, within 2 working days of entering into such agreements or signing an agreement to enter into such agreements, has widened the scope of disclosure requirements relating to agreements which shall impact the management or control of the Listed Entity or impose any restriction or create any liability upon the Listed Entity. Furthermore, insertion of new Regulation 31B which provides that any special right can be granted to a shareholder of a Listed Entity only with the approval of other shareholders in general meeting by way of a special resolution once in every 5 years from the date of grant of such special right, ensures that no special treatment can be bestowed on any particular shareholder unilaterally by the Listed Entity.

These amendments will have an impact on the future acquisition of shares of listed entities other than through stock exchanges. The amendments strengthen the corporate governance framework in India by introducing comprehensive and significant disclosure requirements to be followed by the listed entities, thereby bringing transparency in the operations of such companies, and ensuring that the general interest of the public shareholders is upheld.

