



Bringing Clarity to the Listing Agreement
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Introduction

SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") was notified on 2nd September, 2015, replacing the earlier Listing agreement. The aim was to consolidate and simplify listing norms, make the whole process comprehensive and bring in enhanced transparency by way of selective disclosures. This Regulations was made effective from 1st December, 2015, except the sections relating to:

1. passing of ordinary resolution instead of special resolution in case of material related party transactions subject to related parties abstaining from voting on such resolutions, and
2. re-classification of promoters as public shareholders under various circumstances, which shall be effective from 2nd September, 2015 itself.

Unfortunately, good intention does not guarantee expected outcome unless there is clarity and effective implementation. There have been various queries from stakeholders regarding interpretation of the provisions clearly indicating lack of clarity in application of the said regulation. SEBI has been proactive and has issued 3 FAQs on LODR, in the month of January 2016 with an aim to provide guidance on the provisions. SEBI has uploaded the consolidated FAQ on its website on 29th September, 2016. The FAQ has been divided into 6 sections.

This article seeks to provide a brief summary of the said FAQs.

A. Definition

SEBI has clarified that it will be sufficient to treat an entity as an associate and a party as related party when conditions are met, either in Companies Act 2013 or under the relevant accounting standards.

B. Common obligations of listed entity

In respect of Regulation 9 which mandates formulating a policy for preservation of document, it has been clarified that "documents" includes documents required to be preserved by a listed entity in terms of securities laws defined under Regulation 2(1)(zf) and other laws and statutes applicable to such listed entity.

C. Corporate Governance

- It has been clarified that the compliance certificate to be given under regulation 17(8) by CEO/CFO to Board of Directors, can also be signed by any officials who hold powers, duties and responsibilities of a CEO/ CFO irrespective of their designations.
- On the query of whether only those related parties who are related to the concerned transaction/ contract should abstain from voting or whether related parties should altogether abstain from voting with regards to Regulation 23(4), SEBI has clarified that for applicable entities, all material related party transactions shall require approval of the shareholders through resolution and the related parties shall abstain from voting on such resolutions whether the entity is a related party for the particular transaction or not.

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- On Regulation 23(8) regarding obtaining of shareholder approval for existing related party contracts or arrangements entered prior to notification of LODR 2015, SEBI has clarified that listed entity need not take fresh approval of shareholders in case the entity has already fulfilled the requirement of the regulations by taking shareholder approval.
- SEBI has clarified that wherever 'unlisted material subsidiary' and 'unlisted subsidiary' have been distinctly mentioned in a particular sub-regulation, such sub-regulation shall be applicable to material unlisted subsidiaries or all unlisted subsidiaries as the case may be. Further, SEBI has clarified that all unlisted subsidiaries shall periodically furnish a statement to the board mentioning all significant transactions and arrangements entered into by them.
- SEBI has provided the much needed clarification with regard to counting of committee membership/chairmanship under regulation 26(1) which provides that director shall not be a member in more than ten committees or act as chairperson of more than five committees across all listed entities. It has been clarified that director of a listed entity can be member in maximum ten committees and chairperson of not more than five committees of listed entities and unlisted public limited companies put together.

D. Disclosure of Events or Information

- On the question of whether, provision of Regulation 30(8) which requires posting of disclosures on the listed entity's website for a minimum period of 5 years is prospective from 1st December, 2015, SEBI has clarified that the disclosures made under Regulation 30(8) shall be made w.e.f December 01, 2015, i.e., the listed entity shall disclose on its website all such events or information which has been disclosed to stock exchange(s) under this regulation on or after the said date, and such disclosures shall be hosted on the website of the listed entity for a minimum period of five years from the date of disclosure to the stock exchange
- SEBI has clarified that the disclosure under Regulation 30(9), of all events and information with respect to subsidiaries which are material, is to be done by both parent and material subsidiary in their own right as Listed Entities. On the issue of material subsidiary, SEBI has clarified that as per Explanation to Regulation 16(1)(c), a listed entity can develop criteria that is stricter than what has been provided in the Regulations. Regulation 16(1)(c) defines material subsidiary as a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year. Further, it has been clarified that, disclosure requirement under Regulation 30(9) emphasizes on materiality of event or information, and hence even material information relating to non-material subsidiaries are required to be disclosed under the said Regulation.
- SEBI has clarified that the disclosure requirement as under Schedule III Part A, Para A, item 1(ii)(a), relating to acquisition/agreement to acquire shares/voting rights in a company aggregating to 5 % or more of shares/voting rights in the said company, applies with respect to both listed/non-listed target company.

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- On the question of coverage of method of fund raising as deemed material events under Schedule III Para A of Part A, item 4 (d) which requires disclosure of decision within 30 minutes of closure of meeting, SEBI has clarified that listed entities may be guided by Regulation 29(1)(d) which stipulates that fund raising will cover Further Public offer, Rights issue, ADR/GDR/FCCB, Bonds, QIP, debit issue, preferential issue or any other method.

E. Other Clarifications

- SEBI has reiterated that the financial statements for the last quarter shall necessarily be audited and unaudited results cannot be submitted to stock exchanges as clearly mentioned in Regulation 33(3).
- SEBI has clarified that, for compliance with Regulation 33(3)(d), a company having subsidiaries will prepare two sets of Form A and/or Form B, one for standalone results and another for consolidated results based on the respective audit report.
- Requirement under Regulation 34(2)(f) with respect to inclusion of Business Responsibility Report in the Annual Report, by top 500 companies by market capitalization will be effective from April 1, 2016 and hence will form part of Annual Report for the financial year 2016-17.
- Also the applicability date and manner with respect to submission of Annual Information memorandum under Regulation 35, shall be as and when specified by SEBI.
- SEBI has directed that Regulation 40(3), regarding registering of transfer of securities in the name of transferee's, may be read in context with Regulation 7(1) which states that listed entity shall appoint a share transfer agent or manage the share transfer facility in-house. Share transfer agent is an agent of the company and it is imperative that listed entity as Principal shall supervise the activities of the agent.
- Regulation 40(9) states that the listed entity shall ensure that the share transfer agent and/or the in-house share transfer facility, as the case may be, produces a certificate from a practicing company secretary within one month of the end of each half of the financial year, certifying that all certificates have been issued within thirty days of the date of lodgment for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies. SEBI has clarified that the listed entity may seek such reports from share transfer agents as they may require, so as to ensure compliance with the time period of 15 days for transfer of securities as stipulated in Regulation 40(8) which requires the listed entity that has not effected transfer of securities within fifteen days to compensate the aggrieved party for opportunity losses caused during period of delay.

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- SEBI has clarified that only such agreements with media companies and/or their associates etc. , that are not in the normal course of business shall be disclosed. Listed entities may refer to SEBI Press Release No. 200/2010 dated 27th August, 2010 and Press Council of India Press Release No. PR/3/10-11-PCI dated 2nd August, 2010 wherein concerns related to 'private treaties' and their disclosures have been discussed in detail.
- SEBI has clarified that since Regulation 46(2) prescribes the list of information to be disseminated by a listed entity on its website. Regulation 46 (3) refers to the update of any change in the content which is provided as per the requirements of Regulation 46 (2).

F. Miscellaneous

Finally, SEBI has also clarified that in the absence of specific definition of “working days” in the Regulation, 'Working days' means working days of the stock exchange where the securities of the entity are listed.

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