

# Moving towards an era of Listing Regulations from Listing Agreement

## The Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015

Securities and Exchange Board of India ('SEBI') with the power conferred by SEBI Act, 1992 notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('Listing Regulations 2015') on 2nd September, 2015, whereby an endeavor were made by it to align the present Listing Agreement with the Companies Act, 2013 and to fuse the scattered requirement under listing agreement for different securities in single piece of regulation. Further, obligations which are applicable to specific types of securities have been incorporated in separate chapters.

These regulations will be effective from 1<sup>st</sup> December, 2015 i.e. on ninetieth days of its notification, except regulation 23(4) and 31A which are effective from the date of notification. A shortened version of the Listing Agreement is also prescribed which will be required to be signed by a company getting its securities listed on Stock Exchanges. Existing listed entities will be required to sign the shortened version of listing agreement within six months of the notification of the regulations.

Apart from this, the regulation 23(4) which requires listed company to obtain shareholders approval for all material related party transactions and abstain all related parties to vote on such resolutions whether the entity is related to the transaction or not and regulation 31A which obligates disclosure of Class of Shareholders and conditions for reclassification by the listed companies to be effective with immediate effect i.e. from 2<sup>nd</sup> September, 2015.

### **Applicability:**

Specified securities listed on Main Board or SME Exchange or Institutional Trading Platform; Non-Convertible Debt Securities, Non-Convertible Redeemable Preference Shares, Perpetual Debt Instrument, Perpetual Non-Cumulative Preference Shares; Indian Depository Receipts; Securitized Debt Instruments; Units issued by Mutual Funds; and Any other securities as may be specified by SEBI.

### **Some of the Material Insertions under the Listing Agreement, 2015 are as follows:**

- a. As per regulation 9, the listed company shall frame the policy for preservation of documents, classifying the documents into two categories atleast:-
  - Documents which shall be preserved permanently,
  - Documents which shall be preserved for the period of 8 years atleast after the completion of the transaction.

The responsibility of deciding what documents to be grouped as "documents to be preserved permanently" and those "documents which shall be preserved for period of eight years atleast" has been casted on the board of the company and accordingly the board has to frame the policy for effective compliance of the provisions.

- b. To ensure the expeditious redressal of investor complaints, the listed entity shall file a statement giving the number of investor complaints pending at the beginning of the quarter, received during the quarter, disposed off during the quarter & remaining at the end of the quarter, within 21 days from the end of each quarter to the recognised stock exchange.
- c. According to Regulation 30, SEBI has divided the disclosure of events to stock exchange into two categories:
  - The material events, which needs to be disclosed without any application of the guidelines for materiality i.e. those events enlisted under Para A of Part A of Schedule III.
  - The material events which shall be disclosed upon application of the guidelines for materiality mentioned under regulation 30(4) i.e. Para B of Part A of Schedule III.

All such events shall be intimated to the stock exchange as soon as reasonably possible but not later than 24 hours from the occurrence of an event or information, for any delay the explanation shall be given.

- d. As per Regulation 33, now irrespective of whether the subsidiary of the listed entity is listed or not, they need to submit Form A (for audit report with unmodified opinion) or Form B (for audit report with modified opinion) alongwith Form A or Form B with audit report for standalone financial results for the financial year, within sixty days from the end of the financial year. In case of submission of Form B (for audit report with modified opinion), the audit report will be review by Qualified Audit Report Review Committee who will analyze the case as referred by the Stock Exchange(s).
- e. In order to diminish the paper work, all listed entities are required to file the reports, documents, statements etc in electronic form only to all recognised Stock Exchanges.
- f. To ensure proper information to shareholders, the SEBI has specified the list of documents to be disclosed on the website of the company within 2 working days of such change in content of the document and shall be there for a period of 5 years.

**Some of the disparities between the provisions of the Companies Act, 2013 and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 in respect of Related Party Transaction**

- Under Companies Act, 2013 there are seven different types of transactions which if entered with related party will be termed as related party transaction however, as per listing agreement any transaction involving the transfer of resources, services or obligations between a listed entity and a related party will be termed as a related party transaction.
- The Companies Act, 2013 exempt transaction/s entered with the related party if such transaction is at arm length price and entered in ordinary course of business of the Company unlike this the listing agreement provide no such exemption and every material related party transaction whether entered at ALP and in ordinary course of business will requires the approval of board of directors as well as of shareholders of the company.
- The section 188 states that the shareholder shall not vote on the resolution in which he is a related party, due to the ambiguity in the provision, the Ministry of Corporate Affairs had clarified vide General Circular No. 30/2014 dated 17.07.2014, that only the related party in the context of the contract or arrangement was abstained from voting. However, the newly introduced regulations has abstained all related parties to vote on such resolutions whether the entity is related to the transaction or not, accordingly this point differs with Section 188 of the Companies Act.
- Further, the company has to decide whether a particular person fall under the definition of related party as per list provided under section 2(76) & 2(77) of the Companies Act, 2013. However, in the Listing Regulation the company has to check the definition as mentioned under Companies Act, 2013 along with the criteria as mentioned under the Accounting Standard for ascertaining the applicability of related party provisions.
- Apart from this all related party transaction requires the prior approval of the audit committee unlike the requirement of just approval of audit committee either prior or post under Companies Act, 2013.
- All material related party transaction requires the approval of shareholders, any transaction with related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity. This means that listing regulation prescribed the single criteria for different types of related party transaction, however, the Companies Act, 2013 has prescribed different threshold for different types of transaction which requires the approval of shareholder.

Keeping aside the mentioned differences between CA, 2013 and listing regulations, the SEBI with the introduction of this regulation has tried to provide ease of reference by consolidating into one single document different regulations for different types of securities listed on stock exchanges and also ensured ease and transparency in the regulations both as per the company as well as other stakeholders prospective.