

ERGO

Analysing developments impacting business

SEBI LODR AMENDMENT, 2022: ANALYSING IMPACT ON THE ONGOING DISCLOSURES FOR LISTED ENTITIES

29 November 2022 The Securities and Exchange Board of India (SEBI) vide its Notification No. SEBI/LAD-NRO/GN/2022/103 dated 14 November 2022 has further amended the SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations) by notifying the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 (Amendment).

The key changes made to the SEBI LODR Regulations by way of the Amendment are summarised below:

Amendment concerning entities which have listed equity shares:

1. Requirement of report from the monitoring agency extended to all forms of fund raising

Prior to the Amendment, listed entities were required to place the report received from the monitoring agency before their audit committee and submit it to the stock exchanges on a quarterly basis in case of a public issue or rights issue only.

Pursuant to the Amendment, this requirement has been extended to preferential issue and qualified institutions placements as well, thereby covering all forms of equity fund raising.

Amendment concerning entities which have listed equity shares or non-convertible debt securities (of at least INR 500 crores or above):

2. Enhancing flexibility in procedure for appointment of independent directors

Prior to the Amendment, the appointment, reappointment, or removal of independent directors required approval of shareholders by way of a special resolution.

Pursuant to the Amendment, an appointment of an independent director shall be deemed to have been made where:

- (i) the votes cast by the shareholders in favour of the resolution exceed the votes cast against the resolution; and
- (ii) the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution.

Further, currently such an independent director shall be removed only if the votes cast in favour of the resolution proposing the removal exceed the votes cast against the resolution and the votes cast by the public shareholders in favour of the resolution exceed the votes cast against the resolution. This would ease the process for the appointment of independent directors in listed entities.

Suffice to say that, SEBI has relaxed the procedure for listed entities for the appointment of independent directors to provide for a way out in the event the special resolution for such appointment of independent directors fails.

Amendments concerning entities which have listed their non-convertible securities:

3. Requirement for submission of audited or unaudited quarterly financial statements for the last quarter

Prior to the Amendment, a listed entity which has listed its non-convertible securities (NCS Listed Entities) was required to submit un-audited or audited quarterly and year to date standalone financial results (Quarterly Results) on a quarterly basis within 45 days from the end of the quarter other than the last quarter.

Pursuant to the Amendment, SEBI has now mandated that, for the last quarter of the financial year, the listed entities shall submit the Quarterly Results to the recognised stock exchange within 60 days from the end of the last quarter. SEBI has made this amendment with an aim to bring about clarity and to provide granular disclosures even for the financial results of the last quarter.

4. Relaxations for NCS Listed Entities to be audited by the Comptroller and Auditor General of India

Prior to the Amendment, NCS Listed Entities which are required to be audited by the Comptroller and Auditor General of India (CAG Audit Entities) were required to carry out a first level audit of their annual financial results by an auditor appointed by the Comptroller and Auditor General of India (CAG) and such audited results were to be submitted to the stock exchanges within 60 days from the end of the financial year. However, SEBI in the agenda for its board meeting dated 30 September 2022, held prior to the Amendment, has stated that certain representations were received from certain CAG Audit Entities stating that the statutes governing them do not provide for appointment of an auditor and/or an audit to be undertaken by such an auditor.

As a consequence, *vide* the Amendment, SEBI has now allowed the CAG Audit Entities to submit unaudited financial results to stock exchanges within 60 days of the end of the fiscal year, along with a limited review report from either the CAG, or an auditor designated by the CAG, or a practising chartered accountant. The requirement for the CAG Audit Entities to submit the annual audited financial results within 9 months from the end of the financial year continues.

5. Clarity provided for submission of statement of assets and liabilities and cashflows

Prior to the Amendment, under Regulation 52(2)(f), NCS Listed Entities were required to submit a statement of assets and liabilities and a statement of cash flows as part of their standalone or consolidated financial results for the half-year (ALCF Statements). As Regulation 52(2) deals with the quarterly and annual disclosure requirements for NCS Listed Entities, and the ALCF Statements are required to be submitted on a half-yearly basis, SEBI has omitted Regulation

52(2)(f) *vide* the Amendment and inserted this requirement as Regulation 52(2A) with an aim to bring about clarity in the regulations.

6. Relaxation by allowing other applicable ratios or equivalent financial information in quarterly and annual results

Prior to the Amendment, NCS Listed Entities were required include certain line items as set out in Regulation 52(4) of the SEBI LODR Regulations in their quarterly and annual financial results. A proviso was provided to exclude 'debt service coverage ratio' and 'interest service coverage ratio' for banks and non-banking financial companies, as such line items were not applicable for them. However, pursuant to representations made by banks and non-banking financial companies to SEBI that certain additional line items under Regulation 52(4) of the SEBI LODR Regulations were also not applicable to them (e.g., debenture redemption reserve), SEBI has made clarificatory changes to this regulation *vide* the Amendment.

Currently, the erstwhile proviso to Regulation 52(4) has been replaced with a proviso that clarifies that if any line item as required under the Regulation 52(4) of the SEBI LODR Regulations is not applicable to an NCS Listed Entity, then in that case, other applicable ratio, or equivalent financial information, as required to be maintained under applicable laws, can be disclosed instead.

7. Clarifications pertaining to submission of statement indicating the utilisation of the issue proceeds and a statement disclosing material deviations

Prior to the Amendment, listed entities were required to submit statement indicating the utilisation of the issue proceeds (Issue Proceeds Statement) along with a statement disclosing material deviations, if any (material deviation statement) within 45 days from the end of the quarter.

In order to align the timelines of submission of such statements with the submission of quarterly financial results, pursuant to the Amendment, the listed entities are now required to submit the Issue Proceeds Statement and the Material Deviation Statement along with the quarterly financial results in accordance with the timelines for submission of such quarterly financial results.

8. Requirement of publication of consolidated financial results in an English national daily

Prior to the Amendment, a listed entity is required to publish its financial results in an English newspaper.

Pursuant to the Amendment, SEBI has now further provided that where a listed entity submits both standalone and consolidated financial results to the stock exchanges, it shall publish only the consolidated financial results along with the prescribed line items in the newspaper.

9. Unclaimed amounts to be transferred into a separate fund where entity is not a "company"

Pursuant to the Amendment, the interest or dividend or redemption amounts, unclaimed for seven years, lying in the escrow account of such NCS Listed Entities which are not incorporated as a 'company' under the Companies Act, 2013, shall specifically get transferred to the 'Investor Protection and Education Fund' created under the Securities and Exchange Board of India Act, 1992.

10. Introduction of obtaining stock exchange approval for draft scheme of arrangement and scheme of arrangement for non-convertible securities

Prior to the Amendment, the erstwhile SEBI LODR Regulations did not provide for measures to restructure non-convertible debt securities (NCDs) or non-convertible redeemable preference shares (NCRPS) of NCS Listed Entities, which undergo a scheme of arrangement in accordance with sections 230-234 and section 66 of the Companies Act, 2013 (Scheme of Arrangement), although, a mechanism was provided for listed entities that have listed their equity shares or convertible securities (CS Listed Entities).

In order to bring parity between the regulations governing CS Listed Entities and NCS Listed Entities, pursuant to the Amendment, SEBI has introduced a process for obtaining no-objection letter from the stock exchanges prior to filing of a Scheme of Arrangement with the stock exchange(s).

Further, for NCS Listed Entities, which intend to enter a Scheme of Arrangement, or are currently engaged in a Scheme of Arrangement (SOA NCS Listed Entities), SEBI has, vide circular number SEBI/HO/DDHS/DDHS-RACPOD1/P/CIR/2022/156, dated 17 November 2022 (Arrangements Operational Circular), provided the operational guidelines containing the requirements to be complied with by the SOA NCS Listed Entities prior to and after undertaking the Scheme of Arrangement.

SOA NCS Listed Entities are now required to: (i) file a draft scheme of arrangement with the stock exchange(s) along with the required information and documents listed in Part I of the Arrangements Operational Circular; and (ii) obtain a no-objection letter from the stock exchange(s) prior to filing of a Scheme of Arrangement with the NCLT.

Without the no-objection letter from the stock exchange(s), NCS Listed Entities cannot file a Scheme of Arrangement, and such a no-objection letter should be placed before the NCLT before seeking approval. The validity of the non-objection letter is 6 months from date of issuance.

Upon sanction from the NCLT, SEBI has listed the requirements to be complied with by such NCS Listed Entities in Part II of the Arrangements Operational Circular. Following the NCLT's approval of the Scheme of Arrangement, fees for entities with listed specified securities, listed non-convertible debt securities, or listed non-convertible redeemable preference shares, shall be at the rate of 0.1% of the paid-up share capital of the listed / transferee / resulting company, whichever is higher. However, it is pertinent to note that the total amount due shall not exceed INR 5 lakhs.

Comment:

While the Amendment brings about stricter and more detailed compliances for listed entities, it has relaxed the process of appointment of independent director, thereby, giving some more power to minority shareholders. Notably, the Amendment also attempts to make timelines for various disclosures uniform with filings in relation to financial disclosures to be made for the relevant quarter, half-year, or financial year. In conclusion, it appears that SEBI intends to establish a robust, clear, and uniform regulatory regime for listed entities in India through this Amendment.

- *Sudhir Bassi (Executive Director), Manisha Shroff (Partner), Sriram Madhav Kommu (Associate), Ritika Khare (Associate), Ira Pandya (Associate), Sanjana Karnavat (Associate) and Rishab Aggarwal (Associate)*

For any queries please contact: editors@khaitanco.com

We have updated our [Privacy Policy](#), which provides details of how we process your personal data and apply security measures. We will continue to communicate with you based on the information available with us. You may choose to unsubscribe from our communications at any time by clicking [here](#).