

Salient Amendments in the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2018



The Securities & Exchange Board of India (SEBI) vide a Notification dated 9th May, 2018 issued the Securities & Exchange Board of India (Listing Obligations & Disclosure Requirements) (Amendment) Regulations, 2018 (Amended Regulations). This is mainly consequent to the Report of Uday Kotak Committee on Corporate Governance (Committee on Corporate Governance) issued on 5th October, 2017 suggesting Amendments to be made in the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 (Listing Regulations). The article discusses the issues relating to Financial Statements, Audit Committee, Audit & Auditors and Independent Directors as contained in the Amended Regulations. Read on...

I. Introduction

The Securities & Exchange Board of India (SEBI) vide a Notification dated 9th May, 2018 issued the Securities & Exchange Board of India (Listing Obligations & Disclosure Requirements) (Amendment) Regulations, 2018 (Amended Regulations). This is mainly consequent to the Report of Uday Kotak Committee on Corporate Governance (Committee on Corporate Governance) issued on 5th October 2017 suggesting Amendments to be made in

the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 (Listing Regulations). The Article discusses the issues relating to Financial Statements, Audit Committee, Audit & Auditors and Independent Directors as contained in the Amended Regulations. Save as otherwise specifically mentioned the Amendments stated hereunder shall come into force from April 1, 2019.

II. Financial Results

The following three clauses have been inserted after clause 33 (3) (f) which deals with Financial results.

(g) The listed entity shall also submit as part of its standalone and consolidated financial results for the half year, by way a note, statement of cash flows for the half year.

(h) The listed entity shall ensure that, for the purpose of quarterly financial results, at least



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eighty percent of each of the consolidated revenue, assets and profits respectively, shall have been subject to audit or in case of unaudited results, subjected to limited review.

(i) The listed entity shall disclose, in the results of last quarter in financial year, by way of a note, the aggregate effect of material adjustments made in the results of the quarter which pertain to earlier periods.

II.1. Comments

The Companies Act, 2013 (the Act) does not require submission of Quarterly Financial Results but the Listing Regulations contain detailed provisions regarding submission of quarterly Financial Results by a listed company to the stock Exchanges every quarter. The publication of Cash Flow Statements every half year is to enhance the levels of transparency.

The proposal to ensure audit/limited review of at least 80 percent of each of the consolidated revenue, assets and profits is to ensure that the underlying subsidiaries are also considered for audit/limited review.

Clarity should be given for determining the Criteria for consolidated revenue, assets and profits.

There may be foreign subsidiaries not subjected to mandatory audit as per Local Laws and therefore this condition will be difficult to comply with.

The Listing Regulations at present require the submission of the Audited Financial results in respect of the last quarter along with the results of the entire financial year. A note is included which states that the figure of the last quarter are the balancing figures between the audit figures in respect of the full financial year and published year-to-date figures up to the third quarter of the current financial year. Consequent to the Amendment a listed entity is required to disclose by way of a note, the aggregate effect of material adjustments made in the results of the last quarter which pertain to earlier periods.

Further, in Regulation 33(3)(b) the word 'may' has been replaced by the word 'shall' consequently listed entities having subsidiaries shall have to submit quarterly/

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year to date consolidated financial results, the option to opt submission of quarterly/year-to-date consolidated financial results has been done away with.

III. Fees to Statutory Auditors and Credentials of Auditors

In the case of appointment/ re-appointment of Statutory Auditors the Notice of Annual General Meeting is required to include the following in the Explanatory Statement

- a) Proposed fees payable to the statutory auditor(s) along with terms of appointment and in case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change;
- b) Basis of recommendation for appointment including the details in relation to and credentials of the statutory auditor(s) proposed to be appointed.

(Insertion of Clause 5 to Regulation 36)

III.1. Comments

The rationale for introduction of these provisions is to ensure that the shareholders take informed decisions on the appointment of auditors of listed Companies.

It has now been laid down that the proposed fees must be disclosed in the notice and if there is any material change in the fees paid to a new auditor as compared to current audit fee, the rationale for the same be provided.

Regarding credentials of auditors to be carried in the Explanatory Statement there is no guidance on what should be the contents thereof.

This will lead to solicitation/advertisement which is not in line with the ICAI Code of Ethics which prohibits a firm from marketing its credentials whether client wise, industry wise or in any other manner.

IV. Resignation of Auditor

In case of resignation of Auditor of listed company detailed reasons for resignation of Auditors as given by the said Auditor should be disclosed by the listed entities to the Stock Exchanges as soon as possible but not later than 24 hours of receipt of such from the Auditor. **(Insertion of sub-clause 7A to schedule III of the Listing Regulations).**

IV.1. Comments

According to Section 140(2) of the Act the Auditor who has resigned from the company shall file within a period of thirty days from the date of resignation, a statement in the prescribed form with the company and the Registrar, and in case of companies referred to in sub-Section 139, the auditor shall also file such statement with the Comptroller and Auditor-General of India, indicating the reasons and other facts as may be relevant with regard to his resignation.

Rule 8 of the Companies (Audit & Auditors) Rule, 2014 lays down that where an auditor has resigned from the company, he shall file a statement in Form ADT-3.

The Existing Listing Regulations contain no specific provisions for disclosure of detailed reasons on change/resignation of Auditors even though as per the Listing Regulations a change in Auditor is deemed to be a material event and disclosure required to be made to the stock exchanges.

It was the view of the Committee on Corporate Governance that resignation of auditor before the expiry of the term may be a cause for concern. The Committee was also of the view that for greater transparency it is important for companies to disclose the reasons for resignation of its Audit firm. It was also felt that the Audit firms must also be encouraged to truthfully disclose the reasons for their resignation as part of their fiduciary responsibility towards the shareholders.

As will be evident from above the Companies Act requires the Resigning Auditor to provide Reasons for Resignation and other facts as may be relevant with regard to his resignation whereas the Amended Regulations require detailed reasons to be provided. The listed entities are required to

intimate the stock Exchange within 24 hours of Receipt of Resignation of Auditor.

It is interesting to note here that the Amended Regulations also require detailed reasons for resignation of Independent Directors but the intimation to the stock exchanges has to be done within seven days by the listed entity.

This clause is not applicable to removal of Auditors.

V. Audit Qualification

The Existing Clause BB of Schedule IV (Disclosures in Financial Results) to the Listing Regulations has been substituted by the following.

- i. The management shall *mandatorily* make an estimate which the auditor shall review and report accordingly.
- ii. Notwithstanding the above, the management may be permitted to not provide estimate on matters like going concerns or sub-judice matters; in which case, the management shall provide the reasons and the auditor shall review the same and report accordingly.

V.1. Comments

The amendments relate to Audit Qualification where the Impact of the qualification is not quantifiable.

In the Existing listing Regulations the Management was required to make an estimate and the auditor was required to review and report accordingly where the impact of qualification is not quantifiable. There is no change in this requirement. An amendment has been made to clarify that the management be permitted to not provide estimate on matters like going concern or sub-judice matters in which case the Management shall provide the reasons and the Auditor shall review the same & report accordingly. This Amendment is required because with the introduction of

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VI. Statutory Auditor to Undertake Limited Review

In Regulation 33 dealing with Financial Results, the following new Sub-Regulation 8 has been inserted.

‘The statutory auditor of a listed entity shall undertake a limited review of the audit of all the entities/companies whose accounts are to be consolidated with the listed entity as per AS 21 in accordance with guidelines issued by the Board on this matter.’

VI.1 Comments

This is not mandated under SA600 the Auditing Standard applicable for Group Audit. This change was not suggested by Committee on Corporate Governance. The process of Auditing Standards setting is a very robust process in India and we have converged with almost All international Auditing standards with the exception of ISA 600. However, the corresponding Indian Auditing Standard SA 600 issued by ICAI addresses the difficulties, if any, which a Group Consolidating Auditor may face. Internationally this Standard adoption is under revision by the International Auditing & Assurance Standards Board (IAASB).

VII. Enhanced Role of Audit Committee

The Role of Audit Committee has been enhanced to review the utilisation of loans and/or advances from/investment by the holding company in the subsidiary exceeding Rupees 100 crores or 10% the asset size of the subsidiary whichever is lower including existing loans/advances/investments existing as on the date of coming into force of this provision (**Insertion of a new sub-clause 21 in Part C Clause A of Schedule II of Listing Regulations relating to Corporate Governance**).

VII.1. Comments

This is an additional responsibility given to Audit Committee of listed Companies to review utilisation of funds of the listed entity infused into unlisted subsidiary including foreign subsidiaries.

The limits fixed are to ensure that the Audit Committee reviews only cases where such loans and/or advances are significant.

VIII. Independent Directors VIII.1 Changes in Criteria of Independence

Regulation 16 dealing with Definition of Independence Director has the following two changes effective from 1st October 2018.

In Sub Clause (ii) of clause ‘b’ the words “or member of the promoter group of the listed company have been inserted”.

Consequently, this clause will now read as “who is or was not a promoter of the listed Company or its holding, subsidiary or associate Company or member of the promoter group of the listed Company”.

The following new clause has been added after clause vii.

‘Who is not a non-independent director of another company on the Board of which any non-independent director of the listed company is an independent director.

VIII.2 Comments

Consequent to the change an Independent Director cannot belong to the promoter Group as well.

Further the Amendment excludes ‘Board Interlocks’ consequent to common non-independent directors on Boards of listed companies

VIII.3 Insertion of a New Regulation 17A

No person shall hold office as a director, including any alternate directorship, in more than eight listed entities at the same time (of which independent directorships shall not exceed seven), with effect from April 1, 2019 and not more than seven listed entities with effect from April 1, 2020:

Provided that any person who is serving as a whole-time director/managing director in any listed entity shall serve as an independent director in not more than three listed entities.

VIII.4 Comments

This amendment is to ensure that a director is able to provide sufficient time to a company so as to be effective in his role.

VIII.5 Independent Women Directors

The following proviso & Explanation

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inserted in Sub-Regulation 1 to Regulation 17.

“Provided that the Board of directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020;

Explanation: The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.”

VIII.6 Comments

The Companies (Appointment & Qualification of Directors) Rules, 2014 mandate the appointment of at least one Woman Director in a listed company. But such Director need not be an Independent Director.

The objective concerning the Amendment is to ensure that the Women Directors are Independent as well. At present many of the women directors are from the family of the promoters/directors. This is a welcome change.

VIII.7 Evaluation of Independent Directors

Sub-regulation 10 of Regulation 17 has been substituted by the following:

“(10) The evaluation of independent directors shall be done by the entire Board of Directors which shall include –

- (a) Performance of the directors; and
- (b) fulfilment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.”

VIII.8 Comments

Consequent to the amendment the Board of Directors will have to evaluate the fulfilment

VIII.9

of Independence Criteria in addition to performance of Independent Directors.

Declaration of Meeting Criteria of Independence

In Regulation 25 dealing with Obligations with respect to Independent Directors the following new Sub-Regulations has been added after Sub-Regulation 7

“(8) Every independent director shall, at the first meeting of the board in which he participates as a director and thereafter at the first meeting of the board in every financial year or whenever there is any change in the circumstances which may affect his status as an independent director, submit a declaration that he meets the criteria of independence as provided in clause (b) of sub-regulation (1) of regulation 16 and that he is not aware of any circumstance or situation, which exist or may be reasonably anticipated, that could impair or impact his ability to discharge his duties with an objective independent judgment and without any external influence.

(9) The board of directors of the listed entity shall take on record the declaration and confirmation submitted by the independent director under sub-regulation (8) after undertaking due assessment of the veracity of the same.

(10) With effect from October 1, 2018, the top 500 listed entities by market capitalisation calculated as on March 31st of the preceding financial year, shall undertake Directors and Officers insurance (‘D and O insurance’) for all their independent directors of such quantum and for such risks as may be determined by its board of directors.”

VIII.10 Comments

The Declaration to be made by the Independent Director is to ensure that the Criteria of Independence is met. The Board is required to assess the veracity of the Declaration and then take the same on record.

Independent Directors have significant responsibilities and liabilities. Hence, it has been made mandatory for top 500 companies by market capitalisation to undertake D & O Insurance for its independent Directors with effect 1st October 2018. It may be noted here that such Insurance is not mandatory under the Companies Act. ■


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