



Ms. Padmashree Crasto
(Partner, M S K C & Associates)

(with contributions from Mr. Aleem Lilani and Mr. Mayank Parekh)

Scorecard of Recent SEBI Amendments For Bettering Governance & Compliance



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India has evidenced amendments in various regulations recently to increase the transparency in functioning and enhance the quality of Financial Reporting.

Highlighted below are few of the recent regulatory changes from SEBI and their effects on the listed entities they regulate, in a step toward better governance and compliance.

- **SEBI (Listing Obligations and Disclosure Requirements) Amendment, 2022**, provides the requirement of at least one-third of the Board of Directors to comprise of independent directors with the chairperson being a non-executive director and at least half of the Board of Directors to comprise of independent directors where the listed entity does not have a regular non-executive chairperson. The definition of Related Party has undergone a change with effect from 01 April 2023, wherein any person or entity forming a part of the promoter or promoter group of the listed entity holding 10% or more in the listed entity either directly or on a beneficial interest basis shall become a related party. Earlier, the specified percentage prescribed was 20%.
- **The materiality of Related Party Transaction (RPT):** Previously, a transaction was considered material during a financial year if it exceeded 10% of the annual consolidated turnover of the listed entity as per the last audited financial statement of the listed entity, but with effect from 01 April 2023, an RPT would be considered as material if the transaction entered into individually or taken together with previous transactions during a financial year exceeds INR 10bn or 10% of the annual consolidated turnover of the listed entity as per the last audited financial statement of the listed entity, whichever is lower. Prior approval of the shareholder of a listed entity is needed for all material RPTs and subsequent material modifications of such transactions.
- **Related Party Transactions:** The amended definition of 'Related Party' would now include not only the transaction of a listed entity but also transactions of the subsidiary with the related party of a subsidiary company. This implies that the listed entity would have to meet the approval and disclosure requirements even with respect to RPTs of a subsidiary company, where the listed entity is not a party. Additionally, with effect from 01 April 2023, the definition deems certain categories of unrelated transactions also as RPT, i.e. the purpose and effect of such transactions is to benefit a related party of the listed entity or any of its subsidiaries.



- **Amendments to SEBI (Alternative Investment Funds) Regulations 2022 (AIFs):**
 - I. Category AIFs shall invest a maximum of up to 10% of the investable funds in an Investee Company directly or through investment in the units of other AIFs except for large value funds for accredited investors of Category III AIFs which may invest up to 20%.
 - II. However, for investment in listed equity of an Investee Company, Category III AIFs and large value funds for accredited investors, may calculate the investment limit of 10% and 20% respectively of either the investable funds or the net asset value of the scheme.

- **Change in control of Sponsor and/or Manager of AIF involving Scheme of Arrangement under Companies Act, 2013:**

As per SEBI, the following shall be applicable to all the Schemes which are filed with The National Company Law Tribunal (NCLT) on or after 01 April 2022:

 - I. The application seeking approval for the change in control of the Sponsor and/or Manager of the AIF (under the applicable AIF Regulations) shall be filed with SEBI prior to filing the same with the NCLT.
 - II. SEBI shall grant an in-principal approval upon being satisfied with the compliance of applicable regulatory requirements, the validity of which shall be 3 months from the date of issuance within which the relevant application shall be made to the NCLT.
 - III. Within 15 days from the date of the order of NCLT, the applicant shall submit the NCLT-approved application and its order along with other specified documents to SEBI for final approval.

- **SEBI (Issue and Listing of Non-Convertible Securities) (Amendment) Regulations, 2022** states the conditions for Issuing and Listing of Non-Convertible Securities:
 - I. **General Obligations:** The issuer has to consider higher security cover as per the terms of the Offer Document/Debenture Trust Deed which should be sufficient to discharge the principal amount and the interest thereon.
 - II. **Creation of Charge:** The charge created on secured debt securities shall be disclosed in the offer document as well as the Debenture Trust Deed. The condition is applicable in case of public/private issues and listing of debt securities.



- III. Issue of Due Diligence Certificate: The Debenture Trustee must furnish a separate Due Diligence Certificate for each of the secured and unsecured debt securities, to the board and stock exchange(s), at a prescribed time and format. The condition is applicable in case of Public/Private issue of debt securities and private placement of non-convertible redeemable preference shares.
- IV. Disclosure: An issuer seeking to issue its debt securities is required to include the details of credit rating along with the latest press release (not older than a year) of the credit rating agency validating the rating as on the issue and listing date.
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