THE INSTITUTE OF
Company Secretaries of India
भारतीय कम्पनी सचिव संस्थान
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

SUPPLEMENT
EXECUTIVE PROGRAMME
(OLD SYLLABUS)

SECURITIES LAWS AND CAPITAL MARKETS

(Supplement covers amendments/developments from August 2021 to November 2023)

MODULE 2, PAPER 6

Students appearing in Examination shall note the following:

Students appearing in Examination should also update themselves on all the relevant Notifications, Circulars, Clarifications, Orders etc. issued by MCA, SEBI, RBI & Central Government.

The students are advised to acquaint themselves with the Monthly and Regulatory updates published by the Institute.

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LESSON 1
SECURITIES CONTRACTS (REGULATION) ACT, 1956

(1) Declaration of zero coupon zero principal instruments as securities under the Securities Contracts (Regulation) Act, 1956

(Ministry of Finance Notification No. S.O. 3210(E) dated July 15, 2022)

In exercise of the powers conferred by sub-clause (iia) of clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956, the Central Government declares "zero coupon zero principal instruments" as securities for the purposes of the said Act.

"Zero coupon zero principal instrument" means an instrument issued by a Not for Profit Organisation which shall be registered with Social Stock Exchange segment of a recognised Stock Exchange in accordance with the regulations made by the Securities and Exchange Board of India.

For details: https://www.sebi.gov.in/legal/gazette-notification/jul-2022/declaration-of-zero-coupon-zero-principal-instruments-as-securities-under-the-securities-contracts-regulation-act-1956_60875.html

(2) Securities Contracts (Regulation) (Amendment) Rules, 2022.

(Ministry of Finance Notification No. G.S.R. 03(E) dated January 02, 2023)

The Ministry of Finance on January 02, 2023, has notified the Securities Contracts (Regulation) (Amendment) Rules, 2022 to amend the Securities Contracts (Regulation) Rules, 1957. The following amendments have been made:

1. The definition of "Government Company" has been amended. The amended definition prescribed that Government company means a Government company as defined in Section 2(45) of the Companies Act, 2013.

   According to Section 2(45) the Companies Act, 2013, "Government company" means any company in which not less than fifty-one per cent of the paid-up share capital is held by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, and includes a company which is a subsidiary company of such a Government company.

2. In Rule 19A pertaining to Continuous Listing Requirement, Sub-rule (6) has been amended which provides that "*the Central Government may, in public interest, exempt any listed entity in which the Central Government or State Government or public sector company, either individually or in any combination with other, hold directly or indirectly, majority of the shares or voting rights or control of such listed entity, from any or all of the provisions of this rule.*"

   For details: https://www.sebi.gov.in/legal/rules/jan-2023/securities-contracts-regulation-amendment-rules-2022_67099.html

(3) Case Laws

30.08.2022	**Atlanta Infrastructure and Finance Ltd.**	**Adjudicating Officer, SEBI**

Facts of the Case:
Atlanta Infrastructure and Finance Ltd. ("Atlanta") was formerly known as Kadvani Securities Ltd. and was an authorised Non-Banking Financial Services Company (NBFC). The Company changed its name to Atlanta Infrastructure and Finance Ltd. w.e.f. August 3, 2013. The main business activity of the Company is infrastructure and development of land. The company was incorporated in 1992 and listed on BSE w.e.f June 07, 1995. SEBI conducted an investigation into trading of the scrip of Atlanta for suspected manipulation of the scrip price for the period August 2, 2010 to January 6, 2015 and the investigation revealed that the promoters/promoter group had all disposed-of their shares on February 19, 2014 as per information provided by RTA of the company. The total promoter/promoter group shareholding of Atlanta for the quarter ended March 2014 should have been zero. Atlanta had submitted to BSE a wrong shareholding pattern. Atlanta had submitted 2,23,000 shares as promoter shareholding to BSE for the quarter ended March 2014 and therefore, was alleged to have violated Section 21 of Securities Contracts (Regulations) Act, 1956 ("SCR Act").

SEBI Order
SEBI under Section 23-I of SCR Act read with Rule 5 of SCR(A) Rules, imposed a penalty of Rs. 1,00,000/- (Rupees One Lakh only) under Section 23H of SCRA, 1956 on Atlanta Infrastructure and Finance Ltd. for violation of Section 21 of SCRA, 1956.

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LESSON 4
AN OVERVIEW OF SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

(1) SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2021 (August 13, 2021)

SEBI vide its notification dated August 13, 2021, amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette.

The following amendments have been made:

- **Omission: Regulation 2(1)(pp)(iii)(C)**
  The amendment is made in the definition of promoter group where the promoter is a body corporate, by omitting the following provision:
  C) any body corporate in which a group of individuals or companies or combinations thereof acting in concert, which hold twenty per cent. or more of the equity share capital in that body corporate and such group of individuals or companies or combinations thereof also holds twenty per cent. or more of the equity share capital of the issuer and are also acting in concert.

  Regulation 16- Lock-in of specified securities held by the promoters in case Initial Public Offer

- **Substitution: Regulation 16(1)(a)**
  The words "three years from the date of commencement of commercial production or date of allotment in the initial public offer, whichever is later", shall be substituted with the words "eighteen months from the date of allotment in the initial public offer".

  The aim of this amendment is to reduce the lock-in period of specified securities held by the promoters from **3 years from the date of commencement of commercial production or date of allotment in the IPO, whichever is later to 18 months from the date of allotment in the IPO.**

- **Insertion: Proviso to Regulation 16(1)(a)**
  Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer.

- **Substitution: Regulation 16(1)(b)**
  The words **"one year"** shall be substituted with the words **"six months".**
  Promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of **6 months** from the date of allotment in the IPO instead of existing **1 year.**

- **Insertion: Proviso to Regulation 16(1)(b)**
  Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be one year from the date of allotment in the initial public offer.

- **Substitution: Explanation to Regulation 16(1)**
  Explanation: For the purpose of this sub-regulation, "capital expenditure" shall include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc.
  The concept of **date of commencement of commercial production** is completely removed from Regulation 16, consequently its meaning is also deleted from the explanation and the meaning of capital expenditure is added.

Regulation 17 - Lock-in of specified securities held by persons other than the promoters

- **Substitution: Regulation 17**
  The words **"one year"** shall be substituted with the words **"six months".**
  The entire pre-issue capital held by persons other than the promoters shall be locked-in for a period of 6 months from the date of allotment in the IPO instead of 1 year.

- **Substitution: Proviso to Regulation 17(c)**
  The words **"one year"** shall be substituted with the words **"six months".**
  Provided that such equity shares shall be locked in for a period of at least **six months** from the date of purchase by the venture capital fund or alternative investment fund or foreign venture capital investor.

Regulation 115 - Lock-in of specified securities held by the promoters in case Further Public Offer

- **Substitution: Regulation 115(a)**
  The words **"three years from the date of commencement of commercial production or from the date of allotment in further public offer, whichever is later;"** shall be **substituted** with the words **"eighteen months from the date of allotment of the further public offer:"**

  The aim of this amendment is to reduce the lock-in period of specified securities held by the promoters from **3 years from the date of commencement of commercial production or from the date of allotment in the FPO, whichever is later to 18 months from the date of the allotment of the FPO.**

- **Substitution: Regulation 115(b)**
  The words **"one year"** shall be substituted with the words **"six months".**
  Promoters' holding in excess of minimum promoters' contribution shall be locked-in for a period of **6 months** instead of **1 year.**

Regulation 117 - Lock-in of party-paid securities

- **Substitution: Regulation 117**
  The words **"three years"** shall be substituted with the words **"eighteen months".**
  Where the specified securities which are subject to lock-in are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the lock-in shall end only on the expiry of eighteen months after such specified securities have become pari passu with the specified securities issued to the public.
  For details:

  https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2021_51884.html

(2) SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2021 (October 26, 2021)

SEBI vide its notification dated October 26, 2021, amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette.

Regulation 6 - Eligibility requirements for an initial public offer

Regulation 6(3) of SEBI (ICDR) Regulations, 2018 provides that if an issuer has issued SR equity shares to its promoters/ founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance of various clauses specified in Regulation 6(3).

Vide this notification, the clause (ii) of Regulation 6(3) has been substituted with the following: -

"(ii) The net worth of the SR shareholder, as determined by a Registered Valuer, shall not be more than Rs. 1000 crore.

Explanation: While determining the individual net worth of the SR shareholder, his investment/ shareholding in other listed companies shall be considered but not that of his shareholding in the issuer company."

Further clause (v) of Regulation 6(3) has been substituted with the following: -

(v) the SR equity shares have been issued prior to the filing of draft red herring prospectus and held for a period of at least three months prior to the filing of the red herring prospectus.

For details: https://www.sebi.gov.in/legal/regulations/oct-2021/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2021_53516.html

(3) Non-compliance with certain provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 ("ICDR Regulations")

(Circular No. SEBI/HO/CFD/DIL1/P/CIR/2021/0660 dated November 23, 2021)

SEBI issued a Circular bearing reference number SEBI/HO/CFD/DIL2/CIR/P/2019/94 dated August 19, 2019, specifying the fines to be imposed by the Stock Exchanges for non-compliance with certain provisions of SEBI (ICDR) Regulations, 2018. In partial modification of the circular dated August 19, 2019, para 9A is inserted which provides that the Stock Exchanges may deviate from the provisions of the circular, wherever the interest of the investors are not adversely affected, if found necessary, only after recording reasons in writing.

For details: https://www.sebi.gov.in/legal/circulars/nov-2021/non-compliance-with-certain-provisions-of-sebi-issue-of-capital-and-disclosure-requirements-regulations-2018_54130.html

(4) SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 (January 14, 2022)

SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which has come into force on the date of their publication in the Official Gazette. Provided that the amendments to sub-regulation (3A) of regulation 32, regulation 49, regulation 129, regulation 145, clause (10) and clause (15) of

Part A of Schedule XIII and Schedule XIV shall come into force from April 1, 2022, for issues opening on or after April 1, 2022.

The amendments *inter alia* provide that-

- In regulation 2(1)(lll), in the definition the words "wilful defaulter" wherever it appears, shall be substituted with the words "wilful defaulter or a fraudulent borrower" and the words "wilful defaulters" shall be substituted with the words "wilful defaulters or fraudulent borrowers".

- **General conditions for object of the issue for IPO/FPO/Right issue [Insertion: Regulation 7(3), 62(2A) and 104(3)]**

  An issuer making an IPO/FPR/Right issue shall ensure that the amount for general corporate purposes and such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed 35% of the amount being raised by the issuer.

  However, the amount raised for such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty 25% of the amount being raised by the issuer.

  Further, provided that such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

- Regulation (8A) is inserted prescribing the additional conditions for an offer for sale for issues under regulation 6(2).

  Regulation (8A) - For issues where draft offer document is filed under sub-regulation (2) of regulation 6 of these regulations:

a. shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, more than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than fifty per cent of their pre-issue shareholding on fully diluted basis;

b. shares offered for sale to the public by shareholder(s) holding, individually or with persons acting in concert, less than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, shall not exceed more than ten per cent of pre-issue shareholding of the issuer on fully diluted basis;

c. for shareholder(s) holding, individually or with persons acting in concert, more than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis, provisions of lock-in as specified under regulation 17 of these regulations shall be applicable, and relaxation from lock-in as provided under clause (c) of regulation 17 of these regulations shall not be applicable.

- **Lock-in period for venture capital fund or alternative investment fund [Amendment: Regulation 17(c)]**

  The equity shares held by a venture capital fund or alternative investment fund of category I or Category II or a foreign venture capital investor shall be locked in for a period of at least 6 months from the date of purchase by the venture capital fund or alternative investment fund of Category I or Category II or foreign venture capital investor.

- **Price and Price Band [Insertion: Proviso to Regulation 29(2)]**

  As per regulation 29(2), the cap on the price band, and the coupon rate in case of convertible debt instruments, shall be less than or equal to 120% of the floor price. **Provided that the cap of the price band shall be at least 105% of the floor price.**

- **Allocation in the net offer [Insertion: Regulation 32(3A) and 129 (3A)]**

  In an issue made through book building process, the allocation in the non-institutional investors' category shall be as follows:

  (a) 1/3rd of the portion available to non-institutional investors shall be reserved for applicants with application size of more than Rs. 2 lakh and up to Rs. 10 lakh;

  (b) 2/3rd of the portion available to non-institutional investors shall be reserved for applicants with application size of more than Rs. 10 lakh.

  Provided that the unsubscribed portion in either of the sub-categories specified in clauses (a) or (b) may be allocated to applicants in the other sub-category of non-institutional investors.

- **Monitoring of utilization of IPO proceeds [Amendment: Regulation 41, 82 and 137]**

  If the issue size exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored only by a credit rating agency registered with the SEBI instead of Scheduled commercial Banks and Public Financial Institutions. Monitoring of the funds raised by the issuer companies must be done for the entire proceeds instead of the erstwhile requirement of 95% of the amounts raised.

- **Refund of Application Money [Amendment: Regulation 45, 86 and 141]**

  In the event of non-receipt of minimum subscription of 90%, all application monies received shall be refunded to the applicants forthwith, but not later than **4 days** (earlier 15 days) from the closure of the issue**.**

- **Release of subscription money [Amendment: Regulation 53(2) and Regulation 94(2)]**

  In case the issuer fails to obtain listing or trading permission from the stock exchanges where the specified securities were to be listed, it shall refund through verifiable means the entire monies received within **4 days** (earlier 7 days) of receipt of intimation from stock exchanges rejecting the application for listing of specified securities, and if any such money is not repaid within **4 days** (earlier 8 days) after the issuer becomes liable to repay it, the issuer and every director of the company who is an officer in default shall, on and from the expiry of the **4th day** (earlier 8th day), be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.

- **Period of subscription [Amendment: Regulation 87]**
  The rights issue shall be kept open for subscription for a minimum period of **7 seven days** (earlier 15 days) and for a maximum period of 30 days and no withdrawal of application shall be permitted after the issue closing date.

- **Eligibility requirements for further public offer [Amendment: Regulation 103]**
  (1) An issuer shall be eligible to make a further public offer, if it has not changed its name in the last one year period immediately preceding the date of filing the relevant offer document:

  Provided that if an issuer has changed its name in the last one year period immediately preceding the date of filing the relevant offer document, such an issuer shall make further public offer if at least fifty per cent. of the revenue for the preceding one full year has been earned by it from the activity indicated by its new name.

  (2) An issuer not satisfying the condition stipulated in the proviso to sub-regulation (1), shall make a further public offer only if the issue is made through the book building process and the issuer undertakes to allot at least seventy five per cent. of the net offer, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

- **Issuers Ineligible to Make a Preferential Issue [Regulation 159]**
  i. Amendment to Regulation 159(1)
  Preferential issue of specified securities shall not be made to any person who has sold or transferred any equity shares of the issuer during the **90 trading days** (earlier six months) preceding the relevant date.

  ii. Regulation 159(4) has been inserted as:
  An issuer shall not be eligible to make a preferential issue if it has any outstanding dues to the Board, the stock exchanges or the depositories. However, this shall not be applicable in a case where such outstanding dues are the subject matter of a pending appeal or proceeding(s), which has been admitted by the relevant Court, Tribunal or Authority, as the case may be.

- **Conditions for preferential issue [Insertion: Regulation 160(f)]**
  The issuer has made an application seeking in-principle approval to the stock exchange, where its equity shares are listed, on the same day when the notice has been sent in respect of the general meeting seeking shareholders' approval by way of special resolution.

- **Tenure of convertible securities[Insertion: 162(2)]**
  Upon exercise of the option by the allottee to convert the convertible securities within the tenure, the issuer shall ensure that the allotment of equity shares pursuant to exercise of the convertible securities is completed within 15 days from the date of such exercise by the allottee.

- **Disclosures to Shareholders [Regulation 163]**

  i. Amendment to Regulation163(2)

  The issuer shall place a copy of the certificate of **a practicing company secretary** before the general meeting of the shareholders considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of the SEBI (ICDR) Regulations, 2018.

  ii. Amendment to Regulation163(3)

  Specified securities may be issued on a preferential basis for consideration other than cash: Provided that consideration other than cash shall comprise only swap of shares pursuant to a valuation report by an independent registered valuer, which shall be submitted to the stock exchange(s) where the equity shares of the issuer are listed.

- **Lock-in [Amendment: Regulation 167]**

  Lock in requirement for securities allotted to promoters/ promoter group (upto 20% of the post issue capital) has been reduced to 18 months. For allotment exceeding 20% of the post issue capital, lock in period has been reduced to 6 months. Lock in requirement for allotment to persons other than promoters and promoter group has been reduced to 6 months.

- **Pledge of locked-in specified securities [Insertion: Regulation 167A]**

  167A. Specified securities, except SR equity shares, held by the promoters and locked-in under the provisions of these regulations, may be pledged as collateral for a loan granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company:

  Provided that the loan has been granted to the issuer or its subsidiary(ies) for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the conditions for sanction of the loan:

  Provided further that the lock-in on the specified securities shall continue pursuant to the invocation of the pledge and the entity invoking the pledge shall not be eligible to transfer the specified securities till the lock-in period stipulated in these regulations has expired.

  For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2022_55351.html

(5) Disclosures in the abridged prospectus and front cover page of the offer document

(Circular No. SEBI/HO/CFD/SSEP/CIR/P/2022/14 dated February 04, 2022)

Background

Section 2(1) of the Companies Act, 2013 defines an abridged prospectus as *a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board India by making regulations in this behalf.*

In terms of Regulation 34(1) SEBI (Issue of Capital and Disclosure Requirements), 2018, abridged prospectus shall contain the disclosures as specified in Annexure I of Part E of Schedule VI of ICDR Regulations.

Further, Section 33(1) of the Companies Act stipulates that that every application form for the purchase of any securities of a company shall be accompanied by an abridged prospectus.

Brief Analysis

In order to further simplify, provide greater clarity and consistency in the disclosures across various documents and to provide additional but critical information in the abridged prospectus, the format for disclosures in the abridged prospectus has been revised and is placed at Annexure A of this Circular. This Circular shall be applicable for all issues opening after the date of this Circular. While the disclosures in the abridged prospectus shall be as per Annexure A of this Circular instead of Annexure I of Part E of Schedule VI of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 and the disclosure on front outside cover page shall be as per Annexure B of this Circular.

For details: https://www.sebi.gov.in/legal/circulars/feb-2022/disclosures-in-the-abridged-prospectus-and-front-cover-page-of-the-offer-document_55920.html

(6) SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2022 (April 27, 2022)

SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette. Vide this notification it is provided that the amendments relating to regulations 32(3A), 49, 129, 145, clause (10) and clause (15) of Part A of Schedule XIII and Schedule XIV carried out by the SEBI (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2022 shall come into force in the following manner: -

(a) for public issues of a size less than Rs. 10,000 crore and opening on or after April 1, 2022; with effect from April 1, 2022;

(b) for public issues of a size equal to or more than Rs. 10,000 crore and opening on or after April 1, 2022; with effect from July 1, 2022.

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2022_58496.html

(7) Streamlining the Process of Rights Issue

(Circular No. SEBI/HO/CFD/SSEP/CIR/P/2022/66 dated May 19, 2022)

SEBI has streamlined the rights issue process and provided that the trading in Right Entitlements (REs) on the secondary market platform of stock exchanges commence along with the opening of the right issue and has to be closed at least three working days prior to the closure of the rights issue. Earlier, the requirement was four days. SEBI received representation from the market that

in case there are trading holidays between the last date of REs trading date and issue closure, the provision of the minimum gap of four days may not always ensure that there are adequate days for settlement, as minimum 2 working days are required for the settlement of REs traded on last day of REs trading window. REs traded on the exchange platform have a T+2 rolling settlement.

For details: https://www.sebi.gov.in/legal/circulars/may-2022/streamlining-the-process-of-rights-issue_59023.html

(8) Processing of ASBA applications in Public Issue of Equity Shares and Convertibles

(Circular No. SEBI/HO/CFD/DIL2/P/CIR/2022/75 dated May 30, 2022)

SEBI has reviewed the processing of Application Supported by Blocked Amount (ASBA) applications in the Public Issues by market intermediaries and Self-Certified Syndicate Banks (SCSBs) as a part of the continuing efforts to further streamline the bidding process and to ensure the orderly development of securities market.

SEBI vide this circular has provided that the ASBA applications in Public Issues shall be processed only after the application monies are blocked in the investor's bank accounts. Accordingly, all intermediaries / market infrastructure institutions are advised to ensure that appropriate systemic and procedural arrangements are made within three months from the date of issuance of this circular.

Further provided that the Stock Exchanges shall accept the ASBA applications in their electronic book building platform only with a mandatory confirmation on the application monies blocked. The circular shall be applicable for all categories of investors viz. Retail, QIB, NII and other reserved categories and also for all modes through which the applications are processed and for public issues opening on or after September 01, 2022.

For details: https://www.sebi.gov.in/legal/circulars/may-2022/processing-of-asba-applications-in-public-issue-of-equity-shares-and-convertibles_59338.html

(9) SEBI (Issue of Capital and Disclosure Requirements) (Third Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/90 dated July 25, 2022)

SEBI vide its notification dated July 25, 2022, has amended the provisions of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification SEBI has prescribed the framework for Social Stock Exchange and inserted a separate Chapter X-A under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Meaning of Social Stock Exchange:

Social Stock Exchange means a separate segment of a recognized stock exchange having nationwide trading terminals permitted to register Not for Profit Organizations and / or list the

securities issued by Not for Profit Organizations in accordance with provisions of these regulations.

Applicability of the Chapter:
The provisions of the above mentioned Chapter shall apply to

- a Not for Profit Organization seeking to only get registered with a Social Stock Exchange;
- a Not for Profit Organization seeking to get registered and raise funds through a Social Stock Exchange; and
- a For Profit Social Enterprise seeking to be identified as a Social Enterprise under the provisions of this Chapter.

Access to Social Stock Exchange: A Social Stock Exchange shall be accessible only to institutional investors and non-institutional investors. However, SEBI may permit other class(es) of investors, as it deems fit, for the purpose of accessing Social Stock Exchange.

Social Stock Exchange Governing Council: Every Social Stock Exchange shall constitute a Social Stock Exchange Governing Council to have an oversight on its functioning. The composition and terms of reference for such Governing Council shall be specified by the SEBI from time to time. **(Specified by SEBI vide its Circular No. SEBI/HO/MRD/MRD-RAC-2/P/CIR/2022/141 dated October 13, 2022)**

Eligibility conditions for being identified as a Social Enterprise:

- A Not for Profit Organization or a For Profit Social Enterprise, to be identified as a Social Enterprise, shall establish primacy of its social intent.
- In order to establish the primacy of its social intent, such Social Enterprise shall meet the prescribed eligibility criteria and shall be indulged in at least one of the activities such as eradicating hunger, poverty, malnutrition and inequality; promoting health care including mental healthcare, sanitation and making available safe drinking water; promoting education, employability and livelihoods; protection of national heritage, art and culture etc.

Requirements relating to registration for a Not for Profit Organization:

- A Not for Profit Organization shall mandatorily seek registration with a Social Stock Exchange before it raises funds through a Social Stock Exchange. Provided that a Not for Profit Organization may choose to register on a Social Stock Exchange and not raise funds through it.
- The minimum requirements for registration of a Not for Profit Organization on a Social Stock Exchange shall be specified by the SEBI from time to time.
- The Social Stock Exchange may specify the eligibility requirements for registration of a Not for Profit Organization in addition to the minimum requirements specified by the SEBI.

Fund raising by Social Enterprises:
A Not for Profit Organization may raise funds on a Social Stock Exchange through:

- issuance of Zero Coupon Zero Principal Instruments to institutional investors and/or non-institutional investors in accordance with the applicable provisions of this Chapter;
- donations through Mutual Fund schemes as specified by the SEBI;
- any other means as specified by the SEBI from time to time.

A For Profit Social Enterprise may raise funds through:

- issuance of equity shares on the main board, SME platform or innovators growth platform or equity shares issued to an Alternative Investment Fund including a Social Impact Fund;
- issuance of debt securities;
- any other means as specified by the SEBI from time to time

Framework on Social Stock Exchange ("SSE")

SEBI vide its circular No. SEBI/HO/CFD/PoD-1/P/ CIR/2022/120 dated September 19, 2022 has issued a detailed framework for social stock exchange, specifying minimum requirements for a Not-for-Profit Organisation (NPO) for registering with the Stock exchange and disclosure requirements. This circular has specified minimum requirements to be met by a NPO for registration with SSE, disclosure requirement for NPOs raising funds through the issuance of zero-coupon zero principal instruments and put in place annual disclosure requirements that needs to be made by NPOs on SSE.

Governing Council for Social Stock Exchange

SEBI vide its Circular No. SEBI/HO/MRD/MRD-RAC-2/P/CIR/2022/141 dated October 13, 2022 has prescribed a framework for governing council of the Social Stock Exchange (SSE). Every SSE is required to constitute a Social Stock Exchange Governing Council (SGC) which willhave an oversight on the functioning of the Board. The SGC shall comprise of individuals with relevant experience who can contribute to the development of the Social Stock Exchange. SGC will have a minimum of 7 members having representation from non-profit organisations, Stock exchange, Social impact investors, Philanthropic and social sectors, Information Repositories, Social Audit Profession and Capacity Building Fund. The same shall be supported by the administrative staff from SSE. The SGC is expected to provide oversight and guidance to facilitate the smooth functioning of the operations of the Social Stock Exchange, with regard to registration,fund raising and disclosures by Social Enterprises.

For details: https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-third-amendment-regulations-2022_61171.html

https://www.sebi.gov.in/legal/circulars/sep-2022/framework-on-social-stock-exchange_63053.html

(10) SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/107 dated November 21, 2022)

SEBI on November 21, 2022, has notified the SEBI (Issue of Capital and Disclosure Requirements) (Fourth Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. Vide this Notification, the following has been amended-

- In regulation 25(1) the words "with the concerned regional office of the Board (SEBI) under the jurisdiction of which the registered office of the issuer company is located" shall be substituted with the words "with the Board (SEBI)" with reference to filing of draft offer document and offer document.

- New Chapter IIA "Initial public offer on the main board through the pre-filing of the draft offer document" has been inserted.

For details: https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-fourth-amendment-regulations-2022_65407.html

(11) SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/130 dated May 23, 2023)

With the objective of increasing transparency and streamlining certain issue processes, SEBI has notified the SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2023. Vide this notification following amendments have been made:

- The words "SEBI (Share Based Employee Benefits) Regulations, 2014" wherever they appear, will be substituted with the words "SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021".
- Regulation 40 and 136 pertaining to Underwriting in the case of an initial public offer (IPO) and further public offer (FPO), respectively, have been replaced.

Underwriting [Regulation 40 and 136]

(1) If the issuer making an initial public offer or further public offer, other than through the book building process, desires to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the prospectus, enter into an underwriting agreement with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

(2) The issuer making an initial public offer or further public offer, other than through the book building process, shall, prior to the filing of the prospectus, enter into an underwriting agreement

with the merchant bankers or stock brokers registered with the Board to act as underwriters, indicating therein the number of specified securities they shall subscribe to on account of rejection of applications, either by themselves or by procuring subscription, at a predetermined price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

(3) If the issuer makes a public issue through the book building process:

(a) the issue shall be underwritten by lead manager(s) and syndicate member(s):
Provided that at least seventy five per cent. of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 6 shall not be underwritten.

(b) the issuer shall, prior to the filing of the prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s), indicating therein the number of specified securities they shall subscribe to on account of rejection of bids, either by themselves or by procuring subscription, at a price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the prospectus.

(c) if the issuer desires to have the issue underwritten to cover under-subscription in the issue, it shall, prior to the filing of the red herring prospectus, enter into an underwriting agreement with the lead manager(s) and syndicate member(s) to act as underwriters, indicating therein the maximum number of specified securities they shall subscribe to, either by themselves or by procuring subscription, at a price which shall not be less than the issue price, and shall disclose the fact of such underwriting agreement in the red herring prospectus.

(d) if the syndicate member(s) fail to fulfil their underwriting obligations, the lead manager(s) shall fulfil the underwriting obligations.

(e) the lead manager(s) and syndicate member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.

(f) in case of every underwritten issue, the lead manager(s) shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.

(g) where the issue is required to be underwritten, the underwriting obligations should be at least to the extent of minimum subscription."

- In regulation 293 pertaining to conditions for a Bonus issue, the following clause is inserted:
"It has received approval from the stock exchanges for listing and trading of all the securities, excluding options granted to employees pursuant to an employee stock option scheme and convertibles securities, issued by the issuer prior to the issuance of bonus shares."

- In regulation 294 pertaining to restrictions on a bonus issue, the following clause is inserted:
"Bonus issue shall be made only in dematerialised form.

For details: https://www.sebi.gov.in/legal/regulations/may-2023/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-second-amendment-regulations-2023_71705.html

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LESSON 5

AN OVERVIEW OF SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

(1) SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021 (August 03, 2021)

SEBI vide its notification dated August 03, 2021, amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on January 1, 2022.

The amendments, inter alia, include the following:

o The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. [Reg. 17(1C)]- New Insertion

o **At least** 2/3rd of the members of the audit committee shall be independent directors and all related party transactions shall be approved by only independent directors on the Audit Committee. [Reg. 18(1)(b)]

o The composition of Nomination and remuneration committee has been modified to include at least 50% independent directors instead of existing requirement of 2/3rd of independent directors. [Reg. 19(1)(c)]

o The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution. [Reg. 25(2A)]- New Insertion

o The requirement of undertaking Directors and Officers insurance has been extended to the top 1000 companies with effect from January 01, 2022. [Reg. 25(10)]

o No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group, unless a period of one year has elapsed from the date of resignation as an independent director. [Reg. 25(11)]- New Insertion

For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2021_51719.html

(2) Disclosure of shareholding pattern of promoter(s) and promoter group entities

(Circular No. SEBI/HO/CFD/CMD/CIR/P/2021/616 dated August 13, 2021)

As per Regulation 31(4) SEBI (LODR) Regulations, 2015, it is mandatory that all entities falling under promoter and promoter group be disclosed separately in the shareholding pattern on the website of stock exchanges, in accordance with the format specified by SEBI. The shareholdings of promoters and promoter group entities, which are currently collectively disclosed under 'table II-Statement showing shareholding pattern of the promoter and promoter group', shall now be segregated into promoter(s) and promoter group in the revised format as annexed to this circular.

For details: https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-shareholding-pattern-of-promoter-s-and-promoter-group-entities_51847.html

(3) SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 (September 07, 2021)

SEBI vide gazette notification dated September 07, 2021 amends the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

- The amendments, inter-alia, provides the terms "'non-convertible debt securities', 'non-convertible redeemable preference shares', 'non-convertible securities', 'perpetual debt instrument' and 'perpetual non-cumulative preference share' shall have the same meaning as defined under the SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021.
- SEBI (LODR) Regulations, 2015 shall also apply to a listed entity which has listed non-convertible securities on recognised stock exchange(s). The provisions of these regulations which become applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities shall continue to apply to such entities even if they fall below such thresholds.
- The regulation 15 and regulation 16 to regulation 27 of SEBI (LODR) Regulations, 2015, w.r.t. the corporate governance provisions shall apply to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of Rs. 500 crore and above.

  However, in case an entity that has listed its non-convertible debt securities triggers the specified threshold of Rs. 500 crore during the course of the year, it shall ensure compliance with these provisions within six months from the date of such trigger.

  Further, it has been provided that these provisions shall be applicable to a 'high value debt listed entity' on a 'comply or explain' basis until March 31, 2023 and on a mandatory basis thereafter.
- **Intimation to stock exchange(s) [Regulation 50].**

  (1) The listed entity shall give prior intimation to the stock exchange of at least two working days in advance, excluding the date of the intimation and the date of the meeting of the board of directors, about the Board meeting in which any of the following proposals is to be considered:

  (a) an alteration in the form or nature of non-convertible securities that are listed on the stock exchange or in the rights or privileges of the holders thereof;

  (b) an alteration in the date of the interest/ dividend/ redemption payment of non-convertible securities;

  (c) financial results viz. quarterly or annual, as the case may be;

  (d) fund raising by way of issuance of non-convertible securities; or

  (e) any matter affecting the rights or interests of holders of non-convertible securities.

  (2) The listed entity shall also intimate the stock exchange not later than the date of commencement of dispatch of notices, in case of:

  (a) any annual general meeting or extraordinary general meeting that is proposed to be held for obtaining shareholder approval for the proposals at clauses (c) and (d) mentioned above;

  (b) any meeting of the holders of non-convertible securities in relation to the proposal at clause (e) mentioned above.
- **Financial Results. [Regulation 52]**

  (1) The listed entity shall prepare and submit un-audited or audited quarterly and year to date standalone financial results on a quarterly basis in the format as specified by the Board within

forty- five days from the end of the quarter, other than last quarter, to the recognised stock exchange(s).

However, in case of entities which have listed their debt securities, a copy of the financial results submitted to stock exchanges shall also be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.

(2) The listed entity shall comply with following requirements with respect to preparation, approval, authentication and publication of annual and quarterly financial results:

(a) Un-audited financial results on quarterly basis shall be accompanied by limited review report prepared by the statutory auditors of the listed entity, in the format as specified by the Board:

Provided that in case of issuers whose accounts are audited by the Comptroller and Auditor General of India, the report shall be provided by any practising Chartered Accountant.

(b)The quarterly results shall be taken on record by the board of directors and signed by the managing director / executive director.

(c)The audited results for the year shall be submitted to the recognised stock exchange(s) in the same format as is applicable for quarterly financial results.

(d)The annual audited standalone and consolidated financial results for the financial year shall be submitted to the stock exchange(s) within sixty days from the end of the financial year along with the audit report:

Provided that issuers, who are being audited by the Comptroller and Auditor General of India, shall adopt the following two step process for disclosure of the annual audited financial results:

(i) The first level audit shall be carried out by the auditor appointed by the Comptroller and Auditor General of India, who shall audit the financials of the listed entity and such financial results shall be submitted to the Stock Exchange(s) within sixty days from the end of the financial year.

(ii) After the completion of audit by the Comptroller and Auditor General of India, the financial results shall be submitted to the Stock exchange(s) within nine months from the end of the financial year.

(e)Modified opinion(s) in audit reports/limited review reports that have a bearing on the interest payment/ dividend payment pertaining to non-convertible securities/ redemption or principal repayment capacity of the listed entity shall be appropriately and adequately addressed by the board of directors while publishing the accounts for the said period.

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

- **Intimations/ other submissions to stock exchange(s). [Regulation 57]**

(1) The listed entity shall submit a certificate to the stock exchange within one working day of the interest or dividend or principal becoming due regarding status of payment in case of non-convertible securities.

For details: https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021_52488.html

(4) SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2021 (November 09, 2021)

SEBI vide its notification dated November 09, 2021, amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force with effect from April 1, 2022 unless otherwise specified in the respective provision of the regulation.

- The amendments, inter-alia, have been carried out in the definitions of Related Party and Related Party transactions.

In the existing provision under Regulation 2(1)(zb) it was provided that, any person or entity belonging to the promoter or promoter group of the listed entity and holding 20% or more of shareholding in the listed entity shall be deemed to be a related party.

However, vide this amendment, it is provided that, any person or entity forming a part of the promoter or promoter group or any person or any entity, holding equity shares of 20% or more (10% w.e.f. 1st April, 2023) in the listed entity either directly or on a beneficial interest basis, at any time, during the immediate preceding financial year, shall be deemed to be a related party.

Further, the definition of related party transaction under regulation 2(1)(zc), has been substituted with the following, namely, -

"Related Party Transaction" means a transaction involving a transfer of resources, services or obligations between:
(i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or
(ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023;

regardless of whether a price is charged and a "transaction" with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Provided that the following shall not be a related party transaction:

(a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018;

(b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:

i. payment of dividend;

ii. subdivision or consolidation of securities;

iii. issuance of securities by way of a rights issue or a bonus issue; and

iv. buy-back of securities.

(c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the

format as specified by the Board:
Provided further that this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s)."

Regulation 23 - Related Party Transactions

- In the existing provisions, it was provided that, a transaction with a 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 10% of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

  Vide this amendment, it is provided that, a transaction with a 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 Rs. 1000 crore or 10%** of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower."

- In regulation 23(2), after the words "party transactions" the words "and subsequent material modifications" shall be inserted and the words and symbol "audit committee." shall be substituted with the words and symbol "audit committee of the listed entity:"

  Vide this amendment, it is clarified that even the subsequent material modifications in a related party transaction shall require prior approval of the audit committee of the listed entity.

- In regulation 23(2), after the existing proviso, the following shall be inserted, namely, -

  "Provided further that:

  (a) the audit committee of a listed entity shall define "material modifications" and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;

  (b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;

  (c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;

  (d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

  Explanation : For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the audit committee of the listed subsidiary shall suffice."

- In regulation 23(4), after the words "related party transactions" the words and symbol "and subsequent material modifications as defined by the audit committee under sub-regulation (2)," shall be inserted and after the words "shall require" the word "prior" shall be inserted.

  Vide this amendment it is clarified that **prior** approval of shareholders shall be required for material related party transactions.

- In regulation 23(4), before the existing proviso, the following shall be inserted, namely, -

  "Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.

  Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice."

- In regulation 23(5), after clause (b), the following new clause shall be inserted, namely, -

  "(c) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval."

- Regulation 23(7) shall be omitted

  Omitted Provision:

  For the purpose of this regulation, all entities falling under the definition of related parties shall not vote to approve the relevant transaction irrespective of whether the entity is a party to the particular transaction or not.

- Regulation 23(9) shall be substituted with the following, namely, -

  "(9) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website:

  Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year:

  Provided further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results:

  Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023."

  For details: https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2021_53851.html

(5) Disclosure obligations of listed entities in relation to Related Party Transactions
(Circular No. SEBI/HO/CFD/CMD1/CIR/P/2021/662 dated November 22, 2021)

Background.
Vide notification dated November 9, 2021, Regulation 23 of the SEBI (Listing Obligations and Disclosure Requirements), Regulations 2015 ('LODR Regulations') was amended, inter-alia, mandating listed entities that have listed specified securities to submit to the stock exchanges disclosure of Related Party Transactions (RPTs) in the format specified by the Board from time to time.

SEBI vide this circular has prescribed the information to be placed before the audit committee and the shareholders for consideration of RPTs.

A. Information to be reviewed by the Audit Committee for approval of RPTs

The listed entity shall provide the following information, for review of the audit committee for approval of a proposed RPT:

a. Type, material terms and particulars of the proposed transaction;

b. Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);

c. Tenure of the proposed transaction (particular tenure shall be specified);

d. Value of the proposed transaction;

e. The percentage of the listed entity's annual consolidated turnover, for the immediately preceding financial year, that is represented by the value of the proposed transaction (and for a RPT involving a subsidiary, such percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis shall be additionally provided);

f. If the transaction relates to any loans, inter-corporate deposits, advances or investments made or given by the listed entity or its subsidiary:

i) details of the source of funds in connection with the proposed transaction;

ii) where any financial indebtedness is incurred to make or give loans, intercorporate deposits, advances or investments,

- nature of indebtedness;
- cost of funds; and
- tenure;

iii) applicable terms, including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and

iv) the purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.

g. Justification as to why the RPT is in the interest of the listed entity;

h. A copy of the valuation or other external party report, if any such report has been relied upon;

i. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;

j. Any other information that may be relevant

The audit committee shall also review the status of long-term (more than one year) or recurring RPTs on an annual basis.

B. Information to be provided to shareholders for consideration of RPTs

The notice being sent to the shareholders seeking approval for any proposed RPT shall, in addition to the requirements under the Companies Act, 2013, include the following information as a part of the explanatory statement:

a. A summary of the information provided by the management of the listed entity to the audit committee as specified above;

b. Justification for why the proposed transaction is in the interest of the listed entity;

c. Where the transaction relates to any loans, inter-corporate deposits, advances or investments

made or given by the listed entity or its subsidiary, the details specified under point 4(f) above; (The requirement of disclosing source of funds and cost of funds shall not be applicable to listed banks/NBFCs.)
d. A statement that the valuation or other external report, if any, relied upon by the listed entity in relation to the proposed transaction will be made available through the registered email address of the shareholders;
e. Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT, on a voluntary basis;
f. Any other information that may be relevant.

C. Format for reporting of RPTs to the Stock Exchange
The listed entity shall make RPT disclosures every six months in the format provided at Annex to this circular.

This Circular shall come into force with effect from April 1, 2022.

For details: ***https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html***

(6) SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2022 (January 24, 2022)

SEBI vide its notification dated January 24, 2022, has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

The amendments inter alia provide that-

- The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors **or as a manager** is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier. **[Regulation 17(1C)]**
- The appointment or a re-appointment of a person, including as a managing director or a whole-time director or a manager, who was earlier rejected by the shareholders at a general meeting, shall be done only with the prior approval of the shareholders. Further, the statement referred to under sub-section (1) of section 102 of the Companies Act, 2013, annexed to the notice to the shareholders, for considering the appointment or re-appointment of such a person earlier rejected by the shareholders shall contain a detailed explanation and justification by the Nomination and Remuneration Committee and the Board of directors for recommending such a person for appointment or re-appointment. **[Insertion: Proviso to Regulation 17(1C)]**
- Where the listed entity has appointed a monitoring agency to monitor the utilisation of proceeds of a public or rights issue, the monitoring report of such agency shall be placed before the audit committee on **a quarterly basis**, promptly upon its receipt. **[Substitution: Regulation 32(7)]**
- Issuance of duplicates or new certificates in cases of loss or old decrepit or worn out certificates in dematerialised form. This will improve ease, convenience and safety of transactions for investors. **[Regulation 39(2)]**
- The requests for effecting transfer of securities shall not be processed unless the securities are held in the dematerialised form with a depository. Further, transmission or transposition of securities

held in physical or dematerialised form shall be effected only in dematerialised form. **[Substitution: Proviso to 40(1)]**

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2022_55526.html

(7) SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 (March 22, 2022)

SEBI has notified SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2022 on March 22, 2022, which shall come into force on the date of their publication in the Official Gazette. SEBI vide this notification has omitted the regulation 17(1B) related to separation of role of Chairperson and MD/CEO. It is provided that this provision may not be retained as a mandatory requirement and instead be made applicable to the listed entities on a voluntary basis.

For details:https://www.sebi.gov.in/legal/regulations/mar-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2022_57098.html

(8) SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022 (April 11, 2022)

SEBI on April 11, 2022, has notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notifications SEBI has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, to align the framework and terminology with respect to 'Security Cover' wherein the term 'Asset Cover' has been substituted with term 'Security Cover' in regulation 54 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Further, it is prescribed that the maintenance of security cover is sufficient to discharge both principal **and interest thereon** in SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/sebi-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2022_57988.html

(9) Simplification of procedure and standardization of formats of documents for issuance of duplicate securities certificates

(Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2022/70 dated May 25, 2022)

With a view to make issuance of duplicate securities more efficient and investor friendly, SEBI

has simplified the procedure and documentation requirements for issuance of duplicate securities.

The requirements are as specified below:

1. Submission by the security holder of copy of FIR including e-FIR/Police complaint/Court injunction order/copy of plaint, necessarily having details of the securities, folio number, distinctive number range and certificate numbers.
2. Issuance of advertisement regarding loss of securities in a widely circulated newspaper.

   However, there shall be no requirement to comply with above mentioned Para 1 and 2, if the value of securities as on the date of submission of application, along with complete documentation as prescribed by the SEBI does not exceed Rs.5 Lakhs.
3. Submission of Affidavit and Indemnity bond as per the format prescribed by the SEBI. There shall be no requirement of submission of surety for issuance of duplicate securities

4. In case of non-availability of Certificate Nos./Distinctive Nos./ Folio nos., the RTA (upon written request by the security holder) shall provide the same, to the security holder only where the signature and the address of the security holder matches with the RTA / listed company's records. In case the signature and/or the address do not match, the security holder shall first comply with the KYC procedure and then only the details of the securities shall be provided to the security holder by the RTA/listed company.

   As mandated vide SEBI Circular dated January 25, 2022, duplicate securities shall be issued in dematerialized mode only.

For details: https://www.sebi.gov.in/legal/circulars/may-2022/simplification-of-procedure-and-standardization-of-formats-of-documents-for-issuance-of-duplicate-securities-certificates_59173.html

(10) SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/88 dated July 25, 2022)

SEBI vide its notification dated July 25, 2022, has amended the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification SEBI has inserted "Zero Coupon Zero Principal Instruments" in the definition of Designated Securities and notified a new chapter IX-A which deals with Obligations of Social Enterprises.

Applicability:

The provisions of the Chapter IX-A shall apply to a "For Profit Social Enterprise" whose designated securities are listed on the applicable segment of the Stock Exchange(s) and a "Not for Profit Organizations" that is registered on the Social Stock Exchange(s).

Disclosures by a For Profit Social Enterprise and Not for Profit Organization:
A For Profit Social Enterprise whose designated securities are listed on the Stock Exchange(s) shall comply with the disclosure requirements contained in these regulations with respect to issuers whose specified securities are listed on the Main Board or the SME Exchange or the Innovators Growth Platform, as the case may be.

A Not for Profit Organization registered on the Social Stock Exchange(s), including a Not for Profit Organization whose designated securities are listed on the Social Stock Exchange(s), shall be required to make annual disclosures to the Social Stock Exchange on matters specified by the SEBI, within 60 days from the end of the financial year or within such period as may be specified by the SEBI.

Intimations and disclosures by Social Enterprise of events or information to Social Stock Exchange(s) or Stock Exchange(s):

- A Social Enterprise whose designated securities are listed on the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, shall frame a policy for determination of materiality, duly approved by its board or management, as the case may be, which shall be disclosed on the Social Stock Exchange(s) or the Stock Exchange(s).

- The board and management of the Social Enterprise shall authorize one or more of its Key Managerial Personnel for the purpose of determining materiality of an event or information and for the purpose of making disclosures to the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, under this regulation and the contact details of such personnel shall also be disclosed to the Social Stock Exchange(s) or the Stock Exchange(s).

- A Social Enterprise whose designated securities are listed on the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, shall disclose to the Social Stock Exchange(s) or the Stock Exchange(s) where it is registered or has listed its specified securities, as the case may be, any event that may have a material impact on the planned achievement of outputs or outcomes.

- The disclosure shall be made as soon as reasonably possible but not later than seven days or within such period as may be specified by the Board, from the occurrence of the event and shall comprise details of the event including the potential impact of the event and the steps being taken by the Social Enterprise to address the same.

- The Social Enterprise shall provide updates on a regular basis along with relevant explanations in respect of the disclosures required in sub-regulation (3) till the time the concerned event remains material.

- The Social Enterprise shall provide specific and adequate reply to all queries raised by the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, with respect to any events or information. However, the Social Stock Exchange(s) or the Stock

Exchange(s), as the case may be, shall disseminate the information and clarification as soon as reasonably practicable.

- The Social Enterprise may suo moto confirm or deny any reported event or information to Social Stock Exchange(s) or the Stock Exchange(s), as the case may be.

- The Social Enterprise shall disclose on its website all such events or information which have been disclosed to the Social Stock Exchange(s) or the Stock Exchange(s), as the case may be, under this regulation.

Disclosures by a Social Enterprise in respect of social impact:

A Social Enterprise, which is either registered with or has raised funds through a Social Stock Exchange or a Stock Exchange, as the case may be, shall be required to submit an annual impact report to the Social Stock Exchange or the Stock Exchange in the format specified by the SEBI from time to time. The annual impact report shall be audited by a Social Audit Firm employing Social Auditor. The Social Stock Exchange(s) may specify parameters, in addition to those specified by the SEBI, which shall be required to be disclosed by a Social Enterprise on an annual basis.

Statement of utilisation of funds:

A listed Not for Profit Organization shall submit to the Social Stock Exchange(s) the following statement in respect of utilisation of the funds raised, on a quarterly basis:-

(a) category-wise amount of monies raised;

(b) category-wise amount of monies utilised;

(c) balance amount remaining unutilised.

The unutilised amount shall be kept in a separate bank account and shall not be co-mingled with other funds. The statement required shall be given till the time the issue proceeds have been fully utilised or the purpose for which they were raised, has been achieved.

For details: https://www.sebi.gov.in/legal/regulations/jul-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2022_61169.html

(11) SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/103 dated November 14, 2022)

The SEBI on November 14, 2022, notified the SEBI (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. The following amendments have been made under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015: –

(1) In Regulation 25 pertaining to "Obligations with respect to Independent Directors", in sub-regulation (2A), the following provisos have been inserted, namely, -

"Provided that where a special resolution for the appointment of an independent director fails to get the requisite majority of votes but the votes cast in favour of the resolution 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, then the appointment of such an independent director shall be deemed to have been made under sub-regulation (2A):
Provided further that an independent director appointed under the first proviso 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."

(2) In Regulation 32, in sub-regulation (6) and in sub-regulation (7), the words "public or rights issue" have been substituted with the words "public issue or rights issue or preferential issue or qualified institutions placement".

According to the amendment in Regulation 32, listed entities are mandated to submit a quarterly statement of deviation(s) or variation(s) to stock exchanges indicating if they have deviated or varied in using the proceeds from issue of the object stated for the issue, till the complete use of fund from proceed. Earlier to the amendment this statement had to be submitted for public, rights and preferential issues. With the amendment, SEBI had broadened the scope of disclosure and submission of such statement even in funds raised from Qualified Institutional Placements.

For details: https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-sixth-amendment-regulations-2022_65048.html

(12) SEBI (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/109 dated December 05,2022)

SEBI on December 05, 2022, notified the SEBI (Listing Obligations and Disclosure Requirements) (Seventh Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. In Regulation 102 pertaining to power to relax strict enforcement of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a new regulation (1A) has been inserted stating that *"SEBI may after due consideration of the interest of the investors and the securities market and for the development of the securities market, relax the strict enforcement of any of the requirements of these regulations, if an application is made by the Central Government in relation to its strategic disinvestment in a listed entity."*

For details: https://www.sebi.gov.in/legal/regulations/dec-2022/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-seventh-amendment-regulations-2022_65883.html

(13) SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/117 dated January 17, 2023)

SEBI on January 17, 2023, notified the SEBI (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2023. Vide this notification, the following amendments have been made:

1. In regulation 15 pertaining to corporate governance norms, in sub-regulation (1A), Explanation

(4) has been **omitted**:

Explanation (4)–

(a) In case of a 'high value debt listed entity' that is a Real Estate Investment Trust (REIT), the Board of the Manager of the Real Estate Investment Trust (REIT), shall comply with regulation 15 to regulation 27 of these regulations related to corporate governance;

(b) In case of a 'high value debt listed entity' that is an Infrastructure Investment Trust (InvIT), the Board of the Investment Manager of the Infrastructure Investment Trust (InvIT), shall comply with regulation 15 to regulation 27 of these regulations related to corporate governance.

2. Sub-regulation (1B) and (1C) has been inserted under regulation 15, namely, -

"(1B) Notwithstanding anything contained in this regulation, in case of an Infrastructure Investment Trust registered under the provisions of the SEBI (Infrastructure Investment Trusts) Regulations, 2014, the governance norms specified under the SEBI (Infrastructure Investment Trusts) Regulations, 2014 shall be applicable."

"(1C) Notwithstanding anything contained in this regulation, in case of a Real Estate Investment Trust registered under the provisions of SEBI (Real Estate Investment Trust) Regulations, 2014, the governance norms specified under the SEBI (Real Estate Investment Trust) Regulations, 2014 shall be applicable."

For details: https://www.sebi.gov.in/legal/regulations/jan-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2023_67410.html

(14) (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/131 dated June 14, 2023)

SEBI has notified the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 on June 14, 2023. Vide this notification the following amendments have been made in the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015:

1. The new definition Mainstream media is added **[Regulation 2(1)(ra)]:**

   Mainstream media shall include print or electronic mode of the following:
   i. Newspapers registered with the Registrar of Newspapers for India;
   ii. News channels permitted by Ministry of Information and Broadcasting under Government of India;
   iii. Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; and
   iv. Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India.

2. Vacancy to be filled in the office of the Compliance Officer: Any vacancy in the office of the Compliance Officer shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.

   However, the listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person. **[Insertion: Regulation 6(1A)]**

3. The following Regulation 17(1D) is added:

Shareholder approval required for Appointment or Reappointment

17(1D) With effect from April 1, 2024, the continuation of a director serving on the board of directors of a listed entity shall be subject to the approval by the shareholders in a general meeting at least once in every five years from the date of their appointment or reappointment, as the case may be. However, the continuation of the director serving on the board of directors of a listed entity as on March 31, 2024, without the approval of the shareholders for the last five years or more shall be subject to the approval of shareholders in the first general meeting to be held after March 31, 2024.

Provided further that the requirement specified in this regulation shall not be applicable to the Whole-Time Director, Managing Director, Manager, Independent Director or a Director retiring as per the sub-section (6) of section 152 of the Companies Act, 2013, if the approval of the shareholders for the reappointment or continuation of the aforesaid directors or Manager is otherwise provided for by the provisions of these regulations or the Companies Act, 2013 and has been complied with.

The requirement specified in this regulation shall not be applicable to the director appointed pursuant to the order of a Court or a Tribunal or to a nominee director of the Government on the board of a listed entity, other than a public sector company, or to a nominee director of a financial sector regulator on the board of a listed entity.

The requirement specified in this regulation shall not be applicable to a director nominated by a financial institution registered with or regulated by the Reserve Bank of India under a lending arrangement in its normal course of business or nominated by a Debenture Trustee registered with the Board under a subscription agreement for the debentures issued by the listed entity.

4. The following Regulation 17(1E) is added:

Vacancy to be filled in the office of a director: Any vacancy in the office of a director shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date such vacancy. However, if the listed entity becomes non-compliant, due to expiration of the term of office of any director, the resulting vacancy shall be filled by the listed entity not later than the date such office is vacated.

5. The following Regulation 26A is added:

Vacancies to be filled in respect of certain Key Managerial Personnel

- Any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director or Manager shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.

- Any vacancy in the office of the Chief Financial Officer shall be filled by the listed entity at the earliest and in any case not later than 3 months from the date of such vacancy.

- The listed entity shall not fill such vacancy by appointing a person in interim capacity, unless such appointment is made in accordance with the laws applicable in case of a fresh appointment to such office and the obligations under such laws are made applicable to such person.

6. **Disclosure of Cybersecurity Breaches**: Details of cyber security incidents or breaches or loss of data or documents shall be disclosed along with quarterly compliance report on corporate governance. **[Insertion: Regulation 27(2)(ba)]**

7. **Disclosure of events or information:**

- The omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:
    - 2% of turnover, as per the last audited consolidated financial statements of the listed entity;
    - 2% of net worth, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative;
    - 5% percent of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity. **[Regulation 30(4)(i)(c)]**
- In case where the criteria specified is not applicable, an event or information may be treated as being material if in the opinion of the board of directors of the listed entity, the event or information is considered material. **[Insertion: Regulation 30(4)(i)(d)]**
- The listed entity shall first disclose to the stock exchange all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:
    - 30 minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;
    - 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;
    - 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity.

  However, disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines. Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay. **[Regulation 30(6)]**
- The top 100 listed entities (with effect from October 1, 2023) and thereafter the top 250 listed entities (with effect from April 1, 2024) shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than 24 hours from the reporting of the event or information. However, if the listed entity confirms the reported

event or information, it shall also provide the current stage of such event or information. **[Insertion: Provisos to Regulation 30(11)]**

- In case an event or information is required to be disclosed by the listed entity in terms of the provisions of this regulation, pursuant to the receipt of a communication from any regulatory, statutory, enforcement or judicial authority, the listed entity shall disclose such communication, along with the event or information, unless disclosure of such communication is prohibited by such authority. **[Insertion: Regulation 30(13)].**

8. **Disclosure requirements for certain types of agreements binding listed entities:** All the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel and employees of a listed entity or of its holding, subsidiary and associate company, who are parties to the agreements specified in clause 5A of para A of part A of schedule III to these regulations, shall inform the listed entity about the agreement to which such a listed entity is not a party, within 2 working days of entering into such agreements or signing an agreement to enter into such agreements**. [Insertion: Regulation 30A]**

9. **Special rights to shareholders:** Any special right granted to the shareholders of a listed entity shall be subject to the approval by the shareholders in a general meeting by way of a special resolution once in every five years starting from the date of grant of such special right. **[Insertion: Regulation 31B]**

10. **Submission of Financial Results for newly listed entity:** The listed entity shall, subsequent to the listing, submit its financial results for the quarter or the financial year immediately succeeding the period for which the financial statements have been disclosed in the offer document for the initial public offer, in accordance with the timeline specified in regulation 33(3)(a) i.e. 45 days from end of each quarter or in regulation 33(3)(d) i.e.60 days from the end of the financial year or within 21 days from the date of its listing, whichever is later. **[Insertion: Regulation 33(3)(j)]**

11. **Annual Report Disclosures:** For the top 1000 thousand listed entities, the annual report shall contain a Business Responsibility and Sustainability Report (BRSR) on the environmental, social and governance disclosures, in the format as may be specified by SEBI. The assurance of the BRSR Core shall be obtained, with effect from and in the manner as may be specified by SEBI. The listed entities shall also make disclosures and obtain assurance as per the BRSR Core for their value chain, with effect from and in the manner as may be specified by SEBI.

    The remaining listed entities, including the entities which have listed their specified securities on the SME Exchange, may voluntarily disclose the BRSR or may voluntarily obtain the assurance of the Business Responsibility and Sustainability Report Core, for themselves or for their value chain, as the case may be. **[Regulation 34(2)(f)]**

For details: https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-second-amendment-regulations-2023_72609.html

(15) SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023 (Notification No. SEBI/LAD NRO/GN/2023/149 dated August 23, 2023)

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification, Chapter VIA ***"framework for voluntary delisting of non-convertible debt securities or non-convertible redeemable preference shares and obligations of the listed entity on such delisting"*** has been added and the following have been prescribed in this regard:

• **Applicability**

The provisions of this Chapter VIA will be applicable to voluntary delisting of all listed non-convertible debt securities or non-convertible redeemable preference shares from all or any of the stock exchanges where such non-convertible debt securities or nonconvertible redeemable preference shares are listed.

• **In-principle approval of the stock exchanges**

The listed entity shall make an application to the relevant stock exchange(s) for seeking in-principle approval for the proposed delisting of nonconvertible debt securities or non-convertible redeemable preference shares in the form specified by such stock exchange, not later than 15 working days from the date of passing of the board resolution to that effect or of receipt of any other statutory or regulatory approval, whichever is later.

The application seeking in-principle approval for the delisting of the non-convertible debt securities or nonconvertible redeemable preference shares shall be disposed of by the relevant stock exchange(s) within a period not exceeding fifteen working days from the date of receipt of such application that is complete in all respects.

• **Notice of delisting**

The listed entity shall send the notice of delisting to the holders of non-convertible debt securities or non-convertible redeemable preference shares, not later than 3 working days from the date of receipt of in-principle approval from the stock exchanges.

• **Approval from the holders and No-Objection Letter from the Debenture Trustee**

The listed entity shall obtain approval from all the holders of non-convertible debt securities or non-convertible redeemable preference shares within 15 working days from the date of the notice of delisting. The listed entity shall also obtain the No-Objection Letter from the debenture trustee in case of delisting of non-convertible debt securities.

• **Failure of delisting proposal.**

The delisting proposal shall be deemed to have failed under any of the following circumstances:

(a) non-receipt of in-principle approval from any of the stock exchanges; or

(b) non-receipt of requisite approval from the holders of non-convertible debt securities or nonconvertible redeemable preference shares; or

(c) non-receipt of No-Objection Letter from the debenture trustee in case of proposal for delisting of non-convertible debt securities. In case of failure of the delisting proposal, the listed entity shall intimate the same to the stock exchanges within 1 working day from the date of event of failure.

• **Final application to the stock exchange**

Within 5 working days from the date of obtaining the requisite approval from the holders of non-convertible debt securities or non-convertible redeemable preference shares, the listed entity shall make the final application for delisting to the stock exchange in the form specified by such stock exchange. The final application for delisting shall be disposed of by the stock exchange within 15 working days from the date of receipt of such application that is complete in all respects. Upon disposal of the final application for delisting by the stock exchange, the non-convertible debt securities or non-convertible redeemable preference shares of the listed entity, as the case may

be, shall be delisted from the stock exchange.
For details: https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-third-amendment-regulations-2023_75861.html

(16) SEBI (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/151 dated September 19, 2023)

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fourth Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification regulation 62A regarding "Listing of subsequent issuances of non-convertible debt securities" has been inserted and the same is provided hereunder:
62A(1) A listed entity, whose nonconvertible debt securities are listed shall list all non-convertible debt securities, proposed to be issued on or after January 1, 2024, on the stock exchange.
(2) A listed entity, whose subsequent issues of unlisted non-convertible debt securities made on or before December 31, 2023 are outstanding on the said date, may list such securities, on the stock exchange.
(3) A listed entity that proposes to list the non-convertible debt securities on the stock exchange on or after January 1, 2024, shall list all outstanding unlisted non-convertible debt securities previously issued on or after January 1, 2024, on the stock exchange within 3 months from the date of the listing of the nonconvertible debt securities proposed to be listed.
(4) A listed entity shall not be required to list the following securities:
i. Bonds issued under section 54EC of the Income Tax Act, 1961;
ii. Non-convertible debt securities issued pursuant to an agreement entered into between the listed entity of such securities and multilateral institutions;
iii. Non-convertible debt securities issued pursuant to an order of any court or Tribunal or regulatory requirement as stipulated by a financial sector regulator namely, the Board, Reserve Bank of India, Insurance Regulatory and Development Authority of India or the Pension Fund and Regulatory Development Authority.
(5) The securities issued by the listed entity under clauses (ii) and (iii) of sub-regulation (4) shall be locked in and held till maturity by the investors and shall be unencumbered.
(6) A listed entity proposing to issue securities under sub-regulation (4) shall disclose to the stock exchanges on which its non-convertible debt securities are listed, all the key terms of such securities, including embedded options, security offered, interest rates, charges, commissions, premium (by any name called), period of maturity and such other details as may be required to be disclosed by SEBI from time to time.
For details: https://www.sebi.gov.in/legal/regulations/sep-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fourth-amendment-regulations-2023_77193.html

(17) SEBI (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/155 dated October 09, 2023)

SEBI has notified the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2023 which shall come into force with effect from October 1, 2023.

Vide this notification, in the first proviso of regulation 30(11) under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015,-

(i) the symbols, words and numerals "with effect from October 1, 2023" have been omitted;
(ii) the symbols, words and numerals "with effect from April 1, 2024" have been substituted with the symbol and words "with effect from the date as may be specified by the Board".

Brief Analysis

As per Regulation 30(11) of the SEBI (LODR) Regulations, 2015, the listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange. However, the top 100 listed entities and thereafter the top 250 listed entities, **with effect from the date as may be specified by SEBI,** shall confirm, deny or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than 24 hours from the reporting of the event or information.

For details: https://www.sebi.gov.in/legal/regulations/oct-2023/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2023_77867.html

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LESSON 6

AN OVERVIEW OF SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

(1) SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2021 (August 13, 2021)

SEBI vide its notification dated August 13, 2021, has notified the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2021 which shall come into force from April 01, 2022.

Vide this notification regulation 30 has been omitted which provides the provisions for continual disclosures.

For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-second-amendment-regulations-2021_51886.html

(2) SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 (December 06, 2021)

SEBI vide its notification dated December 06, 2021, has notified the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2021 which shall come into force on the date of their publication in the Official Gazette.

The amendments *inter alia* provide that-

I. Through this amendment, regulation 5A which deals with delisting offer has been substituted:

The delisting offer *inter alia* provides that in the event the acquirer makes a public announcement of an open offer for acquiring shares or voting rights or control of a target company in terms of sub-regulation (1) of regulation 3, regulation 4 or regulation 5, the acquirer may seek the delisting of the target company by making a delisting offer in accordance with this regulation (Regulation 5A).

Provided that the acquirer shall have declared his intention to so delist the target company at the time of making such public announcement of an open offer as well as at the time of making the detailed public statement. A subsequent declaration of delisting for the purpose of the delisting offer proposed to be made shall not suffice.

Provided further that if the open offer is for an indirect acquisition that is not a deemed direct acquisition under sub-regulation (2) of regulation 5, the declaration of the intent to so delist shall be made initially only in the detailed public statement.

Brief Analysis:

Under the earlier framework, if an open offer is triggered, compliance with Takeover Regulations could take the incoming acquirer's holding to above 75% or perhaps even 90%, however, to ensure compliance with Securities Contract (Regulation) Rules, 1957 (SCRR) the acquirer would be forced to first bring his stake down to 75% as the SEBI (Delisting of Equity Shares) Regulations, 2021 would not let the acquirer even to attempt at delisting unless the holding is first brought down to 75%. Such directionally contradictory transactions in a sequence pose complexity in the takeover of listed companies especially where the acquirer desires to get the company delisted pursuant to his take over.

II. In Regulation 22(1) which deals with Completion of acquisition, the first proviso has been substituted with the following, namely,

"Provided that in case of an offer made under sub-regulation (1) of regulation 20 of these regulations, pursuant to a preferential allotment, the offer shall be completed within the period as provided under sub-regulation (1) of regulation 170 of the Securities and Exchange Board of India (Issue of Capital and Disclosure requirements) Regulations, 2018, subject to the non-obstante clause in sub-regulation (4) of regulation 7 of these regulations."

III. In Regulation 22(1) which deals with Completion of acquisition, the following proviso has been inserted, namely,

"Provided that in case of proportionate reduction of the shares or voting rights to be acquired in accordance with the relevant provision under sub-regulation (4) of regulation 7, the acquirer shall undertake the completion of the scaled down acquisition of shares or voting rights in the target company."

For details: https://www.sebi.gov.in/legal/regulations/dec-2021/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-third-amendment-regulations-2021_54464.html

(3) SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/98 dated November 09, 2022)

SEBI on November 09, 2022, notified the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. The following amendments have been made:

I. In regulation 8 pertaining to Offer Price,

a) in sub-regulation (2), after clause (d), the following provisos have been inserted, namely, -

"Provided that the price determined as per clause (d) shall not apply in the case of disinvestment of a public sector undertaking by the Central Government or a State Government, as the case may be:

Provided further that this proviso shall apply only in case of a change in control in the public sector undertaking."

b) in sub-regulation (3), in clause (e), after the words "frequently traded;" and before the word "and" the following provisos shall be inserted, namely, -

"Provided that the price determined as per clause (e) shall not apply in the case of disinvestment of a public sector undertaking by the Central Government or a State Government, as the case may be:

Provided further that this proviso shall apply only in case of a change in control in the public sector undertaking;"

II. In regulation 22 pertaining to Completion of acquisition,

a) in sub-regulation (2), after the word "cash" and before the words "of an amount" the words and symbol "or providing unconditional and irrevocable bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank, subject to the approval of the Reserve Bank of India," shall be inserted.

Brief Analysis:
Vide this notifications, the SEBI dispensed with requirement of calculating 60 days' volume-weighted average market price ("VWAMP") for determination of open offer price in case of disinvestment of Public Sector Undertaking (PSU) Companies ("Target company"), wherein it results in its change in control, either by way of direct acquisition or indirect acquisition.

For details: https://egazette.nic.in/WriteReadData/2022/240148.pdf

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LESSON 7
SEBI (BUY-BACK OF SECURITIES) REGULATIONS, 2018

(1) SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/120 dated February 07, 2023)

SEBI on February 07, 2023, notified the SEBI (Buy-Back of Securities) (Amendment) Regulations, 2023. Vide this notification the following amendments have been made:

- The definitions of Frequently traded shares and Secretarial auditor have been inserted:
    i. **Frequently traded shares:** Frequently traded shares shall have the same meaning as assigned to them under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.
    ii. **Secretarial auditor:** Secretarial auditor means an auditor as defined in the Secretarial Standards – I issued by the Institute of Company Secretaries of India.
- The definition of Odd Lots has been omitted.
- In regulation 4 pertaining to conditions and requirements for buy-back of shares and specified securities, the following amendments have been made:
    - The maximum limit of any buy-back, i.e. 25% or less of the aggregate of the paid-up capital and free reserves of the company, will be now based on the standalone or consolidated financial statements of the company, **whichever sets out a lower amount.** In respect of the number of equity shares bought back in any financial year, the maximum limit shall be 25% and be construed with respect to the total paid-up equity share capital of the company in that financial year.

      Also, in regulation 4(ii) sub-clause (a) and sub-clause (b), the words "both standalone and consolidated financial statements of the company", have been substituted by the words and symbol "the standalone or consolidated financial statements of the company, **whichever sets out a lower amount**" [Regulation 4(i) and 4(ii)]

    - The method of buy-back of shares or other specified securities through odd-lot holders has now been deleted. Further provided that the buyback from the open market through stock exchanges, based on the standalone or consolidated financial statements of the company, whichever sets out a lower amount, shall be less than:
        - 15% of the paid up capital and free reserves of the company till March 31, 2023;
        - 10% of the paid up capital and free reserves of the company till March 31, 2024;
        - 5% of the paid up capital and free reserves of the company till March 31, 2025.

  Buy-back from the open market through the stock exchange shall not be allowed with effect from April 1, 2025. [Regulation 4(iv)]

- **Under the heading Buy-Back through Tender Offer the following amendments have been made:**
    - The company shall, simultaneously with the public announcement, file a copy of the public announcement in electronic mode, with SEBI and the stock exchanges on which its shares or other specified securities are listed. Prior to this amendment, the requirement was to file a copy of the public announcement through a merchant banker. [Regulation 7(ii)]
    - The stock exchanges shall forthwith disseminate the public announcement to the public. [Insertion: Regulation 7(iii)]
    - A copy of the public announcement shall be placed on the respective websites of the stock

exchange(s), merchant banker and the company. [Insertion: Regulation 7(iv)]

- A company is required to file within 2 working days from the record date, a letter of offer with SEBI, containing disclosures as specified in Schedule III, through a merchant banker who is not an associate of the company and a certificate in the form specified by SEBI, issued by the merchant banker, who is not an associate of the company, certifying that the buy-back offer is in compliance of these regulations and that the letter of offer contains the information required under these regulations. [Regulation 8(i)(a) and 8(i)(aa)]
- In case of buy-back through tender offer, no draft letter of offer is required to be filed with the Board. [Insertion: Explanation to Regulation 8(i)]
- The public announcement shall disclose that the dispatch of the letter of offer, shall be through electronic mode in accordance with the provisions of the Companies Act, within two working days from the record date and that in the case of receipt of a request from any shareholder to receive a copy of the letter of offer in physical form, the same shall be provided. [Insertion: Explanation to Regulation 9(ii)]
- The date of the opening of the offer shall be not later than 4 working days from the record date. Prior to this amendment, the requirement was 5 working days from the date of dispatch of the letter of offer. [Regulation 9(v)]
- The offer for buy-back shall remain open for a period of 5 working days as prior to this amendment the requirement was 10 working days. [Regulation 9(vi)]
- The company shall complete the verification of offers received and make payment of consideration to those holder of securities whose offer has been accepted and return the remaining shares or other specified securities to the securities holders within five working days (earlier seven days) of the closure of the offer. [Regulation 10(ii)]
- The company shall extinguish and physically destroy the securities certificates so bought back in the presence of a registrar to an issue or the Merchant Banker and the secretarial auditor within fifteen days of the date of acceptance of the shares or other specified securities. [Regulation 11(i)]
- The company shall, furnish a certificate to SEBI certifying compliance of extinguishment of certificate duly certified and verified by the secretarial auditor of the company, the registrar and whenever there is no registrar, by the merchant banker and two directors of the company, one of whom shall be a managing director, where there is one. [Regulation 11(iii)]
- The provisions pertaining to buy-back through Odd-lot buy-back have been omitted. [Omitted: Regulation 12]

- **Under the heading Buy-Back from the Open Market the following amendments have been made:**
  - The company shall ensure that at least 75% of the amount earmarked for buy-back is utilized for buying-back shares or other specified securities. The minimum utilization of the amount earmarked for buy-back through stock exchange route has been increased from existing 50% to 75%. [Regulation 15(i)]
  - The company shall ensure that at a minimum of forty per cent of the amount earmarked for the buy-back, as specified in the resolution of the Board of Directors or the special resolution, as the case may be, is utilized within the initial half of the specified duration. [Insertion: Regulation 15(ii)]
  - For the purpose of buy-back through stock exchange, a separate window will be created by the concerned stock exchange and such window shall remain open for the period specified in these regulations. [Insertion: Explanation to Regulation 16(i)]
  - The company shall, simultaneously with the public announcement made, file a copy of the public announcement in electronic mode with SEBI and the stock exchanges on which its shares or other specified securities are listed. [Regulation 16(iv)(c)]
  - The stock exchanges shall forthwith disseminate the public announcement to the public.

[Insertion: Regulation 16(iv)(ca)]
- A copy of the public announcement shall be placed on the respective websites of the stock exchange(s), merchant banker and the company.] [Insertion: Regulation 16(iv)(cb)]
- The buy-back through stock exchanges shall be undertaken only in respect of frequently traded shares. [Insertion: Regulation 16(v)]
- The buy-back through stock exchanges shall be subject to the restrictions on placement of bids, price and volume as specified by SEBI. [Insertion: Regulation 16(vi)]

- **Under the heading Opening of the offer on stock exchange the following amendments have been made:**
  - The buy-back offer shall open not later than four working days from the record date and shall close-
    - within 6 months, if the buy-back offer is opened on or before March 31, 2023;
    - within 66 working days, if the buy-back offer is opened on or after April 1, 2023 and till March 31, 2024; and
    - within 22 working days, if the buy-back offer is opened on or after April 1, 2024 and till March 31, 2025.

  However, with effect from April 1, 2025, the option of open market buy-back through the stock exchange shall not be available to any company except in cases where the buyback offer has opened on or before Mach 31, 2025. [Regulation 17(ii)]

- **Under the heading Buy-back through book building the following amendments have been made:**
  - A company may buy-back its shares or other specified securities from its existing securities holders through the book building process. [Regulation 22]
  - Disclosures, filing requirements and timelines for public announcement [Insertion: Regulation 22A]:
    - The company, which has been authorised by a special resolution or a resolution passed by its Board of Directors, as the case may be, shall appoint a merchant banker and make a public announcement within two working days from the date of the approval of Board of Directors or of the shareholders, as the case may be.
    - The disclosures in the public announcement shall be made in accordance with Schedule II.
    - The book building process shall commence within seven working days from the date of the public announcement.
    - The public announcement shall contain the detailed methodology pertaining to intimation required to be made prior to the opening of the buy-back offer as specified in Schedule- VI.

For details: https://www.sebi.gov.in/legal/regulations/feb-2023/securities-and-exchange-board-of-india-buy-back-of-securities-amendment-regulations-2023_68110.html

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LESSON 9 and 10

SEBI (SHARE BASED EMPLOYEE BENEFITS AND SWEAT EQUITY) REGULATIONS, 2021

BACKGROUND

SEBI (Issue of Sweat Equity) Regulations, 2002 ("Sweat Equity Regulations") and SEBI (Share Based Employee Benefits) Regulations, 2014 ("SBEB Regulations") were notified on September 24, 2002 and October 28, 2014 respectively. The Sweat Equity regulations provided framework for issuance of Sweat Equity shares by listed companies and the SBEB Regulations provided framework to regulate Employee Stock Option Scheme, Employee Stock Purchase Scheme and other share based employee benefits.

Further, to improve ease of doing business from a regulatory perspective, it was observed that, both the SBEB Regulations and the Sweat Equity Regulations regulate employee benefits arising out of and relating with the equity shares of listed companies, thus the possibility of merging both such regulations might be explored.

Accordingly, the SEBI constituted the Expert Group to analyze the above proposals, and to provide its recommendations on the following:

- Revisiting the framework of SBEB regulations and suggesting policy change thereto.
- Revisiting the framework of SEBI Sweat equity regulations vis-à-vis the Companies Act, 2013 and suggesting policy changes thereto.
- Suggesting, whether it is advisable to combine both the regulations and if so, providing a draft of combined regulations.

The changes in the two regulations and their merger into a single regulation were approved by SEBI in the Board Meeting held on August 06, 2021. **Thereafter, the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (herein referred as "New Regulations") have been notified and become effective on August 13, 2021.**

Pursuant to this, the SEBI (Share Based Employee Benefits) Regulations, 2014 and SEBI (Issue of Sweat Equity) Regulations, 2002 (herein referred as "Erstwhile Regulations") stand repealed.

SHARE BASED EMPLOYEE BENEFITS (CHAPTER I, II and III)

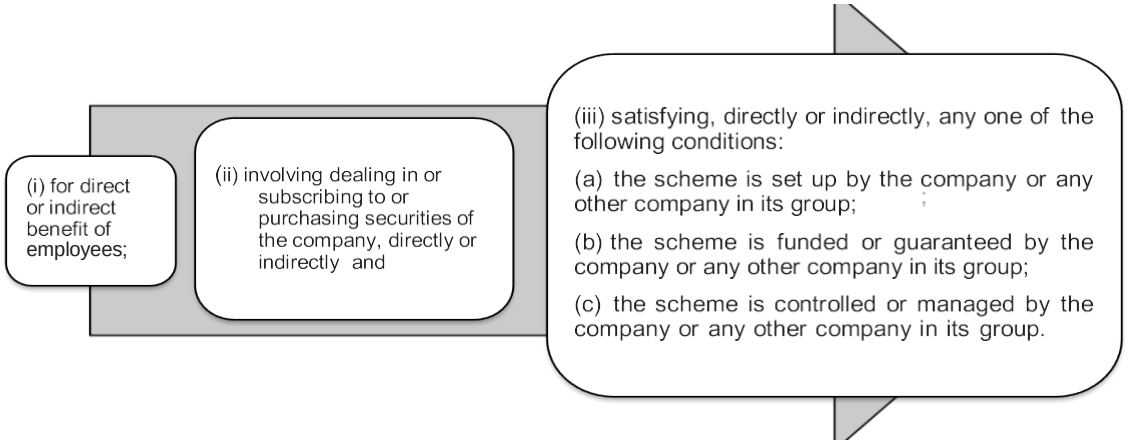
APPLICABILITY

The provisions of these regulations shall apply to the following: -

(i) employee stock option schemes;
(ii) employee stock purchase schemes;
(iii) stock appreciation rights schemes;
(iv) general employee benefits schemes;
(v) retirement benefit schemes; and
(vi) sweat equity shares.

COMPANIES COVERED

The provisions of these regulations shall apply to any company whose shares are listed on a recognised stock in India and who seeks to issue sweat equity shares or has a scheme:-



NON- APPLICABILITY

The provisions pertaining to preferential issue as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 shall not be applicable in case of a company issuing new shares in pursuance and compliance of these regulations except wherever specifically provided for in these regulations.

IMPORTANT DEFINITIONS

- **"Employee"**, except in relation to issue of sweat equity shares, means, —
  - (i) an employee as designated by the company, who is exclusively working in India or outside India; or
  - (ii) a director of the company, whether a whole time director or not, including a nonexecutive director who is not a promoter or member of the promoter group, but excluding an independent director; or
  - (iii) an employee as defined in sub-clauses (i) or (ii), of a group company including subsidiary or its associate company, in India or outside India, or of a holding company of the company, but does not include—

  (a) an employee who is a promoter or a person belonging to the promoter group; or

  (b) a director who, either himself or through his relative or through any body corporate, directly or indirectly, holds more than ten per cent of the outstanding equity shares of the company.

- **"Scheme"** means a scheme of a company proposing to provide share based benefits to its employees under Chapters III of these regulations, which may be implemented and administered directly by such company or through a trust, in accordance with these regulations.

- "**Secretarial auditor"** means a company secretary in practice appointed by a company under rule 8 of the Companies (Meetings of Board and its Powers) Rules, 2014 to conduct secretarial audit pursuant to regulation 24A of the Securities and Exchange Board of India (Listing Obligations and

Disclosure Requirements) Regulations, 2015.

- "**Employee stock option scheme or ESOS**" means a scheme under which a company grants employee stock options to employees directly or through a trust.

- "**Employee stock purchase scheme or ESPS**" means a scheme under which a company offers shares to employees, as part of public issue or otherwise, or through a trust where the trust may undertake secondary acquisition for the purposes of the scheme.

- "**General employee benefits scheme or GEBS"** means any scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for the purpose of employee welfare including healthcare benefits, hospital care or benefits, or benefits in the event of sickness, accident, disability, death or scholarship funds, or such other benefit as specified by such company.

- "**Retirement benefit scheme or RBS"** means a scheme of a company framed in accordance with these regulations, dealing in shares of the company or the shares of its listed holding company, for providing retirement benefits to the employees subject to compliance with existing rules and regulations as applicable under laws relevant to retirement benefits in India.

- "**Sweat equity shares**" means sweat equity shares as defined in sub-section (88) of section 2 of the Companies Act, 2013 (18 of 2013).

- "**Appreciation**" means the difference between the market price of the share of a company on the date of exercise of SAR or the date of vesting of SAR, as the case may be, and the SAR price.

- "**Exercise**" means making of an application by an employee to the company or to the trust for issue of shares or appreciation in form of cash, as the case may be, against vested options or vested SARs in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as the case may be.

- "**Exercise period**" means the time period after vesting within which an employee can exercise his/her right to apply for shares against the vested option or appreciation against vested SAR in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as the case may be.

- **"Exercise price"** means the price, if any, payable by an employee for exercising the option or SAR granted to such an employee in pursuance of the schemes covered under Part A or Part C of Chapter III of these regulations, as the case may be.

- **"Grant"** means the process by which the company issues options, SARs, shares or any other benefits under any of the schemes.

- **"Grant date"** means the date on which the compensation committee approves the grant.

Explanation,—For accounting purposes, the grant date will be determined in accordance with applicable accounting standards.

- **"Option"** means the option given to an employee which gives such an employee a right to purchase or subscribe at a future date, the shares offered by the company, directly or indirectly, at a pre-determined price.

- "**Option grantee**" means an employee having a right but not an obligation to exercise an option in pursuance of an ESOS.

- "**Relevant date**" means,-

  (i) in the case of grant, the date of the meeting of the compensation committee on which the grant is made; or
  (ii) in the case of exercise, the date on which the notice of exercise is given to the company or to the trust by the employee.

- "**Stock appreciation right or SAR"** means a right given to a SAR grantee entitling him to receive appreciation for a specified number of shares of the company where the settlement of such appreciation may be made by way of cash payment or shares of the company.

  Explanation 1,—A SAR settled by way of shares of the company shall be referred to as equity settled SAR.

  Explanation 2,—For the purpose of these regulations, any reference to stock appreciation right or SAR shall mean equity settled SARs and does not include any scheme which does not, directly or indirectly, involve dealing in or subscribing to or purchasing, securities of the company.

- "**Stock appreciation right scheme or SAR scheme**" means a scheme under which a company grants SAR to employees.

- **"SAR grantee**" means an employee to whom a SAR is granted.

- "**SAR price**" means the base price defined on the grant date of SAR for the purpose of computing appreciation.

- "**Trust**" means a trust established under the provisions of the Indian Trusts Act, 1882 (2 of 1882) including any statutory modification or re-enactment thereof, for implementing any of the schemes covered by these regulations.

- "**Vesting**" means the process by which the employee becomes entitled to receive the benefit of a grant made to him/her under any of the schemes.

- "**Vesting period**" means the period during which the vesting of option, SAR or a benefit granted under any of the schemes takes place.

IMPLEMENTATION OF SCHEMES THROUGH TRUST

1. A company may implement a scheme(s) either directly or by setting up an irrevocable trust(s). If the scheme is to be implemented through a trust, the same has to be decided upfront at the time of taking approval of the shareholders for setting up the scheme(s).

   However, if prevailing circumstances so warrant, the company may change the mode of implementation of the scheme subject to the condition that a fresh approval of the shareholders by a special resolution is obtained prior to implementing such a change and that such a change is not prejudicial to the interests of the employees.

   Further it is provided that if the scheme(s) involves secondary acquisition or gift or both, then it shall be mandatory for the company to implement such scheme(s) through a trust(s).

2. A company may implement several schemes as permitted under these regulations through a single trust.

   However, such single trust shall keep and maintain-

   - proper books of account;
   - records and documents;

   for each such scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of each scheme.

3. The trust deed, under which the trust is formed, shall contain provisions as specified in Part A of Schedule – I of these regulations and such trust deed and any modifications thereto shall be mandatorily filed with the recognised stock exchange(s) in India where the shares of the company are listed.

4. Any person can be appointed as a trustee of the trust, except in cases where such person—
   i. is a director, key managerial personnel or promoter of the company or its group company including its holding, subsidiary or associate company or any relative of such director, key managerial personnel or promoter; or
   ii. beneficially holds ten percent or more of the paid-up share capital or the voting rights of the company.

   However, where individual(s) or "one person company" as defined under the Companies Act, 2013 is appointed as trustee(s), there shall be a minimum of two such trustees, and in case a corporate entity is appointed as a trustee, then it may be the sole trustee.
5. The trustees of a trust, which is governed under these regulations, shall not vote in respect of the shares held by such trust, so as to avoid any misuse arising out of exercising such voting rights.

6. The trustee should ensure that the requisite approval from the shareholders has been obtained by the company in order to enable the trust to implement the scheme(s) and undertake secondary acquisition for the purposes of the scheme(s).

7. The trust shall not deal in derivatives and shall undertake only delivery-based transactions for the purposes of secondary acquisition as permitted by these regulations.

8. Subject to the requirements of the Companies Act, 2013 read with Companies (Share Capital and Debenture) Rules, 2014, as amended from time to time, as may be applicable, the company may lend monies to the trust on appropriate terms and conditions to acquire the shares either through new issue or secondary acquisition, for the purpose of implementation of the scheme(s).

9. For the purpose of disclosures to the recognised stock exchange, the shareholding of the trust shall be shown as "non-promoter and non-public" shareholding.

   Explanation,—The shares held by the trust shall not form part of the public shareholding which needs to be maintained at a minimum of twenty five per cent as prescribed under the Securities Contracts (Regulation) Rules, 1957.

10. Secondary acquisition in a financial year by the trust shall not exceed two per cent of the paid up equity capital of the company as at the end of the previous financial year.

11. The total number of shares under secondary acquisition held by the trust shall at no point of time exceed the below mentioned limits as a percentage of the paid up equity capital of the company as at the end of the financial year immediately prior to the year in which the shareholders' approvalis obtained for such secondary acquisition:

Sl. No.	Particulars	Limit
A	For the schemes enumerated in Part A, Part B or Part C of Chapter III of these regulations	5%
B	For the schemes enumerated in Part D, or Part E of Chapter III of these regulations	2%
C	For all the schemes in aggregate	5%

12. The unappropriated inventory of shares which are not backed by grants, acquired through secondary acquisition by the trust under Part A, Part B or Part C of Chapter III of these regulations, shall be appropriated within a reasonable period which shall not extend beyond the end of the subsequent financial year, or the second subsequent financial year subject to approval of the compensation committee/nomination and remuneration committee for such extension to the second subsequent financial year.

13. The trust shall be required to hold the shares acquired through secondary acquisition for a minimum period of six months except where they are required to be transferred in the circumstances enumerated in these regulations, whether off-market or on the platform of recognised stock exchange.

14. The trust shall be permitted to undertake off-market transfer of shares only under the following circumstances: -
    (a) transfer to the employees pursuant to scheme(s);
    (b) while participating in an open offer under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or while participating in a

buy-back, delisting or any other exit offered by the company generally to its shareholders.

15. The trust shall not become a mechanism for trading in shares and hence shall not sell the shares in secondary market except under the following circumstances:

(a) to enable the employee to fund the payment of the exercise price, the amount necessary to meet his/her tax obligations and other related expenses pursuant to exercise of options granted under the ESOS;
(b) on vesting or exercise, as the case may be, of SAR under the scheme covered by Part C of Chapter III of these regulations;
(c) in case of emergency for implementing the schemes covered under Part D and Part E of Chapter III of these regulations, and for this purpose –

(i) the trustee(s) shall record the reasons for such sale; and

(ii) money so realised on sale of shares shall be utilised within a definite time period as stipulated under the scheme or trust deed.

(d) participation in buy-back or open offers or delisting offers or any other exit offered by the company generally to its shareholders, if required;
(e) for repaying the loan, if the unappropriated inventory of shares held by the trust is not appropriated within the timeline as provided above;
(f) winding up of the scheme(s); and

(g) based on approval granted by the Board to an applicant, for the reasons recorded in writing in respect of the schemes covered by Part A or Part B or Part C of Chapter III of these regulations, upon payment of a non-refundable fee of rupees one lakh to the Board along with the application by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by the Reserve Bank of India.

16. The trust shall be required to make disclosures and comply with the other requirements applicable to insiders or promoters under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 or any modification or re-enactment thereto.

ELIGIBILITY CRITERIA

An employee shall be eligible to participate in the schemes of the company as determined by the compensation committee.

COMPENSATION COMMITTEE

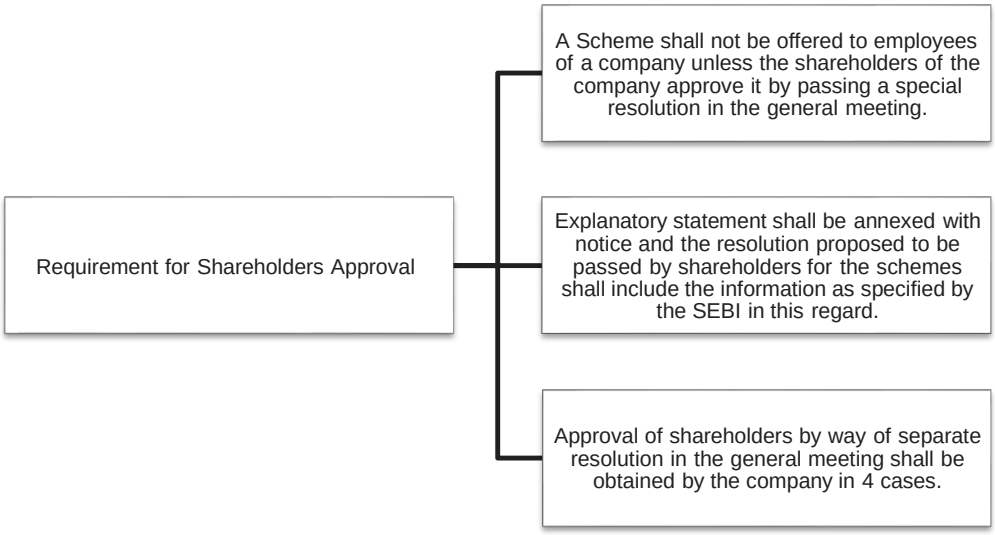
(1) A company shall constitute a compensation committee for administration and superintendence of the schemes. Where the scheme is being implemented through a trust the compensation committee shall delegate the administration of such scheme(s) to the trust.

(2) The compensation committee shall be a committee of such members of the Board of Directors of the company as provided under regulation 19 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, as amended from time to time. Provided that a company may also opt to designate its nomination and remuneration committee as the compensation committee for the purposes of these regulations.

(3) The compensation committee shall, inter alia, formulate the detailed terms and conditions of the schemes which shall include the provisions as specified in Part B of Schedule – I of these regulations.

(4) The compensation committee shall frame suitable policies and procedures to ensure that there is no violation of securities laws including the SEBI (Prohibition of Insider Trading) Regulations, 2015 and the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003, as amended from time to time, by the trust, the company and its employees, as may be applicable.

SHAREHOLDERS APPROVAL



Approval of shareholders by way of separate resolution in the general meeting shall be obtained by the company in case of:

a) Secondary acquisition for implementation of the schemes.

Such approval shall mention the percentage of secondary acquisition (subject to limits specified under these regulations) that could be undertaken;

b) Secondary acquisition by the trust in case the share capital expands due to capital expansion undertaken by the company including preferential allotment of shares or qualified institutions placement, to maintain the five percent cap as prescribed in these regulations of such increased capital of the company;

c) Grant of option, SAR, shares or other benefits, as the case may be, to employees of subsidiary or holding company;

d) Grant of option, SAR, shares or benefits, as the case may be, to identified employees, during any one year, equal to or exceeding one per cent. of the issued capital (excluding outstanding warrants and conversions) of the company at the time of grant of option, SAR, shares or incentive, as the case may be.

VARIATION OF TERMS OF THE SCHEMES.

(1) A company may by special resolution of its shareholders vary the terms of the schemes offered pursuant to an earlier resolution of the general body but not yet exercised by the employees, if such variation is not prejudicial to the interests of the employees

(2) A company shall be entitled to vary the terms of the schemes to meet any regulatory requirement without seeking shareholders' approval by special resolution.

(3) The provisions of regulation 6 (Shareholders' Approval) of these regulations shall apply to such variation of terms as they apply to the original grant of option, SAR, shares or other benefits, as the case may be.

(4) The notice for passing a special resolution for variation of terms of the schemes shall disclose full details of the variation, the rationale therefor, and the details of the employees who are beneficiaries of such variation.

(5) A company may reprice the options, SAR or shares, as the case may be, which are not exercised, whether or not they have been vested, if the schemes were rendered unattractive due to fall in the price of the shares in the stock market.
Provided that the company ensures that such repricing is not detrimental to the interests of the employees and approval of the shareholders by a special resolution has been obtained for such repricing.

WINDING UP OF THE SCHEMES

In case of winding up of the schemes being implemented by a company, the excess monies or shares remaining with the trust after meeting all the obligations, if any, shall be utilised for repayment of loan or by way of distribution to employees or subject to approval of the shareholders, be transferred to another scheme under these regulations, as recommended by the compensation committee.

NON-TRANSFERABILITY

- Option, SAR or any other benefit granted to an employee under the regulations shall not be transferable to any person. No person, other than the employee to whom the option, SAR or other benefit is granted, shall be entitled to the benefit arising out of such option, SAR or other benefit.

- The option, SAR, or any other benefit granted to the employee shall not be pledged, hypothecated, mortgaged or otherwise alienated in any other manner.

- In the event of death of the employee while in employment, all the options, SAR or any other benefit granted under a scheme to him/her till his/her death shall vest, with effect from the date of his/her death, in the legal heirs or nominees of the deceased employee, as the case may be.

- In case the employee suffers a permanent incapacity while in employment, all the options, SAR or any other benefit granted to him/her under a scheme as on the date of permanent incapacitation, shall vest in him/her on that day.

- In the event of resignation or termination of an employee, all the options, SAR or any other benefit which are granted and yet not vested as on that day, shall expire.

LISTING

In case a new issue of shares is made under any scheme, shares so issued shall be listed immediately on all recognised stock exchange(s) where the existing shares are listed, subject to the following conditions:

(a) The scheme is in compliance with these regulations;

(b) A statement, as specified in Part D of Schedule – I of these regulations, is filed and the company obtains an in-principle approval from the recognised stock exchange(s);

(c) As and when an exercise is made, the company notifies the concerned recognised stock exchange(s) as per the statement as specified in Part E of Schedule – I of these regulations.

CERTIFICATE FROM AUDITORS

In the case of every company which has passed a resolution for the scheme(s) under these regulations, the Board of Directors shall at each annual general meeting place before the shareholders a certificate from the **secretarial auditors** of the company that the scheme(s) has been implemented in accordance with these regulations and in accordance with the resolution of the company in the general meeting.

ADMINISTRATION OF SPECIFIC SCHEMES

Employee Stock Option Scheme (ESOS)

Administration and Implementation	• An ESOS shall contain the details of the manner in which the scheme will be implemented and operated. ESOS shall not be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective option grantees.
Pricing	• The company granting options to its employees pursuant to an ESOS shall be free to determine the exercise price subject to conforming to the accounting policies specified in these regulation.
Vesting Period	• There shall be a minimum vesting period of one year in case of ESOS. • The company may specify the lock-in period for the shares issued pursuant to exercise of option.
Rights of the option holder	• An employee shall not have right to receive any dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of option granted to him/her, till shares are issued upon exercise of option.
Consequence of failure to exercise option	• The amount paid by the employee, if any, at the time of grant, vesting or exercise of option, - • may be forfeited by the company if the option is not exercised by the employee within the exercise period; or • may be refunded to the employee if the options are not vested due to non-fulfilment of conditions relating to vesting of option as per the ESOS.

Note :

In regard to Vesting period, -

- where options are granted by a company under an ESOS in lieu of options held by an employee under an ESOS in another company which has merged, demerged, arranged or amalgamated with the first mentioned company, the period during which the options granted by the transferor company were held by such employee shall be adjusted against the minimum vesting period.
- In the event of death or permanent incapacity of an employee, the minimum vesting period of one year shall not be applicable and in such instances, the options shall vest in terms of sub-

regulation (4) of regulation 9 of these regulations, on the date of the death or permanent incapacity.

Employee Stock Purchase Scheme (ESPS)

Administration and Implementation	Pricing and Lock-In
• An ESPS scheme shall contain the details of the manner in which the scheme will be implemented and operated.	• A company may determine the price of shares to be issued under an ESPS, provided they conform to the provisions of accounting policies under these regulation. • Shares issued under an ESPS shall be locked-in for a minimum period of one year from the date of allotment. • If ESPS is part of a public issue and the shares are issued to employees at the same price as in the public issue, the shares issued to employees pursuant to ESPS shall not be subject to lock-in.

Note :

In regard to pricing and Lock-in-

- where shares are allotted by a company under an ESPS in lieu of shares acquired by the employee under an ESPS in another company which has merged or amalgamated with the first mentioned company, the lock-in period already undergone in respect of shares of the transferor company shall be adjusted against the lock-in period.
- In the event of death or permanent incapacity of an employee, the requirement of lock-in shall not be applicable from the date of death or permanent incapacity.

Stock Appreciation Rights Scheme (SAR Scheme)

Administration and Implementation

- A SAR scheme shall contain the details of the manner in which the scheme will be implemented and operated;
- A company shall have the freedom to implement cash settled or equity settled SAR scheme;
- No SAR shall be offered unless the disclosures, as specified by SEBI in this regard, are made by the company to the prospective SAR grantees.

Vesting

- There shall be a minimum vesting period of one year in case of SAR scheme.

Rights of the SAR holder

- The employee shall not have right to receive dividend or to vote or in any manner enjoy the benefits of a shareholder in respect of SAR granted to him/her.

Note :

- In Point No. 1, in case of equity settled SAR scheme, if the settlement results in fractional shares, then the consideration for fractional shares should be settled in cash.

- In Point No. 2-
  - in a case where SAR is granted by a company under a SAR scheme in lieu of SAR held by the employee under a SAR scheme in another company which has merged or amalgamated with the first mentioned company, the period during which the SAR granted by the transferor company were held by the employee shall be adjusted against the minimum vesting period.
  - In the event of death or permanent incapacity, the minimum vesting period of one year shall not be applicable and in such instances, the options shall vest on the date of death or permanent incapacity.

General Employee Benefits Scheme (GEBS)

Administration and Implementation

(1) GEBS shall contain the details of the scheme and the manner in which the scheme shall be implemented and operated.
(2) The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of GEBS.
(3) The secretarial auditor of the company shall certify the above mentioned point (2) compliance at the time of adoption of such balance sheet by the company.

Retirement Benefit Scheme (RBS)

Administration and Implementation

(1) Retirement benefit scheme may be implemented by a company subject to compliance with these regulations and provisions of any other law in force in relation to retirement benefits.

(2) The retirement benefit scheme shall contain the details of the benefits under the scheme and the manner in which the scheme shall be implemented and operated.

(3) The shares of the company or shares of its listed holding company shall not exceed ten per cent of the book value or market value or fair value of the total assets of the scheme, whichever is lower, as appearing in its latest balance sheet (whether audited or limited reviewed) for the purposes of RBS.

(4) The secretarial auditor of the company shall certify compliance with above mentioned point (3) at the time of adoption of such balance sheet by the company.

ISSUE OF SWEAT EQUITY BY A LISTED COMPANY (CHAPTER IV)

Applicability

Nothing contained in this chapter shall apply to an unlisted company:

Provided that an unlisted company coming out with initial public offer and seeking listing of its

securities on the recognized stock exchange, pursuant to issue of sweat equity shares, shall comply with the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirement) Regulations, 2018.

Definition of employee in relation to issue of sweat equity shares

The term 'employee' means,

(i) an employee of the company working in India or abroad; or

(ii) a director of the company whether a whole time director or not.

Issue of sweat equity shares to employees

A company whose equity shares are listed on a recognised stock exchange may issue sweat equity shares in accordance with section 54 of the Companies Act, 2013 and these regulations to its employees for their providing know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Maximum quantum of sweat equity shares

A company shall not issue sweat equity shares for more than fifteen percent of the existing paid up equity share capital in a year. However, the issuance of sweat equity shares in the company shall not exceed twenty five percent of the paid up equity share capital of the company at any time.

Further, a company listed on Innovators Growth Platform shall be permitted to issue not more than fifteen percent of the paid up equity share capital in a financial year subject to overall limit not exceeding fifty percent of the paid up equity share capital of the company, up to ten years from the date of its incorporation or registration.

Special Resolution

(1) For the purposes of passing a special resolution under clause (a) of sub-section (1) of section 54 of the Companies Act, 2013), the explanatory statement to be annexed to the notice for the general meeting pursuant to section 102 of the Companies Act, 2013 shall contain disclosures asspecified in the Schedule – II of these regulations.

(2) The issue of sweat equity shares to employees who belong to promoter or promoter group shall be approved by way of a resolution passed by a simple majority of the shareholders in general meeting.

However, for passing such a resolution, voting through postal ballot and/or e-voting as specified under Companies (Management and Administration) Rules, 2014 shall also be adopted.

Further, provided that the promoters/promoter group shall not participate in such resolution.

(3) Each issue of sweat equity shares shall be voted by a separate resolution.

(4) The resolution for issue of sweat equity shares shall be valid for a period of not more than twelve months from the date of passing of the resolution.

Pricing of sweat equity shares

The price of sweat equity shares shall be determined in accordance with the pricing requirements stipulated for a preferential issue to a person other than a qualified institutional buyer under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Valuation

(1) The valuation of the know-how or intellectual property rights or value addition shall be carried out by a merchant banker.

(2) The merchant banker may consult such experts and valuers, as it may deem fit, having regard to the nature of the industry and the nature of the valuation of know-how or intellectual property rights or value addition.

(3) The merchant banker shall obtain a certificate from an independent chartered accountant certifying that the valuation of the know-how or intellectual property rights or value addition is in accordance with the relevant accounting standards.

Accounting Treatment

Where the sweat equity shares are issued for a non-cash consideration, such non-cash consideration shall be treated in the following manner in the books of account of the company:-

(a) where the non-cash consideration takes the form of a depreciable or amortizable asset, it shall be carried to the balance sheet of the company in accordance with the relevant accounting standards; or

(b) where clause (a) is not applicable, it shall be expensed as provided in the relevant accounting standards.

Placing of auditor's certificate before annual general meeting

In the general meeting subsequent to the issue of sweat equity shares, the Board of Directors shall place before the shareholders, a certificate from the secretarial auditor of the company that the issue of sweat equity shares has been made in accordance with these regulations and in accordance with the resolution passed by the company authorizing the issue of such sweat equity shares.

Ceiling on managerial remuneration

The amount of sweat equity shares issued shall be treated as part of managerial remuneration for the purpose of sections 196, 197 and other applicable provisions of the Companies Act, 2013, if the following conditions are fulfilled:

(i) the sweat equity shares are issued to any director or manager; and

(ii) the sweat equity shares are issued for non-cash consideration, which does not take the form of an asset which can be carried to the balance sheet of the company in accordance with the relevant accounting standards.

Lock-in of sweat equity shares

(1) The sweat equity shares shall be locked in for such period of time as specified in relation to a preferential issue under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, as amended from time to time.

(2) The provisions of the Securities and Exchange Board of India (Issue of Capital and Disclosures Requirements) Regulations, 2018 in respect of public issue in terms of lock-in and computation of promoters' contribution shall apply if a company makes a public issue after it has issued sweat equity shares.

Listing

The sweat equity shares issued by a listed company shall be eligible for listing subject to their issuance being in accordance with these regulations.

Applicability of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Any acquisition of sweat equity shares shall be subject to the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

General Obligations

The company shall ensure that –

(a) the explanatory statement to the notice for general meeting contains the disclosures specified under clause (b) of sub-section (1) of section 54 of the Companies Act, 2013 and sub-regulation (1) of regulation 32 of these regulations.

(b) the secretarial auditor's certificate required under regulation 36 is placed in the general meeting of the shareholders.

(c) the company, within seven days of the issue of sweat equity shares, sends a statement to the recognised stock exchange, disclosing:

(i) number of sweat equity shares issued;

(ii) price at which the sweat equity shares are issued;

(iii) total amount received towards sweat equity shares;

(iv) details of the persons to whom sweat equity shares have been issued; and

(v) the consequent changes in the capital structure and the shareholding pattern before and after the issue of sweat equity shares.

For details: ***https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-share-based-employee-benefits-and-sweat-equity-regulations-2021_51889.html***

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LESSON 11

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

(1) SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2021 (August 05, 2021)

SEBI vide its notification dated August 05, 2021, amends the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015, which shall come into force on the date of their publication in the Official Gazette.

Regulation 7D - Informant Reward

The amendment has been made in regulation 7D which provides that SEBI may at its sole discretion, declare an Informant eligible for Reward provided that the amount of Reward shall be ten percent of the monetary sanctions and shall not exceed Rupees 10 crores (earlier Rs. 1 crores) or such higher amount as SEBI may specify from time to time.

Further, a new sub-regulation 7D (1A) has been inserted which provides that if the total reward payable is less than or equal to Rupees One Crore, SEBI may grant the said reward upon the issuance of the final order by SEBI.

Provided that in case the total reward payable is more than Rupees One Crore, SEBI may grant an interim reward not exceeding Rupees One Crore upon the issuance of the final order by SEBI and the remaining reward amount shall be paid only upon collection or recovery of the monetary sanctions amounting to at least twice the balance reward amount payable.

For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-prohibition-of-insider-trading-second-amendment-regulations-2021_51932.html

(2) Trading Window closure period under Clause 4 of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") – Framework for restricting trading by Designated Persons ("DPs") by freezing PAN at security level

(Circular No. SEBI/HO/ISD/ISD-SEC4/P/CIR/2022/107 dated August 05, 2022)

Background:

Clause 4 (1) of Schedule B read with Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations), inter-alia, states that "Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information ("UPSI"). Such closure shall be imposed in relation to such securities to which such UPSI relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed".

One of the instances of closure of trading window is provided in Clause 4 (2) of Schedule B read with Regulation 9 of PIT Regulations, which inter-alia states that "trading restriction period shall

be made applicable from the end of every quarter till 48 hours after the declaration of financial results ".

Brief of the Circular:

In order to rationalize the compliance requirement under Clause 4 of Schedule B read with Regulation 9 of PIT Regulations, improve ease of doing business and prevent inadvertent non-compliances of provisions of PIT Regulations by DPs, it has been provided that Stock Exchanges and Depositories shall develop a system to restrict trading by DPs of listed company during trading window closure period.

To begin with, the provisions of this circular shall be applicable to declaration of financial results of the listed company that is or was part of benchmark indices i.e. NIFTY 50 and SENSEX from the date of implementation of this circular. Further, to begin with, the restriction on trading shall be for on-market transactions, off-market transfers and creation of pledge in equity shares and equity derivatives contracts (i.e. Futures and Options) of such listed companies.

The procedure for implementation of the system is enclosed at Annexure- A. The flow chart of the same is enclosed at Annexure - B. This circular shall come into force with effect from the quarter ending September 30, 2022.

For details: https://www.sebi.gov.in/legal/circulars/aug-2022/trading-window-closure-period-under-clause-4-of-schedule-b-read-with-regulation-9-of-sebi-prohibition-of-insider-trading-regulations-2015-framework-for-restricting-trading-by-designated-persons-b-_61781.html

(3) SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/108 dated 24th November, 2022)

SEBI has notified the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2022 to further amend the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015. They shall come into force on such date as the Board may by notification in the Official Gazette, appoint.

The following has been amended namely: -

1. Chapter II A has been inserted which states "Restrictions on Communication in Relation to and Trading by Insiders in the Units of Mutual Funds" and shall be applicable to the following namely-

Applicability of the Chapter II A:

- The provisions of this Chapter shall apply only in relation to the units of a mutual fund.
- All the provisions of Chapters IIIA and V shall also apply in relation to the units of a mutual fund.

Communication or procurement of unpublished price sensitive information and maintenance of a structured digital data base:

- No insider shall communicate, provide, or allow access to any unpublished price sensitive information to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. [Regulation 5C(1)]

- No person shall procure from or cause the communication by any insider of unpublished price sensitive information, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. [Regulation 5C(2)]
- The board of directors of an asset management company with the approval of the Trustees shall make a policy for determination of "legitimate purposes". [Regulation 5C(3)]
- Any person in receipt of unpublished price sensitive information pursuant to a "legitimate purpose" shall be considered an "insider" for purposes of this chapter and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations. [Regulation 5C(4)]
- The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained containing the nature of unpublished price sensitive information and the names of suchpersons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controlsand checks such as time stamping and audit trails to ensure non-tampering of the database. [Regulation 5C(6)]

Trading when in possession of unpublished price sensitive information:

No insider shall trade in the units of a scheme of a mutual fund, when in possession of unpublished price sensitive information, which may have a material impact on the net asset value of a scheme or may have a material impact on the interest of the unit holders of the scheme. [Regulation 5D (1)]

Disclosures by certain persons:

- An asset management company shall, on such date as may be specified by the Board and on a quarterly basis thereafter, disclose the details of holdings in the units of its mutual fund schemes, on an aggregated basis, held by the Designated Persons of asset management company, trustees and their immediate relatives on the platform of Stock Exchanges or in any other manner as may be specified by the Board. [Regulation 5E (1)]
- Details of all the transactions in the units of its own mutual funds, above such thresholds as may be specified by the Board, executed by the Designated Persons of asset management company, trustees and their immediate relatives shall be reported by the concerned person to the Compliance Officer of asset management company within two business days from the date of transaction. [Regulation 5E (2)]

Code of Conduct:

- The board of directors of every asset management company shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report dealings in mutual fund units by the Designated Persons and immediate relatives of the Designated Persons towards achieving compliance with these regulations and , adopting the minimum standards set out in Schedule B1 to these regulations, without diluting the provisions of these regulations in any manner. [Regulation 5F (1)]
- The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information relating to a mutual fund scheme or its units in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their Designated Persons and immediate relative of Designated Persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule

C to these regulations, without diluting the provisions of these regulations in any manner. [Regulation 5F (2)]

Designated Person:
The board of directors of the asset management company and trustees shall in consultation with the compliance officer specify the Designated Persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:

i. Head of the asset management company (designated as Chief Executive Officer/Managing Director/President or by any other name),
ii. Directors of the asset management company or the trustee company,
iii. Chief Investment Officer, Chief Risk Officer, Chief Operation Officer, Chief Information Security Officer, Fund Managers, Dealers, Research Analysts, all employees in the Fund Operations Department, Compliance Officer and Heads of all divisions and/or departments or any other employee as designated by the asset management company and/or trustees.

2. Schedule B1 which states "Minimum Standards of Code of Conduct for Mutual Funds to regulate, monitor and report trading by the Designated Persons in the units of own mutual fund schemes" has been inserted after Schedule B.
3. In Schedule C which states "Minimum Standards for Code of Conduct for Intermediaries and Fiduciaries to Regulate, Monitor and Reports Trading by Designated Persons", Clause 11A has been inserted namely: -

"In case of dealing in the units of mutual funds, the code of conduct shall specify that in case it is observed by the intermediary or fiduciary required to formulate a code of conduct under sub-regulation (2) of regulation 5F, that there has been a violation of these regulations, such intermediary or fiduciary shall promptly inform the same to the stock exchange(s) in such form and such manner as may be specified by the Board from time to time"

For details: https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-prohibition-of-insider-trading-amendment-regulations-2022_65437.html

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LESSON 12
MUTUAL FUNDS

(1) SEBI (Mutual Funds) (Second Amendment) Regulations, 2021 (August 05, 2021)

SEBI vide its notification dated August 05, 2021, amends the provisions of SEBI (Mutual Funds) Regulations, 1996 which shall come into force on the 270th day from the date of their publication in the Official Gazette.

The amendment, inter alia, has inserted a new sub-regulation 25(16A) under Asset management company and its obligations which provides that the asset management company shall invest such amounts in such schemes of the mutual fund, based on the risks associated with the schemes, as may be specified by the Board from time to time.

For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-mutual-funds-second-amendment-regulations-2021_51695.html

(2) Disclosure of risk-o-meter of scheme, benchmark and portfolio details to the investors

(Circular No. SEBI/HO/IMD/IMD-II DOF3/P/CIR/2021/621 dated August 31, 2021)

SEBI has clarified that Asset Management Companies (AMCs) shall disclose risk-ometer of the scheme and benchmark of the scheme in all its promotional material. AMCs shall provide a feature wherein a link is provided to investors to their registered email to enable the investor to directly view/download only the portfolio of schemes subscribed by the said investor. Further, AMCs shall enter into arrangements with their selected Index providers to provide the risk-o-meter for their benchmarks to the AMCs latest by the fifth day subsequent to the end of the month. The provisions of this circular shall be applicable with effect from October 1, 2021.

For details: https://www.sebi.gov.in/legal/circulars/aug-2021/disclosure-of-risk-o-meter-of-scheme-benchmark-and-portfolio-details-to-the-investors_52262.html

(3) Risk Management Framework (RMF) for Mutual Funds

(**Circular No. SEBI/HO/IMD/IMD-1 DOF2/P/CIR/2021/630 dated September 27, 2021)**

To protect the interests of investors and to ensure that mutual funds render high standard of service, SEBI has come out with a revised risk management framework. With the overall objective of management of key risks involved in mutual fund operation, the revised Risk Management Framework (RMF) shall provide a set of principles or standards, which inter alia comprise the policies, procedures, risk management functions and roles & responsibilities of the management, the Board of AMC and the Board of Trustees.

SEBI's new RMF terms risk management as an independent and specific function of the asset management company. For each risk such as investment risk, compliance risk, operational risk, and cyber security the asset management company should appoint a dedicated risk officer. In addition to these officials, there should be a chief risk officer (CRO) in each asset management company.

The RMF seeks to clearly define the roles of risk personnel and mention the same on the fund house's website. Though the CRO is responsible for the overall risk, along with the management, both board of AMC and trustees should also be responsible.

AMCs shall perform a self-assessment of their RMF and practices and submit a report, thereon, to their Board along with the roadmap for implementation of the framework. Compliance with the RMF should be reviewed annually by the AMC.

The detailed RMF for mutual funds are placed at Annexure-A to this circular.

For details: https://www.sebi.gov.in/legal/circulars/sep-2021/risk-management-framework-rmf-for-mutual-funds_52943.html

(4) Investment/ trading in securities by employees and Board members of AMC(s) and Trustees of Mutual Funds

(Circular No. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2021/654 dated October 28, 2021)

SEBI came out with modified provisions for investment and trading in securities by employees of Asset Management Companies (AMCs) and trustees of mutual funds.

This SEBI circular, interalia, provides that, to ensure that the employees of AMC(s), Board members of AMC(s) and Board members of Trustees, including Access Persons shall not take undue advantage of any sensitive information that they may have about any company or its securities or about the AMC's schemes or its units, a category of "access persons" has been created.

"Access Person for the purpose of these Guidelines shall mean the Head of the AMC (designated as CEO/Managing Director/President or by any other name), Executive Directors, Chief Investment Officer, Chief Risk Officer, Chief Operation Officer, Chief Information Security Officer, Fund Managers, Dealers, Research Analysts, all employees in the Fund Operations Department, Compliance Officer and Heads of all divisions and/or departments or any other employee as decided by the AMC(s) and/or Trustees. Non-Executive Directors of the AMC/trustee company or trustees who are in possession of / have access to any non-public information which could materially impact the price of the securities, NAV of the schemes or interest of the unitholders shall also be deemed as Access Persons."

Further, it has been provided that all employees shall refrain from profiting from the purchase and sale or sale and purchase of any security within a period of 30 calendar days from the date of their personal transaction. However, in cases where it is done, the employee shall provide a suitable explanation to the Compliance Officer, which shall be reported to the Board of the AMC and the Trustees at the time of review.

Provisions of the "cooling off" period may be relaxed for Access Persons, subject to the conditions specified by the SEBI.

For details: https://www.sebi.gov.in/legal/circulars/oct-2021/investment-trading-in-securities-by-employees-and-board-members-of-amc-s-and-trustees-of-mutual-funds_53618.html

(5) SEBI (Mutual Funds) (Third Amendment) Regulations, 2021 (November 09, 2021)

SEBI vide its notification dated November 09, 2021, amended the provisions of SEBI (Mutual Funds) Regulations, 1996, which shall come into force on the thirtieth day from the date of their publication in the Official Gazette.

- Vide this notification the term Mutual fund defined under Regulation 2(1)(q) has been substituted as follows:

  "(q) "**mutual fund**" means a fund established in the form of a trust to raise monies through the sale of units to the public or a section of the public under one or more schemes for investing in securities, money market instruments, gold or gold related instruments, silver or silver related instruments, real estate assets and such other assets and instruments as may be specified by the Board from time to time:

  Provided that infrastructure debt fund schemes may raise monies through private placement of units, subject to conditions specified in these regulations:

  Provided further that mutual fund schemes investing in exchange traded commodity derivatives may hold the underlying goods in case of physical settlement of such contracts."

- Vide this amendment, the definitions of "**silver exchange traded fund scheme**" and "**silver related instrument**" have been inserted:

  Regulation 2(1)(wa) - "silver exchange traded fund scheme" shall mean a mutual fund scheme that invests primarily in silver or silver related instruments.

  Regulation 2(1)(wb) - "silver related instrument" shall mean such an instrument as may be specified by the Board from time to time, which has silver as the underlying product.

Norms for Silver Exchange Traded Funds (Silver ETFs) and Gold Exchange Traded Funds (Gold ETFs). (Circular No. SEBI/HO/IMD/DF2/CIR/P/2021/668 Dated November 24, 2021)

SEBI has specified the operating norms with respect to Silver ETFs, a move that will expand the options available for investing in commodities through exchanges. This comes after the SEBI earlier amended mutual funds regulations to have mechanism for silver ETFs.

With respect to Silver ETFs/Gold ETFs, the following operating norms have been specified:

- **Investments:** SEBI mandated that a Silver ETF Scheme shall invest at least 95% of the net assets of the scheme in Silver and Silver related instruments.
- **Disclosure of NAV:** The NAV shall be disclosed on daily basis on the website of the AMC. Further, the indicative NAVs of Silver ETFs shall be disclosed on Stock Exchange platforms, where the units of these ETFs are listed, on continuous basis during the trading hours.
- **Disclosures:** To enable the investors to take an informed decision, the SID shall, inter-alia, disclose the following:

  1. Tracking error and tracking difference,

  2. Market risk due to volatility in silver prices,

  3. Liquidity risks in physical or derivative markets impairing the ability of the fund to buy and sell silver,

  4. Risks associated with handling, storing and safekeeping of physical silver;

  5. Applicable tax provisions.

- **Dedicated Fund Manager:** For commodity based funds such as Gold ETFs, Silver ETFs and other funds participating in commodities market, a dedicated fund manager with relevant skill and experience in commodities market including commodity derivatives market shall be appointed to

manage the fund. However, it is clarified that dedicated fund manager(s) for each Commodity based fund is not mandatory.

- **Half Yearly Trustee Report:** Physical verification of silver underlying the Silver ETF units shall be carried out by the statutory auditor of mutual fund and shall report the same to trustees on half yearly basis.

  The confirmation on physical verification of silver as stated above shall also form part of half yearly report by trustees to SEBI.

  For details:

  https://www.sebi.gov.in/legal/circulars/nov-2021/norms-for-silver-exchange-traded-funds-silver-etfs-and-gold-exchange-traded-funds-gold-etfs-_54166.html

  https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-mutual-funds-third-amendment-regulations-2021_53855.html

(6) SEBI (Mutual Funds) (Amendment) Regulations, 2022 (January 25, 2022)

SEBI, vide it notification dated January 25, 2022, has notified the SEBI (Mutual Funds) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. However, the amendments to sub-regulation IV of regulation 3, sub-regulation VI of regulation 3, sub-clause (e) of clause (i) of sub-regulation VIII of regulation 3 and sub-clause (b) and (f) of clause (iii), sub-clause (b) and (c) of clause (iv) and clause (vi) of sub-regulation IX of regulation 3, shall come into force on April 1, 2023.

The amendments *inter alia* provide that-

- Regulation 18(15)(c) which specify "when the majority of the trustees decide to wind up or prematurely redeem the units" has been substituted namely: -

  "when the majority of the trustees decide to wind up a scheme in terms of clause (a) of sub regulation (2) of regulation 39 or prematurely redeem the units of a close ended scheme"

- Sub-regulation (3) of regulation 39 shall be substituted as follows, namely –

  "(3) Where a scheme is to be wound up under sub-regulation (2), the trustees shall give notice within one day, disclosing the circumstances leading to the winding up of the scheme, —

  a) to the Board; and

  b) in two daily newspapers having circulation all over India, a vernacular newspaper circulating at the place where the mutual fund is formed:

  Provided that where a scheme is to be wound up under clause (a) of sub-regulation (2), the trustees shall obtain consent of the unit holders participating in the voting by simple majority on the basis of one vote per unit and publish the results of voting within forty five days from the publication of notice under sub-regulation (3):

  Provided further that in case the trustees fail to obtain the required consent of the unitholders under

clause (a) of sub-regulation (2), the schemes shall be reopened for business activities from the second business day after publication of results of the voting."

- Regulation 50(1) which specify "To maintain proper books of account and records, etc." the following sub-regulation (1A) has been inserted namely: -

  "(1A) The financial statements and accounts of the mutual fund schemes shall be prepared in accordance with Indian Accounting Standards (IND AS) and any addendum thereto, as notified by the Companies (Indian Accounting Standards) Rules, 2015, as amended from time to time:

  Provided that in case there is any conflict between the requirements of IND AS and these regulations and guidelines issued thereunder, the asset management companies shall follow the requirements specified under these regulations."

  For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-mutual-funds-amendment-regulations-2022_55593.html

(7) Change in control of the asset management company involving scheme of arrangement under Companies Act, 2013

(Circular No. SEBI/HO/IMD/IMD-I DOF5/P/CIR/2022/10 dated January 31, 2022)

To streamline the process of providing approval to the proposed change in control of an asset management company ("AMC") involving scheme of arrangement which needs sanction of National Company Law Tribunal ("NCLT") in terms of the provisions of the Companies Act, 2013, SEBI vide this circular has provided that the application seeking approval for the proposed change in control of the AMC under Regulation 22(e) of Mutual Fund Regulations shall be filed with SEBI prior to filing the application with the NCLT.

Upon being satisfied with compliance of the applicable regulatory requirements, an in-principle approval will be granted by SEBI. The validity of such in-principle approval shall be 3 months from the date of issuance, within which the relevant application shall be made to NCLT. Within 15 days from the date of order of NCLT, applicant shall submit the application for the final approval along with copy of the NCLT Order approving the scheme, to SEBI for final approval.

The provisions of this Circular shall be applicable to all the applications for change in control of AMC for which the schemes of arrangement are filed with NCLT on or after March 1, 2022.

For details: https://www.sebi.gov.in/legal/circulars/jan-2022/change-in-control-of-the-asset-management-company-involving-scheme-of-arrangement-under-companies-act-2013_55745.html

(8) Audit Committee of Asset Management Companies (AMCs)

(Circular No. SEBI/HO/IMD/IMD-I DOF2/P/CIR/2022/17 dated February 09, 2022)

Taking into account the recommendation of Mutual Fund Advisory Committee (MFAC) and the feedback received from the industry, SEBI has prescribed that the AMCs of mutual funds shall be required to constitute an Audit Committee. The role, responsibility, membership and other

features of the Audit Committee of AMC are detailed in this circular. Currently, the requirement for an Audit Committee is at the level of trustees of Mutual Funds.

Role: The Audit Committee of the AMC shall be responsible for oversight of financial reporting process, audit process, company's system of internal controls, compliance to laws and regulations and other related process, with specific reference to operation of its Mutual Fund business.

Membership:

(1) The Audit Committee of AMC shall have minimum 3 directors as members.

(2) At least two-third members of the Audit Committee shall be independent directors of AMC. If two-third of the total strength results into fraction, then higher number after rounding up shall be considered.

(3) The members of the Audit Committee will be appointed by the Board of Directors of AMC.

(4) All members of Audit Committee shall be persons with ability to read and understand the financial statement and at least one member shall have experience and background in finance and accounts.

(5) The Chairperson of the Committee shall be an independent director, with adequate experience in the areas of finance and financial services.

Meetings: The Chairperson of the Audit Committee shall call the meeting as and when required. However, atleast four meetings shall be called in a financial year and not more than one hundred and twenty days shall elapse between two meetings.

Quorum: The quorum for meeting shall either be two members or one third of the members of the Audit Committee, whichever is greater, with at least two independent director.

For details: https://www.sebi.gov.in/legal/circulars/feb-2022/circular-on-audit-committee-of-asset-management-companies-amcs-_55987.html

(9) SEBI (Mutual Funds) (Second Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/92 dated August 03, 2022)

SEBI has notified the SEBI (Mutual Funds) (Second Amendment) Regulations, 2022 to further amend the SEBI (Mutual Funds) Regulations, 1996. They shall come into force on the thirtieth day from the date of their publication in the Official Gazette.

In the SEBI (Mutual Funds) Regulations, 1996, after sub-clause (iii) of clause (c) of Regulation 2 providing definition of 'Associate', the following proviso has been inserted:

"Provided that the above definition of associate shall not be applicable to such sponsors, which invest in various companies on behalf of the beneficiaries of insurance policies or such other schemes as may be specified by the Board from time to time."

For details: https://www.sebi.gov.in/legal/regulations/aug-2022/securities-and-exchange-board-of-india-mutual-funds-second-amendment-regulations-2022_61565.html

(10) SEBI (Mutual Funds) (Third Amendment) Regulations, 2022 (Notification No. SEBI/LAD-NRO/GN/2022/106 dated November 15, 2022)

SEBI has notified the SEBI (Mutual Funds) (Fourth Amendment) Regulations, 2022 to further amend the SEBI (Mutual Funds) Regulations, 1996. They shall come into force on the sixtieth day from the date of publication of these regulations in the Official Gazette.

In the SEBI (Mutual Funds) Regulations, 1996, Regulation 53 pertaining to "Despatch of warrants and proceeds", the following has been substituted, namely:

Transfer of dividend and redemption proceeds

Every mutual fund and asset management company shall,

(a) transfer to the unitholders the dividend payments within such period as may be specified by the Board from time to time;

(b) transfer to the unitholders the redemption or repurchase proceeds within such period as may be specified by the Board from time to time;

(c) in the event of failure to transfer the redemption or repurchase proceeds or dividend payments within the period specified in clauses (a) and (b), the asset management company shall be liable to pay interest to the unitholders at such rate as may be specified by the Board for the period of such delay;

(d) notwithstanding payment of such interest to the unit-holders under clause (c), the asset management company may be liable for action for failure to transfer the redemption or repurchase proceeds or dividend payments within the stipulated time:

Provided that physical despatch of redemption or repurchase proceeds or dividend payments shall be carried out only in exceptional circumstances and asset management companies shall be required to maintain records along with reasons for all such physical despatches.

For details: https://www.sebi.gov.in/legal/regulations/nov-2022/securities-and-exchange-board-of-india-mutual-funds-third-amendment-regulations-2022_65163.html

(11) SEBI (Mutual Funds) (Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/134 dated June 26, 2023)

SEBI has notified the SEBI (Mutual Funds) (Amendment) Regulations, 2023 on June 26, 2023. Vide this notification the following amendments have been made in the SEBI (Mutual Funds) Regulations, 1996:

1. The new definition "Liquid networth" is added **[Regulation 2(1)(na)]:**

Liquid networth means the networth deployed in liquid assets which are unencumbered and shall include cash, money market instruments, Government Securities, Treasury bills, Repo on Government securities and any other like instruments as specified by the Board from time to time.

2. The new definition “NAV” or “Net Asset Value” is added **[Regulation 2(1)(qa)]:**

   NAV or Net Asset Value shall mean the value computed in the manner provided in sub-regulation (1) of regulation 48 of these regulations.

3. In regulation 7 pertaining to eligibility criteria for registration of Mutual Funds, clause (a) has been substituted relating to the sponsor having a sound-track record and general reputation of fairness and integrity in all business transactions.

   For the purposes of this clause “sound track record” shall mean the sponsor should,—
   i. be carrying on business in financial services for a period of not less than five years; and

   ii. ensure that the networth is positive in all the immediately preceding five years; and

   iii. ensure that the positive liquid networth is more than the proposed capital contribution of the sponsor in the asset management company and ensure that in case of change in control of the existing asset management company due to acquisition of shares, the positive liquid net worth of the sponsor or funds tied up by the sponsor is to the extent of aggregate par value or market value of the shares proposed to be acquired, whichever is higher; and

   iv. have net profit after providing for depreciation, interest and tax in each of the immediately preceding five years; and

   v. have average net annual profit after depreciation, interest and tax during the immediately preceding five years of at least rupees ten crore.

   However, if the requirements specified under Explanation are not fulfilled, the sponsor shall,-

   i. adequately capitalize the asset management company such that the net worth of the asset management company is not less than rupees one hundred fifty crore; and

   ii. ensure that the initial shareholding equivalent to capital contributed to the asset management company to the extent of not less than rupees one hundred fifty crore is locked-in for a period of five years; and

   iii. appoint experienced personnel in asset management company such that the total combined experience of Chief Executive Officer, Chief Operating Officer, Chief Risk Officer, Chief Compliance Officer and Chief Investment Officer should be at least thirty years; and

   iv. ensure that in case of acquisition of existing asset management company, the sponsor shall have minimum positive liquid net worth equal to incremental capitalization required to ensure minimum capitalization of the asset management company and the positive liquid net worth of the sponsor or the funds tied up by the sponsor are to the extent of aggregate par value or market value of the shares proposed to be acquired, whichever is higher; and

   v. ensure that in case of acquisition of stake in an existing asset management company, the shareholding equivalent to at least rupees one hundred fifty crore shall be locked in for five years; and vi. ensure that other conditions in this regard as may be specified by the Board from time to time are adhered to.

   A private equity fund or a pooled investment vehicle or a pooled investment fund may also be permitted to sponsor mutual funds subject to such other conditions as may be specified by SEBI.

4. The following regulation 7C has been inserted pertaining to Norms for Shareholding and Governance in Mutual Funds

   7C (1) The sponsor may be permitted to disassociate from the asset management company and the mutual fund subject to such conditions as may be specified by the SEBI.

   (2) In the event of the sponsor disassociating itself from the asset management company and the

mutual fund, the asset management company of the existing mutual fund may act as sponsor of the same mutual fund subject to such conditions and in the form and manner as may be specified by the SEBI.

(3) In the event of the disassociation of the sponsor from the asset management company and the mutual fund, the shareholding for any shareholder in the asset management company shall be below 10%.

(4) In the event of the sponsor disassociating itself from the asset management company and the mutual fund, the board of directors of such asset management company shall have at least two third independent directors.

(5) If the asset management company fails to fulfill the conditions specified above, the dissociated sponsor or any new entity may become sponsor of the mutual fund subject to such conditions as may be specified by the SEBI from time to time.

5. In regulation 16, pertaining to disqualification from being appointed as trustees, the following sub-regulation 7 is inserted:

   • In case a company is appointed as the trustee of a mutual fund, the Chairperson of the board of directors of that trustee company shall be an independent director. Provided that a trustee company, already appointed as the trustee of a mutual fund shall comply with this sub-regulation within a period as may be specified by the Board from time to time.

6. Regulation 31A, pertaining to in-principle approval from recognised stock exchange(s), is substituted with the following:

   For listing of units of any scheme of a mutual fund on the recognised stock exchange(s), the asset management company of that mutual fund shall take all necessary steps and obtain the 'in-principle' approval from the recognised stock exchange(s) in the manner as specified by such exchange(s) from time to time.

7. Regulation 31B, pertaining to listing agreement, is substituted with the following:
   Before listing of units of any scheme of mutual fund on the recognised stock exchange(s), the asset management company of that mutual fund shall execute an agreement with such exchange(s).

   For details: https://www.sebi.gov.in/legal/regulations/jun-2023/securities-and-exchange-board-of-india-mutual-funds-amendment-regulations-2023_73224.html

(12) Case Laws

23.05.2006	**SEBI Vs. Shriram Mutual Fund**	**Hon'ble Supreme Court**

Facts of the Case:
The respondent was a mutual fund and the asset management company. During the period from June, 1998 to September, 1999, the respondent had conducted business through associated brokers, in excess of the limits prescribed under regulation 25(7)(a) of the 1996 Regulations on 12occasions covering 6 quarters. The respondent had failed to comply with the terms and conditions

attached to the certificate of registration granted to it, inasmuch as it did not exercise diligence to ensure that the transactions by its own asset management company were confined to the permissible limits. The Adjudicating Officer imposed a sum of Rs. 5 lakhs as penalty on the respondent No. 2 under section 15E for failure to comply with regulation 25(7) (a) and Rs. 2 lakhs on the respondent No. 1 for failure to comply with the terms and conditions attached to the certificate of registration.

The respondents filed appeals before the Securities Appellate Tribunal, inter alia, contending that the transactions with the associate brokers were related to thinly traded securities, for which there were no ready markets available through the normal stock exchange, or were relating to securities which did not have any large volume or trade in the market.

The Tribunal set aside the order passed by the Adjudicating Officer on the ground that the penalty to be imposed for failure to perform a statutory obligation is a matter of discretion which has to be exercised judicially and on a consideration of all the relevant facts and circumstances. The Tribunal also held that the Adjudicating Officer had to be satisfied with the material placed before him that the violation deserved punishment. The appeal was filed to Supreme Court.

Hon'ble Supreme Court Judgment:

The Hon'ble Supreme Court set aside the decision of Securities Appellate Tribunal in Shriram Mutual Fund v. Chairman.

It was held by Supreme Court that the penalty is warranted by the quantum which has to be decided by taking into consideration the factors stated in section 15J of SEBI Act. In its opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. The penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not.

The SEBI was set up to promote orderly and healthy growth of the securities market and for investors protection SEBI has been monitoring and regulating the activities of Stock Exchanges, Mutual Funds and Merchant Bankers, etc. to achieve these goals. The capital market has witnessed tremendous growth in recent times, characterized particularly by the increasing participation of the Public. Investors' confidence in the capital market can be sustained largely by ensuring investors protection. That it became imperative to impose monetary penalties also in addition to other penalties in cases of default.

The Court held that mens rea is not an essential element for imposing penalty for breach of civil obligations.

23.10.2017	**SAHARA ASSET MANAGEMENT COMPANY P. LTD & ORS. Appellant(s)** **VERSUS**	**Hon'ble Supreme Court**

	SECURITIES AND EXCHANGE BOARD OF INDIA & ORS. Respondent(s)	

Facts of the case:
SEBI passed an order dated June 23, 2011 against two Sahara group entities namely Sahara India Real Estate Corporation Ltd. (SIRECL), Sahara Housing Investment Corporation Ltd. (SHICL) and some of their Directors to refund the money collected through the issue of Optionally Fully Convertible Debentures (OFCDs) and restrained those Directors from associating themselves with any listed public company and any public company which intends to raise money from the public till such time the money is refunded to the investors to the satisfaction of SEBI.

Following these orders against the two Sahara group companies and their Directors SEBI initiated proceedings by appointing a Designated Authority under the Intermediaries Regulations on June 9, 2014. This Designated Authority was to enquire into whether there was any violation of the provisions of the Mutual Fund Regulations, 1996 as well as related SEBI Circulars by the Sahara Mutual Fund, Sahara Sponsor, Sahara AMC and its Trustees. The Designated Authority submitted the report on October 14, 2014 holding that these entities are no longer fit and proper persons to carry on the business of mutual fund and recommended cancellation of certificate of registration of Sahara MF.

The impugned order has been issued consequent to the findings by SEBI that Sahara Sponsor is not a 'fit and proper person' because its Promoter-Director is not a fit and proper person and hence the Sahara MF and Sahara AMC are no longer fit and proper to carry on the business of mutual fund.

Thus, SEBI vide order dated July 28, 2015 had ordered cancellation of Certificate of Registration of Sahara Mutual Fund with effect from expiry of 6 months from the date of the order.
Subsequently, Sahara MF, Sahara AMC and others had preferred an appeal against the SEBI order dated July 28, 2015 before the Hon'ble Securities Appellate Tribunal (SAT). The Hon'ble SAT vide order dated July 28, 2017 disposed of the said appeal, granting a period of 6 weeks to the appellants to approach the Hon'ble Supreme Court of India.

Sahara MF and others subsequently filed an appeal in the Hon'ble Supreme Court, challenging the aforesaid order of the Hon'ble SAT.

Hon'ble Supreme Court Order:

The said appeal was dismissed by the Hon'ble Supreme Court vide order dated October 23, 2017

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Lesson 13
COLLECTIVE INVESTMENT SCHEMES

(1) SEBI (Collective Investment Schemes) (Amendment) Regulations, 2022 (May 10, 2022)

SEBI has notified the SEBI (Collective Investment Schemes) (Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification, the following amendments to the SEBI (Collective Investment Schemes) Regulations, 1999, have been made:

1. In Regulation 2(e), the definition of **"auditor"** has been modified as-

"auditor" means a firm, including a limited liability partnership, constituted under the Limited Liability Partnership Act, 2008, who is eligible and qualified to audit the accounts of a company under section 141 of the Companies Act, 2013.

2. The definition of "**designated employees**" has been inserted:

"designated employees" of the Collective Investment Management Company includes:

(i) chief executive officer, chief investment officer, chief risk officer, chief information security officer, chief operation officer, fund manager, compliance officer, sales head, investor relation officer, heads of other departments and dealer of the Collective Investment Management Company;

(ii) persons directly reporting to the chief executive officer (excluding personal assistant/ secretary);

(iii) fund management team and research team;

(iv) other employees as identified by Collective Investment Management Companies or trustees.

3. In regulation 9 which specify Conditions for eligibility for registering as Collective Investment Management Company, clause (c) has been substituted with the following clause, namely,-

"(c) the applicant or its promoters should have a sound track record and general reputation of fairness and integrity in all their business transactions."

4. Under the heading "Criteria for fit and proper person", after regulation 9A, the following regulation 9B has been inserted, namely,-

"9B (1) No Collective Investment Management Company or a promoter of a Collective Investment Management Company, their associates or group companies, through the schemes of the Collective Investment Management Company or otherwise, individually or collectively, directly or indirectly, have –

(a) ten percent or more of the shareholding or voting rights in the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company; or

(b) representation on the board of the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company.

(2) Any shareholder holding ten percent or more of the shareholding or voting rights in the Collective Investment Management Company or the trustee company of a Collective Investment Management Company, shall not have, directly or indirectly,-

(a) ten percent or more of the shareholding or voting rights in the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company; or

(b) representation on the board of the Collective Investment Management Company or the trustee company of any other Collective Investment Management Company:

Provided that in the event of a merger, acquisition, scheme of arrangement or any other arrangement involving the promoters of the Collective Investment Management Company, shareholders of the Collective Investment Management Company or trustee companies, their associates or group companies which results in the incidental acquisition of shares, voting rights or representation on the board of the Collective Investment Management Company or trustee companies, this regulation shall be complied with within a period of one year of coming into force of such an arrangement."

5. In regulation 14, which specify the obligations of Collective Investment Management Company, the following clause has been inserted, namely,-

"The Collective Investment Management Company and its designated employees shall invest such amounts in such schemes of the Collective Investment Management Company, as may be specified by the Board from time to time."

6. The following regulation 24(6) has been inserted, namely,-

"Closure of subscription list

Each collective investment scheme shall immediately after the closure of the subscription list comply with the following conditions, namely,-

(a) minimum subscription amount of rupees twenty crore;

(b) minimum twenty investors; and

(c) no person shall hold more than twenty-five percent of the assets under management of scheme:

Provided that where the collective investment scheme fails to comply with this subregulation, Collective Investment Management Company shall be liable to refund the application money to the applicants."

7. Regulation 30 dealing with Offer period has been substituted with the following, namely,

"**Offer period**

No collective investment scheme shall be open for subscription for more than fifteen days:

Provided that collective investment scheme may be kept open for subscription for a maximum of another fifteen days subject to issuance of public notice by the Collective Investment Management Company before the expiry of initial fifteen days."

For details: https://www.sebi.gov.in/legal/regulations/may-2022/securities-and-exchange-board-of-india-collective-investment-schemes-amendment-regulations-2022_58854.html

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LESSON 14
RESOLUTION OF COMPLAINTS AND GUIDANCE

(1) Master Circular on the redressal of investor grievances through the SEBI Complaints Redress System (SCORES) platform
(Circular No. SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022)

SEBI launched a centralized web based complaints redress system 'SCORES' in June 2011. The purpose of SCORES is to provide an administrative platform for aggrieved investors, whose grievances, pertaining to the securities market, remain unresolved by the concerned listed company, registered intermediary or recognized market infrastructure institutions (MIIs). SEBI had been receiving inputs from listed companies, registered intermediaries and recognised MIIs that such investor grievances may be resolved faster if these grievances are taken up directly with the entity concerned at the first instance. Accordingly, it is now mandatory for investors to first take up their grievances for redressal with the entity concerned, through their designated persons/officials who handle issues relating to compliance and redressal of investor grievances. In case, the entity concerned fails to redress the complaint within the timeline provided herein, the investor may then file their complaint in SCORES.

The investors may contact the Investor Associations (IAs) recognized by SEBI for any assistance in filing complaints on SCORES.

Direct Complaint

The complainant may use SCORES to submit the complaint or grievance directly to the listed companies / intermediaries / MIIs for resolution. Such a complaint is called a "Direct Complaint" and shall be redressed by the entity within 30 days without any intervention of SEBI, failing which the complaint shall be registered on SCORES. Thereafter, SEBI shall take it up with the entity concerned.

Timeline for lodging complaint on SCORES

In order to enhance ease, speed and accuracy in the redressal of grievance, the complaint shall be lodged on SCORES within 1 year from the date of cause of action, where

i. the complainant has approached the listed company or registered intermediary / MII, as the case may be, for redressal of the complaint and,

ii. The concerned listed company or registered intermediary/ MII has rejected the complaint or,

iii. The complainant has not received any communication from the concerned listed company or the registered intermediary / MII or,

iv. The complainant is not satisfied with the reply received or the redressal action taken by the concerned listed company or an intermediary / MII.

SEBI reserves its right to reject a complaint lodged on SCORES, if the date of cause of action is more than one-year-old and/or the complainant has not taken up the complaint with the concerned entity prior to the said date.

One-time 'Review' option

To enhance investor satisfaction on complaint redressal, a one-time 'Review' option is also available under SCORES wherein a complainant, if not satisfied with the extent of redressal of grievance by the concerned listed company/ intermediary/ MII, opts for review of the extent of the redressal, within 15 days from the date of closure of the complaint on SCORES. Thereafter, the complaint shall be escalated to the supervising official of the dealing officer of SEBI.

Types of complaints shall not be dealt through SCORES

The following types of complaints shall not be dealt through SCORES:

- Complaints against companies which are unlisted/delisted and companies on Dissemination Board of Stock Exchanges (except complaints on valuation of securities).
- Complaints relating to cases pending in a court or subject matter of quasi-judicial proceedings, etc.
- Complaints falling under the purview of other regulatory bodies such as Reserve Bank of India, (RBI), Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority of India (PFRDAI), Competition Commission of India (CCI), or complaints falling under the purview of other ministries. iv. Complaints against a company under resolution under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).
- Complaints against the companies where the name of company is struck off from Register of Companies (RoC) or a vanishing company as published by MCA.
- Liquidated Companies or companies under liquidation.

SCORES Authentication for intermediaries and MIIs

The procedure for generation of SCORES user id and password is fully automated for all new SEBI registered intermediaries and MIIs who got registered/ recognised with / by SEBI after August 02, 2019. SCORES user id and password details shall be sent through auto-generated e-mails, upon completion of process of online grant of registration by SEBI. Stock Brokers and Depository Participants are not required to obtain SCORES authentication since complaints against these intermediaries shall continue to be routed through the platforms of the concerned Stock Exchange/ Depository.

SCORES Authentication for companies intending to list their securities on SEBI recognized stock exchanges

An online mechanism for obtaining SCORES credentials for all "companies intending to list their securities on SEBI recognized stock exchanges" was introduced on October 14, 2021. The online form can be accessed on the SCORES website www.scores.gov.in. This has been done as part of SEBI's green initiative and to streamline the redressal of investor grievances against companies before listing. The SCORES credentials shall be sent to the e-mail id of the Compliance Officer/Dealing Officer as provided in the online form.

Complaints against listed companies can be processed by companies in-house or through its Registrar to Issue and Share Transfer Agent (RTI/STA). In case the complaints are processed

by the RTI/STA on behalf of the listed company, any failure on the part of the RTI/STA to redress the complaints or failure to update Action Taken Report (ATR) in SCORES, will be treated as failure of the listed company to furnish information to SEBI and non redressal of investor complaints by the listed company.

For details: https://www.sebi.gov.in/legal/master-circulars/nov-2022/master-circular-on-the-redressal-of-investor-grievances-through-the-sebi-complaints-redress-system-scores-platform_64742.html

(2) Redressal of Investor Grievances through the SEBI Complaint Redressal (SCORES) Platform and Linking it to Online Dispute Resolution Platform. (Circular No. SEBI/HO/OIAE/IGRD/CIR/P/2023/156 dated September 20, 2023)

SEBI Complaint Redressal System (SCORES) is a centralised web based complaint redressal facilitation platform launched in 2011 vide circular dated June 3, 2011 to provide a facilitative platform for the benefit of the aggrieved investors, whose grievances against (a) listed company, (b) registered intermediary or (c) market infrastructure institution ("Entities") remain unresolved. Since then, SEBI has revised and strengthened the process of facilitating the redressal of grievances by such Entities. Currently, the process of investor grievances redressal on SCORES is governed by the Master Circular dated November 07, 2022 on "Processing of investor complaints against listed companies in SEBI Complaints Redress System – SCORES" (bearing reference SEBI/HO/OIAE/IGRD/P/CIR/2022 /0150).

In order to strengthen the existing investor grievance handling mechanism through SCORES by making the entire redressal process of grievances in the securities market comprehensive by providing a solution that makes the process more efficient by reducing timelines and by introducing auto-routing and auto-escalation of complaint, SEBI notified the SEBI (Facilitation of Grievance Redressal Mechanism) (Amendment) Regulations, 2023 and amended the various SEBI regulations such as SEBI (Stock Brokers) Regulations, 1992, SEBI (Merchant Bankers) Regulations, 1992, SEBI (Registrars to an Issue and Share Transfer Agents) Regulations,1993, SEBI (Debenture Trustees) Regulations, 1993, SEBI (Bankers to an Issue) Regulations, 1994 etc., vide notification dated August 16, 2023. Consequently, it becomes necessary to revise the extant process for redressal of investors' grievances against Entities and provide for a mechanism through which Designated Bodies may monitor the process of the redressal of investors' grievances by Entities.

The Designated Bodies, as per this circular, include Listed companies, Merchant Bankers, Bankers to an Issue, Real Estate Investment Trusts, Municipal Debt Securities, Debenture Trustees, Portfolio Managers, Mutual Funds, Depository Participants, Investment Advisers, Registrars to an Issue and Share Transfer Agents, Stock Brokers, Vault Managers.

Responsibilities of the Designated Bodies

The Designated Bodies shall be responsible for:

- Monitoring and handling grievance redressal of investors against respective entities under their domain as stipulated under Schedule
- Taking non-enforcement actions including issuing advisories, caution letters for non-redressal of investor grievances and referring to SEBI for enforcement actions.

Framework for handling of investor grievances received through SCORES by Entities and monitoring of the redressal process by designated bodies.

1. **Submission of the Complaint and handling of the Complaint by the Entity:**
   - All Entities who are in receipt of the complaints of the investors through SCORES, shall resolve the complaint within 21 calendar days of receipt of such Complaint.
   - The Complaints lodged on SCORES against any Entity shall be automatically forwarded to the concerned Entity through SCORES for resolution and submission of ATR. Entities shall resolve the Complaint and upload the ATR on SCORES within 21 calendar days of receipt of the Complaint. The ATR of the entity will be automatically routed to the complainant.

- The Complaint against the Entity shall be simultaneously forwarded through SCORES to the relevant Designated Body. The Designated Body shall ensure that the concerned Entity submits the ATRs within the stipulated time of 21 calendar days.
- The Designated Body shall monitor the ATRs submitted by the entities under their domain and inform the concerned entity to improve the quality of redressal of grievances, wherever required.
- SEBI may concurrently monitor grievance redressal process by entities and Designated Bodies.

2. First review of the Complaint:

- In case complainant is satisfied with the resolution provided by the entity vide the ATR or complainant does not choose to review the Complaint, the Complaint shall be disposed on SCORES. However, if the complainant is not satisfied, the complainant may request for a review of the resolution provided by the entity within 15 calendar days from the date of the ATR.
- In case the complainant has requested for a review of the resolution provided by the entity or the entity has not submitted the ATR within the stipulated time of 21 calendar days, the concerned Designated Body shall take cognizance of the Complaint for first review of the resolution through SCORES. The Designated Body shall take up the first review with the concerned Entity, wherever required. The concerned Entity shall submit the ATR to the Designated Body within the time stipulated by the Designated Body.
- The Designated Body may seek clarification on the ATR submitted by the Entity for the first review. The concerned Entity shall provide clarification to the respective Designated Body, wherever sought and within such timeline, as the Designated Body may stipulate. The Designated Body shall stipulate the timeline in such as manner to ensure that the Designated Body submits the revised ATR to the complainant on SCORES within 10 calendar days of the review sought.

3. Second Review of the Complaint:

- The complainant may seek a second review of the Complaint within 15 calendar days from the date of the submission of the ATR by the Designated Body. In case the complainant is satisfied with the ATR provided by the concerned Designated Body or complainant does not choose to review the Complaint within the period of 15 calendar days, the Complaint shall be disposed on SCORES.
- In case the complainant is not satisfied with the ATR provided by the Designated Body or the concerned Designated Body has not submitted the ATR within 10 calendar days, SEBI may take cognizance of the Complaint for second review through SCORES.
- SEBI may take up the review with stakeholders involved, including the concerned entity or/and Designated Body. The concerned entity or/and Designated Body shall take immediate action on receipt of second review complaint from SEBI and submit revised ATR to SEBI through SCORES, within the timeline specified by SEBI.
- SEBI or the Designated Body (as the case may be) may seek clarification on the ATR submitted by the concerned entity for SEBI review complaint. The concerned entity shall provide clarification to the respective Designated Body and/or SEBI, wherever sought and within such timeline as specified.
- The second review Complaint shall be treated as 'resolved' or 'disposed' or 'closed' only when SEBI 'disposes' or 'closes' the Complaint in SCORES. Hence, mere filing of ATR with respect to SEBI review complaint will not mean that the SEBI review complaint is disposed.

4. Action for failure to redress investor complaints by listed companies:

- The Designated Stock Exchange (DSE) shall levy a fine of ₹ 1000 per day per complaint on the listed company for violation of Regulation 13 (1) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015 (LODR Regulations) read with SEBI circular no. SEBI/HO/CFD/CMD/CIR/P/2020/12 dated January 22, 2020.
- DSE shall issue a notice intimating the listed company about the levy of fines while also directing it to submit ATRs on the pending complaints and payment of the fines within 15 days from the date of such notice.
- In case the listed company fails to redress the grievances and/or pay fine levied within 15 days from the date of such notice, the concerned DSE shall issue notices to the promoter(s) of such listed company, to ensure

submission of ATRs on the pending complaints and payment of fines by the listed company within 10 days from the date of such notice.

- In case the listed entity fails to comply with the aforesaid requirement and/ or pay fine levied within the stipulated period as per the notices, the DSE shall forthwith intimate the depositories to freeze the entire shareholding of the promoter(s) in such listed company as well as all other securities held in the demat account of the promoter(s).
- In case the listed entity fails to pay the fine or resolve the complaint despite receipt of the notice as stated above, the DSE may initiate other action as deemed appropriate.
- The procedure and actions mentioned above shall only be applicable for categories of complaints provided below:

1) Non updation of address /Signature or Corrections etc.
2) Non-receipt of Bonus
3) Non receipt of Dividend
4) Non receipt duplicate debt securities certificate
5) Non-receipt of duplicate share certificate
6) Non receipt of fractional entitlement
7) Non receipt of interest for delay in dividend
8) Non receipt of interest for delay in payment of interest on debt security
9) Non receipt of interest for delay in redemption proceeds of debt security
10) Non receipt of interest for delay in refunds
11) Non receipt of interest on securities
12) Non receipt of redemption amount of debt securities
13) Non receipt of refund in Public/ Rights issue
14) Non receipt of Rights Issue form
15) Non receipt of securities after conversion/ endorsement/ consolidation/ splitting
16) Non receipt of securities after transfer
17) Non receipt of securities in public/ rights issue
18) Non receipt of shares after conversion/ endorsement/ consolidation/ splitting
19) Non receipt of shares after transfer
20) Non receipt of shares after transmission
21) Non receipt of shares in public/ rights issue (including allotment letter)
22) Non-receipt of interest for delay in dispatch/credit of securities
23) Receipt of refund/ dividend in physical mode instead of electronic mode
24) Receipt of shares in physical mode instead of electronic mode
25) Demat/Remat
26) Complaints of any other nature as may be informed from time to time

General provisions regarding investor grievance redressal

- Investors shall first take up their grievances for redressal with the entity concerned, through their designated persons/officials who handle issues relating to compliance and redressal of investor grievances.
- Investors who wish to lodge a Complaint on SCORES (complainant) are required to register themselves on www.scores.gov.in by clicking on "Register here" under the "Investor Corner". While filing the registration form, details like Name of the investor, Permanent Account Number (PAN), contact details, email id, are required to be provided for effective communication and speedy redressal of the grievances. Upon successful registration, a unique user id and a password shall be generated and communicated through an acknowledgement email to the complainant.
- In order to enhance ease, speed and accuracy in the redressal of grievance, the investor may lodge the Complaint against any Entity on SCORES within a period of one year from the date of occurrence of the cause of action, where:
    a. The complainant has approached the Entity for redressal of the complaint and the Entity has rejected the complaint or the complainant has not received any communication from the concerned Entity;

b. The complainant is not satisfied with the reply received or the redressal by the concerned Entity.

- If any complaint filed on SCORES beyond the limitation period specified above, SEBI may reject such complaint.
- The following types of complaints shall not be dealt through SCORES:
    a. Complaints against companies which are unlisted/delisted and companies on Dissemination Board of Stock Exchanges (except complaints on valuation of securities).
    b. Complaints relating to cases pending in a court or subject matter of quasijudicial proceedings, disputes pending with Online Dispute Resolution mechanism under the aegis of Market Infrastructure Institutions [as per SEBI master circular SEBI/HO/OIAE/OIAE_IAD-1/P/CIR/2023/145 dated July 31, 2023] etc.
    c. Complaints falling under the purview of other regulatory bodies such as Reserve Bank of India, (RBI), Insurance Regulatory and Development Authority of India (IRDAI), Pension Fund Regulatory and Development Authority of India (PFRDAI), Competition Commission of India (CCI), or complaints falling under the purview of other ministries.
    d. Complaints against a company under resolution under the relevant provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).
    e. Complaints against the companies where the name of company is struck off from Register of Companies (RoC) or a vanishing company as published by MCA.
    f. Liquidated Companies or companies under liquidation.
    g. Complaints which are in the nature of market intelligence i.e., information given to SEBI regarding violation of any of the provisions of the securities laws.
- SEBI shall handle the first review complaint for categories of intermediaries where no Designated Body has been appointed for the purpose.
- The complainant in the event of being dissatisfied shall give reasons for not being satisfied with the ATR and provide clear reasons for review at any stage.
- SCORES shall only be a facilitative platform for investors to get redressal of their grievances from the concerned entity.
- In cases where investors raise issues, which require adjudication on any third party rights, on questions of law or fact or which is in the nature of a *lis* between parties, or if investors are not satisfied with disposal on SCORES post SEBI review, they shall seek appropriate remedies through the Online Dispute Resolution mechanism in securities market. In addition, investors have the option to approach legal forums including civil courts, consumer courts etc.
- Investors can approach the Online Dispute Resolution mechanism or other appropriate civil remedies at any point of time. In case the complainant opts for Online Dispute Resolution mechanism or other appropriate civil remedies while the complaint is pending on SCORES, the complaint shall be treated as disposed on SCORES.

The provisions of this circular related to work flow of processing of investor grievances by Entities and framework for monitoring and handling of investor complaints by the Designated Bodies shall come into force with effect from April 01, 2024. This Circular shall rescind the Master Circular SEBI/HO/OIAE/IGRD/P/CIR/2022/0150 dated November 07, 2022 above with effect from April 01, 2024.

For Details: https://www.sebi.gov.in/legal/circulars/sep-2023/redressal-of-investor-grievances-through-the-sebi-complaint-redressal-scores-platform-and-linking-it-to-online-dispute-resolution-platform_77159.html

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LESSON 15
STRUCTURE OF CAPITAL MARKET

(1) SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2021 (August 03, 2021)

SEBI vide its notification dated August 03, 2021, amends the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the date of their publication in the Official Gazette.

The amendment introduced a framework for, "accreditation agency", "accredited investor" and "large value fund for accredited investors" as under:

1) **"accreditation agency"** means a subsidiary of a recognized stock exchange or a subsidiary of a depository or any other entity as may be specified by the Board from time to time.

2) **"accredited investor"** means any person who is granted a certificate of accreditation by an accreditation agency who,

(i) in case of an individual, Hindu Undivided Family, family trust or sole proprietorship has:

(A) annual income of at least two crore rupees; or

(B) net worth of at least seven crore fifty lakh rupees, out of which not less than three crores seventy-five lakh rupees is in the form of financial assets; or

(C) annual income of at least one crore rupees and minimum net worth of five crore rupees, out of which not less than two crore fifty lakh rupees is in the form of financial assets.

(ii) in case of a body corporate, has net worth of at least fifty crore rupees;

(iii) in case of a trust other than family trust, has net worth of at least fifty crore rupees;

(iv) in case of a partnership firm set up under the Indian Partnership Act, 1932, each partner independently meets the eligibility criteria for accreditation:

Provided that the Central Government and the State Governments, developmental agencies set up under the aegis of the Central Government or the State Governments, funds set up by the Central Government or the State Governments, qualified institutional buyers as defined under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018, Category I foreign portfolio investors, sovereign wealth funds and multilateral agencies and any other entity as may be specified by the Board from time to time, shall deemed to be an accredited investor and may not be required to obtain a certificate of accreditation;"

3) **"large value fund for accredited investors"** means an Alternative Investment Fund or scheme of an Alternative Investment Fund in which each investor (other than the Manager, Sponsor, employees or directors of the Alternative Investment Fund or employees or directors of the Manager) is an accredited investor and invests not less than seventy crore rupees;"

The notification further provides that-

- the minimum level of investment value i.e., Rs. 1 crore is not applicable to accredited investors. [Proviso to Reg. 10 (c)]

- large value funds for accredited investors may be permitted to extend its tenure of the close ended Alternative Investment Fund beyond 2 years, subject to terms of the contribution agreement, other fund documents and such conditions as may be specified by the SEBI from time to time. [Proviso to Reg.13(4)]
- large value funds for accredited investors of Category I and II may invest up to 50% of the investable funds in an investee company directly or through investment in the units of other Alternative Investment Funds. [Proviso to Reg. 15(1)(c)]
- large value funds for accredited investors of Category III may invest up to 20% of the investable funds in an investee company directly or through investment in units of other Alternative Investment Funds. [Proviso to Reg. 15(1)(d)]

Modalities for implementation of the framework for Accredited Investors (Circular No. SEBI/HO/IMD/IMD-I/DF9/P/CIR/2021/620 dated August 26, 2021)

SEBI has come out with detailed modalities for implementation of the Accredited Investors (AIs) framework, a move expected to open up a new channel of raising funds from sophisticated investors. The SEBI has issued guidelines on eligibility criteria for AIs, procedure as well as validation for accreditation, procedure to avail benefits linked to accreditation and flexibility to investors to withdraw 'consent'. The SEBI had earlier this month introduced the concept of "Accredited Investors" in the securities market.

For details:
https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-alternative-investment-funds-third-amendment-regulations-2021_51670.html

https://www.sebi.gov.in/legal/circulars/aug-2021/circular-on-modalities-for-implementation-of-the-framework-for-accredited-investors_52116.html

(2) SEBI (Alternative Investment Funds) (Fifth Amendment) Regulations, 2021 (November 09, 2021)

SEBI vide its notification dated November 09, 2021, amended the provisions of SEBI (Alternative Investment Funds) Regulations, 2012, which shall come into force on the on the thirtieth day from the date of their publication in the Official Gazette.

1) Vide this notification, a definition of co-investment under Regulation 2(1)(fa) is inserted-

"Co-investment" means investment made by a Manager or Sponsor or investor of Category I and II Alternative Investment Fund(s) in investee companies where such Category I or Category II Alternative Investment Fund(s) make investment:

Provided that Co-investment by investors of Alternative Investment Fund shall be through a Co-investment Portfolio Manager as specified under the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020;"

2) In Regulation 15(1) related to General Investment Conditions by all categories of Alternative Investment Funds

- clause (b) shall be substituted with the following, namely,-

  "(b) The terms of Co-investment in an investee company by a Manager or Sponsor or coinvestor, shall not be more favourable than the terms of investment of the Alternative Investment Fund:

  Provided that the terms of exit from the Co-investment in an investee company including the timing of exit shall be identical to the terms applicable to that of exit of the Alternative Investment Fund:

  Provided further that the above proviso shall be applicable only for coinvestment made from the date of coming into force of this regulation."

- clause (d) shall be substituted with the following, namely,-

  "(d) Category III Alternative Investment Funds shall invest not more than ten per cent of the net asset value in listed equity of an Investee Company and shall invest not more than ten per cent of the investable funds in securities other than listed equity of an Investee Company, directly or through investment in units of other Alternative Investment Funds:

  Provided that large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty per cent of the net asset value in listed equity of an Investee Company and may invest up to twenty per cent of the investable funds in securities other than listed equity of an Investee Company, directly or through investment in units of other Alternative Investment Funds;"

3) In Regulation 20 related to General Obligations, after sub-regulation (14) the following sub-regulation has been inserted, namely-

"(15) The manager shall not provide advisory services to any investor other than the clients of Co-investment Portfolio Manager as specified in the Securities and Exchange Board of India (Portfolio Managers) Regulations, 2020, for investment in securities of investee companies where the Alternative Investment Fund managed by it makes investment."

For details: https://www.sebi.gov.in/legal/regulations/nov-2021/securities-and-exchange-board-of-india-alternative-investment-funds-fifth-amendment-regulations-2021_53830.html

(3) SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2022 (January 14, 2022)

SEBI vide its notification dated January 14, 2022, has amended the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2019, which has come into force on the date of their publication in the Official Gazette. The amendments enable SEBI to generate unique registration numbers of Foreign Portfolio Investors on receiving the basic details of the applicants seeking FPI registration from either of SEBI registered Depositories.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2022_55352.html

(4) SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022 (January 24, 2022)

SEBI has notified the SEBI (Alternative Investment Funds) (Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

The amendment inserted Chapter III-B on Special Situation Fund in the Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012.

Meaning: "special situation fund" means a Category 1 Alternative Investment Fund that invests in special situation assets in accordance with its investment objectives and may act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016.

Applicability: The provisions of this Chapter shall apply to special situation funds and schemes launched by such special situation funds.

Investment in special situation funds

(1) Each scheme of a special situation fund shall have a corpus as may be specified by the SEBI.

(2) The special situation fund shall accept from an investor, an investment of such value as may be specified by the SEBI.

(3) The special situation fund shall not accept investments from any other Alternative Investment Fund other than a special situation fund.

Investment by special situation funds

(1) Special situation funds shall invest only in special situation assets and may act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016. However, the special situation fund shall not invest in,
i. its associates; or

ii. the units of any other Alternative Investment Fund other than the units of a special situation fund; or

iii. units of special situation funds managed or sponsored by its manager, sponsor or associates of its manager or sponsor.

(2) Any investment by a special situation fund in the stressed loan acquired under clause 58 of the Master Direction – Reserve Bank of India (Transfer of Loan Exposures) Directions, 2021 as amended from time to time shall be subject to lock-in period as may be specified by the SEBI.

In this context, SEBI vide its Circular No. SEBI/HO/IMD-I/DF6/P/CIR/2022/009 dated January 27, 2022 has specified the following:

(a) Each scheme of SSF shall have a corpus of at least 100 crore rupees.

(b) SSF shall accept an investment of value not less than 10 crore rupees from an investor. In case of an accredited investor, the SSF shall accept an investment of value not less than 5 crore rupees. Further, in case of investors who are employees or directors of the SSF or employees or directors of the manager of the SSF, the minimum value of investment shall be 25 lakh rupees.

(c) SSF intending to act as a resolution applicant under the Insolvency and Bankruptcy Code, 2016 shall ensure compliance with the eligibility requirement provided thereunder.

For details: https://www.sebi.gov.in/legal/regulations/jan-2022/securities-and-exchange-board-of-india-alternative-investment-funds-amendment-regulations-2022_55525.html

https://www.sebi.gov.in/legal/circulars/jan-2022/introduction-of-special-situation-funds-as-a-sub-category-under-category-i-aifs_55625.html

(5) SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2022 (March 16, 2022)

SEBI has notified the SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette.

Vide this notification, clause (d) of regulation 15(1) regarding general investment conditions, has been substituted which provides that-

"Category III Alternative Investment Funds shall invest not more than ten per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds and the large value funds for accredited investors of Category III Alternative Investment Funds may invest up to twenty per cent of the investable funds in an Investee Company, directly or through investment in units of other Alternative Investment Funds:

Provided that for investment in listed equity of an Investee Company, Category III Alternative Investment Funds may calculate the investment limit of ten per cent of either the investable funds or the net asset value of the scheme and large value funds for accredited investors of Category III Alternative Investment Funds may calculate the investment limit of twenty per cent of either the investable funds or the net asset value of the scheme, subject to the conditions specified by the Board from time to time."

For details: https://www.sebi.gov.in/legal/regulations/mar-2022/securities-and-exchange-board-of-india-alternative-investment-funds-second-amendment-regulations-2022_56966.html

(6) Block Mechanism in demat account of clients undertaking sale transactions (Circular No. SEBI/HO/MIRSD/DoP/ P/CIR/2022/109 dated August 18, 2022)

Background:

SEBI, vide its circular dated July 16, 2021, introduced block mechanism in the demat account of clients undertaking sale transactions on optional basis, for ease of operations in Early Pay-in mechanism. When the client intends to make a sale transaction, shares will be blocked in the demat account of the client in favour of Clearing Corporation. If sale transaction is not executed, shares shall continue to remain in the client's demat account and will be unblocked at the end of the T day. Thus, this mechanism will do away with the movement of shares from client's demat account for early pay-in and back to client's demat account if trade is not executed.

Brief of the Circular:

SEBI vide this circular has provided that the facility of block mechanism shall be mandatory for all Early Pay-In transactions with effect from November 14, 2022.

SEBI vide its Circular No. SEBI/HO/MIRSD/DOP/P/CIR/2022/143 dated October 27, 2022 has issued a clarification on "Block Mechanism in demat account of clients undertaking sale transactions". As per the clarification the block mechanism shall not be applicable to clients having arrangements with custodians registered with SEBI for clearing and settlement of trades.

For details: https://www.sebi.gov.in/legal/circulars/aug-2022/block-mechanism-in-demat-account-of-clients-undertaking-sale-transactions_62131.html

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LESSON 16
SECURITIES MARKET INTERMEDIARIES

(1) SEBI (Investment Advisers) (Third Amendment) Regulations, 2021 (August 3, 2021)

SEBI vide its notification dated August 03, 2021, amends the provisions of SEBI (Investment Advisers) Regulations, 2013 which shall come into force on the date of their publication in the Official Gazette.

- The amendment introduced a framework for "**accreditation agency" & "accredited investor**" which shall have the same meaning as assigned to it as per SEBI (Alternative Investment Funds) Regulations, 2012.

  (The definitions are covered above in Lesson 15 under the heading "SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2021").

- Further, Regulation 15A has been amended which provides that Investment Adviser shall be entitled to charge fees for providing investment advice from a client including an accredited investor in the manner as specified by the SEBI.

  For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-investment-advisers-third-amendment-regulations-2021_51672.html

(2) SEBI (Portfolio Managers) (Third Amendment) Regulations, 2021 (August 3, 2021)

SEBI vide its notification dated August 03, 2021, amended the provisions of SEBI (Portfolio Managers) Regulations, 2020, which shall come into force on the date of their publication in the Official Gazette.

The amendment introduced a framework for, "accreditation agency", "accredited investor" and "large value accredited investor" as under:

1) "accreditation agency" shall have the same meaning as assigned to it as per SEBI (Alternative Investment Funds) Regulations, 2012 (covered herein above in Lesson 15 under SEBI (Alternative Investment Funds) (Third Amendment) Regulations, 2021).

2) "accredited investor" means any person who fulfils the eligibility criteria as specified by the Board and is granted a certificate of accreditation by an accreditation agency.

3) "large value accredited investor" means an accredited investor who has entered into an agreement with the portfolio manager for a minimum investment amount of ten crore rupees.

The notification further provides that-

- The portfolio manager shall, before taking up an assignment of management of funds and portfolio on behalf of a client, enter into an agreement in writing with such client. However, the contents of agreement as specified shall not apply to the agreement between the portfolio managers and the large value accredited investors. [Insertion: Proviso to Reg. 22(1)]
- The requirement of minimum investment amount of Rs. 50 lakh per client shall not apply to an accredited investor, subject to appropriate disclosures in the disclosure document and the terms agreed between the client and the portfolio manager. [Insertion: Proviso to Reg. 23(2)]
- The portfolio manager may offer discretionary or non-discretionary or advisory services for investment up to 100% of the assets under management of the large value accredited investors in

unlisted securities, subject to appropriate disclosures in the disclosure document and the terms agreed between the client and the portfolio manager. [Insertion: Reg. 24(4A)].

For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-portfolio-managers-third-amendment-regulations-2021_51674.html

(3) SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2021 (August 03, 2021)

SEBI vide its notification dated August 03, 2021, amends the provisions of SEBI (Foreign Portfolio Investors) Regulations, 2019, which shall come into force on the date of their publication in the Official Gazette.

The amendment substitutes the Regulation 4 (c) (eligibility criteria of foreign portfolio investor) with the following, namely, –

"(c) non-resident Indians or overseas citizens of India or resident Indian individuals may be constituents of the applicant provided they meet the conditions specified by the Board from time to time:

Provided that resident Indian other than individuals, may also be constituents of the applicant, subject to the following conditions, namely –

i. such resident Indian, other than individuals, is an eligible fund manager of the applicant, as provided under sub-section (4) of section 9A of the Income Tax Act, 1961 (43 of 1961); and

ii. the applicant is an eligible investment fund as provided under subsection (3) of section 9A of the Income Tax Act, 1961 (43 of 1961) which has been granted approval under the Income Tax Rules, 1962;"

For details: https://www.sebi.gov.in/legal/regulations/aug-2021/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2021_51676.html

(4) Permitting non-scheduled Payments Banks to register as Bankers to an Issue

(Circular No. SEBI / HO / MIRSD / MIRSD_DOR / P / CIR/ 605 / 2021 dated August 03, 2021)

SEBI vide notification dated July 30, 2021, amended the SEBI (Bankers to an Issue) Regulations, 1994 (BTI Regulations) thereby permitting such other banking company, as may be specified by the SEBI, from time to time, to carry out the activities of Bankers to an Issue (BTI), in addition to the scheduled banks.

In this regard, non-scheduled Payments Banks, which have prior approval from Reserve Bank of India, shall be eligible to act as a Bankers to an Issue (BTI) subject to fulfilment of the conditions stipulated in the BTI Regulations. Further, Payments Banks registered as a BTI shall also be permitted to act as a Self-Certified Syndicate Bank subject to the fulfilment of the criteria laid down by the SEBI. The blocking / movement of funds from the investor to issuer shall only be made through the savings account of the investor held with the payments bank.

For details: https://www.sebi.gov.in/legal/circulars/aug-2021/permitting-non-scheduled-payments-banks-to-register-as-bankers-to-an-issue_51595.html

(5) SEBI (Portfolio Managers) (Fourth Amendment) Regulations, 2021 (November 09, 2021)

SEBI vide its notification dated 9th November 2021 has notified the SEBI (Portfolio Managers) (Fourth Amendment) Regulations, 2021 to further amend the SEBI (Portfolio Managers) Regulations, 2020. They shall come into force on the thirtieth day from the date of their publication in the Official Gazette.

The amendment is brought under regulation 2, through which it has inserted the term "Co-investment Portfolio Manager".

Regulation 2(1)(fa) –

"Co-investment Portfolio Manager" means a Portfolio Manager who is a Manager of a Category I or Category II Alternative Investment Fund(s); and:

- provides services only to the investors of such Category I or Category II Alternative Investment Fund(s); and
- makes investment only in unlisted securities of investee companies where such Category I or Category II Alternative Investment Fund(s) make investments:

  Provided that the Co-investment Portfolio Manager may provide services to investors from any other Category I or Category II Alternative Investment Fund(s) which are managed by them and are also sponsored by the same Sponsor(s).

(6) Publishing Investor Charter and Disclosure of Complaints by Merchant Bankers on their Websites

(Circular No. SEBI/HO/CFD/DCR2/P/CIR/2021/0661 dated November 23, 2021)

With a view to provide investors an idea about the various activities pertaining to primary market issuances as well as exit options like Takeovers, Buybacks or Delistings, an Investor Charter has been developed in consultation with the Merchant Bankers. This charter is a brief document in an easy to understand language and contains different services to the investors at one single place for ease of reference. All the registered Merchant Bankers are hereby advised to disclose on their website, Investor Charter for each of the following categories, as provided at Annexure-'A' to this circular –

1. Initial Public Offer (IPO) and Further Public Offer (FPO) including Offer for Sale (OFS);
2. Rights Issue;
3. Qualified Institutions Placement (QIP);
4. Preferential Issue;
5. SME IPO and FPO including OFS;
6. Buyback of Securities;
7. Delisting of Equity Shares;
8. Substantial Acquisitions of Shares and Takeovers.

Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has also been decided that all the registered Merchant Bankers shall disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, on each of the aforesaid categories separately as well as collectively, latest by 7th of succeeding month, as per the format enclosed at Annexure- 'B' to this circular.

The provisions of this circular shall come into effect from January 01, 2022.

For details: ***https://www.sebi.gov.in/legal/circulars/nov-2021/publishing-investor-charter-and-disclosure-of-complaints-by-merchant-bankers-on-their-websites_54147.html***

(7) Publishing Investor Charter and Disclosure of Complaints by Registrar and Share Transfer Agents (RTAs) on their Websites

(Circular No. SEBI/HO/MIRSD/MIRSD_RTAMB/P/CIR/2021/670 dated November 26, 2021)

In order to facilitate investor awareness about various activities where an investor has to deal with RTAs for availing Investor Service Requests, SEBI has developed an Investor Charter for RTAs, inter-alia, detailing the services provided to Investors, Rights of Investors, various activities of RTAs with timelines, Dos and Don'ts for Investors and Grievance Redressal Mechanism. In this regard, all the registered RTAs shall take necessary steps to bring the Investor Charter, as provided at 'Annexure – A' to the notice of existing and new shareholders by way of:

a. disseminating the Investor Charter on their websites / through e-mail;

b. displaying the Investor charter at prominent places in offices etc.

Additionally, in order to bring about transparency in the Investor Grievance Redressal Mechanism, it has been decided that all the registered RTAs shall disclose on their respective websites, the data on complaints received against them or against issues dealt by them and redressal thereof, latest by 7th of succeeding month, as per the format enclosed at 'Annexure - B' to this circular

The provisions of this circular shall come into effect from January 01, 2022.

For details: ***https://www.sebi.gov.in/legal/circulars/nov-2021/publishing-investor-charter-and-disclosure-of-complaints-by-registrar-and-share-transfer-agents-rtas-on-their-websites_54224.html***

(8) SEBI (Stock Brokers) (Amendment) Regulations, 2022 (February 23, 2022)

SEBI has notified the SEBI (Stock Brokers) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette. Vide this amendment, a new clause "professional clearing member" has been inserted in regulation 2(1)(ca) which means a member having clearing and settlement rights in any recognized clearing corporation, but not having trading rights in any recognized stock exchange.

For details: https://www.sebi.gov.in/legal/regulations/feb-2022/securities-and-exchange-board-of-india-stock-brokers-amendment-regulations-2022_56372.html

(9) SEBI (Depositories and Participations) (Amendment) Regulations, 2022 (February 23, 2022)

SEBI has notified the SEBI (Depositories and Participations) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette.

The amendment has been made in Regulation 35(a)(viii) of the SEBI (Depositories and

Participants) Regulations, 2018. Vide this amendment, SEBI has increased the networth requirements for stock broker to register as a depository participant and provides that the stock broker shall have a networth of rupees three crores {within one year of the date of this notification}, which shall be increased to rupees five crores {within two years of the date of this notification}.

Further provided that a self-clearing member fulfilling the networth requirements as provided under the SEBI (Stock Brokers) Regulations, 1992 shall also be eligible to register as a depository participant.

For details: https://www.sebi.gov.in/legal/regulations/feb-2022/securities-and-exchange-board-of-india-depositories-and-participations-amendment-regulations-2022_56368.html

(10) SEBI (Custodian) (Amendment) Regulations, 2022 (April 25, 2022)

SEBI has notified the SEBI (Custodian) (Amendment) Regulations, 2022 which shall come into force on the date of their publication in the Official Gazette.

The following has been amended namely: -

• In Regulation 2(e), the definition of custodial services has been amended namely: -

"custodial services" in relation to securities or goods of a client or gold or gold related instruments **or silver or silver related instruments** held by a mutual fund or title deeds of real estate assets held by a real estate mutual fund scheme in accordance with the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996 means, the safekeeping of such securities or goods or gold or gold related instruments **or silver or silver related instruments** ortitle deeds of real estate assets and providing services incidental thereto.

• Regulation 8 which specify "Procedure and Grant certificate" new sub-regulation (7) has been inserted namely: -

"A custodian holding a certificate of registration as on the date of commencement of the Securities and Exchange Board of India (Custodian) (Amendment) Regulations, 2022, may provide custodial services in respect of silver or silver related instruments held by a mutual fund only after taking prior approval of the Board."

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/securities-and-exchange-board-of-india-custodian-amendment-regulations-2022_58498.html

(11) SEBI (Debenture Trustees) (Amendment) Regulations, 2022 (April 11, 2022)

SEBI on April 11, 2022, has notified the SEBI (Debenture Trustees) (Amendment) Regulations, 2022, which shall come into force on the date of their publication in the Official Gazette. Vide this notification SEBI has amended the provisions of the SEBI (Debenture Trustee) Regulations, 1993, to align the framework and terminology with respect to 'Security Cover' wherein the term 'Asset Cover' has been substituted with term 'Security Cover' in regulation 15 of the SEBI (Debenture Trustee) Regulations, 1993.

For details: https://www.sebi.gov.in/legal/regulations/apr-2022/sebi-debenture-trustees-amendment-regulations-2022_57987.html

(12) SEBI (Intermediaries) (Amendment) Regulations, 2022
(Notification No SEBI/LAD -NRO/ GN/2022/91 dated August 01, 2022)

SEBI has notified the SEBI (Intermediaries) (Amendment) Regulations, 2022 to further amend the SEBI (Intermediaries) Regulations, 2008. They shall come into force on the date of their publication in the Official Gazette. The following amendments have been made:

- In the SEBI (Intermediaries) Regulations, 2008, for the words "designated member", wherever occurring, the words "competent authority" have been substituted.

- The definition of "competent authority" in regulation 22, clause (c) the following definition has been substituted, namely, -

  "(c) "competent authority" means a Whole Time Member or an officer of the Board, not below the rank of a Chief General Manager, as may be designated for the purpose by the Board;"

- Regulation 24(1), pertaining to "Appointment of designated authority", the following has been substituted, namely, -

  "(1) The Board may approve the initiation of proceedings for any default of the nature specified in regulation 23 against any person who has been granted a certificate of registration under the Act and regulations made thereunder."

  For details: https://www.sebi.gov.in/legal/regulations/aug-2022/securities-and-exchange-board-of-india-intermediaries-amendment-regulations-2022_61681.html

(13) SEBI (Stock Brokers) (Amendment) Regulations, 2023
(Notification No. SEBI/LAD-NRO/GN/2023/116 dated January 17, 2023)

SEBI has notified the SEBI (Stock Brokers) (Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification, the following amendments have been made:

1. The new definition of **"Qualified Stock Broker"** has been inserted which means a stock broker referred to in regulation 18D of the SEBI (Stock Brokers) Regulations, 1992.
2. The new regulation 18D related to "Enhanced obligations and responsibilities for qualified stock brokers" has been inserted, namely-

   18D. (1) The SEBI may designate a stock broker as a qualified stock broker having regard to its size and scale of operations, likely impact on investors and securities market, as well as governance and service standards, on the basis of the following parameters and the appropriate

weightages thereon: -

a) the total number of active clients;
b) the available total assets of clients with the stock broker;
c) the trading volumes of the stock broker;
d) the end of day margin obligations of all clients of a stock broker;
e) compliance score as may be specified by the Board;
f) grievance redressal score as may be specified by the Board; and
g) the proprietary trading volumes of the stock broker.

(2). The stock broker designated as a qualified stock broker shall be required to meet enhanced obligations and discharge responsibilities to ensure: -

a) appropriate governance structure and processes;
b) appropriate risk management policy and processes;
c) scalable infrastructure and appropriate technical capacity;
d) framework for orderly winding down;
e) robust cyber security framework and processes; and
f) investor services including online complaint redressal mechanism.

Brief of the Notification:

SEBI has designated stock brokers, based on identified parameters, as Qualified Stock Brokers (QSBs) to mitigate this risk. Certain Stock Brokers in the market handle a very large number of clients, very large amount of client funds and very large trading volumes. Possible failure of such brokers has the potential to cause widespread impact on investors and reputational damage to the Indian securities market. QSBs would need to comply with enhanced risk management practices/requirements. There would also be enhanced monitoring of such QSBs by SEBI / Market Infrastructure Institutions (MIIs).

For details: https://www.sebi.gov.in/legal/regulations/jan-2023/securities-and-exchange-board-of-india-stock-brokers-amendment-regulations-2023_67409.html

(14) SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/128 Dated 14th March, 2023)

SEBI on March 14, 2023, notified the SEBI (Foreign Portfolio Investors) (Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification the following amendments have been made:

- For grant of certificate as a foreign portfolio investor an application to be made to Designated Depository Participants ("DDP") in the form specified by the government or SEBI, along with the fee specified in Part A of the Second Schedule. In addition to this provision, the application now has to be made in the manner specified by the government or SEBI and along with any documents in the manner specified by SEBI. [Amendment: Regulation 3(2)]
- In regulation 22 pertaining to General obligations and responsibilities of foreign portfolio investors, the following amendments have been made:

- The foreign portfolio investor shall **as soon as possible but not later than seven working days**, inform the Board and designated depository participant in writing, if any information or particulars previously submitted to the Board or designated depository participant are found to be false or misleading, in any material respect. [Amendment: Regulation 22(1)(b)]
- As soon as possible but not later than seven working days, inform the Board and designated depository participant in writing, if there is any material change in the information including any direct or indirect change in its structure or ownership or control or investor group previously furnished by him to the Board or designated depository participant. [Substitution: Regulation 22(1)(c)]
- **As soon as possible but not later than seven working days**, inform the Board and the designated depository participant, in case of any penalty, pending litigation or proceedings, findings of inspections or investigations for which action may have been taken or is in the process of being taken by an overseas regulator against it. [Amendment: Regulation 22(1)(e)]
- Ensure that accurate details regarding its investor group are maintained with its designated depository participant at all times. [Insertion: Regulation 22(1)(l)]

For details: https://www.sebi.gov.in/legal/regulations/mar-2023/securities-and-exchange-board-of-india-foreign-portfolio-investors-amendment-regulations-2023_69104.html

(15) SEBI (Stock Brokers) (Second Amendment) Regulations, 2023 (Notification No. SEBI/LAD-NRO/GN/2023/140 dated July 24, 2023)

SEBI has notified the SEBI (Stock Brokers) (Second Amendment) Regulations, 2023 on July 24, 2023 which shall come into force on the date of their publication in the Official Gazette. Vide this notification, the amendments are made in regulation 10A of the SEBI (Stock Brokers) Regulations, 1992, dealing with the registration of clearing members. As per said regulation 10A, a person is required to obtain a certificate of registration from SEBI in order to act as a clearing member. The amendment provides that no separate registration shall be required for any person registered with the limited purpose clearing corporation as a participant for participating in the tri-party repo segment for undertaking proprietary trades in corporate bonds. Further, an explanation is inserted which provides the "Participant" means any person who is an eligible entity as stipulated under the Repurchase Transactions (Repo) (Reserve Bank) Directions, 2018.

For details; https://www.sebi.gov.in/legal/regulations/jul-2023/securities-and-exchange-board-of-india-stock-brokers-second-amendment-regulations-2023_74317.html

(16) SEBI (Foreign Portfolio Investors) (Second Amendment) Regulations, 2023 (Notification No. SEBI/LADNRO/GN/2023/143 dated August 10, 2023)

SEBI has notified the SEBI (Foreign Portfolio Investors) (Second Amendment) Regulations, 2023 which shall come into force on the date of their publication in the Official Gazette. In regulation 22 of the SEBI (Foreign Portfolio Investors) Regulations, 2019 pertaining to General obligations and responsibilities of foreign portfolio investors, after sub-regulation (5), the following sub-regulations have been inserted, namely, -

"(6) A foreign portfolio investor that fulfils the criteria specified by the SEBI from time to time, shall provide information or documents in relation to the persons with any ownership, economic

interest or control, in the foreign portfolio investor.
(7) The information or documents specified in sub-regulation (6) shall be provided in the manner as may be specified by the SEBI from time to time."

For details: https://www.sebi.gov.in/legal/regulations/aug-2023/securities-and-exchange-board-of-india-foreign-portfolio-investors-second-amendment-regulations-2023_75198.html

(17) Case Laws

28.04.2022	**AmrapaliAadya Trading & Investment Pvt. Ltd & Ors (Noticees) vs. SEBI**	**Adjudicating Officer, SEBI**

Facts of the Case:
SEBI conducted an investigation in the matter for the investigation period April 01, 2011 to March 31, 2017. On completion of investigation, it was observed that the Noticees have allegedly been found indulged in following:
a. Non-submission of information sought through summons.
b. Siphoning of clients' funds/ securities.
c. Non segregation & Mis-utilisation of client's securities and funds.
d. Mis-used the client's securities by pledging/transferring the same.
e. Routing/ Diversion of Clients' funds.
f. Running fixed return scheme for some of its clients.
g. Selling of client's securities from the employee's account.
h. Moving funds and securities to its sister concern and transferring funds from business bank account of the Noticee to its related/ group entities.
i. Non-disclosure of demat accounts to NSE.
j. Failed to carry out running account settlement.

In view of same, it was alleged that the Noticees have violated various provisions of the SEBI Act, Securities Contracts (Regulation) Rules, 1957, SEBI (Stock Brokers) Regulations, 1992 and circulars issued by SEBI from time to time.

SEBI Order:
SEBI of considered view that the Noticees have violated various provisions of SEBI Act, SCRA, Rules and Regulation made and various circulars issued thereunder and thus imposed penalties totaling Rs 29 crore on nine entities, including AmrapaliAadya Trading & Investment Pvt. Ltd. and Aadya Commodities Pvt. Ltd. It was held that any omission on part of the registered intermediary is detrimental to the interest of investors in securities market.

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