ARTICLE

Governance Landscape for Unlisted Entities Approaching Listing on Stock Exchanges: A Perspective for Company Secretaries

With the convergence of boom in IPOs and increasing emphasis on the role of Company Secretaries as governance professional, it becomes extremely imperative for Company Secretaries, to understand how the governance landscape transforms from an unlisted entity to a listed entity, due to the applicability of securities laws. However, beyond merely understanding the technical compliances, Company Secretaries should understand the spirit of governance framework applicable to a listed entity, and adopt best practices with comprehensive planning, co-ordination with internal stakeholders, creating awareness within the organisation and implementing controls and procedures across the organisation. This article encapsulates the key corporate governance areas that require close attention of Company Secretaries, in an organisation approaching listing on stock exchanges.

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INTRODUCTION

Capital markets continue to be the preferred fund-raising avenue over traditional bank funding for India Inc., particularly for the new age companies. However, for an organisation aiming to approach capital markets, the dynamics significantly change from pre-listing stage to post listing on stock exchanges. A listed entity faces increased regulatory oversight and continuous scrutiny of various stakeholders viz. shareholders, investors (Institutional, HNIs and Retail investors), regulators, proxy advisory firms, research analysts, peer group / competitors, value chain partners, consumers etc. transcending geographical boundaries. Any action or decision (and communication with respect to that in public domain) must go through a well-laid out process and protocol formed on the principles of integrity, transparency and good governance. This makes the role of Company Secretaries very significant and crucial.

During the journey towards listing of an entity, the management focuses on building a robust growth story; finance teams work towards implementing internal controls to ensure accurate, adequate and timely disclosure of financial information during the IPO as well as post listing and maximising the valuation; similarly, Companies Secretaries must strive to implement a robust governance system suitable to meet the demands of a listed entity, in a proactive and planned way. A well laid out governance system of the organisation helps in bringing confidence in the ethical working and sustainability of the organisation, achievability of the stated growth strategies and can help many investors in taking that final investment call. Thus, the governance system of an entity becomes a crucial element of the benefits perceived from public listing.

During the investors' engagement in IPO, besides the growth story, financial and operational performance indicators; the governance practices and discipline in business conduct is the key focus area that many investors want to discuss with founders/promoters. Founders or promoters also acknowledge that public listing and rigorous scrutiny of stakeholders brings efficiency in business and creates a long-term sustainable organisation beyond individual identities.

Transforming the governance culture of an organisation involves significant time. Therefore, it can be prudent for Company Secretaries to implement the governance requirements as applicable to a listed entity at least one year prior to listing, to overcome operational challenges.

As regards the regulatory framework, a listed entity needs to ensure compliance with both Companies Act, 2013 and SEBI regulations, which are generally not inconsistent but more stringent than Companies Act, 2013. Further, SEBI Listing Regulations primarily follow a principle and disclosure-based approach as articulated in regulation 4. This expansion of applicable legal framework from Corporate and labour laws, to various securities laws such as SEBI ICDR Regulations, SEBI LODR Regulations, SEBI (PIT) Regulations, and various other SEBI laws requires a well-planned strategy, to ensure smooth transition.

Some of the key corporate governance areas (*list is not exhaustive*) that requires close attention of Company Secretaries during this transformational journey to become a listed entity, are encapsulated below:

1. **Alignment of constitutional documents, shareholders' agreement and other material agreements, identification of promoter:**

   The first checkpoint is alignment of constitutional documents from listing perspective. The Articles of association of listed entity should not have any restrictive clauses with respect to issue, transferability and/or listing of securities. Investors in privately held companies, especially the new age companies enter into shareholders' agreements, with or without the company being a party to the agreement, that grants such investors certain special rights in relation to control and management of the company such as Nomination Rights, Veto Rights / Affirmative voting, Information Rights, Anti-Dilution Rights, Right of First Refusal, Tag Along Rights, Divestment Rights, etc. These rights are generally granted to private equity investors as well as founder / promoter investors that, directly or indirectly, have an impact on the management or control of the company. These rights are also generally reflected in Articles of Associations of the company. From the perspective of IPO/ listing, such special rights (whether stipulated under shareholders' agreements or the articles of association) need to be terminated or they will automatically fall away from the date of listing and fresh shareholders' approval will be required to reinstate such rights, subject to approval by way of special resolution of the shareholders in general meeting every five years.

   The terms of such agreements also have an impact on disclosure of founders and/or investors as promoter in the IPO offer documents. Hence, the Company Secretary shall review such shareholders' agreements, constitutional documents, annual reports etc. and align all concerned stakeholders to identify individuals / entities to be named as promoter.

   Apart from the abovementioned shareholders agreements, the Company Secretary also need to execute / review the existing material agreements such as agreements relating to payment of Royalty and brand licensing arrangement with promoters / parent entities / third parties, common services and/ or common infrastructure agreements and ensure that the terms of such agreements are not unfairly biased and are at arms' length basis. Company Secretaries should be cognizant of these requirements and ensure all such agreements and constitutional documents are suitably modified in consultation with internal concerned stakeholders.

2. **Alignment of Corporate Structure, Capital Structure and Compliance Framework:**

   A multi-faceted review of corporate structure is extremely essential ahead of the IPO. In this regard, the Company Secretary should:

   - Review the corporate structure of entities within the Group to assess need for jurisdictional shift/ reincorporation outside the home jurisdiction, merger, demerger or consolidation of business/ divisions to generate investors' interest and maximising valuation.
   - Review the capital structure of the company to assess need for bonus issue / stock split / rights issue, conversion of convertible securities as it may have implications on IPO requirements.
   - Review organisation structure to identify Key Managerial Personnel, senior managerial personnel and other key employees, their profiles, employment agreements etc. from marketing as well as legal perspective.
   - Assess need to implement employee stock option plans, to enhance employees' trust and align employees' interest with organisation goals, or review existing employee stock option plans, to ensure compliance with securities laws.
   - Implement measures to ensure oversight over subsidiaries as per the requirements of SEBI Listing regulations.

   The Company Secretaries also need to review all existing corporate and business approvals, intellectual property rights registrations, litigations, secretarial and legal compliances, tax registrations and compliances, statutory dues compliance and take appropriate actions to address / redress non-compliances, if any.

3. **Changes in Board Structure:**

   Listing transforms governance culture from the Board level, requiring a listed entity to appoint Independent Directors (IDs), or more number of IDs than that envisaged under Section 149 read with companies (Appointment and Qualification of Directors) Rules, 2014. Further, the eligibility criteria of IDs is wider under SEBI Listing Regulations as compared to Companies Act, 2013 e.g. the criteria of 'pecuniary relationship' is subjective under SEBI Listing Regulations as it is based on 'material' pecuniary relationship as compared to an objective threshold specified under the Companies Act, 2013. This may require re-assessing the eligibility of existing IDs and a detailed scrutiny of new IDs. E.g. in a recent informal guidance issued by SEBI on May 14, 2025 in the case of InfoBeans Technologies Limited[1], SEBI highlighted the requirements of SEBI Listing regulations that in the absence of any threshold to determine 'material pecuniary relationship' for eligibility of independent director, the regulations require the Board of Directors and Nomination and Remuneration Committee to undertake due assessment of the veracity of the declaration of independence submitted by Independent Directors, while acknowledging, but not suggesting to technically follow the threshold of 10% of the director's total income as prescribed under the Companies Act,

2013. This informal guidance reinforces SEBI's approach to follow the spirit of corporate governance and not just the letter of the law.

The appointment of IDs is not merely a technical requirement to be fulfilled; it shapes governance culture of the entity post listing. While the selection of IDs is mostly overseen by the management, Company Secretaries as governance professionals, have the responsibility to familiarise the IDs with the business and operations of the company and provide necessary information and means to enable IDs to effectively discharge their role and obligations and meaningfully contribute to the company management while ensuring compliance with relevant legal framework. In the current scenario, the involvement of Independent Directors is increasing significantly from merely supervisory role to proactive participation in all business areas. E.g. as per SEBI Listing Regulations, the related party transactions shall be approved by only those members of audit committee who are Independent Directors. Therefore, Company Secretaries are not just required to arrange necessary information but have a strategic and active participation during the entire decision-making process to ensure that Independent Directors are able to discharge their role meaningfully.

Besides the appointment of Independent Directors, a Company Secretary would also need to review the terms of appointment or employment contracts of existing executive or non-executive non-independent directors and align such terms or contracts with the requirements of SEBI regulations, since SEBI regulations prescribe certain conditions that are more stringent than Companies Act, 2013. e.g. SEBI Listing regulations does not permit board permanency. As per SEBI Listing regulations, w.e.f. April 1, 2024, the continuation of a director serving on the Board of Directors of a listed entity, other than the Directors liable to retire by rotation as per the Companies Act, 2013 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.

> A well laid out governance system of the organisation helps in bringing confidence in the ethical working and sustainability of the organisation, achievability of the stated growth strategies and can help many investors in taking that final investment call.

4. **Constitution of committees / change in composition of existing committees, Appointment of compliance officer:**

While the Companies Act, 2013 mandates constitution of committees such as Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee and CSR committee for listed entities, certain 'public' companies or companies meeting certain threshold criteria, SEBI Listing regulations prescribes detailed requirements relating to composition, meetings, quorum, terms of reference etc. that are more stringent from those prescribed under the Companies Act, 2013. SEBI Listing regulations additionally require Risk Management Committee to be constituted by top 1000 listed entities by market capitalisation and high value debt listed entities (HVDLEs).

In reality, the dynamics of these Board committees have become a lot more complex, where doing a merely technical compliance can be a vulnerable proposition. It is important to understand the spirit of these regulatory requirements and align the conflicting forces within the organisation system to ensure smooth and efficient functioning.

Further, the provisions relating to maximum number of directorships by any director are more stringent under SEBI Listing regulations as compared to the Companies Act, 2013. This requires Company Secretaries to assess the status of compliance in case of each director and take appropriate steps.

The most pertinent matter for Company Secretaries is to understand the role of Compliance Officer under SEBI Listing Regulations. These regulations require every listed entity to appoint a qualified Company Secretary to act as Compliance officer. Further, pursuant to SEBI LODR (Third Amendment) Regulations, 2024 w.e.f December 12, 2024, the regulations now require the Compliance Officer shall be in whole time employment of the listed entity, not more than one level below the Board of Directors and shall be designated as a Key Managerial Personnel. The responsibilities of Compliance Officer are defined in regulation 6(2) to, inter-alia, *ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit* and ensure redressal of investor grievances. While SEBI ICDR regulations also require a qualified Company Secretary to be the Compliance Officer but does not specify level of reporting within the organisation structure. However, on a coherent reading of both SEBI ICDR Regulations and SEBI LODR Regulations, it will be prudent to align the hierarchical position of Compliance Officer one level below the Managing Director or Whole Time Director, who are part of Board of Directors, at the time of IPO.

5. **Policies and code of conduct**

While Companies Act, 2013 mandates every company meeting certain thresholds as prescribed under the relevant section, to form certain policies, SEBI Listing Regulations prescribes many other additional policies to be framed and complied with, that may require substantial planning and execution for successful implementation such as materiality policy for determining material subsidiaries, policy on dealing with related party transactions, policy for determining materiality for disclosures, policy for prevention of insider trading, Code of Practices and Procedures for fair disclosure of unpublished price sensitive information, policy on board diversity, succession planning etc. The existing policies should also be reviewed prior to listing to ensure compliance with SEBI norms and make appropriate amendments. Further, in order to ensure compliance with the policies, Company Secretaries should frame detailed procedure and create awareness in internal teams to ensure adequate and timely information is available for reporting and disclosure purposes.

6. **Related Party Transactions (RPTs):**

The legal framework relating to RPTs has significantly evolved in recent years. RPTs are one of the crucial considerations which require close analysis and planning ahead of IPO, not just from disclosure perspective but also from implementing the right internal controls and workflows to ensure compliance post listing. The Company Secretaries need to carry out an extensive exercise to identify related parties (in joint reading of Companies Act, 2013 SEBI Regulations, and Indian Accounting standards), identify related party transactions and 'material' RPTs as per the thresholds defined under the SEBI Listing Regulations read with industry standards, assess and ensure compliance for each RPT in terms of approval of Audit committee, Board of Directors and Shareholders' approval. In order to comply with legal requirements, the Company Secretaries are required to implement rigorous policies and procedure for identification, approval, certification and reporting of RPTs in compliance with SEBI Listing regulations and industry standards. It is important to note that legal framework relating to RPTs is significantly wider under SEBI Listing Regulations as compared to Companies Act, 2013. E.g. the latest industry standards on RPTs[2], which have evolved pursuant to various rounds of discussions with industry stakeholders and are applicable to listed entities from September 1, 2025[3] provides detailed guidelines for threshold for material RPTs, minimum information to be disclosed to audit committee and shareholders for approval of RPTs, and certification requirements.

Stock Exchanges and SEBI can *suo moto* seek clarifications from listed entities if any RPT disclosed to stock exchanges have been approved by audit committee and shareholders (if applicable).

7. **Regular Compliances and event-based Compliances:**

One of the most significant aspect for a Company Secretary is to upgrade the organisation's systems to disseminate more elaborate, frequent and faster information post listing. The post listing regulatory framework requires many additional disclosures on quarterly/half-yearly/ annual basis, within the specified timelines which are different and more stringent from those defined under the Companies Act, 2013 such as:

i. Declaration of quarterly financial results.

ii. Statement of RPTs every six months along with dissemination of unaudited financialresults.

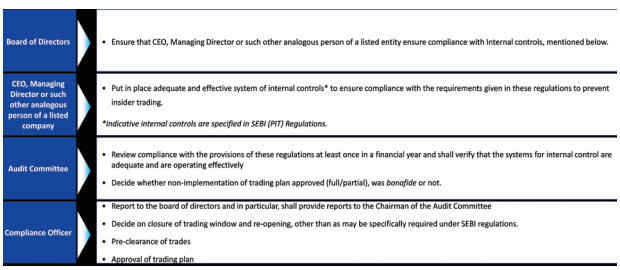
iii. Submission of quarterly compliance report on corporate governance and statement of investor complaints in integrated filing (Governance).

iv. Disclosure of shareholding pattern on a quarterly basis.

Besides the regular compliances, every listed company is also required to make disclosures of any event or information which, in the opinion of the Board of Directors of the listed company, is material. Certain events, as specified in Para A of Part A of Schedule III are per-se deemed material and are required to be disclosed irrespective of the thresholds of materiality. Other 'material' events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality are also required to be disclosed within 30 minutes or 12 / 24 hours or such other timelines as specified in the regulation for a particular event. These events, inter-alia, include extra-ordinary events in company, clarifications on market rumours, material updates in the business and structure of the company. In order to ensure compliance with event-based disclosure requirements, a Company Secretary is required to frame detailed internal controls and procedures and create awareness at all levels of the organisation so that the information is available to the compliance officer in adequate and timely manner.

8. **Compliances under SEBI (Prohibition of Insider Trading) Regulations:**

Prevention of insider trading is one of the major focus areas of SEBI to maintain market integrity and create level playing field for all investors. The regulatory intent and expectations from listed entities to ensure prevention of insider trading beyond the technical compliance, is very clearly articulated in case of SEBI (PIT) Regulations. These regulations provide for a preventive mechanism through the code of conduct and fair disclosures, however pursuant to Report of T.K. Viswanathan Committee on Fair Market Conduct[4] published in August 2018, SEBI PIT Regulations were amended to require listed entities to implement an institutional mechanism to prevent insider trading, as depicted below:



With increasing use of technology and AI based surveillance, the number of insider trading cases investigated and adjudicating by SEBI has increased significantly over the last few years. Many of these cases included penalties for violation of these regulations by top brass of large corporates.[5] This clearly highlight the regulatory intent.

Further, one of the key aspects of these regulations is that it prohibits insider trading in securities that are listed or 'proposed to be listed on a stock exchange' when in possession of UPSI, subject to certain exemptions. 'Proposed to be listed' includes securities of a company that has filed offer document with the Board or stock exchanges or ROC in connection with listing, or has filed a copy of scheme of merger or amalgamation under the Companies Act, 2013 if such company is getting listed pursuant to a scheme of merger or amalgamation. Thus, it is crucial for Company Secretaries to take

appropriate measures prior to filing of the draft offer document or draft scheme, as applicable. With increasing investor base in capital markets, it is very crucial for Company Secretaries to implement robust internal controls to prevent insider trading in its securities. Some of the key requirements under SEBI (PIT) Regulations, 2015 that Company Secretaries should understand are:

i. Identify designated persons based on their role and function in the organisation and the access that such role and function would provide to UPSI in addition to seniority and professional designation. Maintain database of designated persons and their immediate relatives.

ii. Restrict communication of unpublished price sensitive information (UPSI) and trading by insiders, require execution of confidentiality agreements.

iii. Implement and maintain structured digital database containing the name of persons or entities with whom UPSI is shared along with specified details. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

iv. Obtain initial disclosures from Promoters, members of promoter group, KMPs, Directors etc.

v. System driven disclosures to be made.

vi. Formulate policies and code of conduct for fair disclosure and conduct, and policy for prevention of insider trading, as prescribed under the SEBI (PIT) regulations.

vii. Identify a senior officer as 'Compliance Officer' to administer the compliance of Code of Conduct and other requirements under these regulations.

9. **Investor Grievance mechanism**

Due to the involvement of public interest post listing, investors may raise complaints to a listed entity relating to any corporate action, non-payment of dividend, share transfer delays/non-receipt of credit in demat account, demat issues, and discrepancies in shareholding records etc. SEBI Listing regulations requires a company to redress investor grievances promptly, not later than 21 days. For this purpose, a listed entity is required to take put in place an effective investor grievance mechanism, involving the following:

i) Have a dedicated investor relations department and appoint an investor relations officer, usually the compliance officer, to look into investor complaints on timely basis.

ii) Listed entities are also required to register on SEBI Complaints Redressal System (SCORES) platform – a centralised web-based complaint redressal facilitation platform. Any complaint registered on SCORES need to be resolved by the listed entity within 21 days and an action taken report is required to be submitted. Investors may also request for review of the complaint, if not satisfied with the resolution. ATR is reviewed by stock exchanges at the first level and by SEBI at the second level.

iii) A listed entity shall also enrol on the SMART ODR portal, though they are deemed to be enrolled on ODR Portal as per the SEBI Circular dated August 4, 2023, as amended. An investor shall first take up their grievance with the listed entity by lodging a complaint directly with the concerned entity. If the grievance is not redressed satisfactorily, the investor may, in accordance with the SCORES guidelines, escalate the same through the SCORES Portal in accordance with the process laid out therein. After exhausting these options for resolution of the grievance, if the investor is still not satisfied with the outcome, they can initiate dispute resolution through the ODR Portal. Alternatively, the investor can initiate dispute resolution through the ODR Portal if the grievance lodged with the concerned listed entity was not satisfactorily resolved or at any stage of the subsequent escalations mentioned before.

10. **ESG and Business Responsibility and Sustainability Reporting**

ESG has become one of the corner stone of corporate growth strategy and in ESG, i.e. Environment, Social and Governance, Governance is the most important element. Without good governance, an entity can't fulfill environment and social objectives.

ESG investing is rapidly transforming the financial markets. Increasing awareness of stakeholders regarding risks associated with unsustainable practices, and increasing gamut of long-term investors having mandate to invest in companies with strong ESG performance, it is becoming crucial for companies to respond to these investors' demands by improving their ESG performance. Thus, ESG framework is evolving, both in terms of increased emphasis on implementing sustainable business practices as well as accurately measuring and reporting the outcomes of such practices, to ensure comparability across the globe and avoid greenwashing.

BRSR reporting by listed entities

As per SEBI Listing regulations read with LODR Master Circular dated November 11, 2024, Top 1000 companies by market capitalisation are required to disclose Business Responsibility and Sustainability Report (BRSR) from financial year 2023-24 onwards. Further listed entities are also required to undertake reasonable assurance of BRSR Core indicators as per the glide path mentioned in LODR Master Circular.

BRSR reporting framework extends beyond the listed entity to its value chain partners as well. Top 250 listed entities by market capitalisation are also required to disclose ESG Disclosures for the value chain on comply or explain basis from FY 2024-25 and also obtain limited assurance on the above on comply or explain basis from FY 2025-26.

BRSR reporting requires an intensive exercise involving identification of KPIs, data requirements, creating awareness amongst the internal and external stakeholders and assigning roles and responsibilities, and adequate as well as accurate data collection to enable assurance from independent assurance service provider. Therefore, it is pertinent for Company Secretaries to make a comprehensive plan for ESG compliance in co-ordination with all internal stakeholders. In this regard, the first Principal that requires 'business to conduct and govern themselves with integrity and in a manner that is ethical, transparent and accountable' is particularly noteworthy for Company Secretaries.

Besides the above key areas, there are many other crucial areas that require Company Secretaries to strategize and meticulously upgrade the governance framework ahead of listing.

CONSEQUENCES OF NON-COMPLIANCE WITH SEBI REGULATIONS

Company Secretaries should also be aware of the consequences of non-compliance with SEBI Regulations. Stock exchanges and SEBI can either suo-moto or based on information submitted by the listed entity or market information / rumours, or on receipt of any investor / whistleblower complaint, may take action against the listed entity. As per regulation 98 of SEBI Listing Regulations, if the non-compliance is proved, the listed entity shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s),

(a) imposition of fines;

(b) suspension of trading;

(c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories.

(d) any other action as may be specified by the Board from time to time

Similar provisions are included SEBI (ICDR) Regulations. Further, in certain cases, e.g. as per SEBI Circular dated September 20, 2023 for non-redressal of investor grievance and upon exhaustion of steps prescribed in the circular, the stock exchanges can 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).

Besides the above, in case a listed entity is not in compliance with the provisions of SEBI Listing regulation, further fund raising through Equity or NCDs may be restricted or the issuer may be not eligible to certain relaxations / exemptions available in case of such fund-raising transactions, under the SEBI Regulations. Hence, it is very important to ensure compliance with SEBI Regulations, at all times as the consequences of non-compliance extends beyond monetary penalties.

Lastly, in the era of investors and social activism, governance lapses have far-reaching implications on business, reputation and financial performance of an organisation. Thus, when a company is approaching listing, Company Secretaries need to be at the forefront to upgrade and articulate, the governance aspect of an equity story.

CONCLUSION

For Company Secretaries, IPO is not an end goal to be achieved, it can though be considered as a journey towards an important milestone in corporate life, that gives a new identity to the company post listing. However, it can best be described as an opportunity to achieve a larger objective– an opportunity to put into action a complete governance culture transformation that creates a long-term value for the organisation, helping it becomes more disciplined, resilient, efficient and sustainable. Thus, for Company Secretaries, securities laws rightly reflect compliance, governance and opportunities, rolled together. The Company Secretaries should utilise this opportunity to create a long-term value by transforming the governance culture of the organisation on the principles of integrity, transparency and accountability in all operations and decision-making process. Hence, Company Secretaries as governance professionals, are a critical stakeholder in securities market ecosystem, who helps in fostering confidence in integrity of securities market by building robust governance systems in the organisations.

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