SEBI(LODR) Compliances – Company perspective

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OVERVIEW

- Regulations introduced in exercise of powers under the SEBI Act read with Section 31 of SCRA, 1956.
- Corporate India has imbibed the regulations for over a year now.
- Process of self regulation - inherently weak. Hence justifying stringent Regulations.

OBJECTIVES

- Streamlining and consolidating existing listing agreements for different requirements.
- Structured such as to provide ease of reference for consolidating into one single document across various types of listed securities.
- Schematic arrangement of Regulations:

  Sub divided into:-

  - Substantive provisions forming part of Regulations.
  - Procedural requirements in the form of Schedules.

Major principles governing disclosures and obligations [Reg. 4]

- Adherence to applicable Accounting standards and requirements of financial disclosure
- Accounting standards to be followed in letter and spirit
- Ensure independence of Audit
- No misrepresentation/misleading information
- Adequacy and timeliness of information
- Accuracy, simplicity and explicitness of information
- Compliance of all laws relating to Securities and other Guidelines issued by SEBI
- Disclosure should consider spirit of all stakeholders, keeping in view its obligations in letter and spirit.

Major principles governing disclosures and obligations [reg. 4]

- Relevance of information
- Stakeholders to be in a position to assess current stats of the company through filings made.
- Regulations recognizes the rights of stakeholders
- Directs the company to discharge its obligations such that they can exercise their rights.
- Board and its members to ensure:
- - disclosure of information
- - disclose interest in material related party transactions
- -Conduct themselves in line with expectation of operational transparency of stakeholders.

SPECIFIC OBLIGATIONS OF THE COMPANY

- Regulation 9 – Policy for Preservation of Documents

  Documents to be classified into two categories:

- Permanent Maintenance
- Preservation for periods mandated under laws

  Policy to be approved by Board and hosted on website

- Board composition to be in line with Regulation 17
- Discharge by Board committees of responsibilities as mandated under Regulations 18, 19, 20 and 21.

SPECIFIC OBLIGATIONS OF THE COMPANY

- Development of Vigil Mechanism [Reg. 22]
- Related Party Transactions[Reg. 23]
- Formulation of policy on RPT and determination of materiality
- Dichotomy between Act and Regulations

(a)no applicability of arm's length basis and test of ordinary course of business

(b)All transactions need approval

(c)Non-participation of interested parties in Member resolution

(d)Concept of RPT – Wider than under Act.

SPECIFIC OBLIGATIONS OF THE COMPANY

- Requirements relating to Material subsidiary [Reg. 24]

(a) Board Representation

(b) Monitoring of subsidiary accounts/minutes, including significant transactions of subsidiaries

(c) Non-disposal of material stake [50%] without shareholders' approval

- Compliance with CG Requirements [Reg. 27 read with Schedule II]

SPECIFIC OBLIGATIONS OF THE COMPANY

- Determination of Policy on Materiality for dissemination of information –Regulation 30
  - Events in Para A of Part A of Schedule III deemed material

    Some Grey areas in Para A

    Fraud or default by promoter or KMP or by listed entity/arrest of KMP/Promoter
  - Events where materiality to be determined by Board for disclosure
  - Award of contract or orders not in the ordinary course of business
  - Effects of changes in Regulatory framework affecting entity
  - Litigations/disputes with impact
  - Policy on materiality to be evolved

SPECIFIC OBLIGATIONS OF THE COMPANY

- Determination of Policy on Dividend Distribution [Vide Circular dated July 08, 2016].Should be made part of Regulations.
- Maintenance of functional website providing information as required under Reg. 46(2)

SEBI(LODR) Compliances – Company secretary's perspective

Chapter III - Common obligations of listed entities

- **Regulation 6(1).** To appoint qualified Company Secretary as Compliance Officer . Corresponds to Clause 47(a) of LA. Responsibilities of CO much wider.
- To appoint RTA or have in-house arrangements
- **Regulation 7(3)-**To submit Compliance Certificate to the exchange signed by both Compliance Officer and Authorised representative of Share Transfer Agent within 1 month from each half year. To certify compliance that all activities for both physical and electronic transfer maintained in-house or by RTA registered with SEBI.

- **Regulation 7(3)-** Any change in RTA to be by agreement and Exchange to be informed.
- **Regulation 9-**To have a policy for preservation of documents duly approved by the Board. Policy to cover requirements under all laws impacting business .Policy to cover documents whose preservation is permanent and for period of 8 years .Documents can be maintained electronically.
- **Regulation 10-** All reports, documents and filings with Stock Exchange to be uploaded in electronic platform only.
- **Regulation 11 -** Scheme of Amalgamation, Merger not to violate or override the Securities Regulations/Requirements of Exchange

- **Regulation 12-** Payment of Dividend/Interest/on Redemption to be made in electronic form. Dividend for over Rs.1500 should be sent by speed post -
- What about issue of Interest warrants over Rs 1500/- Drafting error.
- **Regulation 13(2)** Investor grievances to be settled only through SCORES Platform
- **Regulation 13(3)** To submit to Exchange details of investor complaints and resolved in a quarter within 21 days from the close of quarter .
- Above statement to be also placed before Board and Stakeholders Relationship Committee every quarter.

Corporate Governance

- **Regulations 17 to 27- CORPORATE GOVERNANCE REQUIREMENTS**

  (Clause 49 Requirements replicated substantially.)

- **Regulation 16(1)(c).-**Material Subsidiary – Refers to Subsidiary whose income or Net-Worth exceeds 20% of the Consolidated income or Net-Worth of Company along with subsidiaries –Definition differs from Clause 49-Reference to Turnover and not total Income.
- To formulate policy for determining material subsidiary

- **Regulation 17(3)-** Board to review periodically compliance reports pertaining to all laws applicable to Company and steps taken to rectify non-compliances .
- **Regulation 17(4).** Board to ensure that there is a plan for orderly succession for appointments to the Board and Senior Management.
- **Regulation 17(5)-** To lay down Code of Conduct for the Board and Senior Management. Code to incorporate duties of Independent directors as per the Companies Act, 2013

- **Regulation 17(6) -** Shareholder approval to specify maximum number of Stock options that may be granted to non-executive directors in a year and in aggregate
- **Regulation 17(7).-** Minimum information to be placed before Board as per Part A of Schedule II .Substantially same as in Clause 49
- **Regulation 17(8)-** CEO and CFO to provide Compliance Certificate on financial statements to Board as per Part B of Schedule II (Format exactly same as in Clause 49 Annexure I(V) .FAQ clarifies that this can be signed by others also holding powers of CEO/CFO regardless of their designations.

- **Regulation 17(6) -** To recommend all fees or compensation payable to non-executive including independent directors. No shareholder approval required for sitting fees.
- **Regulation 17(9) -** Procedure to be laid down for informing Board about risk assessment and minimization procedures. Board responsible for framing and implementing Risk Management plan
- **Regulation 17(10)-** Performance evaluation of ID's to be done by the entire Board. Director being evaluated not to participate

- **Regulation 18(1).** Audit Committee to comprise of at least 2/3rd of total strength as Independent Directors. Departure from requirement of majority being Independent under Section 177(1).
- **Regulation 21(1).** Risk Management Committee (RMC) – Board to define role and responsibilities of Committee. Majority of Committee to consist of Board members . Can consist of Senior Executives . Need for Committee restricted to top 100 companies on market cap.

- **Regulation 27 -** Report on Corporate Governance (Quarterly) – To be filed in revised Format within 15 days from close of Quarter . Board's Comments , if any on Report to be incorporated. Format of Report more elaborate.
- Details of all material transactions with related parties to be provided in the Report

- **Regulation 29- PRIOR INTIMATION TO EXCHANGES**

➢ To be provided for Board Meeting to be held for the following purposes:

- Financial Results- Annual/Quarterly .
- Buyback of shares.
- Proposal for voluntary delisting.
- Fund raising through issue of Securities.
- Declaration of Dividend.
- Declaration of Bonus shares .

- **Regulation 29(2)-** At least two days prior notice to be given for above items unless they were not originally part of agenda - FAQ clarifies that working days refer to working days of Stock Exchanges.
- **Regulation 29(3)-** Eleven days prior notice to be given to stock exchange for any proposal involving alteration of terms of any listed securities

- **Regulation 31-** Statement of shareholding pattern within 21 days from close of Quarter.
- **Statement of Reconciliation of Share capital** –Held in demat and physical form-Quarterly compliance – To be duly certified by practicing CA. As per 2002 directive of SEBI.
- **Regulation 32-** Statement of deviations/variations of use of IPO, Rights, Preferential issue proceeds every quarter**.** Report of Monitoring agency to be attached . Report to be placed with Board.
- **Regulation 33 -** Financial Results-Corresponds to Clause 41.To intimate time of conclusion of meeting with Results sent to Exchange.

- **Regulation 34(1) -** ANNUAL REPORT

  Annual Report containing information in Regulation 34(2) to be submitted to Exchange within 21 days of the conclusion of AGM.

- **Regulation 35** ANNUAL INFORMATION MEMORANDUM

  To submit Annual Information Memorandum to stock exchange in the manner to be specified.

- **Regulation 40(9) -** RTA to provide Certificate from practicing CS as regards issue of certificates , transfers etc within one month of close of each half year.

- **Regulation 47** ADVERTISEMENT IN NEWSPAPERS

- Notice of Meeting of Board for adoption of accounts . Simultaneous with issue of Notice.
- Financial results together with modified opinion or reservation ,if any, expressed by auditors (applicable only for results for the financial year only).

- Publish consolidated financial results along with –
  - Turnover
  - Profit Before Tax (PBT)
  - Profit After Tax (PAT), Also on a standalone basis as footnote.
  - Need not be reproduction of entire Statement of financial results. Format as provided by SEBI.
  - Provide particulars of website of Company and Stock Exchanges where the standalone results are available for viewing.

- Statement of deviation/variations in Results on quarterly basis after review by Audit Committee and its explanation in Directors' Report in the Annual Report.

- **Regulation 47-** Notices to shareholders by advertisement.
- To give reference in the newspaper announcement to the link in the Company's website and Stock Exchanges where further details are available.
- Information as above to be published simultaneously with submission of the same to Stock Exchanges.
- Financial results to be published within 48 hours of the conclusion of Meeting of the Board.
- Publication in English newspaper with national circulation and one in the vernacular.

- **Regulation 48-** Adherence to applicable Accounting standards to be ensured by each Company.
- Company to have policy regarding dividend distribution (Notification dated July 8, 2016).Policy to be approved by Board . Policy to cover :
- Circumstances under which dividend may or may not be expected by Members.
- Financial parameters to be considered for declaration.
- Internal/External factors to be considered.
- To address how retained earnings shall be used.
- Parameters for various classes of shares.

THANK YOU