Gist of the SEBI Notification dated December 12, 2024

SEBI has recently notified the SEBI (LODR) (Third Amendment) Regulations, 2024, following the recommendations of the Expert Committee based on a consultation paper. The primary objective of commissioning this consultation paper was to propose amendments with the aim to facilitate ease of doing business. With the amendments now notified, this article provides an overview of the key highlights of the amendment outlining the major changes and their implications for listed entities.

Increased obligation for compliance (Reg 5 of SEBI (LODR) Regulations, 2015):

Key managerial personnel, directors, promoters, promoter group, and others dealing with the listed entity are required to disclose all relevant and necessary information to the entity. This ensures the listed entity can comply with applicable laws and regulations effectively, reinforcing the importance of transparency and accountability in corporate governance.

Strengthening Compliance: New Regulations for Appointing and Filling Compliance Officer Vacancies (Reg 6):

The amendment introduces new requirements for the appointment of the Compliance Officer. In addition to being a qualified company secretary, the Compliance Officer must now be a whole-time employee, not more than one level below the Board of Directors, and designated as Key Managerial Personnel (KMP). This strengthens the position of the Compliance Officer within the listed entity's senior management.

Additionally, a new sub-regulation(1B) has been introduced, specifically addressing vacancies in the Compliance Officer role in cases where a resolution plan under Section 31 of the Insolvency Code has been approved. In such cases, the vacancy must be filled within three months of the approval of the resolution plan. During this interim period, the listed entity must ensure that at least one full-time KMP is managing the day-to-day affairs of the company.

Integrated Filing of Reports and Documents by Listed Entities (Reg 10):

The updated regulation introduces the option for integrated filing of periodic reports, statements, documents, such as Investor Grievances and Corporate Governance Report and other required information by listed entities. The Board may enable this consolidated filing in a specified format and within defined timelines, streamlining the filing process and ensuring more efficient compliance with the Act and its regulations.

Harmonizing Material Subsidiary Definition with SEBI (ICDR) Regulations (Reg 16):

A subsidiary will now be considered a material subsidiary if its **turnover** or **net worth** exceeds **10%** of the consolidated turnover or net worth of the listed entity and its subsidiaries in the immediately preceding accounting year.

The term "income" has been replaced with "turnover" to harmonize the definition with the SEBI (ICDR) Regulations.

Expanded Scope of Senior Management (Reg 16(d)):

The definition of senior management has been updated to include persons identified and designated as Key Managerial Personnel (KMP) by the listed entity, other than the Board of Directors. Previously, the definition specifically included the Company Secretary, and the Chief Financial Officer.

Enhanced Compliance for Non-Executive Directors Aged 75 and Above (Reg 17):

The provision for appointing or continuing the directorship of a non-executive director aged 75 years or above has been strengthened. Listed entities must now ensure the enhanced compliance at the time of appointment, re-appointment, or any time prior to the non-executive director attaining the age of 75 years.

Updated Shareholder Approval Requirements for appointment of Directors/ Manager (Reg 17)

The time taken to obtain approvals from regulatory, government, or statutory authorities for appointments or re-appointments is excluded from the existing three-month timeline for obtaining shareholder approval for appointment/ re-appointment of a person on the Board of Directors or as a manager. Further, appointments or re-appointments nominated by financial sector regulators, Courts, or Tribunals are now exempted from the shareholder approval requirement.

Timely Resolution of Director Vacancies (Reg 17):

Listed entities must fill any director vacancy within three months. If the vacancy leads to non-compliance with board composition requirements (under Regulations 18, 19, 20, or 21), the entity must ensure compliance within the same timeline. For vacancies arising due to term expiration, the position must be filled immediately. However, if the entity remains compliant without filling the vacancy, this requirement does not apply.

Clarification w.r.t. Committee Meetings held during the year (Reg 18, 19, 20, 21):

The minimum number of meetings for the Audit Committee, Nomination and Remuneration Committee, Stakeholders Relationship Committee, and Risk Management Committee shall now be counted for a financial year.

Additional Provisions for Related Party Transactions (Reg 23):

Remuneration and sitting fees paid to directors, Key Managerial Personnel (KMP), or senior management of the listed entity or its subsidiary do not require audit committee approval, provided:

- The individual is not part of the promoter or promoter group.
- The payment is not considered "material".

Further, Independent directors on the audit committee may ratify related party transactions within three months of the transaction or at the next audit committee meeting, whichever is earlier, under the following conditions:

- The total value of the transaction(s) during a financial year does not exceed ₹1 crore.
- The transaction is not classified as "material."
- Justification for failing to seek prior approval is presented at the time of ratification.
- Ratification details to be disclosed along with related party transaction disclosures.

If ratification is not obtained, the transaction will be voidable at the audit committee's discretion. In such cases, directors involved must indemnify the listed entity against any resulting loss.

Extended exemptions for Related Party Transactions (Reg 23):

Exemptions from regulation 23(2),(3) and (4) now apply to transactions between two public sector companies, replacing the earlier scope limited to two government companies.

New Exemptions Introduced:

- Transactions involving payment of statutory dues, fees, or charges between an entity and the Central Government or State Government (or any combination thereof).
- Transactions between a public sector company and the Central Government or State Government (or any combination thereof).

The remuneration and sitting fees paid by the listed entity or its subsidiary to its director, key managerial personnel or senior management (excluding promoters), is not required to be disclosed provided that the same is not material.

Additions to the list of transactions not considered Related Party Transactions (Reg 2):

The following transactions are excluded from the purview of Related Party Transactions:

- Acceptance of current account deposits and saving account deposits by banks (complying with the RBI directions or any other central bank in the relevant jurisdiction) including the payment of interest
- Retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and at the terms which are uniformly applicable/offered to all employees and directors.

Updated Secretarial Audit Requirements for Listed Entities (Reg 24A):

- Listed entities and their material unlisted subsidiaries incorporated in India must now appoint a Peer Reviewed Company Secretary as the Secretarial Auditor.
- A Secretarial Auditor (individual or firm) can be appointed for a fixed term:
    a. Individual: Up to 1 term of 5 consecutive years.
    b. Firm: Up to 2 terms of 5 consecutive years each.

After the term ends, the individual or firm is ineligible for reappointment in the same entity for 5 years.

- Appointment or reappointment of the Secretarial Auditor must be approved by the shareholders at the Annual General Meeting (AGM).
- If a Secretarial Auditor resigns, passes away, or is disqualified, the board of directors must fill the vacancy within three months and the Secretarial Auditor so appointed shall hold office till the conclusion of the next AGM.
- Where a firm (including an LLP) is appointed as Secretarial Auditor of the listed entity, only the partners who are Peer Reviewed Company Secretaries shall be authorised to act and sign on behalf of the firm.
- A Secretarial Auditor is restricted from rendering certain services to the listed entity, except those approved by the board.
- Effective April 01, 2025, the Secretarial Compliance report shall be signed by either the Secretarial Auditor of the listed entity, or a Peer Reviewed Company Secretary.

Voting Requirements for Agreements by interested persons (Reg 26(6)):

Any interested persons (employee, including key managerial personnel or director or promoter, involved in the transaction covered by the agreement (such as, agreements related to compensation or profit-sharing in connection with securities dealings) - must abstain from voting on the matter during the general meeting.

Disclosure Timelines for Board Meetings concluded after trading hours (Reg 30(6)):

In the event a board meeting closes after normal trading hours of that day but more than 3 hours before the beginning of the next trading session, the listed entity shall disclose the decision pertaining to the event or information within 3 hours of the closure of the board meeting. Further, if the board meeting is held over multiple days, the financial results shall be disclosed within 30 minutes or 3 hours, as applicable, from the closure of the meeting on the day the results are considered. For instance, if the Board Meeting concludes at 7:00 PM, the disclosure must be made by 10:00 PM on the same day. On the other hand, if the Board meeting concludes the next day at 8:00 AM, the disclosure must be made by 8:30 AM since the interval between the closure of the Board Meeting and the commencement of trading hours is less than 3 hours.

Disclosure Timelines for Litigation/ Dispute (Reg 30(6)):

In case of any litigation/ dispute, if all relevant information regarding claims made against the listed entity, under any litigation or dispute (excluding tax-related matters) is maintained in the Structured Digital Database in accordance with the Securities and Exchange Board of India (PIT) Regulations, 2015, the listed entity shall disclose such claims to the stock exchange(s) within seventy-two hours of receiving the notice.

Promoter Re-classification (Reg 31A):

The revised process for re-classification now includes the following:

1. Promoter(s) must make a request for re-classification and provide a rationale and demonstrate compliance with conditions under sub-regulation (3b).
2. The Board of Directors must analyze the request and provide views in the next Board Meeting or within two months, whichever is earlier.
3. The listed entity must apply for a no-objection certificate from the stock exchange(s) within five days of the Board of Director's consideration.
4. Stock exchanges must decide on the application within 30 days, excluding time taken for any queries. For entities listed on multiple exchanges, a joint decision is required.
5. The re-classification request must be placed before shareholders within 60 days of receiving the no-objection letter, accompanied by the board's views and the stock exchange's letter.
6. The request shall be approved by way of an Ordinary Resolution in the general meeting and Promoters and related persons must abstain from voting. (Not applicable if where the promoter(s) seeking reclassification and persons related to the promoter(s) together, do not hold more than 1% of the total voting rights in the listed entity; or where re-classification is pursuant to a divorce.)

7. The listed entity must notify stock exchanges within five days of shareholder approval and effect the re-classification. If circumstances change after receiving the no-objection, fresh approval from the stock exchange is required.

Public shareholders seeking re-classification as promoters must make an open offer as per SEBI (SAST) Regulations, 2011. Additionally, their intention to be reclassified as a promoter must now be disclosed in the letter of offer.

Regulation 31A(8) now requires disclosure of only the board meeting's outcome, rather than the minutes of the board meeting.

Additionally, submission of application seeking no-objection or approval of the recognized stock exchanges for re-classification of status as public by the listed entity to the stock exchanges and approval of shareholders on the request of the promoters seeking reclassification as public is to be disclosed to the Stock Exchange within 24 hours of the occurrence of the event.

For re-classification through an open offer or a scheme of arrangement:

- Provisions of clause Regulation 31(3)(a) and 31(8) will not apply if the intent to reclassify is disclosed in the letter of offer or scheme of arrangement, subject to:
  (i) Compliance with clauses 31(3)(b) and 31(3)(c).
  (ii) Disclosure of reclassification within 24 hours of the completion of the open offer or scheme.

Completion of open offer has been defined to mean the later of:

a. the date of actual transfer of shares from the promoter seeking reclassification to the new acquirer, or
b. the date on which the new acquirer takes control of the listed entity

Revised Provisions for entities in respect of which a resolution plan under section 31 of Insolvency Code ("IBC") has been approved:

Reg 26A: Any vacancy in the office of Chief Executive Officer, Managing Director, Whole Time Director or Manager or Chief Financial Officer shall be filled within a period of three months of such approval. In the interim, the entity shall have not less than one full-time key managerial personnel managing its day-to-day affairs.

Reg 33(3): Listed entities are required to submit quarterly and year-to-date standalone financial results to the stock exchange within 45 days of the end of each quarter, except the last quarter and

annual audited standalone financial results for the financial year, within sixty days from the end of the financial year.

Now, for listed entities where a resolution plan under Section 31 of the Insolvency Code has been approved, financial results must be disclosed within 90 days from the end of the quarter in which the resolution plan was approved, except when the approval occurs in the last quarter of a financial year and the annual audited standalone financial results for the financial year within 120 days of the end of the financial year.

Reg 31A(9): The provisions of sub-regulations (3), (4), and (8) of Regulation 31A will not apply provided that:

(a) The promoters shall not remain in control of the listed entity.
(b) The resolution plan or regulatory order is disclosed within 24 hours, along with an intimation that the promoters will cease to be part of the promoter/promoter group.

Digital Access to Annual Reports (Reg 36(1)):

Listed entities are now required to send a letter providing the web link, including the exact path, where the complete details of the Annual Report are available. This applies to shareholders who have not registered their email addresses with the entity or depository. This replaces the earlier requirement of sending hard copies of the statement containing salient features of the documents, as prescribed under Section 136 of the Companies Act, 2013. This leverages digital access over sending physical copies.

The earlier timeline to send the Annual Report at least 21 days before the general meeting has now been omitted.

Enhanced Transparency in Appointment of Secretarial Auditors (Reg 36(5)):

With an aim to strengthen the corporate governance, listed entities are now required to disclose the following information in the explanatory statement of the Annual general meeting wherein a secretarial auditor is appointed/re-appointed:

a. Proposed fees payable
b. Terms of appointment
c. In case of a new auditor, any material change in the fee payable to such auditor from that paid to the outgoing auditor along with the rationale for such change.
d. Basis of recommendation for appointment including the credentials of the Secretarial Auditor proposed to be appointed.

This requirement ensures transparency in the appointment process, aligning Secretarial Auditors with Statutory Auditors.

Non-Applicability of Scheme of Arrangement Provisions (Reg 37):

Regulation 37 shall not be applicable to the draft schemes which solely provide for writing off the accumulated losses against the share capital of the listed entity applied uniformly across all shareholders on a pro rata basis or against the reserves of the listed entity.

Record Date (Reg 42):

The timeline for advance intimation of record date has been reduced from 7 working days (excluding the date of intimation and the record date) to 3 working days (excluding the date of intimation and the record date) of the record date.

The timeline for intimation of corporate actions through schemes of arrangement covered under regulation 37 is notified to be at least 7 working days in advance (excluding the date of intimation and the record date) of the record date.

The time gap between 2 record dates has been reduced from 30 days to 5 days.

The provisions relating to record date in case of securities held in physical form has been eliminated.

Additional Website Disclosures (Reg 46):

Listed entities are now required to disclose the following documents on their website under a separate section:

a. Memorandum of Association and Articles of Association;
b. Brief Profile of the Board of Directors, including details of directorships and full-time positions held in other body corporates;
c. Employee Benefit Scheme Documents, excluding commercial secrets and any information that could adversely affect the competitive position of the entity.

For compliance with website requirements, the listed entity may now provide a direct link to the webpage of each recognized stock exchange where the required information has already been made available. This allows for the disclosure of information on the listed entity's website through curated links to the stock exchanges.

Updated Timelines and Hosting Requirements for Post-Earnings/Quarterly Call Recordings and Transcripts (Reg 46(2)(o)):

The timelines for making the audio or video recordings and transcripts of post-earnings/quarterly calls, conducted physically or digitally, available on the entity's website have been updated as follows:

i. Audio recordings: The earlier of the next trading day or within 24 hours from the conclusion of the calls.
ii. Video recordings: Within 48 hours from the conclusion of the calls.
iii. Transcripts: Within 5 working days from the conclusion of the calls, along with simultaneous submission to recognized stock exchange.

Additionally, the requirement for hosting audio and video recordings on the website has been updated to a minimum period of 2 years, down from the earlier requirement of 5 years. Transcripts must still be hosted for a minimum period of 5 years.

Revised Requirement for Publication of Financial Results in the Newspaper (Reg 47):

The earlier requirement of publishing the notice of the Board Meeting, Financial Results along with statement of deviation or variation and notice of shareholder meeting has now been revised to include the publication of a Quick Response (QR) code and the details of the webpage where the complete financial results of the listed entity are accessible, within 48 hours of the conclusion of the Board Meeting in which the financial results are approved. The listed entity may also voluntarily publish the financial results as per regulation 33 in the newspaper.

Enhanced requirement for financial results submitted under Regulation 52:

The quarterly financial results shall now be approved by the Board of Directors, replacing the previous requirement of taking them on record. Additionally, the financial results must be signed by the chairperson, managing director, or a whole-time director. In the absence of all these individuals, the results may be signed by any other director of the listed entity who is duly authorized by the Board of Directors, replacing the earlier requirement for the managing director or executive director to sign.

Miscellaneous:

- The requirement to send proxy forms shall not be applicable in case of general meetings held only through electronic mode. (Reg 44(4))
- The definition of SR Equity shares has been included in order to align it with the SEBI (ICDR) Regulations. (Reg 2)

Amendments to the LODR Schedules:

- Listed entities ranked 1001 to 2000 are now required to have at least one woman independent director on their board.
- Independent directors of the top 2000 listed entities by market capitalization must endeavor to hold at least two meetings in a financial year without the presence of non-independent directors or members of management. All independent directors should strive to attend these meetings.
- Listed entities ranked 1001 to 2000 may now constitute a Risk Management Committee.
- The definition of acquisition has been amended to include acquiring control wherein the entity holds 20% or more of the shares/ voting rights of another entity as against the earlier limit of 5%. Further, it now includes change in holding exceeding 5% of shares/ voting rights as against the earlier requirement of 2%.
- The requirement to disclose fraud by senior management (excluding promoters, directors, or key managerial personnel) is applicable only if it relates to the listed entity.
- Presentations prepared by the listed entity for analyst or institutional investor meetings, post-earnings or quarterly calls, must be disclosed to recognized stock exchanges prior to the beginning of such events.
- The term forensic audit has been defined.
- The manner of disclosure of fines/penalties has been provided:
    - A fine of Rs. 1,00,000 or more imposed by a sectoral regulator or enforcement agency, or Rs. 10,00,000 imposed by other authorities or judicial bodies, must be disclosed within 24 hours.
    - Fines or penalties of lesser amounts should be disclosed on a quarterly basis.
- The requirement to disclose the following in the Corporate Governance Report has been omitted:
    - Stock code
    - Market price data- high, low during each month in last financial year
    - Performance in comparison to broad-based indices such as BSE sensex, CRISIL Index etc.