

MMJCINSIGHTS

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Registrar of Companies on Enforcement mode?

Since the decriminalisation of various offences under Companies Act, 2013 (the Act) and setting up of the Registrar of companies [ROC's] internal adjudication mechanism, over 1400 orders has been passed by ROCs on companies throughout the nation.

The power of calling for information and conducting inspections on companies enables ROC to ensure compliance and check the authenticity of information which otherwise is not possible for them.

Over the years it has been observed that the engagement of ROC was with respect to processing of the information filed through the E forms, only limited amount of time was available to the ROC for enforcement of Company Law and LLP provisions.

There are certain precedents which ROC has already set as to what depth of information it can collect from companies using its enforcement and inspection powers under section 206 of the Act.

The below are the few orders passed by ROCs which are in relation to non-compliances in the company's statutory documents like the Minutes book, Board's Report.

Name of the Company & ROC Adjudication Officer	Source of finding violation & Violation	Brief facts/Violations observed.	Penalty levied
Aran Steels Private Limited ROC Chennai - order dated -18.10.2022	Inspection by ROC [section 118 r/w rule 25]- requirement to maintain distinct minute book for each type of meeting	It was observed by ROC that. 1. Company has failed to distinctly keep and maintain minutes for different meetings such as minutes of Board, General and Committee meeting. 2. Such Violations were observed for three	U/s 118 (11) On Company: Rs 25,000/- On Two OIDs: Rs 5,000/- each.

		<p>financial years.</p> <p>The aforesaid defaults were admitted by the authorised representatives of the company in the hearing.</p>	
<p>Lava International Limited</p> <p>ROC Delhi - Dated 07.03.2023</p>	<p>Inspection by ROC</p> <p>[section 118 r/w clause 7.2.2.2 & 7.3.1 of SS-1]</p>	<p>During the Inspection, while perusing the minutes for the financial year 2016-17, the Inspection officer observed that the resolutions placed before the Board during the aforesaid financial year for the purpose of bank signatory did not contain the specimen signatures of the authorized signatories and as such were also not contained in the Minutes book which indicate that minutes of the board meeting held on 29.08.2016, 27.10.2016 and 06.03.2017 respectively are incomplete in terms of section 118 of the Companies Act, 2013.</p>	<p>u/s 118 (11)</p> <p>On company: Rs 25,000/-</p> <p>On Six OIDs: Rs 5,000/- each</p>
<p>Lava International Limited</p> <p>ROC Delhi - Dated 01.03.2023</p>	<p>Inspection by ROC</p> <p>[section 118 r/w clause 1.3.8 of SS-1]</p>	<p>While perusing the minutes of the Board meeting, the Inspection Officer observed that the subject company had not placed the related party transactions before the Audit committee meeting held on 31.10.2018 for approval in compliance of section 118 (1) r/w Clause 1.3.8 of SS 1.</p>	<p>u/s 118 (11)</p> <p>On Company: Rs 25,000/-</p> <p>On Six OIDs: Rs 5,000/- each</p>

<p>Kudos Finance and Investments Private Limited.</p> <p>ROC Pune - Dated 10.03.2023</p>	<p>Inspection by ROC</p> <p>[Section 118 r/w rule 25 (1) (d) & clause 1.2.1 , clause 7.1.4 of SS-1]</p>	<ol style="list-style-type: none"> 1. Minutes book not signed by the Chairman. [rule 25 (1) (d)] 2. Minutes book were not paginated (i.e not numbered at all). [clause 7.1.4 of SS1] 3. Board meetings were not numbered. [clause 1.2.1 of SS1] <p>The subject company cited lack of knowledge and lack of professional guidance for such non compliance.</p>	<p>u/s 118 (11)</p> <p>On Company: Rs 25,000/-</p> <p>On four OIDs: Rs 5,000/- each.</p>
<p>SDU Agritech Private Limited</p> <p>ROC Bangalore - Dated 08.06.2022</p>	<p>Inspection by ROC</p> <p>[Section 118 r/w clause 9 of SS-1]</p>	<p>It is observed by the Inspection officer that that the company as per its Board Report for the year 2016-17, 2017-18 and 2018-19 has failed to include the statement on compliance of applicable secretarial standards.</p> <p>Authorised Representative of the Company submitted that there is no requirement of showing secretarial standard compliance in the Directors' Report. The submission of PCS is not acceptable as there is a clear direction in the Secretarial Standard-1 about the disclosure.</p>	<p>u/s 118 (11) for Three Financial Years:</p> <p>On Company: Rs 75,000/- (Total)</p> <p>On Two OIDs: Rs 15,000/- each</p>

Efforts are being made by the Ministry of Corporate affairs (MCA) to revamp the method and structure in which they regulate corporates in India. As what can be understood from the media speculation and reportings, MCA is reforming two of its key parts one being replacing ROC approvals with Straight Through Processing (STP) which shall now require companies to only obtain an online acknowledgement of their statutory filings to be considered as compliant.

The other reform which MCA has already initiated is setting up of Centralized data processing centres which shall process the forms and data filed by the companies in a swift and hassle-free manner.

Also, it must be noted that once the V3 version of the MCA portal is fully rolled out by MCA till the end of this year, about 95% of the ROC's work relating to statutory E forms shall be fully automated. This shall mean that the role of ROC shall evolve in the areas of enforcement and investigation which shall enable them to devote more time in enforcing its powers of inspection.

Thus, the role of MCA and ROC offices would evolve to a stage which shall enable them to uncover violations and frauds under the Act and other allied laws on the part of the companies.

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in Form MBP-1

Introduction:

A Company is an artificial entity having legal rights and obligations recognised by law. As it is an artificial legal person, it acts through natural persons, a set of such people are termed as Board of Directors (BoD). The directors are appointed by shareholders to perform on behalf of the company. Assuming position and power the board possess, directors are often in a position where they are allowed to enter into engagements in which they have or may , have, a personal interest conflicting, or which possibly may conflict, with the interest of those whom they are bound to protect. Director's being in position of trust and a conflict of interest could reduce that trustworthiness, it's director's duty to avoid such situations of conflict of interest, as the director cannot at the same time protect interest of themselves as well of the company.

Purpose of disclosure of Interest:

Section 184 of the Companies Act, 2013 (the Act) relates to the disclosure of interest or concern by directors in certain companies or contract or arrangements. The duty to disclose such interest or concern is fiduciary duty. The objective of the provision is to ensure that the BoDs are aware that the director(s) is interested in certain contract or arrangement. The entire purpose is to prevent such situations where the fair and valid discharge of one's duty can be affected by commercial interests i.e., to prevent conflict between interest and duty which might otherwise inevitably arise.

General Disclosure in Form MBP-1:

Section 184(1) of the Act mandates every director of the company to disclose concern or interest of director in certain business organisations in a prescribed manner. Rule 9 of Companies (Meeting of Board and its Powers) rules, 2014 prescribed that format called as 'MBP-1.' The directors are bound to make such disclosure on 3 occasions:

- At the first meeting of the BoDs in which they participates as a director (after the appointment/reappointment)

- First meeting of the BoDs in every financial year
- Whenever there is change in the disclosure already made.

The directors are required to at the meeting of BoDs only and in the per prescribed format, shall disclose the concern or interest in:

- Any company or companies
- Bodies Corporate
- Firms
- Other association of individuals wherein the directors hold any kind of interest

Utility of format of MBP-1 in fulfilling its purpose:

As discussed above MBP-1 is useful in identifying the entities wherein directors may have conflict of interest. But it is observed that the form covers interest of directors only in companies, body corporates and association of individuals. It does not cover entities such as HUFs and societies. Also, it does not cover the entities wherein the relatives of directors have any interest. Further, there is an incorrect apprehension that, directors are required to disclose the interest in the form of 2% or more shareholding only. All these factors render the form inadequate to meet the purpose of the form.

Solution to inadequacy:

These inadequacies can be resolved by making small changes to format of form MBP-1. Companies may make certain changes in the prescribed format, to include interest in entities like HUFs and societies where director has any interest or entities wherein relatives of directors are interested. Such addition will better serve the purpose of obtaining disclosure from directors in the form MBP-1.

Conclusion:

No compliance is introduced without any valid reason. If we try to understand the purpose and effect of each compliance, we may realise the benefits of such compliances for the company. A Small change in the approach will result in - better compliance and betterment of the company.

With this approach, as the new financial year already begin and so the cycle of compliances also kickstarted, one of the crucial compliances which company has to start with is obtaining disclosure of concern or interest from its directors.

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ROC orders for violation of section 134 (3) of the Act

Section 134(3) of the Companies Act, 2013 (the Act) prescribes a mandatory list of exhaustive disclosures which must form a part of the Board's report of the company for any financial year.

The contents required to be disclosed in the board's report is a crucial resource for the stakeholders and regulators to know the whereabouts of the company, hence it is very important that companies must ensure that all such disclosures are included in the drafts of its director's report to ensure the compliance of section 134 (3) of the Act

Several ROC Adjudication orders have been passed recently by ROC highlighting the non-compliance of section 134(3), some of which may be noted as below:

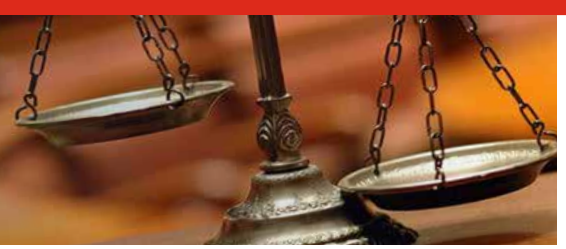
Name of the Company & ROC Adjudication Officer	Source of finding violation	Brief facts/Violations observed	Penalty levied under Section 134(8)
Lava International limited ROC Delhi-order dated-07.03.2023	Inspection of the subject company was ordered u/s 206 (5)	<p>Section 134 (3)(I) requires a statement in the director's report indicating the material changes and commitments if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statement relates and the date of the report.</p> <p>The subject company had entered into a settlement agreement which gave rise to a liability of USD 23 million plus 8% IRR (which amounts to 10.38% of turnover as on 31st March, 2022) due to be paid before 30th June 2022.</p>	On Company: Rs 3,00,000/- On 5 Officers in Default: Rs 50,000/- each.

		As the information was material, company was required to disclose such information in the director's report for the financial year 2021-22.	
Kandan Mutual Benefit Saswatha Nidhi Limited ROC Chennai-order dated-08.02.2023	Inspection of the subject company was ordered u/s 206 (5)	Section 134 (3) (q) [Requirement of including a statement in the Board Report that the company has complied with provisions relating to the constitution of Internal Complaints Committee (ICC) under the sexual Harassment of Women at workplace (Prevention, Prohibition and Redressal) Act, 2013. (POSH) The Company has not made such disclosures as required u/s 134 (3) (q) r/w Rule 8 of the Companies (Accounts) rules, 2014 in its Board's Report for the financial year 2019-2020.	On company: Rs 3,00,000/- On 1 officer in default: Rs 50,000/-
Michelin India Private Limited ROC Chennai-order dated-18.10.2022	Examination of the scheme of Amalgamation by RD [southern region].	Section 134 (3)(f) requires explanation by the Board of directors for the observations of statutory auditors in its report. RD issued directions to ROC that the BOD of the subject company had not offered any explanation for the observations made by statutory auditors in their audit report for the F.Y ended 2021. Observations were as under: 1. Deficiencies in internal financial controls, for which Auditors are unable to obtain sufficient and appropriate Audit evidence to provide a basis for opinion. 2. The subject company has not maintained backup of	On Company: Rs 3,00,000/- On Three Officers in default: Rs 50,000/- each.

		books of accounts maintained in electronic mode in servers physically located in India as required by Rule 3 of Companies [Accounts] rules, 2014.	
Bock Compressors India Private Limited. ROC Gujarat-order dated-08.07.2022	Suo-moto application	As per section 134 (3) (m) , the company was required to make disclosure in the Board's Report relating to conservation of energy, technology absorption, foreign exchange earnings and outgo in such manner as prescribed under Rule 8 of the companies (Accounts) Rules, 2014. However, it has been stated in the Board's report that due to non coverage of activities, disclosure is not required. Therefore, the company has defaulted to comply with the requirements of the above provisions due to wrong interpretation while approving Board's Report for the Financial year ended on 31.03.2015.	On Company: Rs 3,00,000/- On Two Officers in Default: Rs 50,000/- each.

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An unsuccessful resolution applicant has no locus standi (no bona fide reason to approach court) to assail the resolution plan or its implementation

In the matter of M K Rajagopalan (Applicant) vs S Rajendra - Resolution Professional (RP) and ASG Hospital Private Limited (Respondents) at National Company Law Appellate Tribunal (NCLAT) order dated 17 March, 2023.

Facts of the Case:

- Vasan Healthcare Private Limited (Corporate Debtor/CD) was admitted into Corporate Insolvency Resolution Process (CIRP) u/s 9 of Insolvency and Bankruptcy Code (IBC).
- Thereafter, the resolution plan submitted by ASG Hospital Private Limited (Respondent) was approved by the Committee of Creditors (CoC) and subsequently by the National Company Law Tribunal (NCLT) vide an order dated 3 February, 2023 (Impugned Order).
- Mr. M.K. Rajagopalan (Appellant) an unsuccessful Resolution Applicant, challenged the approval of the resolution plan before the NCLAT and also filed an Interlocutory Application seeking leave to prefer the instant Appeal.

Arguments of the Appellant:

- It was contended that as a prospective resolution applicant suffered due to the resolution process.
- Further also highlighted the fact that they had objected to the resolution plan. However, NCLT dismissed the same.
- It was further argued that they had vested interest in pursuing the present appeal as they were aggrieved by the order passed by the NCLT.

Arguments of the Respondents:

- The RP contended that the appellant being unsuccessful resolution applicant had 'no locus standi' to question the approval granted by NCLT vide impugned order.
- As the appellant was not a 'Stakeholder' pertaining to the CD within the ambit of Section 31 (1) of the IBC and therefore was not an aggrieved party, in respect to the Impugned Order approving the resolution plan.

- Further, it was also contended that the resolution plan had already been implemented and funds of Rs. 400 crores had been infused which was proposed to be distributed to stakeholders under the plan. Also, the management of CD had been transferred to Respondent 2 by reconstituting the Board of Directors.
- Further - relied on ***Hindustan Oil Exploration Company Vs Erstwhile Committee Creditors JEKPL Pvt Ltd*** wherein *the appellant, an Unsuccessful Resolution Applicant had challenged the order passed by NCLT approving the renegotiated resolution plan, which was approved by the CoC. Wherein, NCLAT had held that, once the appellant is out of the fray, it neither has the locus to question the action of any of the stakeholders on the implementation of the approved Resolution Plan nor can it claim any prejudice on the pretext that any of the actions post approval of the Resolution Plan has affected its prospects of being a Successful Resolution Applicant.*
- Reliance was also placed on the decision of the Hon'ble ***Supreme Court*** in the case of ***Bank of Baroda and Anr Vs MDFL Infrastructure Ltd & Ors*** wherein it was *held that the object of the IBC was to put a CD back on the rails and held that no prejudice would be caused to the dissenting creditors as their interests was secured under the resolution plan. Thus, the SC chose not to disturb the approved resolution plan.*
- Further, they also referred to an e-mail of the appellant in respect to the revision of the resolution plan, where in it was contended that the appellant had not raised any protest for the resolution plan and had elected to participate in the process.
- Further, the appellant has no right to question the approval of the resolution plan by the NCLT as he had subjected himself to the process.
- It was also argued that the RP became functus officio (duty of RP came to an end) as far as being resolution professional of CD.
- Further, the reliance was also placed on judgement passed by the NCLT in the case of ***Bipin Textiles Processing Vs. Shiva Dutt Bannanje & Ors.***, wherein *the object of seeking leave to appeal, was to prevent an unreasonable plea to be taken by a litigant who had no substantial defence, in regard to the implementation of a resolution plan.*

Held:

- It was noted that the CIRP ended on 10 March 2022. Thus, the endeavour made by the appellant to rewind the process and to vote on its resolution plan again as of 4 January 2022 was impermissible.
- Further, the Bench held that the appellant being unsuccessful resolution applicant has no locus standi to assail the resolution plan

or its implementation by the meagre fact that he was not a stakeholder u/s 31(1) of the IBC in relation to CD.

- The NCLAT held that the appellant was not an 'Aggrieved Person' falling within the ambit of Section 61(1) of the IBC, specifically as he was not 'Privy' to the 'Resolution Plan'.
- Thus, NCLAT held that the leave sought to challenge the resolution plan was sans merit and the same was dismissed.



Filing of Reg 30 of SEBI LODR announcements in XBRL format on NSE NEAPS and BSE listing centre

Bombay Stock Exchange ('BSE') and National Stock Exchange ('NSE') ['Stock Exchanges'] had vide their circulars dt: dated January 27, 2023 advised listed entities to submit disclosures under Reg. 29 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 SEBI (LODR) i.e. prior intimations to stock exchanges and certain Reg 30 disclosures in XBRL form. Now BSE & NSE have issued **another circular dt: March 31, 2023** stating that **few more disclosures under Reg 30** of SEBI LODR **will be available for filing in XBRL form w.e.f. April 01, 2023.**

A detailed discussion regarding both these circulars is given below:-

Q) Which of the disclosures under Reg. 30 of SEBI LODR would now be required to be made through XBRL and pdf. form both?

Stock Exchanges have vide their circular dt: March 31, 2023 have asked listed entities to submit certain corporate announcements under Reg 30 of SEBI LODR in XBRL format with effect from April 01, 2023 ('effective date'). Prior to this Stock Exchanges had vide their circular dt: January 27, 2023 had specified some disclosures to be submitted in XBRL and PDF. The compiled list of disclosures required to be submitted in XBRL and PDF as follows:

1. Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary etc.), Auditor, Compliance Officer and Share transfer agent. (w.e.f. January 28, 2023)
2. Outcome of Board Meeting for Dividend, Buyback, Bonus Issue and decision on voluntary delisting by the listed entity. (w.e.f. January 28, 2023)
3. Acquisition(s) (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s) or subsidiary of the listed entity or any other restructuring. (w.e.f. January 28, 2023)
4. Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities etc. (w.e.f. April 1, 2023)
5. Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity),

- agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof. (w.e.f. April 1, 2023)
6. Fraud/defaults by promoter or key managerial personnel or by listed entity or arrest of key managerial personnel or promoter. (w.e.f. April 1, 2023)
 7. One time settlement with a bank (w.e.f. April 1, 2023)
 8. Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions (Inter-Creditors Agreement). (w.e.f. April 1, 2023)
 9. Corporate Debt Restructuring (w.e.f. April 1, 2023)
 10. Notices of Shareholders Meeting. (w.e.f. April 1, 2023)

Q) For submission of Reg. 30 disclosures to Stock Exchanges within how much time is XBRL required to be filed after submission of disclosures in pdf form?

It is clarified in BSE and NSE Circulars dated January 27, 2023 as well as March 31, 2023 that all listed entities would be required to also submit the filings in XBRL mode within 24 hours of submission of the said PDF filing.

Q) Will non-submission of Reg. 30 disclosures in XBRL form be considered as non-compliance of Reg. 30?

Stock Exchanges have further guided that PDF filings will be considered by the Exchange as compliance under Regulation 30 of the SEBI LODR. At a later stage (date to be informed separately) Exchange will shift to only XBRL submission. So, it can be seen that submission of disclosures under Reg. 30 should not be considered as non-compliance.

Q) What are the additional items of disclosures that are required to be made to stock exchange under XBRL form in addition to what are prescribed under September 9, 2015 SEBI Circular?

SEBI had vide its circular dt: September 30, 2015 prescribed minimum items of disclosure required to be given to Stock Exchange. Now as these disclosures are required to be given in XBRL form it needs to be checked the whether minimum items of disclosures required to be given in XBRL form are same as prescribed by SEBI circular dt: September 30, 2015 or disclosures specified under XBRL notified are more than what is prescribed under SEBI Circular September 30, 2015. For this it is necessary that actual XBRL instance needs to be checked.

Particulars	September 9, 2015 circular	Data required to be given as per XBRL utility																	
One Time Settlement ('OTS') with Bank	<p>There are two items which are required to be given:</p> <ol style="list-style-type: none"> Reason for opting for OTS Brief summary of OTS. 	<p>In addition to minimum items prescribed by September 9, 2015 Circular, following additional items are required to be given in XBRL form:</p> <table border="1"> <tr><td>Whether disclosure filed for listed company*</td></tr> <tr><td>Name of entity for which disclosure is filed</td></tr> <tr><td>Relationship with the listed company</td></tr> <tr><td>Whether the disclosures related to defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions and unlisted debt securities was filed with Stock Exchanges as required vide SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019*</td></tr> <tr><td>If No, provide the reason for the same</td></tr> <tr><td>If Yes, provide the date of disclosure</td></tr> <tr><td>Meeting in which One-time Settlement (OTS) is considered, if any*</td></tr> <tr><td>Date of Meeting*</td></tr> <tr><td>Name of Bank(s) / Financial Institution(s) / Lender(s)*</td></tr> <tr><td>Date of entering / receiving the agreement / letter for settling the due</td></tr> <tr><td>Details of amount agreed to be paid by the Company</td></tr> <tr><td>Date of payment agreed to be made by the Company</td></tr> <tr><td>Date of payment made by the Company, if any</td></tr> <tr><td>Reasons for opting for OTS*</td></tr> <tr><td>Brief summary of the OTS*</td></tr> <tr><td>Date of intimation of the OTS to competent Authority, if any*</td></tr> <tr><td>Name and details of the Authority to whom intimation was made*</td></tr> </table> <p>* Mandatory data</p>	Whether disclosure filed for listed company*	Name of entity for which disclosure is filed	Relationship with the listed company	Whether the disclosures related to defaults on payment of interest/ repayment of principal amount on loans from banks / financial institutions and unlisted debt securities was filed with Stock Exchanges as required vide SEBI circular no. SEBI/HO/CFD/CMD1/CIR/P/2019/140 dated November 21, 2019*	If No, provide the reason for the same	If Yes, provide the date of disclosure	Meeting in which One-time Settlement (OTS) is considered, if any*	Date of Meeting*	Name of Bank(s) / Financial Institution(s) / Lender(s)*	Date of entering / receiving the agreement / letter for settling the due	Details of amount agreed to be paid by the Company	Date of payment agreed to be made by the Company	Date of payment made by the Company, if any	Reasons for opting for OTS*	Brief summary of the OTS*	Date of intimation of the OTS to competent Authority, if any*	Name and details of the Authority to whom intimation was made*
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It also needs to be highlighted here that the concept of 'Corporate Debt Restructuring' was replaced with 'Corporate Insolvency Resolution Process ('CIRP')' by SEBI vide its amendment notification dt: May 5,

2021. Minimum items of disclosures for CIRP are already specified by SEBI in Schedule III of LODR. It seems Stock Exchanges would be required to review these provisions once.

Effective date of this circular dated March 31, 2023 is April 1, 2023

BSE and NSE Circular link:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230331-87>

<https://static.nseindia.com//s3fs-public/inlinefiles/Circular%20draft%20XBRL%20release%2031032023.pdf>

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Common and simplified norms for processing investor's service requests by RTAs and norms for furnishing PAN, KYC details and Nomination

SEBI, vide Circular Nos. SEBI/HO/MIRSD/MIRSD_RTAMB/P/ CIR/2021/655 dated November 03, 2021 ['November 2021'] & SEBI/HO/MIRSD/MIRSD_RTAMB/P/ CIR/2021/ 687 dated December 14, 2021 ['December 2021'], had prescribed the common and simplified norms for processing investor's service request by RTAs and norms for furnishing PAN, KYC details and Nomination. SEBI has now, in supersession of November 2021 and December 2021 circulars, prescribed new norms by way of SEBI circular dt: March 16, 2023 ['March 2023'].

This circular is effective from April 1, 2023.

Following is the analysis of the change in procedural norms as compared to November 2021 and December 2021 Circulars:

1. **Mandatory furnishing of PAN, KYC details and Nomination by holders of physical securities.**

a. Permanent Account Number ('PAN'):

- i. SEBI has now stated that it shall be mandatory to quote and provide a self-attested copy of the PAN by the security holder/claimant to **avail any service request**. Accordingly, the security holder shall register the PAN through form **ISR – 1**.
- ii. From July 01, 2023 or any other date as may be specified by the CBDT, RTAs shall accept only operative PAN (i.e., linked with Aadhaar number). The folios in which PANs are not linked with Aadhaar numbers as on the notified cut-off date of June , 30, 2023 or any other date as may be specified by the CBDT, shall also be frozen. SEBI had also vide its press release dt: March 8, 2023 reminded investors about this due date and highlighted the consequences of non-adherence.
- iii. The requirement of existing investors to link their PAN with their Aadhaar number is not applicable for Non-Resident Indians (NRI) as per Income Tax Act 1961, Overseas Citizens of India (OCI) unless the same is specifically mandated by Central Board of Direct Taxes (CBDT), Ministry of Finance / any other Competent Government authority, Individual who is not citizen of India, Individuals residing in the State of Assam, Jammu and Kashmir and Meghalaya , Individuals residing and Individuals who have

attained the age of 80 years or more at any time during previous financial year.

- b. Contact Details:** Physical Security holders were earlier required to mandatorily register their email id. Now SEBI has asked RTAs/listed companies to encourage the security holders to register e-mail ID also to avail the online services. So it has now created a confusion whether RTAs/listed companies shall insist on email id as specified earlier or only encourage them to register without making it mandatory? Physical security holder can register/update the contact details through form **ISR- 1** prescribed vide SEBI Circular dated March 16, 2023.
- c. Bank Account details:** Upon processing of request for registration/updation of bank details through Form ISR – 1, the RTA shall, *suo-moto*, generate request to the company’s bankers to pay electronically, all the moneys of / payments to the holder that were previously unclaimed / unsuccessful. SEBI has now clarified that RTAs can now, on their own, generate request to company’s banker for payment of all money’s that were previously unclaimed or unpaid. Till now RTAs had power to make payment of all money’s that were previously unclaimed or unsuccessful. Now SEBI has clarified that RTAs can itself generate this payment request to company’s bankers.
- d. Processing of investor service requests:** As per November 2021 circular if folios of physical security holders were not KYC compliant or were not having operative PAN then their investor service requests shall also not be processed. So, it used to so happen that sometimes, some RTAs were not guiding the investors with respect to the procedure for making folios KYC compliant or having an operative PAN. Now with this March 2023 circular SEBI has stated that RTA shall furnish required information as sought by investors with respect to procedure related to investor service requests.
- e. Specimen signature:**
- i. **Minor mismatch in signature:** In case of minor mismatch in signature of the security holder, as available in the folio of the RTA and the present signature, the RTA, while processing the service request, shall intimate the security holder about the minor mismatch in signature, providing a timeline of 15 days for raising any objection through all the following modes:
 - a. By speed post – on the address available in RTA’s records, and
 - b. by way of sending an email on the registered e-mail id as available in the RTAs records and

- c. by way of SMS on the registered mobile number as available in the RTAs records.

SEBI has further provided different scenarios which could arise due to raising of objections through various modes. SEBI has stated that where letter sent through speed post is returned undelivered but there is confirmation by the security holder for no-objection via return e-mail registered with the RTA, the service request shall be processed. The timeline for the RTA to process the service request shall commence from the day of receipt of no-objection. Further If the letter is delivered and in the absence of any objection, the service request shall be processed. The timeline for the RTA to process the service request shall commence after the notice period of 15 days.

If the letter is returned undelivered and there is no confirmation by the security holder for no-objection or if there is an objection, the RTA shall follow the procedure as prescribed for major mismatch in signature.

So, in case of objection is raised in processing of request for minor mismatch in signature then for rectifying the same, the process as specified for rectification of major mismatch shall be followed. This shows that with respect to signature verification, SEBI wants listed entities to be very much cautious.

- ii. **Major mismatch in signature:** the RTA, while processing the service request, shall intimate the security holder about such mismatch/updation in signature, through all the following modes:
 - a. By speed post – on the address available in RTA’s records, and
 - b. By sending e-mail – on the registered e-mail id as available in the RTA’s records, and
 - c. By SMS – on the registered mobile number as available in the RTA’s records.

The security holder can register/update the specimen signature through form **ISR-1** and shall complete either of the two processes:

<p>Option A – This process given below is similar to what was given by SEBI in November 2021 and December 2021 Circular but now SEBI has made it more elaborate for listed entities. The changes are marked in bold:</p>	<p>Option B – This is an additional method provided by SEBI for verification of signature.</p>
<p>i. Security holder shall provide the following documents: (a) Original cancelled cheque with name of the security holder printed on it; or (b) Self-attested copy of Bank Passbook/Bank Statement; ii. Banker’s attestation of the signature of the same bank account as mentioned in (i) above as per Form ISR - 2.</p>	<p>The investor may get his or her signature changed or updated by visiting the office of the RTA in person. In such a case, the investor shall sign before the authorized personnel of the RTA, along with PAN card and any one additional document mentioned at Serial Nos. 1-4 of Annexure – E of March 2023 SEBI Circular, in original for verification by the RTA, and submit self-attested copies of the same.</p>

As is specified above for verification of signature, any of the above two processes can be followed. But the discretion as to which process has to be followed for verification is not with RTA/listed entity but it is with the security holder. But looking at the various frauds done through forged signature, it would not be wrong if RTA/listed entities insist on Option B only (as mentioned above) for verification of signature.

f. Name mismatch:

- i. **Minor mismatch in name:** In case of minor mismatch in name as per two set of documents, SEBI has now stated that RTA shall additionally obtain self attested copy of any one of the documents mentioned in the Annexure E of March 2023 SEBI Circular, explaining the difference in name. In this list of documents, one new document has been added Identity card / document with applicant’s Photo, issued by any of the following: Central / State Government and its Departments, Statutory / Regulatory Authorities, Public Sector Undertakings, Scheduled Commercial Banks, Public Financial Institutions **duly attested by their employer with date and organization stamp would be required.** The requirement of attestation by employer with date and organisation stamp was not required

till now. Rest other details for verification of name remains same.

- ii. **Major mismatch in name:** SEBI has now provided processes for major mismatch in name due to marriage or change of name voluntarily, which was not provided till now. SEBI has now stated that the security holder would be allowed to change his name subject to the submission of following documents:

- a) **In case of change in name on account of marriage** - Marriage Certificate or copy of valid Passport showing husband's name or publication of name change in official gazette, and any document evidencing the old name as specified in March 2023 Circular Annexure E
- b) **In case of change in name on account of reasons other than marriage** - Publication of name change in official gazette, and any document evidencing the old name as per Annexure E.

- g. Updation of Bank details:** SEBI has now provided for procedure for updation of bank details. In cases where Bank account details of the security holder are not available with RTA or there is a change in such details, RTA shall obtain Bank account details along with any one of the following documents to update the security holder's Bank details,

- a) Original cancelled cheque bearing the name of the security holder; **OR**
- b) Bank passbook/ statement attested by the Bank.

The RTA shall proceed with the updation of bank details based on the documents provided by the first holder only, in case of joint holding.

2. **Documents for proof of address:** The RTA shall obtain any one of the documents mentioned in **Annexure – F** of March 2023 SEBI Circular, from the security holder / claimant, if the address is not available in the folio or for processing the request for its change.
3. **Mode for providing documents / details by investors:** SEBI has now stated that in case the documents are submitted through in person verification, the RTA shall provide acknowledgement with In-Person Verification ('IPV') stamping with date and initials and in any case of other mode, the RTA shall acknowledge the receipt of the documents by intimating the security holder through post or by sending e-mail on the e-mail ID as registered with the RTA.
4. **Timelines for registering of / up-dation of / change in PAN, KYC and nomination:** SEBI had earlier stated that RTAs shall

process request relating to updation of PAN, KYC and Nomination from the holder, within seven working days of receipt of the complete documents / details. For updation or registering signature of security holder timeline mentioned was 15 days.

Now SEBI has linked the timeline for registering of / up-dation of / change in PAN, KYC and nomination to SEBI Circular dt: November 26, 2021 titled as, "Publishing Investor Charter and Disclosure of Complaints by Registrar and Share Transfer Agents (RTAs) on their Websites".

So revised timeline for registering of / up-dation of / change in PAN, KYC and nomination by RTA with effect from April 1, 2023 would be as follows:

Sl.no	Investor Service Request	Expected timelines (number of days)	Form
1	Processing of request for change in / updation of		
	a. Name	30	
	b. Signature	30	ISR-1, ISR-2 (as may be applicable)
	c. Nomination	30	SH-13, SH-14, ISR-3 (as may be applicable)
	d. Contact details (address, email, and mobile number)	15	ISR-1
	e. Bank account details	15	ISR-1
	f. Processing of request for updation of PAN	15	ISR-1
	g. Issue of duplicate security certificate	30	ISR - 4
	h. Replacement / Renewal / Exchange of Securities Certificate	-	ISR - 4
	i. Consolidation of Securities Certificate	-	ISR - 4
	j. Sub-division / splitting of securities certificate	-	ISR - 4
	k. Consolidation of folios	-	ISR - 4

	l. Transmission	21	ISR – 4
	m. Transposition	15	ISR – 5
	n. Endorsement	-	ISR – 4
	o. Change in name of holder	-	ISR – 4
	p. Change in status from minor to major and resident to NRI and vice versa	-	NA
	q. Claim from unclaimed suspense account and suspense escrow demat account	-	ISR – 4

[Source: SEBI Circular dt: November 26, 2021 on, "Publishing Investor Charter and Disclosure of Complaints by Registrar and Share Transfer Agents (RTAs) on their Website]

It needs to be highlighted that timeline for processing of investor service request by RTA as per SEBI Circular dt: November 26, 2021 was from January 1, 2022. But SEBI had vide its November 2021 Circular prescribed different timeline for processing of certain investor service request. This created a scenario wherein two different timelines were provided for registering of / up-dation of / change in PAN, KYC and nomination. Also, SEBI circular dt: November 26, 2021 had stated that its provisions were in addition to provisions provided by various other SEBI Circulars. Now as per March 2023 circular SEBI has linked the timeline for processing of requests relating to registering of / up-dation of / change in PAN, KYC and nomination with timelines provided by SEBI circular dt: November 26, 2021.

So, now revised timeline as specified in table above for **registering of / up-dation of / change in PAN, KYC and nomination** would be applicable with effect from April 1, 2023 i.e. the effective date of March 2023 Circular.

Copy of SEBI circular dt: March 16, 2023 can be accessed at below given link:

https://www.sebi.gov.in/legal/circulars/mar-2023/common-and-simplified-norms-for-processing-investor-s-service-requests-by-rtas-and-norms-for-furnishing-pan-kyc-details-and-nomination_69105.html

Copy of SEBI Circular dt: November 26, 2021 can be accessed at below link:

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

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FAQs on Prohibition of Insider Trading dt: March 31, 2023

With an objective to provide greater clarity on several concepts related to the SEBI (PIT) Regulations, 2015, as also to shed more light on the nuances of various requirements of the regulations, SEBI has issued comprehensive Frequently Asked Questions (FAQs) on April 29, 2021, which consolidated all the FAQs and guidance notes issued earlier.

Structured Digital Database

SEBI had vide its FAQ no. 7 April 2021 had stated that Databases/servers provided by third party vendors whether within India or outside India will be considered as outsourced. Now SEBI has without agreeing in principle, stated that board of directors of the listed entity would be solely accountable for all aspects related to the maintenance of data on cloud or any other method. SEBI has further stated that it would be responsibility of Board of Directors and Compliance Officer to ensure the confidentiality, integrity and security of its data and logs, and ensure compliance with the laws, regulations, circulars, FAQs etc. issued by SEBI/ Exchanges from time to time. So, responsibility and accountability for maintenance of data on cloud or any other method is of Compliance Officer and Board of Directors of Listed Entity.

Nominee Director of a bank or financial institution

SEBI has further clarified FAQ no. 11 of April 2021. It was earlier not clear whether Nominee Director would be of Bank or Financial Institution would be considered as Designated Person if UPSI was shared with him? It has now been clarified by SEBI that Nominee Director be it of a bank or financial institution if he is falling under the list of designated persons or is an Insider as per PIT Regulations as he has access to UPSI and shares UPSI with the Bank/FIs he is representing for the legitimate purpose then it will require an entry in SDD.

Transfer of shares from one demat account to another

SEBI has clarified that transfer of shares from one demat account to another where one of the demat accounts has more than single ownership would trigger disclosure requirements.

So, for example: Mr A has two demat accounts. First demat account is with Zerodha where he is sole holder. Second demat account is with Motilal Oswal where there are two holder viz. Ms B and Mr A. So, in demat account

with Motilal Oswal Mr A is jointly holding shares with his wife. Now if shares of a company are transferred from 'Demat account with Zerodha' to 'demat account with Motilal Oswal' then it would amount to trading in shares. This would be irrespective of whether Mr A is first holder in Motilal Oswal Demat account

Till now it was stated that where beneficiary ownership remains same transfer of shares from one demat account to another demat account will not qualify as trading.

Contra Trade

ESOP Execution: SEBI has elaborated that subscribing, exercising, and subsequent sale of shares (either in tranches or in bulk) so acquired under ESOP shall not attract contra trade restrictions if they are executed within a period of six months. It is further clarified that other provisions of PIT viz. pre-clearance, trading window closure, disclosure requirements would be applicable to disposal of shares so acquired through ESOP. Further by way of giving various scenarios SEBI has explained as to when buying and selling of ESOP shares would be considered as Contra Trade. It can be summarised that if a designated person buys or sells shares in open market in six months either before or after acquisition of ESOP then it would be considered as Contra Trade.

Corporate Actions: SEBI has further elaborated the list of corporate actions wherein restriction of contra trade in securities would not be applicable. SEBI has now added following corporate actions wherein contra trade restrictions would not be applicable, "OFS, share split, bonus, exit offers, merger/amalgamation, demerger". These are in addition to existing corporate actions that were notified by SEBI earlier buy back offers, open offers, rights issues, FPO.

Holding shares under single PAN: SEBI has now by way of FAQ stated that if designated person is holding shares under single PAN but in different capacities restriction to engage in contra trade would be applicable to all the shares held under the PAN of the Designated Person, irrespective of the capacities in which such Designated Person holds such shares in the Company. This makes clear that restrictions of contra trade would be based on PAN. This view was also given by SEBI in an Informal Guidance¹

Trading in Rights Entitlement: SEBI has clarified that Trading in Rights Entitlements tantamount to open market trade in the Company securities and contra trade provisions are applicable on them.

¹ https://www.sebi.gov.in/enforcement/clarifications-on-insider-trading/oct-2022/compilation-of-informal-guidance-relating-to-sebi-pit-regulations-2015-for-the-period-oct-2015-sept-2022_64336.html - IG to Arvind Ltd

Applicability of PIT to entities under CIRP

If Entities who have participated as a prospective bidder in the bidding process of a listed company, under the Corporate Insolvency Resolution Process (CIRP) have access to UPSI during the bidding process of the company under CIRP then the provisions of PIT Regulations would be applicable to them.

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Extension of compliance period - Fund raising by large corporates through issuance of debt securities to the extent of 25% of their incremental borrowings in a financial year

I. Background:

SEBI had vide its Circular dt: November 26, 2018 (for equity listed entities) and SEBI Circular dt: August 10, 2021 ('For debt listed entities only') ['LC circulars'] had brought into existence a new compliance for listed companies. By these LC Circulars listed entities were termed as 'Large Corporates' based on certain criteria specified in these LC circulars as follows:

- Entities which have their specified securities or debt securities or non-convertible redeemable preference shares, listed on a recognised stock exchange(s) in terms of SEBI LODR Regulations, 2015; and
- Have an outstanding long-term borrowing of Rs. 100 crore or above (which will include any outstanding borrowing with original maturity of more than one year and exclude external commercial borrowings and inter-corporate borrowings between a parent and subsidiary(ies)); and
- Have a credit rating of "AA and above" of the unsupported bank borrowing or plain vanilla bonds of an entity, which have no structuring/ support built in; and in case, where an issuer has multiple ratings from multiple rating agencies, the highest of such ratings shall be considered for the purpose of applicability of this framework.

These criteria had to be checked at the end of every financial year and a declaration in this regard was required to be given.

II. Compliance Requirement till March 31, 2023:

Large Corporates had to mandatorily fund 25% of their incremental funding requirements through issue of debt securities. This compliance was required to be done within a period of two financial years. For FY 2020 (i.e., FY from April 1, 2019 to March 31, 2020) and 2021 (i.e., FY from April 1, 2020 to March 31, 2021), the requirement of meeting the incremental borrowing norms was made applicable on an annual basis. Accordingly, a listed entity identified as a LC on last day of FY 2019 (i.e., as on March 31, 2019) and FY 2020 (i.e., as on March 31, 2020), was required to comply with this requirement by last day of FY 2020 (i.e., by March 31, 2020) and FY 2021 (i.e., by March 31, 2021), respectively. From FY 2022 (i.e., FY beginning from April 1, 2021), the requirement of

mandatory incremental borrowing by a LC in a FY was required to be met over a contiguous block of two years (i.e., during the block of April 1, 2021 to March 31, 2023).

If Large Corporates are unable to fund their incremental borrowing requirements through debt market in the contiguous block ending on March 31, 2023, then they were subject to penalty as specified in the LC circulars.

III. Amendment after March 31, 2023:

SEBI had received representations to provide additional time to comply with these requirements. Accordingly, SEBI in its Board Meeting held on March 29, 2023 approved this granting of additional one year time.

SEBI has now vide its circular dt: March 31, 2023 provided an additional time-limit of one year to comply with this requirement.

So now Large Corporates who had failed to fulfil their 25% of additional funding requirement by issue of debt securities till FY 2023 (i.e., till March 31, 2023) will now have additional one year (i.e. FY 2024 OR till March 31, 2024) to fulfil the same.

IV. Some questions arising from this amendment:

Q. Whether this extension granted pursuant to SEBI circular would be applicable for upcoming financial years or it is only an extension for FY 2023 only?

SEBI has vide its circular dt: March 31, 2023 stated as follows, *"Taking into account the representations from the market participants and on a review of the matter, it has been decided that the contiguous block of two years over which large corporates need to meet the mandatory requirement of raising minimum 25% of their incremental borrowings in a financial year through issuance of debt securities **will be extended to a contiguous block of three years (from the present requirement of two years) reckoned from FY 2021-22 onwards"** **"The provisions of paras 2.2 (c) and 2.2 (d) of Chapter XII of the NCS Operational Circular dt: April 13, 2022 shall be modified accordingly"***

On perusing the above para, it is appearing that the time limit for **'contiguous block of two years is now extended to 'contiguous block of three years'** to be reckoned from FY 2021-22 onwards. So it seems that going forward Large Corporates would be getting Contiguous block of three years for meeting requirements of fund raising through issue of debt

securities. Any further clarification on time limit available for fund raising to large corporates from SEBI or Stock Exchange would be helpful.

Q. Whether this extension is only for listed entities who have listed their Non-Convertible Securities, securitised debt instruments, security receipts, municipal debt securities and commercial paper or listed entities who have listed their specified securities?

SEBI Circular dt: November 26, 2018 was applicable for entities who have listed their specified securities or debt securities or NCRPS. Later on SEBI vide its Circular dt: August 10, 2021 viz. Operational Circular for issue and listing of Non-Convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper repealed SEBI Circular dt: November 26, 2018.

SEBI Circular dt: November 26, 2018 was applicable to entities who have listed their specified securities or debt securities or NCRPS. SEBI notified Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 on August 9, 2021.

SEBI vide its Circular dt: August 10, 2021 as amended from time to time ['Operational Circular'] issued an operational circular providing a chapter wise framework for issuance, listing and trading of non-convertible securities.

Chapter XII of Operational Circular provides for 'Operational Framework on Fund Raising by Large Corporates'.

Provisions of Chapter XII are applicable to entities who have listed their 'Specified Securities' or 'Debt Securities' or Non-Convertible Redeemable Preference Shares'. Specified Securities are defined in Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021 at Reg. 2(1)(II) as, "*specified securities' shall have the same meaning assigned to it under the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018*

So it is clear that even if Operational Circular is for Issuance, listing and Trading of Non-convertible Securities, Securitised Debt Instruments, Security Receipts, Municipal Debt Securities and Commercial Paper but chapter XII is applicable for 'Specified Securities, debt securities or non-convertible redeemable preference shares'

SEBI vide its circular dt: March 31, 2023 has amended SEBI circular dt: August 10, 2021. So it is clear that this amendment is also applicable for listed entities who have listed only their specified securities, i.e., equity shares and securities convertible into equity shares. .

Copy of the above circular can be accessed at below mentioned link:

https://www.sebi.gov.in/legal/circulars/mar-2023/extension-of-compliance-period-fund-raising-by-large-corporates-through-issuance-of-debt-securities-to-the-extent-of-25-of-their-incremental-borrowings-in-a-financial-year_69574.html

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SDD Certificate under PIT Regulations continues for certain listed entities

I. Introduction:

Bombay Stock Exchange ('BSE') & National Stock Exchange ('NSE') ['Stock Exchanges'] have vide its circular dt: March 29, 2023 has directed listed entities to whom the provisions of Regulation 24A of SEBI(LODR) Regulations, 2015 ("SEBI LODR") are not applicable, to continue to submit Structured Digital Database under SEBI PIT Regulations, 2015 ("SDD") Compliance certificate on quarterly basis, within 21 days from end of each quarter on the specified path: *BSE Listing Centre > Listing Compliance > Compliance Module > Structured Digital Database (SDD) Compliance Certificate and for NSE listed entities SDD certificate shall be submitted at sdd_pit@nse.co.in email id.*

II. Background:

Stock Exchanges had initially sent emails to listed entities on August 5, 2022 asking all listed entities to submit SDD certificate confirming compliance with Regulation 3(5) of SEBI PIT Regulations 2015. Further Stock Exchanges have issued various circulars dated October 28, 2022, November 4, 2022 and January 25, 2023_for modifying the format, giving option of getting this certificate from Practising Company Secretary (PCS) OR from Compliance Officer of company, specifying timelines for submission of SDD Compliance certificate and action to be taken against compliances which are found to be non-complaint with above mentioned Regulation 3(5) of SEBI PIT Regulations, 2015 ("SEBI PIT").

III. Additional confirmations in Annual Secretarial Compliance Report (ASCR):

BSE and NSE had vide their Circular No. 20230316-14 dated March 16, 2023 revised the format of Annual Secretarial Compliance Report (ASCR) from Practising Company Secretary (PCS) to be submitted to stock exchanges by listed entities to whom the provisions of Reg 24A of SEBI LODR. This new format requires the Practising Company Secretary ('PCS') to inter-alia certify compliance with Reg 3(5) and Reg 3(6) of SEBI PIT.

IV. BSE & NSE Circulars dated March 29, 2023 and incidental questions:

BSE & NSE have now vide their circulars dated March 29, 2023 clarified that all such entities to whom Reg 24 of SEBI LODR are not applicable need to continue submission of SDD certificate.

With this there is now clarity as to which all listed entities will have to submit SDD certificate and which all entities will have to certify compliance with Reg 3(5) and Reg. 3(6) of SEBI PIT.

This raises various questions on submission of Certificate of Maintenance of SDD:

1. Which of the listed entities exactly would still be required to submit Quarterly "Certificate of maintenance of SDD"?

Stock Exchanges have vide their circular dt: March 29, 2023 stated that listed entities to whom Reg 24A of SEBI LODR is not applicable shall continue to submit Certificate on Maintenance of SDD shall continue to submit Certificate of Maintenance of SDD on quarterly basis. So, accordingly following entities would be required to submit Certificate on Maintenance of SDD on quarterly basis:

- a. High Value Debt Listed ('HVDL') entity who are choosing not to comply Reg24A of SEBI LODR, as comply or explain basis is extended till FY2024 vide SEBI Board Meeting Press Release dt: March 29, 2023
- b. To whom Reg. 24A is not applicable
 - Entities who have their specified securities listed on Small and Medium Enterprise ('SME') platform of Stock Exchanges
 - Entities who have their non-convertible debt listed on Stock Exchanges,
 - Entities who are exempted from the provisions of Corporate Governance pursuant to provisions of Reg 15(2)(a) of SEBI LODR as their paid up share capital and net worth is not meeting the criteria mentioned therein

2. Which of the listed entities would now not be required to submit "Certificate of maintenance of SDD" on quarterly basis?

Stock Exchange vide their circular dt: March 16, 2023 have amended the format for submission of Annual Secretarial Compliance Report to be submitted to Stock Exchanges under Reg. 24A of SEBI LODR. Under the revised format Practising Company Secretary will now have to certify compliance with Reg. 3(5) and Reg. 3(6) of SEBI (Prohibition of Insider

Trading) Regulations, 2015. So, accordingly quarterly SDD Compliance Certificate will now not be required to be given by those entities to whom Reg. 24A of SEBI LODR is applicable which are following entities:

- a. HVDL who mandatorily comply with Reg. 24A (inspite of it being voluntary) shall submit annually.
- b. Listed Entities whose equity shares are listed and they would be covered by Reg. 24A of SEBI LODR

This is because in case of these entities, the Annual Secretarial Compliance Certificate from PCS under Reg. 24 will cover the confirmation about whether Regulation 3(5) and 3(6) of SEBI PIT are complied with. If those listed entities are mandated to submit the SDD certificate too, then it shall lead to duplication.

3. Whether REIT/InvITs whose units are listed, REIT/InvITs whose units are listed and also whose High Value Debt Securities are listed, REIT/InvITs whose units and debt securities are listed whose are also required to submit 'Certificate with respect to maintenance of Structured Digital Database'?

SEBI vide its amendment notification dt: January 17, 2023 has inserted Reg. 15(1B) and (1C) in SEBI LODR whereby it is stated that,
"(1B) Notwithstanding anything contained in this regulation, in case of an Infrastructure Investment Trust registered under the provisions of the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, the governance norms specified under the Securities and Exchange Board of India (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 Securities and Exchange Board of India (Real Estate Investment Trust) Regulations, 2014, the governance norms specified under the Securities and Exchange Board of India (Real Estate Investment Trust) Regulations, 2014 shall be applicable".

On reading Reg. 15(1B) and (1C) of SEBI LODR it is clear that REITs or InvITs whose High Value Debt Securities are listed is also now out of the purview of Corporate Governance Provisions of SEBI LODR. Further It needs to be highlighted that SEBI has vide its amendment notification dt: January 17, 2023 omitted Explanation 4 to Reg. 15(1) of SEBI LODR which was mandating Investment Managers and Managers in case of REITs and InvITs to comply with Corporate Governance provisions.

Further SEBI vide its amendment notification dt: February 14, 2023 introduced 'Corporate Governance norms' for REITs and InvITs in their respective governing Regulations. Post this amendment as per Reg. 26J of SEBI (Infrastructure Investment Trust) Regulations, 2014 and Reg 26D of SEBI (Real Estate Investment Trust) Regulations, 2014, Investment Manager of the InvIT and Manager of REIT shall submit a Secretarial Compliance Report from a Practicing Company Secretary within a period of sixty days from end of financial year. **However formats for both these Certificates is yet to be notified.**

So, on harmoniously reading Reg 15(1B), (1C) with Reg 26J of SEBI (Infrastructure Investment Trust) Regulations, 2014 and Reg. 26D of SEBI (Real Estate Investment Trust) Regulations, 2014 REITs / InvITs would be out of the purview of Reg 24A of SEBI LODR.

So, it may be stated that REITs and InvITs whose units are listed shall continue to submit quarterly SDD certificate pursuant to BSE and NSE circulars dt: October 28, 2022 read with March 16, 2023 as they are governed by SEBI PIT.

This circular is effective from 29th March 2023 with immediate effect.

BSE Circular Debt:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230329-20>

BSE Circular equity:

<https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230329-21>

NSE Circular:

https://static.nseindia.com//s3fs-public/inline-files/NSE_CIRCULAR_29032023.pdf

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