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IPO Preparedness- Composition of Board of Directors

Introduction

An Initial Public Offering (IPO) marks a major milestone in a company's growth journey. By offering shares to the public and getting listed on the stock exchanges, a company gains access to capital while also taking on new responsibilities. One of the most crucial duties after an IPO is maintaining transparency with shareholders. This means the company must follow the rules and regulations set by regulatory bodies like the Securities and Exchange Board of India (SEBI) to ensure trust and compliance in the market.

To ensure a smooth IPO process, a company must start preparing well in advance—long before submitting its Draft Red Herring Prospectus (DRHP). Early preparation helps avoid regulatory non-compliance after listing. This involves several key steps, such as maintaining accurate financial records, meeting IPO eligibility criteria (including those for promoters and directors), ensuring the right board composition, establishing policies, and setting up essential committees. Proper planning streamlines the IPO journey. In this article, we will discuss how a company should prepare for an IPO by structuring its Board of Directors before going public.

Legal requirements for the Board of Directors

Composition of board of directors is governed by Regulation 17, 17 A of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations) and Section 149 of the Companies Act, 2013.

Having the right Board composition is essential for companies gearing up for an IPO. It ensures they meet regulatory requirements and avoid delays in the listing process. Regulations outline board structures, emphasizing a balanced mix of executive, non-executive, and independent directors. This balance helps in better decision-making, strengthens corporate governance, and boosts investor confidence. By following these guidelines, companies can create a Board that not only meets compliance standards but also provides strong and effective leadership.

We will take a look at the different scenarios of the composition of the board of directors as per the Regulation 17 of the LODR Regulations:

The board of directors of the top 2000 listed entities by way of market capitalization shall comprise of not less than six directors. The board of directors shall also have an optimum combination of executive and non-executive directors with at least one woman director (at least on woman independent director in case of top 1000 listed entities) and not less that fifty percent of the board of directors shall comprise of non-executive directors.

Scenario 1: where the chairperson of the board of directors is non-executive director, at least one third of the board of directors shall comprise of independent directors. So, the companies can form the board of directors as shown in figure below.

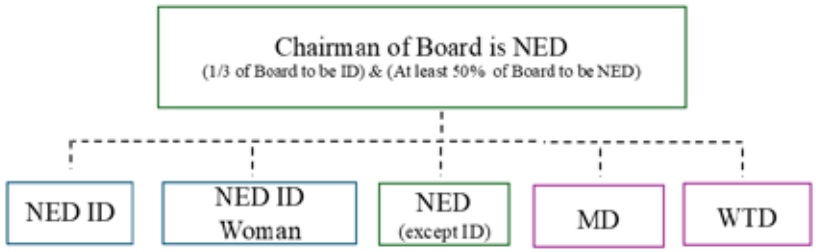

Image 1: Board Structure : Scenario -1 (Section 17 of SEBI (LODR) Reg 2015)

Scenario 2: Where the listed entity does not have a regular non-executive chairperson, at least half of the boardof the directors shall comprise of indpendent directors.

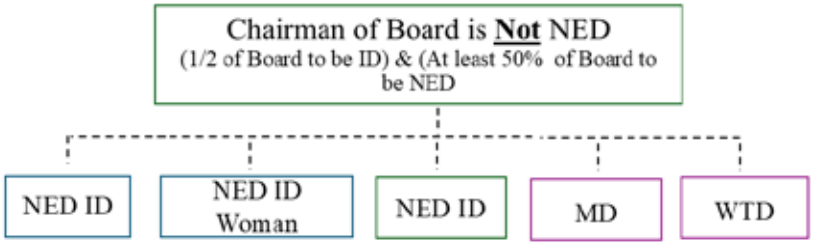

Image 2: Board Structure : Scenario -2 (Section 17 of SEBI (LODR) Reg 2015)

Scenario 3: if the regular non-executive chairperson is a promotor of the listed entity or is related to any promotor or person occypying management position at the level of board of directpr or at one level below the board of directors, at least half of the board of directors of the listed entity shall consist of indepenent directors

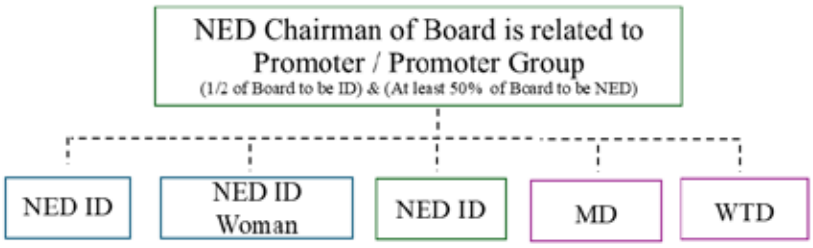

Image 3: Board Structure : Scenario -3 (Section 17 of SEBI (LODR) Reg 2015)

These are just the scenarios as per the Regulation 17 of the SEBI LODR Regulations considering minimum number of directors in the board of directors. Companies may need to curate the structure as per their requirements.

LODR further states the maximum number of the directorship allowed for a director. A person shall not be director in more than seven listed entities. Notwithstanding with this any person who is serving as a whole-time director or managing director of the listed entity shall not serve as independent director in not more than three listed entities.

Constitution of Nomination and Remuneration Committee (NRC)

NRC is constituted comprising of NEDs. Atleast two thirds of directors should be independent directors and the committee should have three members under the chairmanship of Independent Director.

As per Regulation 19 of SEBI (LODR) Regulations, 2015, every listed company must have an NRC to oversee the selection and remuneration of directors and senior management. Additionally, Section 178 of the Companies Act, 2013, mandates that the NRC define the qualifications, skills, and attributes required for these roles. By setting clear criteria, the NRC ensures that leadership positions are filled by individuals with the right expertise, integrity, and strategic outlook. It also establishes fair, performance-linked compensation, aligning leadership incentives with the company's growth and shareholder interests.

Independent Director Requirements

As per Section 149(11) of companies act, 2013 and independent director can serve only two consecutive terms and can be reappointed after a cooling off period of 3 years. As company proceeds for IPO it is important to check the if the term of an independent director is coming to an end as soon as planned listing date, if so, company needs to appoint another independent director chosen by the NRC.

Directors Crossing the age of 75 years

Companies preparing for an IPO should also review the age limit of their directors. If any director is nearing 75 years as soon as company lists or in one years' time after listing, shareholder approval must be obtained either before the director crossing the age of 75 years, ensuring compliance with regulatory requirements.

Reviewing Director Appointments Before IPO

For companies preparing to go public, it is essential to review the appointment of any nominee directors designated by institutions. Key checks include identifying which institution has nominated the director and whether the necessary member approval under the Companies Act has been obtained. If approval has not been taken, companies must assess whether it will be required post-listing under SEBI (LODR) regulations to ensure compliance and avoid governance issues after going public.

According to Schedule V, Part A, Para C, clause 10(h) of SEBI LODR Regulations certificate from company secretary in practice should be obtained that none of the directors on the board have been debarred or disqualified from being appointed as directors of companies by SEBI or Ministry of Corporate Affairs or any such statutory authority.

Case Study: Shadowfax (Feb 14, 2025)

Shadowfax- India's premier provider of e-commerce express parcel and value-added solutions[i]- prepares for its IPO, the company has strengthened its board[ii] by bringing in experienced independent directors. These leaders, with backgrounds in retail, venture capital, and logistics, are set to play a key role in guiding Shadowfax's growth and ensuring strong governance.

This thoughtful decision reflects the company's dedication to transparency, operational excellence, and long-term success. For other companies eyeing an IPO, taking similar steps can make a real difference—building investor trust, staying ahead of regulatory requirements, and laying the groundwork for a successful public debut. By adding the right experts to the board, companies can unlock new opportunities for growth and enhance their reputation in the market.

Conclusion

From the outset, we've highlighted the importance of companies fully complying with regulations when preparing for an IPO. One of the key factors in this process is the composition of the board of directors. Companies must ensure their directors meet eligibility criteria and, when necessary, obtain shareholder approval. This thoughtful approach not only streamlines the IPO process but also minimizes the risk of compliance issues post-listing. A well-structured board, supported by a Nomination and

Remuneration Committee (NRC), is essential in shaping leadership, maintaining governance, and fostering investor trust. By proactively addressing regulatory aspects such as director age limits and board composition requirements, companies can avoid hurdles and set the stage for a smoother IPO, long-term growth, and sustained market credibility.

Here are some key action points that companies should implement to ensure compliance.

- **Ensure Proper Board Composition** – Maintain the right mix of executive, non-executive, and independent directors, including a woman director, as per Regulation 17 of SEBI (LODR). It also needs to ensure that it has minimum no. of directors as specified under SEBI LODR.
- **Meet Independent Director Criteria** – Ensure compliance with Section 149 of the Companies Act, 2013, including ensuring compliance with terms of independent directors and cooling-off periods for re-appointment of independent directors.
- **Composition of Committees:** Ensure that statutory committees are properly constituted viz. audit committee, nomination and remuneration committee, stakeholder relationship committee etc. It also needs to be ensured that these committees are properly constituted as per the requirements stated in SEBI (LODR) regulations and Companies act, 2013.
- **Review Director Age Limits** – Obtain shareholder approval for directors nearing 75 years of age before in accordance with provisions of SEBI LODR.
- **Ensure Directorship Compliance** – No director should hold directorships in more than seven listed entities (or three if a whole-time director/MD serving as an independent director).
- **Obtain Compliance Certification** – Get a practicing company secretary's certificate confirming all directors meet eligibility criteria and are not debarred by SEBI or MCA or any other applicable regulatory authority.

By taking these steps before filing the DRHP, companies can avoid compliance risks and ensure a smooth IPO process and long-term success.

This article has been published on Taxmann . The Link for the same

https://www.taxmann.com/research/company-and-sebi/top-story/105010000000026234/ipo-preparedness-composition-of-board-of-directors-experts-opinion

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[i] https://www.entrepreneur.com/en-in/news-and-trends/shadowfax-strengthens-board-with-strategic-appointments-of/486609

[ii] https://inc42.com/buzz/shadowfax-strengthens-its-board-ahead-of-ipo/

IPO Eligibility Criteria: What Companies, Promoters, and Directors Must Know

Introduction

In India, the process of launching an Initial Public Offering (IPO) on main board of a recognised stock exchange is a significant milestone for any company looking to raise capital from the public. However, before a company, its promoters, or directors can embark on this journey, they must meet several stringent eligibility criteria set by regulatory bodies such as the Securities and Exchange Board of India (SEBI).

These criteria ensure that only companies with sound financial standing and good governance practices are allowed to access public markets, thus protecting investor interests. This article explores the key eligibility requirements for the company, its promoters, and its directors, shedding light on the standards that must be met and preparedness prior to successfully launch an IPO in India.

Eligibility Requirements

The eligibility requirements for company, promotor, and its directors[i] are stated in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations 2018, (SEBI ICDR Regulations).

Eligibility Criteria for Issuer Company

A company must meet several financial and regulatory conditions before launching the IPO. By taking these criteria into consideration companies should prepare for IPO well before to avoid last minute hassle to comply and smooth IPO launch.

Sr. No.	Criteria	Details
1	**Net Tangible Assets**	A company can proceed with an Initial Public Offering (IPO) only if it meets certain financial requirements. One key condition is that the company must have net tangible assets—essentially, all its physical assets minus liabilities and intangible assets—of at least rupees three crore for each of the last three years. These financial figures must be reported on a restated and consolidated basis, meaning they should be adjusted for accuracy and include the financials of any subsidiaries to present a clear overall picture. Additionally, no more than fifty percent of these assets should be held in cash or other monetary forms unless they are specifically allocated for business expansion. However, this fifty percent restriction does not apply if the IPO is being conducted through an offer for sale (OFS), where existing shareholders sell their shares instead of the company issuing new ones.

2	**Operating Profit**	The company must have an average operating profit of at least rupees fifteen crore over the last three years, with profits recorded in each of those years.
3	**Net Worth**	A company must have a net worth of at least rupees one crore in each of the last three years, calculated on a restated and consolidated basis. Net worth refers to the total value of the company's paid-up share capital, along with reserves generated from profits and the securities premium account. It also includes the profit or loss balance from the company's financial statements.
4	**Name Change Requirements**	If the company has changed its name within the last year, at least fifty percent of its revenue in the preceding year (i.e., the full financial year immediately before the date of filing the Draft Red Herring Prospectus) must come from activities related to its new name.
5	**No Convertible Securities**	The company must not have any outstanding convertible securities or other instruments entitling any person to equity shares, except in specific cases like employee stock options or securities convertible before filing the drat red herring prospectus.

SEBI ICDR further provides that in case a company is planning for an IPO it shall meet the above referred criteria. If in case a company fails to meet the above referred criteria then it may be permitted to go ahead with an IPO but in that case the company proposing will have to allot atleast seventy five percent of net offer of shares to qualified institutional buyers.

Eligibility Criteria for promoters and directors of the issuer company

Promoters play a significant role in the company's IPO. Hence SEBI has set specific conditions for their participation. They are as follows:

Sr. No.	**Criteria**	**Details**
1	**Debarment Status**	Any of the promoter, promoter group, directors or selling shareholders (in case a company is bringing an IPO by way of offer for sale) of the issuer company should not be or have been debarred from accessing capital market by the SEBI. If any of the above person is debarred in the past by the Board (SEBI) but the debarment period is over as on the date of filing of the draft offer document; the issuer company may proceed for the IPO[ii].

2	**No link to debarred companies**	If any of the promoters or directors is associated with another company debarred from accessing the capital market, the company becomes ineligible. For Example: Suppose XYZ Ltd. plans to launch an IPO, and one of its promoters, Mr. A, is also a promoter in another company, ABC Ltd. If SEBI had earlier barred ABC Ltd. from raising funds from the public, XYZ Ltd. would also be ineligible to proceed with its IPO unless Mr. A steps down from his role or is removed as a promoter or director.
3	**Wilful Defaulter**	Any of the promoters or the directors of the company should not be a wilful defaulter or a fraudulent borrower or the company is not permitted to issue an offer. According to Master Circular on wilful defaulters by RBI[iii] a wilful defaulter is a unit defaulted in meeting its payment/ repayment obligations to the lender even if it has capacity to honour the said obligations or has not utilised the finance from the lender for the specific purposes for which finance was availed of but has diverted the funds for other purposes or has siphoned off the funds or has also disposed off or removed the movable fixed assets or immovable property given by him or it for the purpose of securing a term loan without the knowledge of the bank/lender.
4	**Fugitive Economic Offender**	Any promoter or the director of the company should not be a fugitive economic offender. Fugitive economic offender means any individual against whom a warrant for arrest in relation to a scheduled offence has been issued by any court in India, who: (i) leaves or has left India so as to avoid criminal prosecution; or (ii) refuses to return to India to face criminal prosecution.[iv]
5	**SR (Superior Rights) Shareholders**	If a promoter holds SR equity shares, they should comply with: **a.** A net worth of less than ₹1,000 crore. **b.** SR shares must be issued only to executive promoters and approved via a special shareholder resolution. **c.** SR shares must be held for at least three months before filing the red herring prospectus. **d.** SR shares should have voting rights between 2:1 and 10:1 compared to ordinary shares.

Conclusion

To ensure a smooth and successful IPO, the issuing company must comply with various regulatory requirements. Based on the above referred criteria, companies need to maintain and present their financial records according to these requirements for the three years leading up to the IPO. This means they should start preparing to meet these standards at least three years before the IPO is launched. The key is to plan ahead, engage experienced professionals, and start meeting these requirements well in advance. A proactive approach helps avoid last-minute hurdles, builds investor confidence, and enhances the company's credibility.

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[i] Regulation 5, Regulation 6 of SEBI ICDR Regulations, 2018.
[ii] Explanation of Regulation 5 of SEBI ICDR Regulations, 2018.
[iii] https://www.rbi.org.in/commonman/English/scripts/Notification.aspx?Id=1458#21
[iv]https://dea.gov.in/sites/default/files/Draft%20Fugitive%20Economic%20Offenders%20Bill%2C%202017-22.3.2017.pdf

IPO Preparedness: The Role of Key Committees in Corporate Governance

Introduction

Going public is a transformative journey for any company, bringing new responsibilities, higher scrutiny, and the need for stronger governance structures. SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR) and the Companies Act, 2013 mandate listed entities to constitute key board committees to ensure compliance, risk management, and investor protection.

For companies preparing for an IPO, establishing these committees in advance is crucial to avoid last-minute regulatory hurdles. The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR) also require disclosure of governance frameworks, including committee compositions, in the Draft Red Herring Prospectus (DRHP).

In this article, we'll break down the composition, functions, and legal requirements of key board committees—Audit, NRC, SRC, RMC, and CSR—and provide guidance on how companies planning an IPO can set up these governance structures for a smooth listing process.

In the table below we will take a look at the overview of the committees:

Committee	Composition Requirement	Meeting Frequency	Key Roles & Responsibilities	Relevant LODR Regulation
Audit Committee	• At least 3 directors, • At least two third of the members shall be independent directors, • All members should be financially literate • Chairperson-Independent director	At least 4 times a financial year – not more that 120 days shall elapse between two consecutive meetings	Approval of financial results, and RPTs. • Oversight of internal controls, • Role in vigilance framework	Regulation 18.
Nomination & Remuneration Committee (NRC)	• At least 3 non-executive directors, • at least 2 /3 rd of the directors shall be independent • Chairperson-Independent Director	At least once a financial year	• Deciding upon appt. /reappt of senior management and KMP. • Performance evaluation of directors	Regulation 19

Stakeholders Relationship Committee (SRC)	At least 3 directors, with at least 1 independent director	At least once a year	• Handling investor grievances, • complaints resolution	Regulation 20
Risk Management Committee (RMC)	• Majority of members from the board of directors. • At least one independent director • Chairperson-Member of the board • Senior executives may be members of committee	At least once in six months (not more that 210 days elapsed between two consecutive meetings)	• Identifying and mitigating risks, • compliance with risk policies	Regulation 21
CSR Committee	At least 3 directors, including 1 independent director (if applicable)	At least once a year	• Preparation of annual action plan. • Monitoring CSR initiatives undertaken by the company. x	Section 135 of Companies Act, 2013

Understanding the Audit Committee's Role

The Audit Committee is one of the most critical pillars of corporate governance for a listed company. Its primary job is to ensure financial transparency, accountability, and compliance but its influence goes far beyond just checking the books. From overseeing financial reporting and approving related party transactions (RPTs) to appointing auditors, the committee plays a crucial role in maintaining investor trust.

One of its key post-listing responsibilities is monitoring fund utilization, ensuring that money raised in the IPO is used for its intended purpose. Regulation 32 of LODR mandates companies to disclose any deviations in usage of proceeds from public issue, and the Audit Committee must keep a close watch on this to prevent financial mismanagement.

Audit Committee's Role in Vigilance

SEBI LODR in schedule II specifies terms of reference of audit committee. Terms of reference provides for list of things that needs to be placed before audit committee. Post listing company needs to ensure that these terms of reference are followed. Further post listing all related party transactions need to be approved by audit committee prior to the transaction being entered. Company once listed needs to ensure that all related party transactions as would be covered within regulation 23 needs to be approved by audit committee. Audit committee is also required to look into vigil mechanism. Hence companies need to ensure that they have vigil mechanism in place.

Understanding the Role of the Nomination and Remuneration Committee (NRC)

NRC plays a crucial role in shaping a company's leadership and governance. Beyond deciding pay structures, it ensures the board and senior management have the right skills, experience, and independence to drive long-term growth.

More than just selecting directors, the NRC oversees board diversity, succession planning, and performance evaluation. It also assesses independent directors' suitability, ensuring their appointment aligns with the company's strategic needs, as outlined in Schedule II, Part D of SEBI (LODR) Regulations, 2015.

Post-listing, the NRC's key responsibility is conducting an annual evaluation of the board and independent directors while ensuring remuneration policies are fair, transparent, and aligned with shareholder interests. Given the increased scrutiny on listed companies, a well-structured NRC is essential for maintaining investor confidence and regulatory compliance.

Understanding the Role of the Stakeholders Relationship Committee (SRC)

The Stakeholders Relationship Committee (SRC) ensures that shareholders' concerns are addressed efficiently, strengthening investor trust in a listed company. Its primary role is to resolve investor grievances, including issues related to share transfers, dividends, and corporate communication.

Beyond grievance redressal, the SRC also reviews measures to enhance shareholder participation in decision-making, ensures adherence to service standards of the Registrar & Share Transfer Agent (RTA), and takes steps to reduce unclaimed dividends. Given the increased investor interactions post-listing, the SRC becomes even more critical in ensuring smooth communication between the company and its shareholders.

Understanding the Role of the Risk Management Committee (RMC)

The Risk Management Committee (RMC) is essential for identifying, assessing, and mitigating risks that could impact a company's operations and financial health. While its role is mandated for the top 1000 listed entities and high-value debt listed entities, every company planning an IPO should proactively establish a risk management framework.

The RMC formulates and oversees risk management policies, ensuring a structured approach to handling financial, operational, ESG, cyber security, and other industry-specific risks. It also monitors the business continuity plan, ensuring that the company can sustain operations during unforeseen events.

To ensure a seamless transition into the listed space, companies must proactively establish strong governance, compliance, and risk management frameworks.

Conclusion

The following key steps summarize the essential measures companies should take for IPO preparedness:

- **Audit & Vigilance Framework**
  - Reconstitute the Audit Committee in advance, ensuring compliance with LODR composition requirements.

- Establish a vigilance framework, including whistleblower mechanisms, fraud detection systems, and independent audits.
- Schedule the first Audit Committee meeting post-listing to approve financial results and assess financial risks.

➢ **Board Composition & Remuneration**

- Reconstitute the Nomination and Remuneration Committee (NRC) with the right mix of skills, experience, and independence to comply with provisions of SEBI (LODR).
- Define clear policies for director and senior management appointments, ensuring diversity and governance best practices.
- Ensuring to have a nomination and remuneration policy for directors and senior management appointments, reappointments to ensure diversity.
- Set up a board evaluation mechanism to ensure accountability and periodic performance reviews.

➢ **Shareholder & Investor Protection**

- Constitute the Stakeholders Relationship Committee (SRC) to oversee shareholder grievance redressal and investor relations.
- Establish an efficient grievance redressal mechanism in coordination with the Registrar & Transfer Agent (RTA) for share transfers and dividend processing.

➢ **Risk Management & Compliance**

- Formulate a risk management policy, identifying key risks including financial, regulatory, operational, and cyber risks.
- Establish internal controls to monitor and mitigate risks effectively.
- Ensure board awareness by keeping directors informed about risk-related discussions and oversight.

By integrating these practices early, companies can strengthen investor confidence, enhance corporate governance, and navigate the post-listing phase smoothly, ensuring sustainable growth in the capital markets.

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Applicability of Pre-clearance and Contra Trade for Transactions Exempt from Trading Window Closure

Introduction

Schedule B of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulation") provides "Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons ("Code"). Code provides minimum standards for regulating dealing in listed securities of listed entities. One of the minimum standards as prescribed by Code for regulating dealing in securities of listed entities is 'Closure of Trading window'.

Clause 04 of the Code states that trading window shall be closed when designated person is expected to have access to UPSI[i]. Designated persons are allowed to trade when the trading window is closed.[ii]

It means following transactions are exempted from trading window closure:

a. Transactions relating to pledge of shares for Bonafide purpose,
b. off market inter-se transfer of shares between persons in possession of same UPSI in compliance with SEBI (PIT),
c. transactions carried out through block deal mechanism between persons who were in possession of unpublished price sensitive information in compliance with SEBI (PIT),
d. transaction carried out pursuant to a statutory or regulatory obligation,
e. transaction undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations,
f. trades undertaken pursuant to trading plan,
g. transactions undertaken pursuant to respective regulations viz. acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer [Exempted Transactions']

In this regard the question that now arises is whether the compliances with respect to pre-clearance are applicable for 'Exempted Transactions'?

In accordance with the Code, designated persons and their immediate relatives are required to obtain prior approval from the compliance officer before engaging in trades involving the company's securities available for trading in the market and crossing thresholds specified in the Code, when they are in possession of UPSI[iii]. Hence designated persons dealing in shares for undertaking 'Exempted Transactions' will have to apply for taking pre-clearance.

Regulation 4 of PIT regulations prohibit dealing in securities of company when in possession of UPSI. Further when designated persons is expected to have access to UPSI or are in possession of UPSI, trading window is closed by compliance officer for dealing in securities of the company. SEBI being conscious of this fact has granted exemption from trading window closure for dealing in shares when in possession of or having access to UPSI.

The guiding principles behind considering grant of exemption to the 'Exempted Transactions' are that these transactions are pre-decided events, regulated, and subject to disclosure requirements/ shareholder approval under applicable regulations[iv].

Looking at the above analysis, if compliance officer refuses to grant pre-clearance for executing Exempted Transactions due to reason that designated person is in possession of UPSI then trading window closure exemption for Exempted Transactions will lose its relevance.

Hence, compliance officer will have to follow same principle as is provided for allowing Exempted Transactions to be undertaken and allow designated persons or their immediate relatives to deal in securities of company during trading window closure by granting pre-clearance even when designated person is in possession of UPSI.

Whether the compliances with respect to Contra Trade are also not applicable for Exempted Transactions?

According to SEBI FAQ on PIT Regulations 2021[v], any acquisition of securities by way of Rights issue, Follow-on Public Offer (FPO), Offer for Sale (OFS), Bonus issue, Share Split, Merger/Amalgamation, Demerger, exercising shares in ESOP would not attract restriction of 'contra-trade', provided the initial transaction of disposal was completed in accordance with PIT Regulations. Similarly, any disposal of securities by way of Buy-back, Open offer, exit offer, Merger/Amalgamation etc. would not attract restriction of 'contra-trade', provided the initial transaction of acquisition was completed in accordance with PIT Regulations. Transactions mentioned here are regulated by way of specific regulations hence they can be categorised as Exempted Transactions.

So, it means in case of executing Exempted Transactions, contra trade provisions would not apply if the original transaction were in accordance with PIT Regulations. The term 'in accordance with PIT Regulations' would mean that the transaction was undertaken in accordance with Code and were undertaken when not in possession of UPSI.

So, if a designated person has undertaken a buy transaction in the month of February 2024 (which is violation of Code) and then company comes out with a buyback issue in May 2024 then whether compliance officer can grant pre-clearance for tendering shares in the buy-back offer?

In the given scenario, compliance officer would not be able to give pre-clearance as tendering shares in buyback within a period of six months from the date of purchase of shares would amount to contra trade which would be in violation of Code[vi].

Further Clause 10 allows compliance officer to grant exemption from contra trade provisions for a particular trade proposed to be undertaken by designated persons but this exemption from contra trade cannot be given, when the trade proposed to be undertaken by designated person would be in violation of PIT Regulations

Hence, it is seen that even if Exempted Transaction is exempted from trading window closure restrictions, they are not exempt from the provisions of pre-clearance and contra trade. Hence, in such kind of scenario the exemption granted for trading window restrictions would become redundant.

Conclusion

Considering the analysis, it may be worth considering that the regulator re-evaluates the current framework of exemptions for trading window closure. While the exemptions provided for certain transactions, such as rights issues, buybacks, and other corporate actions, are well-intentioned and aim to provide exemption in case of pre-determined events. By extending these exemptions to **pre-clearance** and **contra trade** requirements in such cases, the regulator may provide greater flexibility to designated persons, while ensuring that the primary objective of protecting against insider trading remains intact.

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[i] *the trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information and the Designated persons, and their immediate relatives shall not trade in securities when the trading window is closed"* - Schedule B Clause 4(1) of PIT Regulation for trading window closure.

[ii] *The trading window restrictions shall not apply in respect of – (a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a Bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board; (b) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time.* - Schedule B Clause 4(3) of PIT Regulation.

[iii] Schedule B Clause 6 of PIT Regulation for pre-clearance: *No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information*

[iv] SEBI Consultation paper dt: September 26, 2024: *https://www.sebi.gov.in/reports-and-statistics/reports/sep-2024/consultation-paper-on-the-proposal-to-exempt-certain-transactions-from-trading-window-restrictions_87021.html*

[v] SEBI FAQ on PIT Regulations 2021 dated March 31, 2023

[vi] Schedule B Clause 10 of PIT Regulation for Contra Trade

Appointment of Branch Auditor – Ensuring Compliance with Provisions of Companies Act, 2013

Introduction

Since the inception of the Companies Act 2013 (the Act), the obligations of statutory auditor have increased. The Act provides for appointment, re-appointment, filing up of casual vacancy and removal of statutory auditor of the company. Suppose a company has also appointed a branch auditor to do branch audit of its various branches then whether this appointment shall also be governed by the provisions of the Act as they related to appointment, re-appointment, filing up of casual vacancy and removal of statutory auditor?

In this article, we shall try to understand as to who can audit the branch accounts of the company and does provisions relating to appointment of statutory auditor apply to appointment of branch auditor as well?

Who can audit the accounts of the branch?

The provisions relating to audit of branch accounts of a company are specified under sub-section (8) of section 143 of the Act[i]. As per provision of this sub-section branch audit may be undertaken by the statutory auditor appointed by the company to do the statutory audit or by any other person qualified to do audit of the company or if the branch office of the company is situated outside India then accounts of the branch may be audited either by the company's auditor or by an accountant or by other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country.

That means, if the person other than the statutory auditor of the company is to be appointed as branch auditor, then in case the branch is located within India, he should be a person who is qualified to do statutory audit of the company (i.e. chartered accountant or a firm of chartered accountants)..

Applicability of provisions relating to appointment of statutory auditor to branch auditor.

Appointment of statutory auditor is done by the members of the company at the annual general meeting unless in case of filling up of casual vacancy. Therefore, there arises the question that is the branch auditor also appointed by shareholders? The answer to this question depends on whether the branch in question is in India or outside India.

(a) Auditor of Indian Branch: As specified above,
If the branch office of a company is located in India, then the person qualified to be appointed as statutory auditor of a company should be appointed as branch auditor of the company. Further as per section 139 of the Act auditor should be appointed by

shareholders through an ordinary resolution passed at annual general meeting. Hence it can be inferred that at the time of appointment of statutory auditor of the company if he is also to be appointed as branch auditor of the company for a branch(es) located in India, then it shall be accordingly mentioned in the resolution for appointment of statutory auditor of the company.

(b) Auditor of foreign branch auditor.
The same sub-section 8 of section 143, that talks about appointment of Indian branch auditor, describes about appointment of foreign branch auditor. Therefore, its prima facie appears that the foreign branch auditor also must be appointed by shareholders as provided in section 139. But when observed carefully, this is not the case. Section 143 (8) reads as under,

"(8) Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (herein referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by any other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed:"

If observed carefully, the conditions relating to appointment of branch auditor of Indian branch and foreign branch are separated with a help of 'comma'. The first part of sub-section says that branch auditor of Indian branch should be appointed as per provisions of section 139. Thereafter, there is a 'comma' and then appointment of foreign branch auditor is described. *In websters dictionary 'comma' means a short clause in a sentence; that which is struck off or cut off from coptein". a mark of punctuation (,) used to indicate a slight separation of sentence elements; commas are used to set-off nonrestrictive or parenthetical elements; quotations, items in a series, etc.*[ii] Therefore, the comma inserted after the words, "section 139" separate the part of sub-section written thereafter.

Therefore, it can be seen that in case of foreign branch auditor, there is no requirement of referring to section 139. -section (8) of section 143 of the Act states that the qualification of foreign branch auditor should be as per the laws of land where the branch is located, or by an accountant or by statutory auditor of the company to whom the branch outside India belongs.

Sub- section (8) of section 143 of the Act is silent about the process of appointment of auditor of the branch located outside India. Therefore, it is upto discretion of the company whether it wants to take the appointment of foreign branch auditor to shareholders or whether it wants to do the same through a board resolution.

Conclusion.

Punctuation in law plays a crucial role in interpreting a law. Presence of comma in sub-section 8 bifurcates it into two parts (viz. appointment of branch auditor for a company having branch in India and for a company having branch located outside India). By understanding the intricacies of branch auditor appointments, companies can avoid non-compliance, fines, and reputational damage.

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[i] "*Where a company has a branch office, the accounts of that office shall be audited either by the auditor appointed for the company (hereafter in this section referred to as the company's auditor) under this Act or by any other person qualified for appointment as an auditor of the company under this Act and appointed as such under section 139, or where the branch office is situated in a country outside India, the accounts of the branch office shall be audited either by the company's auditor or by an accountant or by other person duly qualified to act as an auditor of the accounts of the branch office in accordance with the laws of that country and the duties and powers of the company's auditor with reference to the audit of the branch and the branch auditor, if any, shall be such as may be prescribed :".*

[ii] C V Raju vs C Balagopal and ors April 27, 2001, https://indiankanoon.org/doc/87965/

In the matter of Mr. Imdadali M Momin and others - Appellant vs. Pellucid Lifesciences Private Limited - Respondent at National Company Law Appellate Tribunal (NCLAT) New Delhi dated 9 September 2024

Facts of the Case:

- Six financial creditors filed an application u/s 7 of the Insolvency & Bankruptcy Code, 2016 (IBC) against Pellucid Lifesciences Private Limited - Corporate Debtor (CD/respondent) for initiation of Corporate Insolvency and Resolution Process (CIRP), claiming a debt of ₹1.25 Cr (₹1,25,44,997.25) with interest @ 12% per annum.
- The date of default was 30 November 2022. However, no record of the default was filed with the Information Utility.
- After the application was filed, the CD repaid ₹99 lakhs approx (₹99,07,375.48), but the applicant insisted that the application should proceed since the full amount was unpaid.
- The National Company Law Tribunal (NCLT) rejected the application, because it was found that there was no clear agreement between the creditors and the CD regarding the loan terms, including the repayment schedule and the interest rate.
- Since the CD had already repaid a significant portion of the loan and raised a valid dispute regarding the interest, the application was not appropriate for the IBC process and hence NCLT rejected the application. Aggrieved by the order of NCLT, the financial creditors filed the appeal before National Company Law Appellate Tribunal (NCLAT) u/s 61 of the IBC, challenging the order passed by NCLT.

Arguments of the Appellant:

- The NCLT has erred in dismissing the application u/s 7 of the IBC. The primary basis for dismissal was the view that the forum was unsuitable for money recovery, which misinterprets the IBC`s purpose. Section 7 of the IBC was meant to address insolvency and corporate debt issues, not merely serve as a debt recovery mechanism. The tribunal's failure to address the core issues of debt and default and its reliance on an incorrect interpretation led to an unjust dismissal of the application.
- The NCLT did not properly evaluate the existence of debt and default, which was fundamental prerequisites for admitting a petition u/s 7 of the IBC. The facts of the case clearly demonstrated both elements. The payment of ₹99 lakhs approx., was partial and made under the threat of the admission of application under CIRP, which did not nullify the default.
- NCLT could have concentrated on confirming whether a debt existed and whether there was a default, rather than whether the debt was fully settled.
- The respondent deliberately suppressed crucial material facts, thereby misleading the Tribunal. Notably, CD failed to disclose the No Dues Certificate issued by HDFC on 6 February 2021. Additionally, they misrepresented the status of their credit facility with Bank of Baroda (BOB) and withheld information regarding a letter dated 7 March 2023, in which they requested

non-renewal of the facility. These omissions and misrepresentations distorted the Tribunal's understanding of the case, ultimately influencing its judgment.

- Petitions under Sections 241 and 242 of the Companies Act, 2013 (the Act), were filed, alleging that this was intended to mislead the Tribunal. However, Appellant 1 clarified that he had, in fact, filed an application under Section 169 of the Act, challenging his wrongful removal as Director, rather than under Sections 241 and 242. This misrepresentation by the respondent allegedly distorted the Tribunal's understanding of the case's context. The respondent's statements regarding the nature of the unsecured loan and interest payments were inconsistent. While they claimed the loan was an investment rather than a financial debt, this assertion was contradicted by the financial statements and other supporting evidence.
- Several judicial precedents were cited to challenge the impugned order. Notably, in ***Shrem Residency Private Limited v. Shraman Estates Private Limited*** it was emphasized that u/s 7 of the IBC, the NCLT must admit a petition if there is clear evidence of debt and default, without delving into the merits of the dispute.
- Similarly, the Hon'ble Supreme Court in ***N. Suresh Kumar Reddy v. Canara Bank*** reaffirmed that once a default is established; an application u/s 7 must be admitted, focusing solely on the occurrence of default rather than any disputes regarding the debt. Additionally, in ***Innovative Industries Limited v. ICICI Bank Limited***, the Supreme Court reinforced that the NCLT is mandated to admit a petition if a default is proven, regardless of any contested issues related to the debt itself.

Arguments of the Respondent:

- NCLT dismissed the application, stating the absence of a formal loan agreement and the use of IBC not as a recovery tool but for resolving insolvency issues.
- A payment of approximately ₹99 lakhs was made to cover the claimed debt. However, the appellants failed to provide evidence of the loan disbursement. It was contended that a payment was made to resolve the dispute covering both principal and interest. Furthermore, it was argued that the Appellants' claim for additional interest was unfounded, as TDS deductions did not entitle them to further interest. The payment details and calculations were outlined in an affidavit filed on 16 January 2024, to which the Appellants raised no objections. It was also submitted, that proceedings under the IBC were not an appropriate forum for claiming interest in the absence of a formal loan agreement.
- The appellants belong to the same family. When the respondent company was incorporated in 2013, Appellants Nos. 1, 5, and 6 served as its promoters, shareholders, and directors. In January 2018, Appellants Nos. 5 and 6 were removed as directors. Following a family dispute in 2019, the shares held by Appellants Nos. 4 to 6 were transferred to Appellants Nos. 2 and 3. Appellant No. 1, who had been a director since the company's inception, was later removed from the board, a decision he has challenged through a petition before the NCLT, Ahmedabad. Notably, the appellants have not provided any counterarguments to these facts.
- The respondent cited the decisions of the Tribunal in cases such as ***VRG Healthcare vs. VRG Infrastructure., and Rohit Motwat vs. Madhu Sharma***, that the IBC's purpose is debt resolution, not interest recovery.

- The claim for interest was not maintainable. A similar position was adopted by this Hon'ble Tribunal in ***S.S. Polymers vs. Kanodia Technoplast and in Permali Wallace vs. Narbada Forest Industries***
- Furthermore, any funds provided were investments forming part of the promoter's contribution rather than loans. In the absence of a formal loan agreement or contract specifying loan terms, the Appellants' claims do not qualify as financial debt under the IBC. Judicial precedents, including ***Nidhi Rekhan v. Samyak Projects Private Limited,*** have established that investors cannot assert the status of financial creditors. .
- The Section 7 application appears to be a retaliatory measure following the removal of Appellant No. 1 as a director of the CD. The timing of the application, filed shortly after the director's removal, indicates that it was an attempt to exert pressure and extract money rather than a legitimate insolvency claim. .

Held:

- There was no loan agreement between the appellants and the CD/respondent. Additionally, no document specified the loan tenure, the prescribed rate of interest, or the frequency of interest payments—whether monthly, yearly, or at any other interval. The only document relied upon by the appellants in this regard is the ledger accounts maintained by the CD.
- Appellant-1 was a promoter-director of the CD and was removed from the board, following which the CIRP petition was filed. A separate company petition challenging his removal was already pending.
- The funds provided since 2013 appeared to be more of an investment rather than a financial debt, as they did not meet the conditions under IBC's definition of financial debt (i.e., consideration for time value of money).
- The IBC is not a debt recovery mechanism but a forum for resolving insolvency, as reaffirmed in ***Swiss Ribbons Pvt. Ltd. Vs. Union of India***. The present petition was aimed at recovering interest rather than addressing insolvency.
- The Application was only the application for recovery of balance amount of interest. The CD had already paid the amount of principal and interest for the amount for which TDS was paid.
- The case was aligned with precedents set in ***VRG Healthcare P. Ltd. Vs. VRG Infrastructure P. Ltd. and Rohit Motwat Vs. Madhu Sharma***, which emphasize that IBC proceedings are meant for corporate insolvency resolution, not debt recovery.
- Consequently, the NCLAT found no reason to interfere with the NCLT's order, leading to the dismissal of the appeal.

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[1] Imdadali M Momin, Abasali Mohmmadau Momin, Abidali Mohmedali Momin, Mohsinali Mumtazal Momin, Mumtazali Jamalbhai Momin, Shabbirali Jamalbhai Momin, were the appellants 1 to 6

NEWS UPDATES AND CIRCULARS AND NOTIFICATION FOR THE MONTH OF FEBURARY 2025 AND MARCH 2025

Sr. No.	News Updates	Link
	TOPIC	
1	**NBFC**	NBFCs with high share of bank loans to gain From RBI's risk weight rollback. https://cfo.economictimes.indiatimes.com//news/economy/nbfcs-with-high-share-of-bank-loans-to-gain-from-rbis-risk-weight-rollback/118672749
2	**Unlisted Share Transactions**	I-T Dept investigates unlisted share transactions, tax evasion in OFS deals https://cfo.economictimes.indiatimes.com//news/tax-legal-accounting/i-t-dept-investigates-unlisted-share-transactions-tax-evasion-in-ofs-deals/118672523
3	**Income Tax Bill**	ICSI, ICMAI demand inclusion of co secretaries, cost accountants as 'accountant' in Income Tax Bill https://cfo.economictimes.indiatimes.com//news/tax-legal-accounting/icsi-icmai-demand-inclusion-of-co-secretaries-cost-accountants-as-accountant-in-income-tax-bill/118331945
	Circulars and Notifications	
1	SEBI Industry standards on Regulation 30 of SEBI (LODR) Regulations 2015	The Industry Note is a step in the direction of ease of reporting and providing uniformity in disclosures under SEBI LODR. https://www.sebi.gov.in/legal/circulars/feb-2025/industry-standards-on-regulation-30-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_92172.html

2	NSE Circular on Industry Standards Note on Key Performance Indicators Disclosures in draft Offer Document and Offer Document	SEBI has introduced stricter KPI disclosure norms for IPO`s focusing on transparency standardised definitions and enhanced oversight. https://nsearchives.nseindia.com/web/sites/default/files/inline-files/Circular.pdf
3	SEBI Standards on Key Performance Indicators Disclosures in draft Offer Document and Offer Document	SEBI has introduced stricter KPI disclosure norms for IPO`s focusing on transparency standardised definitions and enhanced oversight. https://www.sebi.gov.in/legal/circulars/feb-2025/industry-standards-on-key-performance-indicators-kpis-disclosures-in-the-draft-offer-document-and-offer-document_92380.html
4	NSE Update on single filing system through API based integration between SEs	Update on single filing system through API based integration between stock exchanges https://nsearchives.nseindia.com/web/sites/default/files/inline-files/Circular%20for%20API%20CG.pdf
5	SEBI | Notification under Section 2(1)(u) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 -	SEBI allows NBFC, HFC as buyers under SARFAESI Act subject to certain conditions. https://www.sebi.gov.in/legal/gazette-notification/feb-2025/notification-under-section-2-1-u-of-the-securitisation-and-reconstruction-of-financial-assets-and-enforcement-of-security-interest-act-2002_92409.html