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Courtroom Clarity: Distinguishing limited liability in case of Sole Proprietorship and OPC

Introduction:

Ever since the evolution of entrepreneurship, the sole proprietorship is the most prominent form of business. Post enactment of Companies Act 2013, this traditional form of business has got a new and advanced version called, one-person company (OPC). even though at a first glance, both appear similar, as each is managed and owned by a single individual. However, the legal and financial implications of the two forms are significantly different.

Recently, the Bombay High Court in one of its judgments, highlighted the difference between both these types of entities, and elaborated upon the limited liability feature of the one-person company. In this article, we shall try to understand more about the characteristics of an OPC and sole proprietorship in the backdrop of the latest Bombay High Court judgment.

Concepts of Sole proprietorship and OPC:

In order to understand the difference between a sole proprietorship and an OPC, we must first understand the basic concepts of both these types of entities. As far as a sole proprietorship is concerned, it is the oldest and most basic form of business, whereas the advanced and evolved form of Sole proprietorship is a One Person Company incorporated under Companies Act 2013.

Sole proprietorship:

The meaning of the concept of sole proprietorship is appropriately elucidated by The Honourable Delhi High Court in its judgment in the matter of Ashok Transport Agency v. Awadheshⁱ in the following words. *“A proprietary concern is only the business name in which the proprietor of the business carries on the business. A suit by or against a proprietary concern is by or against the proprietor of the business. In the event of the death of the proprietor of a proprietary concern, it is the legal representatives of the proprietor who alone can sue or be sued in respect of the dealings”*

One person company:

As the name suggests, a One Person Company (OPC) is a joint stock company incorporated under the provisions of the companies Act 2013. The only difference is that an OPC unlike other companies, has only one shareholder and one director. An OPC is incorporated as a private company with acronym OPC in its name and enjoys all the characteristics of a company incorporated under the Companies Act.

This concept was first time introduced by the Company Law Committee report of J. J. Irani Committee published in the year 2005. The committee gave the following rationale for introduction of this concept in the Companies Act.

“With increasing use of information technology and computers, emergence of the service sector, it is time that the entrepreneurial capabilities of the people are given an outlet for participation in economic activity. Such economic activity may take place through the

creation of an economic person in the form of a company. Yet it would not be reasonable to expect that every entrepreneur who is capable of developing his ideas and participating in the market place should do it through an association of persons. We feel that it is possible for individuals to operate in the economic domain and contribute effectively. To facilitate this, the Committee recommends that the law should recognize the formation of a single person economic entity in the form of 'One Person Company'. Such an entity may be provided with a simpler regime through exemptions so that the single entrepreneur is not compelled to fritter away his time, energy and resources on procedural matters."

Key differences between sole proprietorship and OPC.

The main similarity between a One Person Company (OPC) and a Sole Proprietorship is straightforward. Only a natural person can start one. The law is clear that an OPC must be formed by a single, natural person, not by another company. Likewise, a sole proprietorship is simply a business owned and run by one individual. But that's where the similarities end. This single point of similarity gives way to three critical legal differences. Unlike a sole proprietorship, an **OPC has a separate legal identity**, meaning it can own property and sue or be sued in its own name. This leads to **perpetual succession**, allowing the company to exist even after the owner's death, and most importantly, it provides the owner with **limited liability**, which protects their personal assets from business debts.

How Courts View the Difference?

The honorable Kolkata High Court has elaborated the feature of unlimited liability of a sole proprietorship in one of its latest judgments, in following words.

"A single proprietorship's income is the money made by its owner. For taxation purposes also, a sole owner reports single proprietorship income, losses and costs. The identification of the owner or single proprietor, in this most fundamental legal structure for a company entity, is the same as the identity of the company entity. As a result, the entity's owner is entirely responsible for all obligations the firm may incur. There is no legal separation between the business owner and the business itself; the owner is personally liable for all business debts and obligations. The owner and the business are legally considered one and the same. As a result of this single entity status, the proprietor bears unlimited liability for all business debts and losses."ⁱⁱ

The owner is therefore personally responsible for all business debts and obligations, facing unlimited liability.

In Contrast, The honorable Bombay High Court in the matter of Innovative Film Academy Private limited (OPC) vs Endemol India Private Limitedⁱⁱⁱ where there was a dispute regarding payment of money due for services \ An arbitration award was passed by the arbitral tribunal ordering the deposit of the disputed amount by the OPC and its owner in a separate fixed deposit account till the conclusion of the case.

This award was challenged by the OPC before the Bombay High Court stating that, it was incorrect to order the owner of the OPC to deposit the amount due from OPC in a fixed deposit account, as the liability of the owner is separate from that of the OPC. The Bombay High Court agreed with this argument and held as follows:

"Innovative was inherently an OPC, which, by law may have just one director and by law must have only one shareholder. The OPC is meant to be the business and social alter ego of

the OPC, and that is by legal design. The legal framework explicitly protects such sole shareholder by limiting the liability as for any other company. If the director signing on behalf of the OPC is reason enough to wish away the statutory scheme of limited liability, it would render the very framework of the OPC redundant and otiose.”

Conclusion.

The distinction between a sole proprietorship and an OPC lies in their very foundation—while the former merges the identity of the owner with the business, the latter separates them, ensuring limited liability and perpetual existence. The judicial recognition of these differences, particularly the protection offered under the OPC structure, underscores its significance as a modern alternative to the traditional sole proprietorship, giving entrepreneurs a safer and more sustainable vehicle for business.

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000027068/courtroom-clarity-distinguishing-limited-liability-in-case-of-sole-proprietorship-and-opc-experts-opinion>

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ⁱ Ashok Transport Agency v. Awadhesh [(1998) 5 SCC 567], Delhi High Court

ⁱⁱ Shravan Kumar vs Union Of India & Ors on 26 February, 2025 WPA 23667 of 2024

ⁱⁱⁱ ARBITRATION PETITION (L) NO. 22746 OF 2024 Innovative Film Academy Pvt. Ltd. V. Endemol India Private Limited & Anr Bombay High Court judgment dated 3rd July 2025



Beyond MBP-1: Understanding Substantial Compliance of Section 184 in case of closely held companies

Introduction:

Under the Companies Act 2013 (the Act), the role of a 'director' of a Company is a fiduciary role and various duties of directors are prescribed in section 166. One such duty prescribed in section 166(4)ⁱ is that the directors of the company should not have any such interest which shall conflict with that of the Company. Similarly, section 184 of the Act also requires the directors to disclose any direct or indirect interest to the board of directors of the Company, so that the board can take an informed decision while dealing with parties where one of the directors have direct or indirect interest.

Sub-section (1)ⁱⁱ of section 184 requires the directors to disclose generally their direct or indirect concern or interest in any other company, body corporate or association of individuals, irrespective of whether the Company is dealing with that party or not. Whereas the sub-section (2)ⁱⁱⁱ requires disclosure of interest in case of any particular contract or arrangement to be entered by the company and being placed before the board of directors for its approval. Section 184 and rule 9 of Companies Meetings of Board and its Powers Rules 2014 also prescribe for other procedural requirements in this regard.

However, there arises a question that, if all other directors are already aware about the interest of any one director in any entity and that director does not specifically disclose his interest at the board meeting where the Company is entering into a contract or arrangement with that entity, then will such awareness can be said to be substantial compliance of section 184 (even if director has not specifically disclosed it again) ? For example, Mr. R, director of PQR Limited, has a majority shareholding in ABC Limited and all other directors of PQR Limited are aware about such interest of Mr. R due to their close relationship with Mr. R and the board of directors of PQR Limited is proposing to deliberate upon and enter into an agreement with ABC Limited at a forthcoming board meeting, then in such a case, if Mr R. does not disclose his interest in ABC Limited again at the Board meeting, will it be still considered as substantial compliance of section 184?

In this article, we shall try to find an answer to this question. This particular question highlighting the classic conflict between substance and procedure of law, arises in case of closely held companies or by family owned and managed companies.

Compliance requirements under section 184:

As per subsection (1) of section 184, the director is required to disclose to the board, about his concerns or interests in other companies, body corporates or associations of individuals including shareholding. Such disclosure must be given at the,

- First board meeting in which he participates after becoming director,
- First board meeting of every financial year and
- First board meeting after any change in concern or interest already disclosed.

This disclosure must be given in form MBP-1, and it is the duty of the director giving the disclosure, to cause it to be disclosed at the next board meeting. Also, such disclosure given in form MBP-1 should be preserved for 8 years in the safe custody of the company secretary of the Company.

Other than this, the sub-section (2) prescribes that, if any director is interested in any particular contract or arrangement being entered in to by the company with firm or an entity where the director is partner, owner or member, or with a body corporate wherein the director (alone or with some other director) holds 2% or more shareholding or is its promoter, manager or chief executive Officer, then the director should disclose his interest in that firm/entity/body corporate and such director should not participate in the board meeting wherein such contract or arrangement is being discussed ^{iv}(except in private companies where the director can disclose and participate in board meetings).

Purpose of section 184:

Section 184 corresponds to section 299 of the Companies Act 1956. This section aims at facilitating transparency when the Board is taking any decision on behalf of the Company. This section does not prohibit having concern or interest in other entity but simply requires the disclosure of such interest. The purpose of section 299 of 1956 Act which corresponds to section 184, was highlighted by the Company law Board in the matter of *A. Sivasailam v. Registrar of Companies*^v in following words.

“The disclosure of interest by a director has been provided for in Section 299 only with a view to ensure that a director who occupies a fiduciary position in the company should disclose his interest in any arrangement or contract either directly or indirectly so that the company is in a position to know whether he is acting in any way prejudicial to the interest of the company or for his own benefit. This section further lays down that such a disclosure should be in the meeting of a board. The object of the provision in the section is not that a director should not have any personal interest in a contract or arrangement but only stipulates that the same should be disclosed.”

Meaning of substantial compliance:

The Black’s law dictionary defines the concept of ‘substantial compliance’ as, “if a good faith attempts to perform does not precisely meet the terms of an agreement or statutory requirements, the performance will still be considered complete if the essential purpose is accomplished.”

As discussed above, the essential purpose of section 184 is to make the board members aware about the concerns or interests held by each director to facilitate transparency. As per the definition given by the Black’s law dictionary, if the other directors are already aware about the concern or interest of any one director, then the essential purpose of section 184 is met even without specifically disclosing the concern or interest again. Therefore, one view which can emerge is that the awareness of all other directors about the interest of one director may be considered as substantial compliance of section 184.

Judicial view

The question that, *whether a particular action can be considered as substantial compliance of any law or not* is an interpretation issue taking into account various factors pertaining to that provision of law. Therefore, the opinion of the judicial authority in this regard, is of paramount importance. Hence to determine, whether knowledge of other directors about concern or interest of one director can be considered as substantial compliance of section 184 in absence of specific disclosure by such director, reference will have to be made to judicial pronouncements.

Recently, a similar question was for discussion before National Company Law Tribunal (NCLT) Mumbai bench in the matter of Mr. Diven Dembla versus Precision Rubber Industries Private limited.^{vi} In this case relating to operation and mismanagement, there was an allegation that, even though all other directors were aware about one director's interest in one LLP with whom company had contracted, since the director had not submitted form MBP-1, it was violation of section 184. The NCLT held in this regard that, *"The proposition that when the board is aware of the interest of a director in a particular transaction it would not be necessary for such A director to formally disclose his interest in the board has been propounded by the High Court of Mysore in Ramakrishna Rao v. Bangalore Race Club[1970] 40 Comp Cas 674*

we are of the considered view that the knowledge of the Dembla family of the relatedness of Niraj Thakkar with Aarya Machines LLP constitutes sufficient disclosure, the provisions of Section 184 have been met in substance, though there is still violation in filing form MBP-1 during the relevant time."

Similar view was taken by the Delhi bench of Appellate Tribunal (NCLAT) in the matter of Solar Industries India Ltd V. KailashChandra Nuwal and Ors. In this case the NCLAT held that,

"It is not a case of the Appellant that K C Nuwal has not disclosed his interest in AGT. But admittedly, Appellant's case is that the disclosure is not made in the prescribed format. even if the discloser of shareholding/directorship in Form MBP 1 is not provided, it may only result in violation of Section 184(1) and not Section 184(2) of the Act.

Section 184(2) mandates disclosure of interest by a director in the board meeting where an agreement is being entered into with an entity in which the director has an interest. The disclosure can be oral and/or in writing. Accordingly, the Section 184(2) to stands substantially complied with."

Both these judicial pronouncements highlight that if all other directors are aware about the interest of one director in any other entity or any specific contract or arrangement, then the section 184(2) is considered to be substantially complied, even if the written disclosure in form MBP-1 is not given which will lead to a violation or non-compliance of section 184(1) on the part of that director.

Consequence of not giving MBP-1:

As far as submission of form MBP-1 to the company is concerned, non-submission of form MBP-1 is a procedural non-compliance and hence is subject to in-house adjudication process of Registrar of Companies ('ROC'). Sub-section (4)^{vii} of section 184 prescribes the penalty for non-compliance of sub-sections 1 and 2. Therefore, if the

director does not submit form MBP-1 for the reason that all other directors are already aware of the relevant concern or interest, then it will be considered as procedural non-compliance and the director in question shall be liable to penal provisions for violation of section 184(1).

Conclusion:

Conjoint reading of all the relevant provisions and judicial pronouncements highlights that, if all the directors of the company are aware about the concern or interest held by one of them in any other entity, then such awareness may be considered as substantial compliance of section 184(2) even in absence of written declaration in form MBP-1 from the concerned director under section 184(1) or specific disclosure (oral or in writing) from the concerned at the board meeting where any contract or arrangement to be entered into with such firm / entity / body corporate where such director has concern / interest is being considered by the Board of directors. This situation is seen in case of closely held companies or family-owned companies where directors share a close relationship with each other and have knowledge about each other's interests in other companies.

<https://www.taxmann.com/research/company-and-sebi/top-story/10501000000027059/beyond-mbp-1-understanding-substantial-compliance-of-section-184-in-case-of-closely-held-companies-experts-opinion>

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ⁱ (4) A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.

ⁱⁱ 184. (1) Every director shall at the first meeting of the Board in which he participates as a director and thereafter at the first meeting of the Board in every financial year or whenever there is any change in the disclosures already made, then at the first Board meeting held after such change, disclose his concern or interest in any company or companies or bodies corporate, firms, or other association of individuals which shall include the shareholding, in such manner as may be prescribed.

ⁱⁱⁱ (2) Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement or proposed contract or arrangement entered into or to be entered into—

(a) with a body corporate in which such director or such director in association with any other director, holds more than two per cent. shareholding of that body corporate, or is a promoter, manager, Chief Executive Officer of that body corporate; or

(b) with a firm or other entity in which, such director is a partner, owner or member, as the case may be, shall disclose the nature of his concern or interest at the meeting of the Board in which the contract or arrangement is discussed and shall not participate in such meeting:

^{iv} as per exemption notification dated 5th June 2015 sub-section (2) of section 184- Shall apply with the exception that the interested director may participate in such meeting after disclosure of his interest.

^v A. Sivasailam v. Registrar of Companies 1994 SCC Online CLB 14,

^{vi} *Mr. Diven Dembla versus Precision Rubber Industries Private limited NCLT Mumbai bench C.P. No. 206 of 2022*

^{vii} (4) If a director of the company contravenes the provisions of sub-section (1) or subsection (2), such director shall be liable to a penalty of one lakh rupees]



Applicability of Corporate Governance Provisions to Non-Convertible Debt Listed Entities

Background:

The Securities and Exchange Board of India ('SEBI') has distinctly set out the compliance framework for listed entities under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('SEBI LODR'). The application of corporate governance norms for entities with listed Non-Convertible Debt securities ('NCDs') has evolved and now stands on unambiguous grounds, determined by the relevant chapters of LODR and the outstanding value of such securities.

SEBI had while discussing the proposed amendment relating to applicability of corporate governance provisions to non-convertible debt listed entities had stated that, *"An entity that has solicited money through an issue of debt is under obligation to pay interest and repay the principal to investors. Corporate Governance is an initiative by SEBI to improve transparency about the functioning of the issuer entity and ensures enhanced disclosures to the investors. Given that debt issuers have repayment obligations to investors, the requirements of corporate governance are equally relevant to them. As per data collected from Stock Exchanges, 587 entities have listed only their debt securities as on December 31, 2020. Of these 587 entities, 211 entities have debt outstanding of ₹500 crores and above. 95 entities among these 211 are either Banks, NBFCs, HFCs or PSUs, which are already required to comply with certain corporate governance norms, as prescribed by their respective regulators (like RBI, CPSE etc.). Thus, to begin with, it is proposed that the following corporate governance norms may be made applicable to entities with outstanding listed debt securities of ₹500 crores and above"*ⁱ. So, it is necessary for debt listed entities to understand whether corporate governance provisions are applicable to it or not?

Applicability of Corporate Governance provisions

1. Entities having their specified securities listed along with listing of high value debt: Regulation 15(1A)

As per Regulation 15(1A) of the SEBI LODR, the comprehensive corporate governance requirements of Regulations 16 to 27 (including board composition, independent directors, committee constitution, etc.) are applicable to a listed entity that:

- Has its specified securities (such as equity shares) listed; **AND**
- Also has listed NCDs with an outstanding value of ₹1,000 crore or more as of the end of the previous financial year.

For these entities, full-fledged corporate governance requirements under Chapter IV (Regulations 16-27) must be complied with, ensuring enhanced transparency and oversight. Corporate governance provisions mentioned in Chapter VA are not applicable to these

entities. Such entities may also be governed by circulars, guidance etc. issued by the SEBI from time to time.

2. Applicability of corporate governance provisions for entities that have listed their non-convertible debt securities only - Regulation 62C and Chapter VA

Regulation 62C of LODR provides for applicability of corporate governance provisions to entities that have their outstanding value of listed NCDs crossing ₹1,000 crore making them High Value Debt Listed Entities (HVDLEs). As per Reg. 62C of LODR, once an entity becomes a HVDLE then provisions of corporate governance as specified under Reg 62D to 62Q of SEBI LODR becomes applicable to it. Hence entities who have their only non-convertible debt securities listed and the outstanding value of same is crossing 1000 crore, a separate compliance regime is outlined in Chapter VA. Such entities may also be governed by circulars, guidance etc. issued by the SEBI from time to time.

3. Regulation 49 and Chapter V – Only non-convertible debt listed entity

Regulation 49(1) states that an entity that has listed its NCDs only on a recognized stock exchange, shall comply with Chapter V of LODR and other applicable provisions. This chapter prescribes periodic disclosures and obligations specific to entities with listed debt securities, distinct from overarching corporate governance norms. Hence entities that have listed only their non-convertible debt securities, with an outstanding value less than ₹1,000 crore, are not mandated to comply with the comprehensive corporate governance provisions (Regulations 16-27) neither they are required to comply with provisions of corporate governance as specified in chapter VA.

Conclusion: Applicability in Different Scenarios

- Entities with listed specified securities (equity) and listed NCDs exceeding ₹1,000 crore: Full corporate governance regime (Regulation 16-27/Chapter IV) applies (i.e., HVDLE compliance).
- Entities that have listed only NCDs, with outstanding value less than ₹1,000 crore: Chapter VA applies, not the comprehensive corporate governance provisions.
- Entities with only NCDs and value $\geq$ ₹1,000 crore: Chapter VA compliance is mandatory. If they do not also have listed specified securities, full corporate governance under Chapter IV does not apply—Chapter VA is intended as a tailored framework in this case.

Thus, for entities that have listed only their non-convertible debt securities and the outstanding value of these is not more than ₹1,000 crore, comprehensive corporate governance provisions (Chapter IV, Regulations 16–27) do not apply. Instead, only the obligations set forth in Chapter VA are applicable, providing a lighter compliance framework.



Conclusion

Applicability Table

Chapter of LODR Applicable	Type of Entity Listed
Chapter IV (Reg. 16–27)	Entities with listed specified securities (equity) AND NCDs >₹1,000 crore.
Chapter VA	Entities with only NCDs listed AND value of NCDs <₹1,000 crore.
Chapter V	All entities with NCDs listed (disclosure obligations apply).

This division ensures that only entities with significant public debt exposure or a combination of equity and high-value debt are subject to the most stringent corporate governance requirements.

<https://taxguru.in/sebi/corporate-governance-provisions-non-convertible-debt-listed-entities.html>

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ⁱ https://www.sebi.gov.in/sebi_data/meetingfiles/sep-2021/1631782376088_1.pdf - SEBI board meeting agenda file dt: August 6,2021.[3.1.2]



Newsletter on Consultation paper on requirement of Minimum Public Offer and timelines to comply with Minimum Public Shareholding

Introduction:

On August 18, 2025, SEBI released a consultation paper proposing significant amendments to Rule 19(2)(b) of the Securities Contracts (Regulation) Rules, 1957 (SCRR). The paper reviews two crucial aspects of capital market regulation:

- The Minimum Public Offer (MPO) that companies must undertake at the time of an Initial Public Offer (IPO).
- The timelines for compliance with Minimum Public Shareholding (MPS).

The objective is to provide greater flexibility to large issuers in tapping the Indian capital markets without overwhelming the market with large share dilutions.

Background:

The SCRR framework, read with SEBI (ICDR) Regulations, 2018, currently prescribes tiered MPO and MPS requirements based on post-issue market capitalization. In June 2021, through amendment to SCRR, relaxations were introduced for large issuers:

- Issuers with post-issue market cap above ₹1,00,000 Cr to ensure MPO of ₹5,000 Cr and at least 5% of post-issue share capital.
- Such issuers to increase public shareholding to 10% within 2 years and 25% within 5 years from listing.

However, feedback from stakeholders highlights practical challenges:

- Large IPOs are difficult for the market to absorb, leading to reduced investor appetite and price volatility.
- Issuers, especially cash-rich companies and PSUs may not need repeated capital raising but are compelled to dilute shares purely for compliance.
- Issuers with <25% public shareholding post-IPO have liquidity and shareholder bases comparable to Nifty 100 companies, questioning the rigidity of existing thresholds.

✓ Key Points of the Proposal :

1. Revised Post issue Market Capitalization thresholds:

Existing threshold	Revised threshold
4000 Cr < MCap ≤ 1,00,000 Cr	4000 Cr < MCap ≤ 50,000 Cr
	50,000 Cr < MCap ≤ 1,00,000 Cr
MCap > 1,00,000 Cr	1,00,000 Cr < MCap ≤ 5,00,000 Cr
	MCap > 5,00,000 Cr

2. Relaxed MPO Norms:

- ₹50,000–1,00,000 crore = ₹1,000 crore + 8% of post-issue share capital.
- Above ₹1,00,000–5,00,000 crore = ₹6,250 crore + 2.75% of post-issue share capital.
- ₹5,00,000 crore = ₹15,000 crore + 1% post-issue share capital, with a minimum dilution of 2.5% post-issue share capital.

3. Relaxation in timelines to achieve MPS

- Above ₹50,000–1,00,000 crore 25% MPS within 5 years from date of listing (currently 3 years from date of listing).
- Above ₹1,00,000 crore, following are the proposed timeline:
 1. If public shareholding <15% as on date listing → 15% to be achieved in 5 years and 25% in 10 years from the date of listing.
 2. If public shareholding >15% as on date listing → 25% to be achieved in 5 years from the date of listing.

4. Applicability to Existing Issuers

- Issuers currently within the permissible period for meeting the existing MPS requirements be permitted to avail the proposed extended timelines
- Issuers which have not complied with the MPS requirements, as per their existing timelines, but are within the proposed extended timeline from the date of listing, may also be permitted to avail the proposed extended timelines. However, any fines / penalties levied or to be levied by the Stock Exchanges, shall be continued to be paid by the listed entity from the date of non-compliance till the date of notification of the proposed timelines.

5. Retail Quota Retained at 35%

- SEBI had earlier (July 31, 2025) proposed reducing retail quota in IPOs above ₹5,000 crore to 25%.
- This proposal is now withdrawn; Regulation 32 of SEBI ICDR continues to mandate 35% retail allocation.

Conclusion:

SEBI proposes to recommend amendments to SCRR to:

- Provide relaxations in MPO requirement for very large issuers.
- Allow extended timelines for MPS compliance.
- Retain the 35% retail quota for IPOs.

The changes aim to ease listing for very large issuers, avoid market disruption from oversized dilutions, and still maintain investor participation and liquidity safeguards.

IPO Delays Unpacked: The Board's Role in Governance, Compliance, and Risk Control

Introduction

An Initial Public Offering (IPO) is a major milestone in a company's journey. It marks the shift from being a private business to becoming a publicly listed one, which brings greater visibility, regulatory oversight, and responsibility. While going public is often seen as a moment of success, the process leading up to it, especially if delayed, can be complex and demanding, and calls for careful oversight by the company's leadership.

Delays in IPO timelines are more than just setbacks in the scheduling; they create governance challenges that require the Board's close attention. Whether the delay is due to regulatory comments, market conditions, or the company's own preparedness, it increases the period during which sensitive information keeps generating within the company. This increases the risk of insider trading and heightens the importance of the Board's fiduciary duties under the Companies Act, 2013, and compliance responsibilities under SEBI regulations. In such situations, proactive measures like forming an IPO Steering Committee with legal oversight can help maintain control, ensure transparency, and guide the company through the complexities of a prolonged IPO process.

In this article, we explore how directors can navigate their fiduciary responsibilities during IPO delays, manage insider trading risks effectively, and how establishing an IPO Steering Committee can add significant value.

Board's Fiduciary Responsibilities Amidst IPO Delays

Under Section 166(2)ⁱ of the Companies Act, 2013, directors are duty bound to act in good faith, promoting the company's objectives and acting in the best interests of the company, its employees, shareholders, and the community. These duties persist throughout the IPO process, including periods of delay.

During extended IPO timelines, new developments such as financial results, strategic decisions, or regulatory communications may arise. SEBI's Issue of Capital and Disclosure Requirements (ICDR) Regulations, 2018 mandate prompt disclosure of all material developments between the filing of the draft offer document and the allotment of securitiesⁱⁱ. If such information is not disclosed, the company and its officers may face liabilities under Sections 34 and 35 of the Companies Act, 2013, which deal with false or misleading statements in a prospectus. SEBI has also taken enforcement action in the past against companies for providing inaccurate information in their draft offer documents. Therefore, when an IPO gets delayed, the Board of Directors of such company must not treat it as a passive waiting period it must proactively assess if any new developments have occurred that warrant disclosure and ensure that timely updates are incorporated in the offer documents to avoid regulatory breaches.

For Example: The Quadrant Future Tek Case

A recent settlement orderⁱⁱⁱ (April 01, 2025) involving Quadrant Future Tek Limited highlights the Board's continuing responsibility to oversee disclosures even during IPO delays. In this case, a promoter-to-promoter gift of shares occurred after the filing of the

DRHP but was disclosed well beyond the 24-hour timeline mandated under Regulation 54^{iv} of the ICDR Regulations. Although the transaction was non-commercial and did not alter the overall promoter holding, SEBI still pursued enforcement action for delayed disclosure underscoring that all material transactions during the IPO window must be promptly and transparently disclosed. This case serves as a reminder that the Board must stay alert during prolonged IPO processes and ensure that even seemingly routine or internal developments are evaluated for disclosure obligations.

Managing UPSI and Insider Communication Risks Post Draft Offer Document Filing

Once a draft offer document is filed with SEBI, the company comes under the purview of “to be listed company” and the definition of the UPSI inter-alia becomes applicable. Information in the company gets categorized into material information and price sensitive information. As per PIT this price sensitive information has to be ring fenced and person having access UPSI are subject to code of conduct.

Regulation 3(1)^v of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) clearly prohibits any insider from communicating, providing, or allowing access to UPSI to any person, including other insiders, except where such communication is in furtherance of legitimate purposes, the performance of duties, or the discharge of legal obligations.

In support of this, Regulation 3(5) of PIT Regulations requires companies to maintain a structured digital database (SDD) containing the names of such persons with whom UPSI is shared. This database must be time-stamped and should ensure that any sharing of sensitive information is traceable and auditable.

These safeguards become especially important because Regulation 4(1)^{vi} of the Insider Trading Regulations assumes that if an insider trades while they are in possession of UPSI, it is presumed that the trade was based on that information. In other words, the insider is considered guilty unless they can prove otherwise.

After filing DRHP the key managerial personnel and board members to merchant bankers, legal advisors, and auditors etc. gain access to a load of Unpublished Price Sensitive Information (UPSI). This includes financials, business strategies, regulatory correspondences, and risk disclosures that are not yet available in the public domain. Hence the board of directors need to be more careful and cautious to avoid violation of the PIT regulations.

During long IPO processes, where new sensitive information keeps coming, up the chances of insider trading, whether intentional or accidental, become much higher. This makes it essential for companies to have strict internal controls and regular monitoring in place and making the designated persons aware of the obligations.

One effective way to institutionalize this vigilance is by establishing an IPO Steering Committee with legal oversight, which can centrally manage disclosures, UPSI tracking, and stakeholder coordination throughout the IPO.

Establishing an IPO Steering Committee with Legal Oversight

Given the complexities of the IPO process, forming an IPO Steering Committee may provide structured oversight. While not mandated by law, such a committee can facilitate

coordination between various stakeholders, including management, legal advisors, and merchant bankers.

Typically, such a committee should be constituted soon after the IPO process is initiated, ideally at the time of appointing merchant bankers or finalizing the DRHP outline and should remain in place until the allotment of securities and successful listing on the stock exchange. In some cases, it may be advisable to extend the committee's oversight until post-listing compliances under SEBI LODR Regulations are fulfilled.

The committee's responsibilities may include:

- Monitoring the progress of IPO documentation and responding to SEBI queries as per Regulation 25(4) and (5)^{vii} of the ICDR Regulations.
- Ensuring timely disclosure of material developments in line with Schedule IX of ICDR Regulations.
- Overseeing compliance with insider trading regulations, including the maintenance of structured digital databases under PIT Regulations.
- Coordinating updates to financial statements, ensuring compliance with disclosure requirements.

Conclusion

Delays in IPO timelines are not merely pauses in the process but periods that test a company's commitment to governance and compliance. The Board's active engagement, adherence to fiduciary duties, and proactive risk management are crucial during these times. By establishing an IPO Steering Committee with legal oversight, companies can navigate the complexities of extended IPO processes, maintain regulatory compliance, and uphold investor confidence.

ⁱ Section 166(2) of Companies Act, 2013: *A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment.*

ⁱⁱ SCHEDULE IX of ICDR – *public communications and publicity materials: (4) The issuer shall make a prompt, true and fair disclosure of all material developments which take place between the date of filing offer document and the date of allotment of specified securities, which may have a material effect on the issuer, by issuing public notices in all the newspapers in which the issuer had released pre-issue advertisement under applicable provisions of these regulations;*

ⁱⁱⁱ https://www.sebi.gov.in/enforcement/orders/apr-2025/settlement-order-in-respect-of-mr-mohan-krishnan-abrol-quadrant-future-tek-limited-and-mr-vivek-abrol_93200.html

^{iv} *The issuer shall ensure that all transactions in securities by the promoter and promoter group between the date of filing of the draft offer document or offer document, as the case may be, and the date of closure of the issue shall be reported to the stock exchange(s), within twenty four hours of such transactions.*

^v Regulation 3(1) of PIT Regulations : 3. (1) *No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

^{vi} *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.....*

^{vii} Regulation 24 of ICDR Regulations:

(4) The lead manager(s) shall call upon the issuer, its promoters and its directors or in case of an offer for sale, also the selling shareholders, to fulfil their obligations as disclosed by them in the draft offer document and the offer document and as required in terms of these regulations.

(5) The lead manager(s) shall ensure that the information contained in the draft offer document and offer document and the particulars as per restated audited financial statements in the offer document are not more than six months old from the issue opening date.

<https://www.taxmann.com/research/company-and-sebi/top-story/105010000000027039/ipo-delays-unpacked-the-boards-role-in-governance-compliance-and-risk-control-experts-opinion>

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NEWS UPDATES, CONSULTATION PAPER & AMENDMENTS

Sr. No.	News Updates	Link
	TOPIC	
1	Regulation of Grey Market	SEBI proposes regulation of grey market for unlisted companies to enhance price discovery and tax revenue. https://economictimes.indiatimes.com/markets/ipos/fpos/sebi-proposes-regulation-of-grey-market-for-unlisted-companies-to-enhance-price-discovery-and-tax-revenue/articleshow/123442039.cms?from=mdr
2	IPO	India's renewable energy sector set for Rs 25,000 crore IPO surge. https://economictimes.indiatimes.com/markets/ipos/fpos/indias-renewable-energy-sector-set-for-rs-25000-crore-ipo-surge/articleshow/123420363.cms
3	Bill to ban Online Money Game	Cabinet approves blanket ban on online money games; proposes 3 years jail, fine upto Rs 1 crore. https://economictimes.indiatimes.com/tech/technology/nod-for-blanket-ban-on-online-money-games/articleshow/123395007.cms
4	SEBI proposes sweeping regulatory changes, shares its intent in annual report	SEBI proposals span IPO disclosures, trading safeguards, commodity derivatives, FPIs, mutual funds, REITs, InvITs and others https://www.moneycontrol.com/news/business/markets/sebi-proposes-sweeping-regulatory-changes-shares-its-intent-in-annual-report-13445938.html
5	IBC Amendment Bill	FM Sitharaman tables IBC Amendment Bill, cross-border and group insolvency frameworks introduced The new Bill seeks to modify section 7 of the IBC to specify that an application for initiating the corporate insolvency resolution process by the financial creditors shall be admitted if a default exists, and no other grounds shall be considered for deciding such an application.

		https://www.moneycontrol.com/news/business/fm-sitharaman-tables-ibc-amendment-bill-cross-border-and-group-insolvency-framework-introduced-13446626.html
	Consultation Paper	Link
1.	Review if requirement of minimum public shareholding for issuers in terms of Securities Contracts (Regulation) Rules ,1957	https://www.sebi.gov.in/reports-and-statistics/reports/aug-2025/consultation-paper-on-review-of-requirement-of-minimum-public-offer-and-timelines-to-comply-with-minimum-public-shareholding-for-issuers-in-terms-of-securities-contracts-regulation-rules-1957_96128.html
	Amendment in Rules	Link
2.	Companies (Indian Accounting Standards)Second Amendment Rules 2025	https://www.mca.gov.in/bin/ebook/dms/getdocument?doc=NTU40DYxMzUz&docCategory=Notifications&type=open

