

## SEBI's Recent Amendments: An Analysis

### Introduction

SEBI has announced slew of measures in the context of corporate governance norms, boosting the start-up ecosystem and Innovators Growth Platform (IGP), alternative investment funds (AIF) space and responsibility of managers, trustees, investment committee members, and others as mentioned below:

1. [SEBI \(Listing Obligations and Disclosure Requirements\) \(Second Amendment\) Regulations, 2021;](#)
2. [SEBI \(Issue of Capital and Disclosure Requirements\) \(Second Amendment\) Regulations, 2021;](#)
3. [SEBI \(Substantial Acquisition of Shares and Takeovers\) \(Amendment\) Regulations, 2021;](#)
4. [SEBI \(Alternative Investment Funds\) \(Second Amendment\) Regulations, 2021;](#)
5. [SEBI \(Intermediaries\) \(Second Amendment\) Regulations, 2021;](#)
6. [SEBI \(Payment of Fees and Mode of Payment\) \(Amendment\) Regulations, 2021;](#)

### SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021

Following critical amendments have been done to SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (LODR Regulations):

1. **Applicability based on market capitalization:** The provisions of the LODR Regulations which become applicable to certain listed entities based on the market capitalisation criteria, will continue to apply even if such entities subsequently fall below the specified thresholds.
2. **Applicability of corporate governance provisions based on equity share capital and net-worth:** Certain provisions of Chapter IV the LODR Regulations which only become applicable to listed entities based on the fulfilling certain equity share capital and net-worth norms, when once become applicable, will continue to apply to such entities unless the equity share capital or net-worth falls and continues to remain below the threshold for a period of three consecutive financial years.
3. **Relaxed applicability of corporate governance provisions to entities which are not companies, to discontinue from September 1, 2021:** For other listed entities which are not companies, but body corporate or are subject to regulations under other statutes, the provisions of corporate governance provisions would apply to the extent that it does not violate their respective statutes and guidelines, or directives issued by the relevant authorities. This relaxation will not be available from September 1, 2021.
4. **Risk Management Committee (RMC): Role enhanced, composition changed, quorum, frequency of meetings prescribed, more companies to constitute RMC, can obtain legal / external advice**
  - **Requirement to constitute RMC extended to top 1000 companies:** The requirement to constitute the RMC has been extended to the top 1000 listed entities by market capitalization from the existing top 500 listed entities.
  - **Composition changed:** The RMC shall have minimum three members with majority of them being members of the board of directors, including at least one independent director and in case of a listed entity having outstanding SR equity shares, at least two thirds of the RMC to comprise of independent directors.
  - **Frequency of meetings increased:** The RMC to meet atleast twice instead of once every year and not more than 180 days shall elapse between any two consecutive meetings.
  - **Quorum prescribed:** The quorum for a meeting of the RMC shall be either two members or one third of the members of the RMC, whichever is higher, including at least one member of the board of directors in attendance.
  - **Enhanced mandate of RMC and external assistance:** The role of the RMC has been specified which, inter-alia,

includes formulation of a detailed risk management policy and monitoring its implementation; periodic review of such policy; review of the appointment, removal and terms of remuneration of the Chief Risk Officer (if any), etc. A new part has been added to Schedule II. In order to fulfil its enhanced roles, the RMC shall have powers to seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary

5. **Disposition of shares of material subsidiary:** It is clarified that a listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less 50% or less than 50%, without complying the norms prescribed therein. Earlier, the language provided for applicability of norms when shareholding would fall below 50%.
6. **Secretarial compliance report for listed entity and its material unlisted subsidiaries:** Every listed entity and its material unlisted subsidiaries incorporated in India are mandated to undertake secretarial audit and annex a secretarial audit report given by a company secretary in practice, with the annual report of the listed entity. In addition, a secretarial compliance report in prescribed form is now required to be submitted by the listed entity to stock exchanges, within 60 days from end of each financial year.
7. **At least one meeting of independent directors in a financial year:** Presently, independent directors are required to hold at least one meeting in a year. It has been now amended and aligned with the requirements of the Companies Act, 2013, to reflect that the term "year" means "financial year".
8. **Prior intimation to stock exchange for bonus securities:** The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in which any proposal for declaration of bonus securities is to be considered irrespective of whether such proposal is communicated to the board of directors of the listed entity as part of the agenda papers or not.
9. **Quarterly compliance report:** The timelines for submission of compliance report on corporate governance report has been increased from 15 to 21 days from the end of each quarter.
10. **Reclassification of promoter/ promoter group to public, eased | Additional exemptions incorporated:** The parameters for considering application for reclassification of status of a promoter to public have been revised.
  - (a) Now, an application for reclassification is required to be made by the listed entity to the stock exchanges within thirty days from the date of approval by shareholders in general meeting after ensuring that the following procedural requirements have been fulfilled:
    - the promoter(s) seeking reclassification has made a request for reclassification to the listed entity along with a rationale for the same and a description as to how the certain specified conditions are satisfied;
    - the board of directors of the listed entity has analyzed such request in the immediately next board meeting or within three months from the date of receipt of the request from its promoter(s), whichever is earlier and has placed the same before the shareholders in a general meeting for approval along with the views of the board of directors on the request: Provided that there shall be a time gap of at least one month but not exceeding three months between the dates of the board meeting and the shareholders' meeting considering the request of the promoter(s) seeking reclassification;
    - the request of the promoter(s) seeking reclassification has been approved in the general meeting by an ordinary resolution in which the promoter(s) seeking reclassification and the persons related to him/her/it have not voted to approve such reclassification request;
    - Aforementioned provisions shall not apply in cases: (a) where the promoter(s) seeking reclassification and persons related to the promoter(s) seeking reclassification, together, do not hold more than one percent of the total voting rights in the listed entity; (b) where reclassification is pursuant to a divorce.
  - (b) Reclassification due to resolution plan / open offer:
    - Certain provisions of re-classification shall not apply if reclassification of promoter(s) is as per the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 or pursuant to an order of a regulator under any law subject to the condition that such promoter(s) seeking reclassification shall not remain in control of the listed entity;
    - In case of reclassification pursuant to an open offer or a scheme of arrangement, certain provisions of re-classification shall not apply if the intent of the erstwhile promoter(s) to reclassify has been disclosed in the letter of offer or scheme of arrangement.

11. **Timeline for submission of report of monitoring agency for utilisation of proceeds of fund raise:** Where the listed entity has appointed a monitoring agency to monitor utilisation of proceeds of a public or rights issue, the listed entity to submit to the stock exchange(s) any comments or report received from the monitoring agency within 45 days from the end of each quarter. It is also clarified that the monitoring agency shall mean the monitoring agency as specified in the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.
12. **Business Responsibility and Sustainability Report (BRSR):** Applicable to the top 1000 listed entities (by market capitalization calculated as on 31<sup>st</sup> day of March of every financial year), for reporting on a voluntary basis for financial year 2021 –22 and on a mandatory basis from financial year 2022 –23. Top 1000 listed entities can submit BRSR in place of the mandatory business responsibility report during financial year 2021-22. The remaining listed entities including the entities which have listed their specified securities on the SME Exchange may voluntarily submit BRSR.
13. **Disclosure of beneficial ownership of non-executive directors to shareholders:** In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the shareholding of non-executive directors in the listed entity, including shareholding as a beneficial owner.
14. **Stock exchanges to provide “no-objection” letter, instead of “observation letter”, for scheme of arrangement:** In light of the amendments carried out vide SEBI circular dated November 3, 2020, stock exchanges are now required to provide the ‘No-Objection’ letter to SEBI on the draft scheme; in co-ordination with each other.
15. **Dividend distribution policy to be formulated by top 1000 companies:** Requirement of formulation of dividend distribution policy extended from top 500 to the top 1000 listed entities on the basis of market capitalisation (calculated as on March 31<sup>st</sup> of every financial year). Such policy is required to be disclosed on the website of the listed entity and a web-link to be provided in their annual report. The other remaining listed entities may voluntarily disclose their dividend distribution policy on the website of the listed entity and provide a web-link in their annual report.
16. **Disclosure of voting results of general meeting in 2 working days instead of 48 hours:** The voting results of general meeting to be disclosed to the stock exchange within 2 working days instead of 48 hours of the conclusion of general meeting.
17. **Approval from stock exchange for change of name of listed entity not required:** The requirement to obtain approval of stock exchange for changing of name of listed entity, has been deleted. Now, the listed entity, is required to include a certificate from a practicing chartered accountant stating compliance with prescribed conditions in the explanatory statement to the notice seeking shareholders’ approval for change in name.
18. **Disclosures in respect of analyst/ institutional investor meets by listed entities**
  - Disclosing audio/video recordings of such meetings on the website of the listed entity and exchanges promptly, before next trading day or within 24 hours, whichever is earlier. The information to be hosted on the website of the listed entity for a minimum period of five years and thereafter as per the archival policy of the listed entity, as disclosed on its website.
  - Written transcripts of such meetings to be provided within five working days.
  - The requirement for disclosure(s) of audio/video recordings and transcript to be voluntary with effect from April 01, 2021 and mandatory with effect from April 01, 2022.
19. **Disclosures with respect to financial statements of subsidiary incorporated outside India:** It is clarified that where a listed entity has a subsidiary incorporated outside India:
  - (a) where such subsidiary is statutorily required to prepare consolidated financial statement under any law of the country of its incorporation, it shall be sufficient if consolidated financial statement of such subsidiary is placed on the website of the listed entity;
  - (b) where such subsidiary is not required to get its financial statement audited under any law of the country of its incorporation and which does not get such financial statement audited, the holding Indian listed entity may place such unaudited financial statement on its website and where such financial statement is in a language other than English, a translated copy of the financial statement in English shall also be placed on the website.
20. **Additional disclosures on website:** Listed entities to additionally disseminate the following information under a

separate section on its website:

- secretarial compliance report;
  - policy for determination of materiality of events or information;
  - contact details of key managerial personnel who are authorized for the purpose of determining materiality of an event or information and for the purpose of making disclosures to stock exchange(s);
  - disclosure of all events and information which have been disclosed to the stock exchanges;
  - statements of deviation(s) or variation(s) in utilisation of funds;
  - dividend distribution policy;
  - annual return.
21. **Newspaper advertisement dispensed with for certain purposes:** Requirement of publication of newspaper advertisements for the notice to board meetings where financial results are to be discussed and for quarterly statement on deviation or variation in use of funds, has been dispensed with.
  22. **Disclosure of financial results where board meeting held for more than one day:** In case of board meetings held for more than one day, the financial results shall be disclosed by listed entities within 30 minutes of end of the board meeting for the day on which the financial results are considered.
  23. **Review of information relating to scheme of arrangement by audit committee:** The role of audit committee has been broadened to include consideration and comment on rationale, cost-benefits and impact of schemes involving merger, demerger, amalgamation etc., on the listed entity and its shareholders.
  24. **Disclosure on resolution plan / restructuring considered as material event without application of threshold:** Resolution plan/Restructuring in relation to loans/borrowings from banks/financial institutions including the following details to be disclosed: (i) Decision to initiate resolution of loans/borrowings; (ii) Signing of Inter-Creditors Agreement (ICA) by lenders; (iii) Finalization of Resolution Plan; (iv) Implementation of Resolution Plan; (v) Salient features, not involving commercial secrets, of the resolution/restructuring plan as decided by lenders.
  25. **Additional disclosures in corporate governance section of the annual report related to risk management committee:** The following disclosures shall be made in the section on the corporate governance of the annual report with respect to risk management committee: (a) brief description of terms of reference; (b) composition, name of members and chairperson; (c) meetings and attendance during the year.
  26. **Compliance certificate submission related to share transfer activity:** The listed entity's obligation to submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, is now required to be done within 30 days of end of the financial year. In furtherance to this, frequency of submission of compliance certificates by company secretary relating to share transfer facility and issuance of certificates within 30 days of end of the financial year lodgement for transfer, sub-division, consolidation, renewal, exchange or endorsement of calls/allotment monies, is revised from half-yearly to annual.
  27. **Clarity on meaning of "working day":** LODR Regulations use the term "working day" in various places, now the term has been defined to mean working day of the stock exchange where the securities of the entity are listed.||
  28. **LODR Regulations to apply to IGP companies:** As the concept of institutional trading platform has been replaced with Innovators Growth Platform (IGP), hence, it is clarified that the LODR Regulations will apply to listed entities which have securities listed on IGP.
  29. **Listed entities to ensure effective vigil mechanism:** Listed entities are required to devise an effective vigil mechanism / whistle blower policy enabling stakeholders, including individual employees and their representative bodies, to freely communicate their concerns about illegal or unethical practices.
  30. **Alignment with ICDR Regulations, 2018:** Since SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009||, were replaced by SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, hence, necessary alignments have been made.

The above amendments have been introduced by SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2021 dated May 5, 2021 ([available here](#))

**SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021**

After having approved the proposals with respect to framework of Innovators Growth platform (IGP) under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (ICDR Regulations), with an objective to make the platform more accessible to companies in view of the evolving start-up ecosystem, following are certain key changes introduced:

1. **Applicability to companies which have issued SR equity shares to promoter/ founders:** Issuer companies which have issued Superior Voting Rights (SR) equity shares to promoters / founders will be allowed to make an initial public offer of only ordinary shares for listing on IGP subject to compliance with certain conditions and continued compliance with the prescribed provisions for SR equity shares.
2. **Period for holding of 25% of pre-issue capital by eligible investors:** The present requirement under IGP framework for issuer to have 25% of pre-issue capital held by eligible investors for a period of two years, has been reduced to one year.
3. **Innovators Growth Platform Investors (IGP Investors):** 'Accredited Investor' for the purpose of IGP has been renamed as 'Innovators Growth Platform Investors'
4. **Family trust Eligible IGP Investors:** Any family trust with net worth of twenty five crore rupees added as an eligible IGP Investors.
5. **Pre-issue shareholding of IGP Investors:** The requirement of 10% pre-issue shareholding of IGP Investors to meet eligibility deleted. Accordingly, the pre-issue shareholding of IGP Investors for meeting eligibility will now be required to be 25%, which will also include earlier referred to as Accredited Investors.
6. **Pre-issue shareholding of promoter/ promoter group:** The pre-issue capital held by promoters/promoter groups, even if they are registered as IGP Investors will not be considered for the 25% pre-issue capital eligibility requirement.
7. **Discretionary allotment:** Issuer company permitted to allocate up to 60% of the issue size on a discretionary basis, prior to issue opening, to eligible investors provided (i) the price at which the specified securities are offered to eligible investors is not lower than the price offered to other applicants and (ii) the eligible investors makes an application of a value of at least fifty lakh rupees.
8. **Lock-in Period for Category II AIF:** The exemption from lock-in requirement of six months from the date of allotment in case of listing pursuant to a public issue or date of listing in case of listing without a public issue has been extended to equity shares issued to Category II alternative investment fund provided that such equity shares have been locked-in for a period of at least one year from the date of purchase by the alternative investment fund.
9. **Lock-in period for SR equity shares:** The SR equity shares to be locked-in till (i) conversion into equity shares with voting rights similar to that of ordinary shares or (ii) for a period of six months from the date of allotment in case of listing pursuant to a public issue or date of listing in case of listing without a public issue, whichever is later.
10. **Exit from IGP:** Exit under IGP framework to be governed by the provisions of the SEBI (Delisting of Equity Shares) Regulations, 2009, subject to certain specified regulations being exempted. Detailed conditions have been prescribed for exit, including exit will be considered successful if the post offer acquirer/promoter shareholding, taken together with the shares tendered and accepted, reaches 75% of the total issued shares of that class and at least 50% shares of the public shareholders are tendered and accepted. The exit proposal to be approved by the board of directors of the company in its meeting and by the shareholders of the company by a special resolution passed through postal ballot or e-voting and the votes cast by the majority of public shareholders must be in favour of such exit proposal.
11. **Eligibility to migrate to main board:** Certain thresholds are required to be fulfilled for a company listed on IGP to be eligible to trade under the regular category of the main board of the stock exchanges, such as, profitability, net assets, net worth, etc. Where such conditions were not fulfilled, migration required a company to have 75% of its capital held by Qualified Institutional Buyers as on date of application for migration. This requirement of 75% has been reduced to 50%.

The above amendments have been introduced by SEBI (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2021 dated May 5, 2021 ([available here](#)).

### SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021

The following amendments have been introduced in relation to Innovators Growth Platform (IGP):

1. **Substitution of 'Institutional Trading Platform'**: The words "institutional trading platform" have been substituted with "Innovators Growth Platform." (IGP)
2. **Threshold for acquisition of shares or voting rights to be 49%**: For companies listed under IGP framework, stipulation for triggering open offer in case of acquisition of securities under Takeover Regulations has been increased from existing 25% to 49%.
3. **Disclosure of voting pattern by the committee of independent directors**: The committee of independent directors constituted by the board of the target company to disclose the voting pattern of the meeting in which the open offer proposal was discussed, in addition to providing reasoned recommendations on the open offer proposal.
4. **Disclosure of acquisition**: For companies listed under IGP framework, the requirement for acquirer to make disclosure of acquisition will trigger if the acquirer along with persons acting in concert hold in aggregate 10% or more of the shares of the target company.
5. **Continual disclosures of change in shareholding or voting rights**: For companies under the IGP framework, any person who along with persons acting in concert holds shares or voting rights entitling them to 10% or more of the shares or voting rights in a target company, will be required to disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 10%, if there has been change in such holdings from the last disclosure and such change exceeds 5% of total shareholding or voting rights in the target company.

The above amendments have been introduced by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2021 dated May 5, 2021 ([available here](#)).

### SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2021

1. **Removal of list of restricted activities / sectors from definition of venture capital undertakings**: The list of restricted business activities has been removed from the definition of venture capital undertakings and ahs now been defined to mean a domestic company which is not listed on a recognised stock exchange in India at the time of making investment. This will provide flexibility to venture capital funds registered under Category-I AIFs in making investments.
2. **Additional disclosures in Private Placement Memorandum (PPM)**: The terms of reference of the committee constituted for approving the decisions of the AIF are required to be disclosed in PPM.
3. **Simultaneous investment in securities and units of AIFs**: All categories of AIFs have been allowed to invest their respective investable funds (subject to prescribed thresholds) in an investee company directly or through investment in units of other AIFs. Further, the AIFs which are authorised under the fund documents to invest in units of AIFs shall not offer their units for subscription to other AIFs. Accordingly, following changes have been introduced:
  - **Cat-I AIF**: Category I AIFs shall invest in investee companies, venture capital undertakings, special purpose vehicles, limited liability partnerships or in units of other Category I Alternative Investment Funds of the same sub-category;
  - **Cat-II AIF**: Category II AIFs shall invest in investee companies or in the units of Category I or other Category II AIFs as may be disclosed in the PPM. Category II AIF shall invest primarily in unlisted companies directly or through investment in units of other AIFs;
  - **Cat-III AIF**: Category III AIFs may invest in securities of listed or unlisted investee companies, derivatives, units of other AIFs or complex or structured products.
4. **Investment in units of affiliated AIFs to require approval of 75% investors in value**: AIFs can invest in units of other AIFs managed or sponsored by its Manager, Sponsor or associates of its Manager or Sponsor, with the approval of 75% of investors by value of their investment.
5. **Angel funds to invest in startup**: Angel funds, a sub-category of venture capital funds, which were required to invest in venture capital undertakings, will now invest in startups. The term "startup" has been defined to mean a "startup" means a private limited company or a limited liability partnership which fulfills the criteria for startup as specified by the Department of Promotion of Industry and Internal Trade, Ministry of Commerce and Industry,

Government of India, vide notification No. G.S.R. 127(E) dated February 19, 2019 or such other policy of the Central Government issued in this regard from time to time.

6. **Code of Conduct introduced:** A code of conduct has been prescribed for (i) AIF, (ii) managers of AIFs and key management personnel of the managers and AIF, (iii) members of IC, trustee, trustee company, directors of the trustee company, designated partners or directors of the AIF. The Manager and either the trustee or trustee company or the Board of Directors or the designated partners of the AIF, as the case may be, are required to ensure compliance by the AIF with the Code of Conduct;
7. **Responsibility of Manager:** The Manager to be responsible for the decisions of the AIFs, including their compliance with applicable laws and regulations, terms of the placement memorandum, agreements made with investors and other fund documents.

The above amendments have been introduced by SEBI (Alternative Investment Funds) (Second Amendment) Regulations, 2021 dated May 5, 2021 ([available here](#)).

#### SEBI (Intermediaries) (Second Amendment) Regulations, 2021

SEBI has laid down special procedure for action on expulsion from membership of the stock exchange(s) or clearing corporation(s) or termination of all the depository participant agreements with depository (ies). The detailed procedure is available under the SEBI (Intermediaries) (Second Amendment) Regulations, 2021 dated May 5, 2021 ([available here](#)).

#### SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2021

SEBI has introduced changes to various regulations to facilitate payment of fees by intermediaries through online payment gateway, such as payment of fees by stock brokers, debenture trustees, merchant bankers, credit rating agency, banker to an issue, registrar to an issue and share transfer agent and depositories.

The relevant regulations under which online payment of fees has been introduced are detailed under the SEBI (Payment of Fees and Mode of Payment) (Amendment) Regulations, 2021 dated May 5, 2021 ([available here](#)).

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