

Changes in the Regulatory Framework for Related Party Transactions, Scheme of Arrangement by Listed Companies and Alternative Investment Funds

Dear Reader

SEBI has issued changes and clarifications to the regulatory framework in respect of the following:

A. Disclosure obligations of listed entities in relation to Related Party Transactions (RPT)

Key changes include the following:

- Details of information required to be placed before the audit committee of the company and the shareholders for consideration of RPTs; and
- Revised format for bi-annual disclosures of RPTs by listed entities.

B. Framework for Scheme of Arrangements filed by listed entities

- Valuation report to be accompanied with declaration by the listed entity on occurrence of any material events during the intervening period of filing the scheme documents with stock exchange and period under consideration for valuation;
- Declaration to be submitted on any past defaults of listed debt obligations of the entities forming part of the scheme;
- No Objection Certificate from the lending scheduled commercial banks/ financial institutions/ debenture trustees;
- Sale of fractional entitlements held by nominated trust and reporting thereof.

C. Clarifications regarding concentration norms under SEBI (Alternative Investment Funds) Regulations, 2012 (AIF Regulations)

- Calculation of investment limit of Category-III AIFs; and
- Requirement to appoint a custodian in cases of co-investment.

The aforesaid changes have been analyzed below:

A. **Stricter norms and disclosure obligations of listed entities in relation to RPTs**

In continuation of the recent changes that were introduced by SEBI in relation to RPTs under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) vide notification dated November 9, 2021 ([available here](#)), SEBI has now prescribed the information to be placed before the audit committee and the shareholders for consideration of RPTs. Below is the analysis of the requirements introduced by SEBI which will come into effect from April 1, 2022:

1. **Information to be reviewed by the Audit Committee for approval of RPTs**

In order to provide greater transparency and further scrutiny of the proposed RPTs, listed companies are mandated to place detailed information for such RPTs including following critical information:

Requirements	Details
Terms of the transaction	<ul style="list-style-type: none"> ▪ Type, material terms and particulars of the proposed transaction; ▪ Tenure and value of the proposed transaction;
Details and nature of interest of related party	Name of the related party and its relationship with the listed entity or its subsidiary, including nature of its concern or interest (financial or otherwise);
Value of the transaction vis-à-vis the annual consolidated turnover	Percentage of the listed entity's annual consolidated turnover for the immediately preceding financial year, that is represented by the value of the proposed transaction (for RPTs involving a subsidiary, percentage calculated on the basis of the subsidiary's annual turnover on a standalone basis to be additionally provided)
RPT relating to loans, inter corporate deposits, advances of investment	<p>If RPT relates to any loans, inter corporate deposits, advances of investments made or given by the listed entity or its subsidiary, following information to be provided:</p> <ul style="list-style-type: none"> ▪ Details of the source of funds in connection with the proposed transaction ▪ Nature of indebtedness, cost of funds, and tenure, if any financial indebtedness is incurred; ▪ Applicable terms including covenants, tenure, interest rate and repayment schedule, whether secured or unsecured; if secured, the nature of security; and ▪ Purpose for which the funds will be utilized by the ultimate beneficiary of such funds pursuant to the RPT.
Justification of the transaction	Justification as to why the RPT is in the interest of the listed entity.
Third party report	Copy of the valuation or other external party report, if any such report has been relied upon.
Other information	<ul style="list-style-type: none"> ▪ Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis; ▪ Any other relevant information.
Review	Audit Committee to review the status of long term RPTs (more than 1 year) or recurring RPTs on an annual basis.

2. Information to be provided to shareholders for consideration of RPTs

The following information to be provided to shareholders under the explanatory statement to the notice for general meetings:

- Summary of the information provided by the management of the listed entity to the audit committee;
- Justification as to why the RPT is in the interest of the listed entity;
- If RPT relates to any loans, inter corporate deposits, advances of investments made or given by the listed entity or its subsidiary, the details as presented to the audit committee;
- Statement that the valuation or other external report, if any, will be made available through the registered email address of the shareholders;

- Percentage of the counter-party's annual consolidated turnover that is represented by the value of the proposed RPT on a voluntary basis;
- Any other relevant information.

3. Bi-annual disclosure of RPT in prescribed format

Listed entities are required to make RPT disclosures every 6 months in the format prescribed by SEBI ([available here](#)), which *inter alia* includes the following:

- Details of the party entering into the RPT;
- Details of the counter party and relationship of the counter party with the listed entity/ subsidiary;
- Type of RPT, whether with the same counter party or multiple single counter parties;
- Value of the RPT as approved by the audit committee;
- Value of the RPT during the reporting period;
- Additional disclosures of RPTs in relation to loans, inter-corporate deposits, advances or investments made or given by the listed entity/subsidiary.

The aforementioned changes have been issued vide SEBI circular dated November 22, 2021 ([available here](#)) and shall come into force with effect from **April 1, 2022**.

B. Framework for Scheme of Arrangement filed by listed entities

SEBI had earlier laid down the framework for Schemes of Arrangement by listed entities vide master circular dated December 22, 2020 ([available here](#)) (**Master Circular**) which *inter alia* provided for (i) the requirements to be fulfilled by a listed entity before the Scheme of arrangement is submitted for sanction by the National Company Law Tribunal (**NCLT**); (ii) obligations of stock exchange(s) upon receipt of the draft scheme of arrangement; and (iii) processing of the draft scheme of arrangement by SEBI.

With a view to ensure that the stock exchange(s) refer draft schemes to SEBI only on being satisfied that such draft scheme is in compliance with SEBI Act, Rules, Regulations and circulars issued thereunder, SEBI has amended the Master Circular to include the following additional compliances:

Requirements	Details
Undertaking to be submitted along the Valuation Report	Valuation Report to be accompanied with an undertaking from the listed entity stating that no material event impacting the valuation has occurred during the intervening period of filing the scheme documents with Stock Exchange and period under consideration for valuation.
Declaration for past defaults of listed debt	Listed entity to submit a declaration on any past defaults of listed debt obligations of the entities forming part of the scheme.
NOC from lending bank/ financial institution/ debenture trustees	Listed entity to provide a no objection certificate (NOC) from the lending scheduled commercial bank/ financial institution/ debenture trustees.
Sale of fractional entitlements and report by audit committee and independent directors	Sale of fractional entitlements: Fractional entitlements, if any, to be aggregated and held by board-nominated trust; such shares to be sold in the market at such price, within a period of 90 days from the date of allotment of shares, as per the draft scheme submitted to SEBI.

Requirements	Details
	<p>Report by audit committee and independent directors: The audit committee and the independent directors of the listed entity to submit a report to the designated stock exchange(s) certifying that the listed entity has compensated the eligible shareholders within 7 days of compensating the shareholders.</p> <p>Stock exchange to report quarterly to SEBI: Stock exchange to ensure compliance of the above and non-compliance, if any to be reported to SEBI on a quarterly basis.</p> <p>Misstatement or furnishing of false information: Listed entity to be liable for punitive action as per the provisions of applicable laws for any misstatement or furnishing of false information with regard to the aforementioned information.</p>

The above amendments have been introduced by SEBI vide circular dated November 16, 2021 ([available here](#)) and circular dated November 18, 2021 ([available here](#)).

C. Clarifications regarding investments by Category-III AIFs and Co-investment norms

SEBI had recently amended the AIF Regulations vide notification dated November 9, 2021 ([available here](#)) (**AIF Amendment Regulations**) whereby Category-III AIFs, including any large value funds for accredited investors of Category-III AIFs, have been permitted to calculate the concentration norm on the basis of the Net Asset Value (**NAV**) of the fund for the purposes of investment in listed equity of an investee company.

In furtherance to the said amendment, SEBI has now clarified the following:

- Limit for investment in listed equity to be calculated based on the NAV of the fund on the business day immediately preceding the date on which the Cat III AIF makes such investment;
- NAV of the AIF to be calculated as the sum of value of all securities adjusted for mark to market gains/losses (including cash and cash equivalents), excluding any funds borrowed by the AIF;
- If the market value of the investment of Cat III AIF in listed equity of an investee company exceeds the investment limit as prescribed under the AIF Regulations, such breach to be rectified within 30 days from the date of the breach.

Further, the AIF Amendment Regulations inserted the definition of 'co-investment.' In this regard, SEBI has clarified that the requirement of appointment of custodian under the AIF Regulations shall be applicable only if the sum of corpus of the AIF and the value of the Co-investment managed by the Manager of the AIF as Co-investment Portfolio Manager is more than INR 500 crores.

The above clarifications have been issued vide circular dated November 22, 2021 ([available here](#)).

We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at insights@elp-in.com or write to our authors:

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