
ELP
ECONOMIC
LAWS
PRACTICE
ADVOCATES & SOLICITORS
M&A Push Through Delisting | Easing of Disclosure Norms &
Ease of Doing Business Measures Proposed By SEBI

# M&A Push Through Delisting | Easing of Disclosure Norms & Ease of Doing Business Measures Proposed By SEBI

SEBI in its board meeting held on June 27, 2024, *inter alia* approved changes to the SEBI (Delisting of Equity Shares) Regulations, 2021 (**Delisting Regulations**). The changes include fixed price route as an alternative to the reverse book building (RBB) process, easing threshold for counter-offer and providing separate mechanism for delisting of listed investment holding companies (IHCs). These measures could potentially boost M&A activity and provide more certainty for delisting.

Further, SEBI had also constituted an expert committee (**Committee**) in August 2023 to review SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (**ICDR Regulations**). The Committee thereafter proposed amendments to the aforementioned regulations with the objective of facilitating the ease of doing business for listed companies. Further to the same, a consultation paper dated June 26, 2024 (available here) ("**Consultation Paper**"), has been issued by SEBI to provide for certain critical changes to LODR Regulations, which are listed below:

### A. Changes to the LODR Regulations:

Following are the broad areas of the LODR Regulations where the Committee has proposed amendments related to:

- Regulation 30 disclosure timelines pursuant to board meetings;
- Tax related litigations disclosures;
- Providing flexibility in terms of disclosures for penalties levied by regulators;
- Facilitating standardization and integration of various filings under LODR Regulations;
- Reviewing corporate governance requirements under the LODR Regulations (including board of directors and its committees, reclassification of promoters and related party transactions);
- Facilitating shareholder participation in the governance of listed entities;
- Disclosure of material events;
- Strengthening corporate governance; and
- Other compliance requirements and obligations.

### B. Harmonisation of provisions of LODR Regulations and ICDR Regulations:

With the objective of having a standardized understanding in both the aforementioned regulations, the Committee has proposed:

- Aligning definitions of LODR Regulations and ICDR Regulations;
- Alignment of disclosure requirements in LODR Regulations and ICDR Regulations.

## PART I – PROPOSED CHANGES TO DELISTING REGULATIONS

Basis consultation paper dated August 14, 2023 (available here) on proposed changes to the Delisting Regulations, SEBI has approved the following changes to the Delisting Regulations, thus providing flexibility in the voluntary delisting process:

1. **Fixed Price:** Introduction of fixed price process as an alternative to reverse book building process, where the fixed price shall be at least 15% premium over the floor price as determined under Delisting Regulations.

**ELP Comments**

*Determination of price through reverse book building results in huge uncertainty as far as discovered price is concerned, especially since price tends to move upwards once delsiting is announced and shareholders tend to link the movement in price as the price at which they should tender their shares. The fixed price route will give acquirers and*

*the shareholders assurance with respect to pricing in the delisting offer, which would help shareholders decide upfront whether or not to participate in delisting process. Further, this method may also be beneficial to acquirers for arranging funds in respect of the delisting offer. This route may also reduce volatility in the markets which may have arisen as a result of speculation of prices pursuant to the announcement of delisting.*

2. **Modification of the Counter-Offer mechanism:** As per the Delisting Regulations, an acquirer can make a counter-offer only after the cumulative shareholding of the shares held by acquirer and shares tendered by public shareholders in RBB mechanism reaches at least 90% of the paid-up capital of the company. In order to facilitate cases where cumulative shareholding of the shares held by acquirer and shares tendered by public shareholders does not reach 90%, SEBI has approved to reduce the threshold for making a counter-offer from existing 90% to 75% provided that at least 50% of public shareholding has been tendered.

**ELP Comments**

*Many times, acquirer will lose out on opportunity to make a counter-offer despite them having achieved majority of public shareholders tendering their shares for the sole reason that 90% shares may not have been tendered. In order to overcome this, SEBI has lowered the threshold to allow another shot at counter-offer. This will give more opportunities to the acquirer to close a delisting deal.*

3. **Changes to floor price determination:** (a) In a delisting, a company ceases to be listed, and hence the fair market value of the assets of the company should be taken into consideration while determining the floor price. Accordingly, SEBI has approved "Adjusted Book Value" as an additional criterion for determining floor price; (b) Presently, the reference date for computing the floor price is the date of approval of the board meeting. It has been approved by SEBI to change the reference date to the date of the initial public announcement in the same way as for open offer under takeover deals.

**ELP Comments**

*Above changes are in line with the concerns raised by the industry and are welcome changes, since adjusted book value may offer closer fair market value and reference date as date of public announcement will ensure that price fluctuations later do not deviate the intent of the public shareholders.*

4. **Introduction of an alternate delisting framework for listed Investment Holding Companies (IHC) through scheme of arrangement by way of selective capital reduction:** A Listed IHC: (a) that has at least 75% of their fair value (net of liabilities) comprising direct investments in equity shares of other listed companies; (b) will be permitted to transfer the underlying equity shares held by it in other listed companies to its public shareholders proportionately; (c) will be permitted to make proportionate cash payments to its public shareholders against other assets including investments in land, building, unlisted companies etc. On entire public shareholding being extinguished, the IHC shall be delisted. Delisting of an IHC shall be in compliance with requirements as specified by its financial sector regulator, if any.

**ELP Comments**

*The shares of an IHC tend to trade at a discount compared to the underlying value of the investments of the IHC, hence, to determine intrinsic value of IHCs, a separate mechanism has been approved via NCLT route. The move will ensure protection by NCLT to public shareholders while at the same time offering shares and cash in the hands of public shareholders.*

## PART II – SEBI CONSULTATION PAPER

Vide the Consultation Paper, SEBI has proposed changes to the LODR Regulations and suggested harmonizing certain provisions of the ICDR Regulations and LODR Regulations. Paragraph A hereinbelow analyses recommendations for the LODR Regulations, and Paragraph B hereinbelow discusses the changes proposed with the objective of aligning the terms of LODR Regulations and ICDR Regulations to facilitate the ease of doing business.

### A. RECOMMENDATIONS FOR AMENDMENTS TO LODR REGULATIONS

<table>
<tr><th>Recommendation</th><th>Particulars</th></tr>
<tr><td colspan="2">Disclosure of material events or information under Regulation 30</td></tr>
<tr><td>Timeline for disclosure of material events or information</td><td>
A. Disclosure of outcome of board meetings<br><br>
Presently, the requirement for disclosure of outcome of board meetings is 30 (thirty) minutes from the closure of the meeting. Basis suggestions received, the Committee has recommended that:<br>
▪ In case the board meeting closes after the normal trading hours but more than 3 hours before the beginning of the next normal trading hours, the disclosure shall be made within 3 hours from the closure of the board meeting.<br>
▪ In case the board meeting closes during the normal trading hours or within 3 hours before the beginning of the normal trading hours, the disclosure shall be made within 30 minutes from the closure of the board meeting.<br><br>
To understand this better, the Committee has provided the following illustration:
<table>
<tr><th>Time of closure of board meeting (on a trading day)</th><th>Timeline for disclosure of event decided in the board meeting</th></tr>
<tr><td>4:00 AM</td><td>7:00 AM (within 3 hours)</td></tr>
<tr><td>5:00 AM</td><td>8:00 AM (within 3 hours)</td></tr>
<tr><td>6:00 AM</td><td>9:00 AM (within 3 hours)</td></tr>
<tr><td>6:15 AM</td><td>6:45 AM (within 30 min.)</td></tr>
<tr><td>7:15 AM</td><td>7:45 AM (within 30 min.)</td></tr>
<tr><td>8:15 AM</td><td>8:45 AM (within 30 min.)</td></tr>
<tr><td>9:15 AM</td><td>9:45 AM (within 30 min.)</td></tr>
<tr><td>12:00 PM</td><td>12:30 PM (within 30 min.)</td></tr>
<tr><td>3:30 PM</td><td>4:00 PM (within 30 min.)</td></tr>
<tr><td>3:45 PM</td><td>6:45 PM (within 3 hours)</td></tr>
<tr><td>6:00 PM</td><td>9:00 PM (within 3 hours)</td></tr>
<tr><td>12:00 AM</td><td>3:00 AM (within 3 hours)</td></tr>
</table>
ELP Comments<br>
This proposal allows listed companies additional time to disclose information when a board meeting is held outside of trading hours.
</td></tr>
</table>

| Recommendation | Particulars |
|---|---|
| **Disclosure of litigation or dispute** | Timeline for disclosure may be increased to 72 hours from the existing 24 hours in case of litigations or disputes wherein claims are made against the listed entity.<br><br>**ELP Comments**<br><br>*This additional time will allow listed companies to assess the impact properly especially where such information requires a thorough investigation, and provide adequate information to the market.* |
| **Disclosure of 'acquisition' by listed entities** | Disclosure of acquisition may be required if the listed entity, whether directly or indirectly, holds shares or voting rights aggregating to 20% (increased from 5% at present) or there has been any subsequent change in holding exceeding 5% (increased from 2% at present). However, acquisition of shares or voting rights in an unlisted company, aggregating to 5% or any subsequent change in holding exceeding 2%, may be disclosed on a quarterly basis as part of the Integrated Filing (Governance).<br><br>Details to be provided along with the disclosure of 'to be incorporated' companies may be specified in Annexure I to SEBI Circular dated July 13, 2023. |
| **Disclosure of tax litigations or disputes** | The Committee noted that receipt of tax demand notices, initiation of tax litigation or tax related disputes are in the nature of litigation / dispute / assessment which are required to be disclosed under sub-para (8) of Para B. Such disclosures are not warranted under sub-para (20) of Para A which requires disclosure of actions taken or orders passed including imposition of penalty.<br><br>Hence, it suggested that it may be clarified in Annexure I to the SEBI Circular dated July 13, 2023 that tax litigations / disputes including tax penalties are required to be disclosed under Para B(8) of Part A of Schedule III of LODR Regulations based on application of criteria for materiality. Further, tax litigations or disputes, if material, may be disclosed in the following manner:<br><br>▪ Disclosure of new tax litigations or disputes exceeding materiality threshold within 24 hours.<br>▪ Quarterly updates on existing tax litigations or disputes exceeding materiality threshold as part of the Integrated Filing (Governance).<br>▪ Tax litigations or disputes, the outcomes of which are likely to have a high correlation, should be cumulated for determining materiality.<br><br>**ELP Comments**<br><br>*This additional time will allow listed companies to assess the impact properly especially where such information requires a thorough investigation, and provide adequate information to the market.* |

<table>
<tr><th>Recommendation</th><th>Particulars</th></tr>
<tr><td>Disclosure of imposition of penalty</td><td>Listed companies are required to disclose penalties imposed on the company by authorities. The Committee noted that penalties levied by sectoral regulators or enforcement agencies pertain to the governance / functioning of the company and hence, should have a lower threshold for immediate disclosure. And, a higher threshold may be provided for penalties levied by other authorities.<br><br>In this regard, the Committee has proposed the following:<br><br>▪ A monetary limit may be specified for immediate disclosure of imposition of penalty. A distinction may be made for penalties levied by sectoral regulators or enforcement agencies and those levied by other authorities.<br>▪ A lower threshold of Rs. 10,000 may be applicable for disclosure of penalties levied by sectoral regulators or enforcement agencies within 24 hours. The list of sectoral regulators and enforcement agencies may be specified in the Industry Standards.<br>▪ A higher threshold of Rs. 10 lakhs may be applicable for disclosure of penalties levied by other authorities within 24 hours.<br>▪ Penalties levied which are lower than the monetary thresholds specified above may be disclosed on a quarterly basis, as part of the Integrated Filing (Governance), along with the details mentioned in Para A (20) of Part A of Schedule III of LODR Regulations.<br><br>ELP Comments<br><br>This will come as a huge relief to the industry as prior to this all actions taken by any authority were required to be disclosed within 24 hours despite the amount of penalty. There were cases where orders imposing penalty as low as Rs. 10,000 were being disclosed despite they not being from sectoral regulator. Thresholds will provide clear guidance as to which are material for market and otherwise and market will not be dumped with all such actions.</td></tr>
<tr><td>Clarification with respect to disclosure of material events specified under Schedule III of LODR Regulations</td><td>▪ The types of fund raising which are required to be disclosed as outcome of board meeting under Para A(4) of Part A of Schedule III of LODR Regulations, may be aligned with Regulation 29 of LODR Regulations for prior intimation for board meetings. It may be clarified that disclosure is required only for such type of fund-raising proposals that involve issue of securities. This would exclude borrowings / short-term borrowings which do not involve issuance of any securities.<br>▪ Fraud by senior management under Para A(6) of Part A of Schedule III of LODR Regulations should be disclosed only if it is in relation to the listed entity.<br><br>FAQs on the types of forensic audit which are required to be disclosed under Para A(17) of Part A of Schedule III of LODR Regulations may be specified in the LODR Regulations itself for ample clarity.</td></tr>
<tr><td colspan="2">Filings and Disclosures</td></tr>
</table>

| Recommendation | Particulars |
|---|---|
| **Single Filing System** | Presently, both stock exchanges (BSE and NSE) have their own filing platforms, requiring listed companies to file disclosures separately on both stock exchanges. The Committee has recommended that the filing done on one stock exchange to be automatically disseminated to other stock exchanges using an API-based integration that is being jointly developed by stock exchanges to facilitate ease of filing for entities listed across multiple stock exchanges and eliminate the requirement of filing the same document across multiple exchanges.<br><br>**ELP Comments**<br><br>*This proposal is logistically beneficial for companies in the sense that one common platform for filing disclosures / disseminating information will reduce duplication of filing with both stock exchanges and time lag in uploading information by those exchanges.* |
| **Integration of periodic filings** | The LODR Regulations require listed companies to make various disclosures on a periodic basis – quarterly, half yearly and annual. With the objective of minimizing the number of periodic filings, the Committee has recommended to merge the periodic filings under the LODR Regulations into two broad categories:<br><br>▪ Integrated Filing (Governance) – comprising of corporate governance report, statement on redressal on investor grievance. The timeline for submission of Integrated filing (Governance) shall be within 30 days from the end of the quarter / half-year / year for submission to stock exchanges.<br>▪ Integrated Filing (Financial) – comprising of financial results, statement of deviation in use of proceeds, related party transactions etc. The timeline for Integrated Filing (Financial) shall be within 45 days (or 60 days for the last quarter) from the end of the quarter / half-year for submission to stock exchanges.<br><br>Following filings to be done away with:<br><br>▪ Regulation 7(3): Annual filing on having registered share transfer agent (which is already captured in quarterly share capital reconciliation audit report).<br>▪ Regulation 39(3): Separate disclosure on loss of physical share certificates, since transfer of shares in physical form is no longer permitted for listed companies from April 1, 2019 onwards.<br>▪ Regulation 40(9)/(10) - Annual certification on adhering to the timeline for processing requests relating to physical shares, due to prohibition on transfer of shares in physical mode and negligible physical holding.<br><br>**ELP Comments**<br><br>*The concept of Integrated Filing will benefit listed companies in two ways – reduces fragmentation and duplication of information, and easy access of information to investors of listed companies.* |
| **System driven disclosure of certain filings** | ▪ Disclosure of new or revision in credit ratings to be automated and system driven, as the data is already being shared by credit rating agencies with stock exchanges.<br>▪ Disclosure of shareholding pattern to be automated at the end of depositories and stock exchanges. |

| Recommendation | Particulars |
|---|---|
| **Website disclosures** | Regulation 46 of the LODR Regulations requires every listed entity to maintain a functional website containing basic details about the listed entity, and disseminate certain information. The Committee noted that most of the information that is required to be uploaded on the website of a listed entity in terms of this regulation are disclosures made by the listed entity to stock exchange(s). Therefore, with respect to the information already made available on the website of Stock Exchanges, listed entities may provide curated links on their website instead of uploading all the information / data once again.<br><br>**ELP Comments**<br><br>*Disclosing such a curated link would eliminate duplication of work and wastage of resources and remove the need to keep updating information on the website of the listed entity.* |
| **Newspaper advertisements for financial results and notices** | Considering the increased reliance on technology and reduced support on newspapers, the requirement of publishing detailed advertisements in newspapers for financial results to be made optional for listed entities. However, a small box advertisement with the QR code and weblink to the page where the full financial results of the listed entity are available shall be published for the benefit of the investors. |
| **Board of Directors and Committees** | |
| **Timeline to fill up vacancies in board committees** | The LODR Regulations presently provide a timeline of 3 months to fill up vacancies in the office of a director. However, no specific timelines have been provided in the LODR Regulations to fill up vacancies in board committees arising as a result of vacancy in the office of a director. Therefore, it is suggested that vacancy in the committees of board of directors of the listed entity also to be filled up within a period of 3 months from the date of such vacancy. |
| **Timeline for shareholder approval for appointment or reappointment of director of a listed entity** | In terms of Regulation 17(1C) of the LODR Regulations, approval of shareholders for any person appointed on the board of a listed entity shall be taken within a period of 3 months or the next general meeting, whichever is earlier. Public sector companies are permitted to take shareholder approval at the next general meeting (AGM / EGM).<br><br>The Committee has recommended that (i) in cases where regulatory or statutory or government approvals are required, time taken for such approvals to be excluded from the timeline of 3 months prescribed in Regulation 17(1C) of the LODR Regulations for obtaining shareholder approval, and (ii) shareholder approval may not be required for nominee directors of financial sector regulators or those appointed by Court or Tribunal. |
| **Promoters and Controlling Shareholders** | |

<table>
<tr><th>Recommendation</th><th>Particulars</th></tr>
<tr><td>Framework for reclassification of promoter / promoter group entities</td><td>The following changes are recommended to the process of reclassification of promoters:<ul><li>No-objection to be obtained from stock exchanges (prior to seeking shareholder approval) instead of stock exchange approval as per the existing framework within 30 days of the company making a reclassification request.</li><li>Streamlining the timeline for boards to consider and provide their views on reclassification requests, in the immediate next board meeting or within two months, whichever is earlier.</li><li>Upon receipt of shareholder approval, the listed entity to notify the stock exchanges within 5 days and effect reclassification of the entity.</li><li>Introduction of penalty on companies not processing fully compliant reclassification requests within the specified timelines.</li></ul>ELP Comments<br>Providing stricter timelines for processing reclassification requests of companies will ensure that such requests are dealt with faster, thus reducing the total time for effectuating reclassification of promoters.</td></tr>
<tr><td>Obligations on promoter / promoter group / directors / key managerial personnel (“KMP”) to disclose information to the listed entity</td><td>There is an obligation on listed companies to disclose the shareholding pattern on a quarterly basis and related party transactions on a half-yearly basis. In order to help the listed entity to identify its promoter group and related parties, and further comply with other obligations and disclosure requirements, it is recommended to introduce a provision in the LODR Regulations which requires promoter, promoter group, KMP, directors or any other person dealing with the listed entity to disclose all information necessary for the listed entity to ensure compliance with LODR Regulations and other applicable laws.<br>ELP Comments<br>This recommendation will assist listed companies in making precise disclosures to stock exchanges and also ensure that shareholders / investors have accurate information about the listed company.</td></tr>
<tr><td colspan="2">Related Party Transactions</td></tr>
<tr><td>Definition of related party transactions (“RPT”)</td><td>Basis suggestions received and in line with the current exemptions under Regulation 2(1)(zc) of LODR Regulations given to transactions which are uniformly applicable / offered to all shareholders / public, the following transactions are proposed to be exempted from the definition of RPTs:<ul><li>Corporate actions by subsidiaries of a listed entity and corporate actions received by the listed entity or its subsidiaries which are uniformly applicable / offered to all shareholders in proportion to their shareholding.</li><li>Acceptance of current account deposits or saving account deposits by banks in compliance with the directions issued by RBI from time to time.</li><li>Retail purchases from any listed entity or its subsidiary by its directors or its employees, without establishing a business relationship and at the terms which are uniformly applicable / offered to all employees and directors.</li></ul></td></tr>
</table>

<table>
<tr><th>Recommendation</th><th>Particulars</th></tr>
<tr><td>Approval of RPTs by the audit committee of the listed entity</td><td>
The Committee has suggested that:
<ul>
<li>Remuneration and sitting fees paid by the listed entity or its subsidiary to its director, KMP or senior management, except who is part of the promoter or promoter group, may be exempted from the requirement of approval by the audit committee, provided that it does not fall within the materiality threshold prescribed under Regulation 23(1) of LODR Regulations.</li>
</ul>
ELP Comments<br>
This recommendation will relatively simplify the process of declaring remuneration and sitting fees by removing the additional requirement of audit committee's approval, and only restricting it to such RPTs which crosses the materiality threshold.
<ul>
<li>Further, such remuneration and sitting fees may also be exempted from the half yearly disclosures of RPT under Regulation 23(9) of LODR Regulations.</li>
</ul>
ELP Comments<br>
Disclosure of remuneration paid by any company to its director and KMP is already required to be disclosed as part of its annual return as per Section 92 of the Companies Act, 2013. Disclosure of the same as an RPT will lead to duplication of disclosures.
<ul>
<li>The independent directors who are members of the audit committee of a listed entity may provide post-facto ratification to RPTs within 3 months from the date of the transaction or in the immediate next meeting of the audit committee, whichever is earlier, subject to the following conditions:
<ul>
<li>the value of ratified transaction(s) with a related party, whether entered into individually or taken together, during a financial year does not exceed Rs. 1 crore.</li>
<li>the transaction is not material as per Regulation 23(1) of LODR.</li>
<li>rationale for inability to seek prior approval for the transaction shall be placed before the audit committee at the time of seeking ratification.</li>
<li>the details of ratification shall be disclosed along with the half-yearly disclosures of RPTs under Regulation 23(9) of LODR Regulations.</li>
<li>any other condition as specified by the audit committee.</li>
</ul></li>
</ul>
Further, failure to seek ratification of the audit committee shall render the transaction voidable at the option of the board of directors and if the transaction is with a related party to any director, or is authorised by any other director, the director(s) concerned shall indemnify the listed entity against any loss incurred by it.<br>
ELP Comments<br>
Allowing the post facto ratification of RPTs will ensure uninterrupted business operations for urgent transactions and protect listed entities, particularly large conglomerates with numerous RPTs, from undue penalties.
</td></tr>
</table>

| Recommendation | Particulars |
|---|---|
| **Omnibus approval of RPTs by the audit committee** | With the objective of aligning the provision with the definition of RPT under Regulation 2(1)(zc) of LODR Regulations, it is suggested that the provision of omnibus approval under Regulation 23(3) of LODR be made applicable to RPTs by subsidiaries as well. |
| **Exemption from approval requirements for RPTs** | As per the present language of the LODR Regulations, RPTs between 2 government companies, RPTs between a holding company and its wholly owned subsidiary and RPTs between 2 wholly owned subsidiaries of listed companies are exempt from the requirement of seeking audit committee and shareholder approvals. On similar lines, the Committee suggests that the exemption may be extended to the following transactions:<br>▪ Payment of statutory dues, fees or charges to the Central Government and/or any State Government.<br>▪ Transactions entered into between two public sector companies (including government companies) – in terms of amendment in the language of the provision, the term "government company" is to be replaced by "public sector company".<br>▪ Transactions entered into between a public sector company (including government company) on one hand and the Central Government or any State Government or any combination thereof on the other hand, considering that (a) such transactions are in public interest or of statutory nature and (b) they are also exempt from approval requirements under the Companies Act, 2013. |
| **Other Compliance Requirements and obligations** | |
| **Relaxations from certain compliance requirements for companies coming out of the insolvency and bankruptcy framework** | In order to provide time for companies coming out of corporate insolvency resolution process to ensure compliance with LODR Regulations, the following relaxations may be provided:<br>▪ 3 months for filling up the vacancy of KMPs subject to having at least one full-time KMP;<br>▪ 3 months to comply with corporate governance provisions relating to board / committee composition.<br>▪ Additional time of 45 days (or 60 days for annual results) to be provided for disclosure of financial results for the quarter in which the resolution plan is approved.<br>**ELP Comments**<br>*These proposed relaxations will provide adequate time to listed companies coming out of the corporate insolvency resolution process to ensure compliance with the LODR Regulations.* |
| **Subsidiary related compliance requirements** | The requirement of approval of shareholders under Regulation 24(6) of LODR Regulations for sale, disposal or lease of assets of material subsidiary shall not be applicable if such a transaction is between two wholly-owned subsidiaries of the listed entity.<br>**ELP Comments**<br>*In the case of wholly owned subsidiaries, where transfer of assets is taking place, the ownership of such assets changes mainly at a subsidiary level without any change at the parent level since both entities are ultimately owned by the same parent company.* |

| Recommendation | Particulars |
|---|---|
| | *Therefore, removing this requirement of obtaining shareholder approval will help in easing business operations.* |
| **Record date** | The Committee noted that markets have matured and information disseminated by listed entities is absorbed quickly by investors. Accordingly, the Committee has recommended that:<br>▪ Time gap between intimation and actual record date to be reduced to minimum 3 working days (from 7 working days) except for corporate action through a scheme of arrangement involving mergers, demergers or amalgamations etc.<br>▪ Minimum gap between two record dates to be reduced to 5 working days (from 30 days).<br>▪ Minimum gap of 30 days between two book closures to be omitted as transfer of shares in physical mode is no longer permitted and therefore, the provision is redundant. |
| **Schemes involving reduction of capital on account of writing off accumulated losses** | At present, listed companies are required to file draft scheme of arrangement for reduction of capital with the stock exchanges to obtain no-objection letter. The Committee suggests that the requirement of obtaining no-objection letter from stock exchanges for schemes involving writing off accumulated losses against share capital of the company (applied uniformly to all categories of shareholders) or against the reserves of the company should be done away with, and the draft scheme to be filed with stock exchanges only for disclosure purposes.<br>**ELP Comments**<br>*Scheme of capital reduction which is purely in the nature of writing off the accumulated losses against the share capital of the company applies to all the shareholders on pro rata basis (and not selective reduction) and the rights of shareholders will remain unaffected pre and post scheme. Further, in such schemes, since no fresh shares are issued to outsiders or to select shareholders of the company, requirement of valuation report and fairness opinion are not applicable in such cases. Therefore, removing this regulatory hurdle of obtaining no-objection letter from stock exchanges in case of aforementioned schemes will definitely ease the process of capital reduction.* |
| **Analyst or institutional / Investor meets** | The following are recommendations relating to analyst or institutional investor meets:<br>▪ Disclosure of names of analysts or institutional investors in the schedule of analyst or institutional investor meet shall be optional for listed entities.<br>▪ Presentations prepared by a listed entity for analyst or institutional investors meet or post-earnings / quarterly calls to be disclosed to Stock Exchanges before the beginning of such events.<br>▪ Video recordings of post-earnings / quarterly calls may be uploaded within 48 hours.<br>▪ Audio / video recordings to be available on website for 2 years (instead of 5; to be preserved by company for 8 years) and transcripts to be available on website for 5 years (to be preserved by the company for 8 years). |
| **Annual Reports** | ▪ Taking into consideration suggestions received from stakeholders, the Committee has recommended doing away with the requirement to send physical copies of abridged annual report to shareholders whose email ID is not available. Instead, a letter may be |

| Recommendation | Particulars |
|---|---|
| | sent to such shareholders indicating the link from which the annual report can be downloaded. Accordingly, the requirement to dispatch Annual Reports specified in regulation 36(2) of LODR may be omitted.<br>▪ It is also suggested that annual report should be submitted to stock exchanges on or before commencement of its dispatch to the shareholders. |
| **Postal ballots** | The Committee has proposed that listed entities be exempted from sending physical postal ballots to its shareholders, which may be substituted with remote e-voting. The period for which e-voting needs to be kept open may also be reduced suitably (from the existing timeline of 30 days to 7 days). SEBI to take up this proposal with the Ministry of Corporate Affairs ("**MCA**") as well to align the Companies Act, 2013 and LODR Regulations.<br>**ELP Comments**<br>*Considering that postal ballots have also become predominantly electric with the introduction of electronic voting systems, this proposal will aim to make shareholding voting easier and more efficient.* |
| **Payment of dividend / Dividend warrants** | The Committee has suggested to MCA to do away with the requirement of dispatching dividend warrants for smaller amounts (less than Rs. 10) in cases of non-availability of bank account details or failure of delivery of dividend credit through electronic means. In such scenarios, the dividend to be kept in the unpaid account sent to the shareholders when the cumulative amount exceeds Rs. 10 or before transfer to Investor Education and Protection Fund. |
| **Facilitating Shareholder Participation in Governance of Listed Entities** | |
| **Virtual / electronic and hybrid shareholder meetings** | In respect of shareholder meetings, the Committee has made the following suggestions:<br>▪ SEBI should take up the suggestion of permitting listed entities to hold general meetings through VC /OAVM or in a hybrid mode on a permanent basis with MCA.<br>▪ It is also recommended that notice period for such virtual meetings of a listed entity may be suitably reduced (say 7 days). This may be taken up by SEBI with MCA.<br>▪ The requirement to send proxy forms to holders of securities in terms of Regulation 44(4) of LODR Regulations for general meetings held only through VC / OAVM may be dispensed with.<br>**ELP Comments**<br>*Statutorily recognizing virtual shareholder meetings permanently will encourage more participation from retail investors and those investors not residing in India, in general meetings of listed companies. Further, considering that virtual meetings need not be logistically planned, a reduced time period may be provided for in respect of notices of general meetings.* |
| **Strengthening Corporate Governance at Listed Entities** | |

| Recommendation | Particulars |
|---|---|
| **Diversity in the institution of independent directors ("IDs"), meetings of IDs and risk management committee** | The Committee recommends the following measures to strengthen corporate governance at listed entities but as discretionary compliance requirements (except where specific compliance is already mandatory):<br>▪ Encourage top 2000 listed entities to have at least 1 women independent director in order to have diversity in the institution of independent directors.<br>▪ Encourage the top 2000 listed entities to constitute a risk management committee with the composition, roles and responsibilities as specified in regulation 21 of the LODR Regulations, considering the importance of risk management for listed entities.<br>▪ In the interest of better corporate governance, top 2000 listed entities may strive to have more than the mandatory yearly meeting of IDs.<br>Aforementioned proposals are recommended as discretionary requirements for compliance by listed companies.<br>**ELP Comments**<br>*Aforementioned proposals will strengthen corporate governance practices by widening the scope of compliances, even though discretionary in nature.* |
| **Strengthening the position of Compliance Officer** | Basis suggestions received from stakeholders and in alignment with the Companies Act, 2013, the Committee recommends that the compliance officer shall be an officer, who is in whole time employment, not beyond one level below the board of directors of the listed entity and shall be designated as a "Key Managerial Personnel", and not just senior management. This shall help in strengthening the position of compliance officers commensurate with the responsibilities cast upon them. |
| **Secretarial Auditors** | At present, the LODR Regulations do not provide for criteria for appointment or reappointment or removal for secretarial auditors of a listed entity or a cooling off period. In order to strengthen the secretarial audit at listed entities and to prevent conflict of interests, the Committee has recommended the following for secretarial auditors:<br>▪ ***Alignment with Companies Act, 2013***: Provisions relating to appointment, reappointment of secretarial auditors be inserted in LODR Regulations in line with provisions for appointment, re-appointment of statutory auditors prescribed under section 139 (1) and (2) of Companies Act, 2013 i.e. (a) an individual may be appointed for a term of 5 years and (b) a firm may be appointed for a maximum of 2 terms of 5 years each, both subject to approval of shareholders in a general meeting.<br>▪ ***Eligibility and disqualifications***: Provisions relating to eligibility (i.e. should be a peer reviewed company secretary) and disqualifications may also be prescribed in the LODR Regulations. The Committee has also provided a draft circular for disqualifications (for example, body corporate other than a limited liability partnership, officer / employee of listed company, a person who is a partner, or who is in the employment, of an officer or employee of the listed entity, etc.) and list of services not to be rendered by the secretarial auditor (for example, internal audit, investment advisory services, investment banking services, management services, etc.)<br>▪ ***Cooling off period***: A cooling-off period of 5 years for re-appointment of an individual as a secretarial auditor (after 1 term of 5 years) and for re-appointment of a secretarial audit firm (after two consecutive terms of 5 years). |

| Recommendation | Particulars |
|---|---|
| | ▪ ***Removal***: Provisions relating to removal of secretarial auditors with the approval of shareholders of a listed entity may be inserted in the LODR Regulations.<br>▪ ***Effective date of aforementioned provisions***: It is suggested that from April 1, 2025, appointment, re-appointment or continuation of secretarial auditors of listed entities shall be in compliance with the aforesaid provisions. Further, with effect from April 1, 2025, the secretarial compliance report submitted by a listed entity to be signed only by the secretarial auditor or by a peer reviewed company secretary who satisfies the aforesaid requirements.<br>**ELP Comments**<br>*Considering the significant role played by secretarial auditors in the governance of listed companies i.e. ensuring compliance with legal and regulatory requirements, it is necessary to provide for conditions relating to eligibility, appointment, re-appointment of persons involved in such audit.* |
| **Compensation / profit sharing agreements surviving after listing** | Regulation 26(6) of LODR Regulations presently requires any agreement entered into by any employee, KMP, director or promoter of a listed company with regard to compensation or profit sharing in connection with dealings in its securities to be approved by shareholders of the listed entity. The Committee has suggested that any compensation or profit-sharing agreement that survives post-listing needs to be ratified by the shareholders in the first general meeting held after listing, and the interested parties involved in the transaction shall abstain from voting in the general meeting. |
| **Additional information on website** | In addition to the information already required to be disclosed by listed companies on their websites, it is suggested that the following additional documents / information to be disclosed on the website of a listed entity in the interest of the investors:<br>▪ articles of association of the company,<br>▪ memorandum of association of the company,<br>▪ brief profile of board of directors (including directorship & full-time positions held in other body corporates)<br>▪ employee benefits related scheme documents.<br>**ELP Comments**<br>*The additional disclosures of aforementioned information on the website of listed companies will enhance transparency with stakeholders and allow informed decision-making by shareholders of the companies.* |

## B. HARMONISATION OF PROVISIONS OF LODR & ICDR REGULATIONS

In addition to the amendments proposed for LODR Regulations and ICDR Regulations, the Committee has also proposed that certain provisions of the aforementioned regulations be made consistent to avoid any confusion.

| Recommendation | Particulars |
|---|---|
| **Disclosures related to 'material litigation' in ICDR with LODR** | Currently, the materiality thresholds adopted by companies for disclosure in offer documents prior to listing vary from case-to-case. Once listed, companies are required to disclose material events, including ongoing litigation, based on the recently introduced materiality thresholds under Regulation 30 of the LODR Regulations. Accordingly, the thresholds adopted for disclosure in the offer documents may be lower or higher than the thresholds under Regulation 30 of LODR Regulations, which may result in inconsistencies in disclosure prior to and after listing a company.<br><br>Therefore, the Committee has suggested to align of the disclosure requirements by listed companies and to-be-listed companies (in their offer document), including details of actions against KMP and senior management of the company. Companies should also be permitted to adopt a lower materiality threshold, if required, for the purposes of disclosures in the draft offer document or the offer document. |
| **Aligning the terminology used for defining material subsidiary thresholds** | Currently, under the ICDR Regulations, a 'material subsidiary' is defined to mean any subsidiary that contributes 10% or more to the consolidated turnover or net worth or profit before tax in the annual consolidated financial statements. Under the LODR Regulations, a 'material subsidiary' is defined as any subsidiary whose income or net worth exceeds 10% of the consolidated income or net worth of the company.<br><br>The Committee discussed that a broader definition of 'material subsidiary' is required under the ICDR Regulations given that the issuer is raising capital from the public and accordingly the difference thresholds are justified. However, the Committee proposed that the terminology of one of financial line items for identification of a material subsidiary under the ICDR Regulations and LODR Regulations should be aligned and both regulations should refer to consolidated "turnover" instead of "income". |
| **Disclosure of material agreements in offer documents** | In addition to the material agreements that are required to be discloses in offer documents under the LODR Regulations, the Committee has recommended that agreements that are entered into by shareholders, promoters, directors etc. whose purpose is to impact management or control over the listed entity (as required under Clause 5A of paragraph A of part A of Schedule III of the LODR Regulations) should also be disclosed in the offer document, to ensure parity in disclosures of material agreements by listed and to-be-listed companies |
| **Alignment of qualifications of the compliance officer** | While the qualifications for appointment of the compliance officer are specified under the LODR Regulations (i.e., such person must be a qualified company secretary), no such stipulations are prescribed under the ICDR Regulations. Accordingly, the Committee recommended the introduction of the requirement of qualification as a company secretary to be appointed as the compliance officer under the ICDR Regulations as well. |
| **Harmonising definitions under ICDR Regulations and LODR Regulations** | In addition to the above, Committee recommends that the following definitions also be aligned in the LODR and ICDR Regulations:<br>▪ Definition of "associate" under ICDR Regulations to be aligned with that of LODR Regulations.<br>▪ Definition of "financial year" to be included in the ICDR Regulations.<br>▪ Definition of "securities laws" under LODR Regulations to be aligned with that of ICDR Regulations. |

| Recommendation | Particulars |
|---|---|
| | ▪ Definition of "SR equity shares" to be included in the LODR Regulations. |

**ELP Comments**

*The aforementioned changes to the ICDR Regulations and LODR Regulations will ensure parity in both regulations for listed companies and to-be-listed companies, thus reducing the likelihood of any misunderstandings or misinterpretations by companies and stakeholders of companies.*

*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:*

***Manendra Singh, Partner, Email –*** *ManendraSingh@elp-in.com ;*

***Aditi Ladha, Senior Associate, Email –*** *AditiLadha@elp-in.com*