Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018[1]

SEBI Notification No. SEBI/LAD-NRO/GN/2018/01 dated 12th of February, 2018 ─In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to

[1] See, https://www.sebi.gov.in/legal/regulations/feb-2018/sebi-issue-of-capital-and-disclosure-requirementsamendment-regulations-2018_37851.html

further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:-

1. These regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Amendment) Regulations, 2018.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, in regulation 82, clause (c) shall be omitted.

Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018[2]

Securities and Exchange Board of India (SEBI) Notification dated 31st May, 2018 (Published in the Gazette of India on 1st June 2018) reads as follows:

No. SEBI/LAD-NRO/GN/2018/22.—In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, namely:—

1. These Regulations may be called the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Second Amendment) Regulations, 2018.
2. They shall come into force on the date of their publication in the Official Gazette.
3. In the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, –

I. in regulation 70, in sub-regulation (1),-

A. clause (c) shall be omitted; and

B. the proviso to sub-regulation (1) shall be omitted.

II. In regulation 70, after sub-regulation (1) and before sub-regulation (2), the following subregulation shall be inserted, namely,-

"(1A) The provisions of this Chapter, except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the

[2] See, https://taxguru.in/sebi/securities-exchange-board-india-issue-capital-disclosure-requirementsamendment-second-regulations-2018.html

rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 [1 of 1986] or the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] whichever applicable."

SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018[3]

Based on the recommendation of Kotak Committee on Corporate Governance constituted under the Chairmanship of Shri Uday Kotak, SEBI has issued the SEBI (Listing Obligations and Disclosure Requirement) (Amendment) Regulations, 2018 vide its notification No. SEBI/LADNRO/GN/2018/10 dated May 09, 2018 which provides for more stringent Corporate Governance Framework and enhanced compliance mechanism for listed entity in India.

These regulations will come into effect in two phases. Most of the changes will be effective from April 1, 2019, and April 1, 2020, except some provisions which will effective form October 01, 2018.

The major highlights of the notification are as under:

- Top 500 companies to appoint at least one woman independent director by April 01, 2019 and Top 1000 companies to appoint one woman independent director by April 01, 2020 on its Board of Directors. The current regulations require that there must be one woman on board, irrespective of her being an independent or executive director.
- Top 1,000 listed companies to have minimum six directors from April 01, 2019 and for top 2000 listed companies by April 01, 2020.
- A person will not hold directorship position in more than eight listed entities from April 1, 2019 and in not more than seven listed firms from 2020.
- A person will not serve as an independent director in more than seven listed entities.
- A person who is serving as a WTD/MD in any listed entity will not serve as an Independent Director in more than three listed entity.

[3] See, https://www.sebi.gov.in/legal/regulations/may-2018/sebi-listing-obligations-and-disclosurerequirement-amendment-regulations-2018_38898.html

- Any person or entity belonging to the promoter group of the listed entity and holding at least 20 per cent stake in the listed firm will be deemed to be a related party.
- Besides, shareholder approval will be needed for making royalty or brand payments to related parties exceeding 2 per cent of consolidated turnover.
- These amended regulations also cover issues in accounting and auditing practices by listed companies in order to improve effectiveness of board evaluation practices.
- Companies are now required to disclose details about utilisation of funds raised through qualified institutional placement (QIP) and preferential issues in their annual reports.
- Further, companies will have to make disclosure about auditor credentials, audit fees and any material change in such fee as well as detailed reasons for resignation of auditor.
- Top 100 listed entities by market capitalization, determined as on March 31st of every financial year, shall hold their annual general meetings within a period of five months from the date of closing of the financial year.
- The approval of shareholders will be required every year in cases where the annual remuneration payable to a single non- executive director exceeds 50 per cent of the total annual remuneration payable to all non-executive directors.
- Further, shareholders' approval will be needed if the annual fee payable to executive director, who is part of promoter entity, exceeds Rs 5 crore or 2.5 per cent of the net profits of the listed entity.
- Approval is also required in case if there is more than one such director and the aggregate annual fee to such directors is more than 5 per cent of the net profits of the listed entity.
- The quorum for every board meeting of top 1,000 listed firms from April 1, 2019 and of the top 2,000 listed entities from April 1, 2020 will be one-third of its total strength or three directors, whichever is higher, including at least one independent director.
- Special Resolution would be must for non-executive directors over 75 years of age.
- With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.
- Top 500 listed companies also need to have a risk management committee for cyber security.

Role of Company Secretary

Further, SEBI has recognised the significant role played by a Company Secretary as a Governance Professional under the SEBI Listing Regulations and recognised the role to be played by a Company Secretary under various provisions of the aforesaid notification, which are discussed below:

- "Senior management" shall mean officers/personnel of the listed entity who are members of its core management team excluding board of directors and normally this shall comprise all members of management one level below Chief Executive Officer/ Managing Director/ Whole Time Director/ Manager (Including Chief Executive Officer/Manager, in case they are not part of the board) and shall specifically include Company Secretary and Chief Financial Officer **[Regulation 16 (1) (d)]**
- **Secretarial Audit -** Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake Secretarial Audit and shall annex with its annual report, a Secretarial Audit Report, given by a Company Secretary in Practice, in such form as may be specified with effect from the year ended March 31, 2019 **[Regulation 24A]**
- A certificate from a Company Secretary in Practice that none of the directors on the board of the company have been debarred or disqualified from being appointed or continuing as directors of companies by the Board/ Ministry of Corporate Affairs or any such statutory authority **[Schedule V, Part C, Clause(10) (i)]**

Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2018[4]

The Securities and Exchange Board of India (SEBI) via a Notification No. SEBI/LADNRO/GN/2018-15. dated 30th May, 2018 —In exercise of the powers conferred by section 30 read with section 11 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, namely:-

[4] Available at: https://www.sebi.gov.in/legal/regulations/may-2018/securities-and-exchange-board-of-indiacredit-rating-agencies-amendment-regulations-2018_39183.html

1. These Regulations may be called the Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2018.

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999,

i. in regulation 4, clause (d) shall be substituted with the following, namely: –

"(d) a foreign credit rating agency incorporated in a Financial Action Task Force (FATF) member jurisdiction and recognised under their law, having a minimum of five years' experience in rating securities;" ii. in regulation 5, –

a. clause (c) shall be substituted with the following, namely: – "(c) the applicant has a minimum net worth of rupees twenty five crore."

b. after clause (k), the following clause shall be inserted, namely –

"(l) the promoter of the credit rating agency, in terms of regulation 4, has a minimum shareholding of 26% in the credit rating agency."

iii. in regulation 9, after clause (c), the following clauses shall be inserted, namely –

"(d) the credit rating agency shall at all times maintain a minimum net worth of rupees twenty five crore.

Provided that a credit rating agency already registered with the Board under Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, having a net worth less than rupees twenty five crores, shall, increase its net worth to the specified amount within a period of three years from the date of notification of the Securities and Exchange Board of India (Credit Rating Agencies) (Amendment) Regulations, 2018.

(e) the promoter of the credit rating agency, in terms of regulation 4, shall maintain a minimum shareholding of 26% in the credit rating agency for a minimum period of three years from the date of grant of registration by the Board.

Provided that this clause shall not be applicable to a credit rating agency already registered with the Board under Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999, at the commencement of Securities and Exchange Board of India (Credit Rating Agencies)(Amendment) Regulations, 2018.

(f) a credit rating agency shall not carry out any activity other than the rating of securities offered by way of public or rights issue.

Provided that nothing in these regulations shall prohibit a credit rating agency from engaging in any other activity in so far as it may be required by a financial sector

regulator as defined under section 3(18) of the Insolvency and Bankruptcy Code, 2016.

Provided further that if a credit rating agency is carrying out activities other than the activity required by a financial sector regulator, such activity shall be segregated to a separate entity within a period of two years from the date of notification of Securities and Exchange Board of India (Credit Rating Agencies)(Amendment) Regulations, 2018." iv. In regulation 15, sub-regulation (1) shall be substituted by the following, namely-

"(1) Every credit rating agency shall, during the lifetime of securities rated by it continuously monitor the rating of such securities, unless the rating is withdrawn, subject to the provisions of regulation 16(3)."

v. in regulation 16, –

a. sub-regulation (1) shall be substituted by the following, namely-

"(1) Every credit rating agency shall carry out periodic reviews of all published ratings during the lifetime of the securities, unless the rating is withdrawn, subject to the provisions of regulation 16(3)."

b. sub-regulation (2) shall be substituted by the following, namely-

"(2) If the client does not co-operate with the credit rating agency so as to enable the credit rating agency to comply with its obligations under regulation 15 of these regulations, the credit rating agency shall carry out the review on the basis of the best available information or in the manner as specified by the Board from time to time.

Provided that if owing to such lack of co-operation, a rating has been based on the best available information, the credit rating agency shall disclose to the investors the fact that the rating is so based."

c. sub-regulation (3) shall be substituted by the following, namely-

"(3) A credit rating agency shall not withdraw a rating so long as the obligations under the security rated by it are outstanding, except where the company whose security is rated is wound up or merged or amalgamated with another company or as may be specified by the Board from time to time"

vi. after regulation 24, the following regulation shall be inserted, namely –

"Shareholding in a credit rating agency 24A.

(1) A credit rating agency shall not:

a. directly or indirectly, hold 10 per cent or more shareholding and/ or voting rights in any other credit rating agency, or

b. have representation on the Board of any other credit rating agency.

Provided that a credit rating agency may, with the prior approval of the Board, acquire shares and/ or voting rights exceeding 10 per cent in any other credit rating agency only if such acquisition results in change in control in the credit rating agency whose shares are being acquired. On the basis of the prior approval sought by the acquirer, the Board may approve the acquisition in the interest of investors, market integrity and stability.

(2) A shareholder holding 10 per cent or more shares and/ or voting rights in a credit rating agency shall not hold 10 per cent or more shares and/ or voting rights, directly or indirectly, in any other credit rating agency.

Provided that the said restriction shall not apply to holdings by Pension Funds, Insurance Schemes and Mutual Fund Schemes.

Explanation: For the purpose of this regulation, a "credit rating agency" means a credit rating agency registered with the Board.

Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018[5]

Securities and Exchange Board of India via a Notification No. SEBI/LAD-NRO/GN/2018/20 dated 31st May, 2018 —In exercise of the powers conferred under section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Board hereby makes the following Regulations to further amend the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, namely,—

1. These Regulations may be called the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018.

[5] See, https://www.sebi.gov.in/legal/regulations/jun-2018/securities-and-exchange-board-of-india-substantialacquisition-of-shares-and-takeovers-amendment-regulations-2018_39191.html

2. They shall come into force on the date of their publication in the Official Gazette.

3. In the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011,-

I. in regulation 3, in sub-regulation (2), after the proviso and before the explanation to subregulation (2), the following proviso shall be inserted, namely,-

"Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3"

Amendments to Prevention of Money-laundering (Maintenance of Records) Rules, 2005[6]

1. Government of India (GoI) had notified Prevention of Money-laundering (Maintenance of Records) Second Amendment Rules, 2017 (PML Second Amendment Rules) on June 01, 2017 making the Aadhaar number issued by the Unique Identification Authority of India (UIDAI) and Permanent Account Number (PAN) or Form No. 60 as defined in Incometax Rules, 1962 mandatory for both new and existing accounts with the financial market intermediaries including securities market intermediaries. Copy of the Gazette notification no. G.S.R.538 (E) dated June 01, 2017 is attached as Annexure 1. Annexure 1 could be accessed at https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd1_p.pdf

[6] Available at: https://www.sebi.gov.in/legal/circulars/jun-2018/amendments-to-prevention-of-moneylaundering-maintenance-of-records-rules-2005_39207.html

2. Subsequently, GoI has issued the following notifications –

i. PML(Maintenance of Records) Fifth Amendment Rules, 2017,regarding explanation of the term "certified copy" and a list of deemed OVDs for limited purpose of proof of address(in case OVD submitted does not contain updated address). Copy of the Gazette notification no. G.S.R. 1300(E) dated October 16, 2017, is attached as Annexure 2. Annexure 2 could be accessed at https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd2_p.pdf

ii. PML (Maintenance of Records) Sixth Amendment Rules,2017, regarding acceptable documents in case the OVDs presented by a foreign national does not contain address details. Copy of the Gazette notification no. G.S.R. 1318(E) dated October 23, 2017, is attached as Annexure 3, which is available at https://www.sebi.gov.in/sebi_data/commondocs/jun-2018/annmirsd3_p.pdf

3. Further, as per PML notification dated March 31, 2018 issued by Department of Revenue, Ministry of Finance pursuant to the interim order dated March 13, of Hon'ble Supreme Court, the Central Government has extended the date of submission of Aadhaar Number, and Permanent Account Number or Form 60 by the clients to the reporting entity till a date to be notified subsequent to pronouncement of final judgment in W.P. (C) 494/2012 etc. Copy of the Gazette notification no. G.S.R. 314(E) dated March 31, 2018 is attached as Annexure 4.

4. All the above notifications issued by GoI in relation to PML Rules are brought to notice for necessary compliance.

5. Further, as per Clause 2(b)(4) of PML Second Amendment Rules, in case PAN is not submitted by any client at the time of opening of account based relationship, one certified copy of an "officially valid document" (OVD) shall be submitted. However, it is hereby clarified that for securities market, in terms of SEBI circular dated April 27, 2007, the requirement of PAN would continue to be mandatory for completing the KYC process.

6. The Stock Exchanges and Depositories are directed to:

a. bring the provisions of this circular to the notice of the Stock Brokers and DPs, as the case may be, and also disseminate the same on their websites;

b. make amendments to the relevant bye-laws, rules and regulations for the implementation of the above decision in co-ordination with one another, as considered necessary;
c. monitor the compliance of this circular through half-yearly internal audits and inspections; and
d. communicate to SEBI, the status of the implementation of the provisions of this circular.

7. In case of Mutual Funds, compliance of this circular shall be monitored by the Boards of Asset Management Companies and the Trustees and in case of other intermediaries by their Board of Directors.