

SEBI's Amendments to The LODR: Increasing Corporate Responsibility and Governance for India Inc

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Introduction

In line with its intent to strengthen corporate governance in respect of listed companies, on June 14, 2023, the Securities and Exchange Board of India ("SEBI") passed significant amendments to the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") vide the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 ("Amendment Regulations 2023"). Notably, the Amendment Regulations 2023 feature extensive changes to the disclosure regime currently applicable to listed companies. The Amendment Regulations 2023 implement key proposals that have been discussed since some time by SEBI through its consultation papers, which were also adopted by SEBI in its Board Meeting dated March 29, 2023 with an intent to increase transparency and accountability of listed companies, and its major shareholders, towards all stakeholders.

While the Amendment Regulations 2023 were passed on June 14, 2023, majority of these amendments shall be effective from July 14, 2023 (i.e., 30 days from the date of their publication within the official gazette).

The Amendment Regulations 2023 come on the heels of major occurrences within the listed space (such as the Adani-Hindenburg and the Amazon-Future Group sagas) and an increasing demand for ensuring market symmetry to protect the rights of all investors. With a combination of investors that have become vocal and do not shy away from pushing back on shareholder resolutions and regulators that have actively been developing stewardship codes to facilitate such shareholder participation, it is likely that India shall move towards higher standards of corporate governance over the coming years.

In this backdrop, we analyse some important changes to the LODR through the Amendment Regulations 2023.

1. Disclosures for certain types of agreements binding listed companies

Amendment

The Amendment Regulations 2023 have introduced Regulation 30A to the LODR, which is based on the concept proposed by SEBI in its consultation paper released in February 2023. We had analysed this proposal of SEBI in our previous hotline.

Regulation 30A requires shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel and employees of a listed company or of its holding, subsidiary and associate company to disclose any agreements (to which they are a party) that fall under the scope of Clause 5A of Para A of Part A to Schedule III of the LODR ("Clause 5A") to the listed company, in case the listed company is not a party, within two working days from the date on which they have entered into such agreement.

Clause 5A is in respect of events which are to be disclosed as they are "deemed material" and are accordingly not subject to the materiality determination that is ordinarily undertaken by listed companies for disclosures as per Para B, Part A of Schedule III under the LODR. According to the newly inserted Clause 5A, any agreements which indirectly, directly, or potentially, or have the purpose or effect of: (i) impacting the management; or (ii) impacting control of the listed company, or (iii) imposes any restriction or creates liability(ies) upon the listed company, and are not in the ordinary course of business of the listed company, are required to be disclosed by the listed company under Regulation 30A. The scope of this disclosure will also extend to any subsequent rescission, amendments or alterations to these agreements. In the event that such an agreement is subsisting on the date of notification of the Amendment Regulations, the existence of these agreements should be notified to the stock exchanges and listed on the website. Additionally, listed companies will also be required to disclose the following details within their annual report for FY 2022-23 or 2023-24: (i) number of subsisting agreements on the date of notification of clause 5A; (ii) salient features of these agreements; and (iii) link to the webpage where complete details of these agreements are available.

A major change from the consultation paper released in February 2023 is that the requirement of seeking prior board and shareholder ratification of these agreements has now been removed, and the amendment in its current form is restricted only to making of public disclosures.

In the Indian context, recent matters such as the hostile takeover of NDTV by the Adani Group and the Amazon-Future Group dispute bring out the potential impact of this amendment. Prior to the takeover, the promoters of NDTV had entered into a loan agreement with an entity called Vishvapradhan Commercial Private Limited ("VCPL"), and the terms of this loan agreement also granted VCPL a right to exercise share warrants that would, upon exercise at the discretion of VCPL, amount to 99.99% of the equity share capital of NDTV's promoter company RRPR Holding Private Limited, on a fully diluted basis. It was this agreement that ultimately facilitated Adani Group's hostile takeover of NDTV. Given that the listed company (in this case, NDTV) was not party to this agreement, this would not ordinarily have warranted disclosure until the insertion of Regulation 30A, and therefore this proverbial "hanging sword" would have been unknown to other investors in the listed company. Similarly, at the heart of the Reliance-Future Group dispute is an agreement entered into by Future Coupons with Amazon, for sale of 49% stake of Future Coupons to Amazon. The terms of the underlying agreement provided Amazon a long-term call option (exercisable at its discretion, any time within 3-10 years from the date of the agreement) to buy all or part of Future Coupon's stake in the listed entity, Future Retail. Additionally, the agreement also included a right of

first refusal in the hands of Amazon, along with a non-compete obligation barring Future's dealings with competitors of Amazon, including Reliance. This is another interesting example of an agreement, to which a listed company is not a party, that has the effect of significantly amending its management and control and would now trigger a disclosure under Regulation 30A.

The scope of Clause 5A is very broad, and in the absence of guidance from courts or the regulator, may create an onerous obligation. Potentially, promoter agreements executed with third parties creating security packages, inter se voting agreements amongst shareholders, warrant agreements, proxy agreements, and agreements between a shareholder and his nominee to the board of the listed company are some agreements that may now have to be disclosed vide the Amendment Regulations 2023.

To-do: From our analysis of the changes proposed within the Amendment Regulations 2023, the following action items emerge for Indian listed companies:

1. Listed companies must, on priority, commence the process of identification of all such agreements that fall under the scope of Regulation 30A. Separately, listed companies may also reach out to all concerned stakeholders in order to assess whether they may have any agreements that may require disclosure under the Amendment Regulations 2023.
2. Since the listed company is required to specify the "salient features" of these agreements on their website and annual report (the scope of which is currently undefined), listed companies may have to exercise added caution whilst undertaking the determination of all the clauses / features of these agreements that require express disclosure.
3. For stakeholders (other than the listed company) that are likely to be impacted by the disclosures under the Amendment Regulations 2023, it is important to determine whether they intend to continue in these agreements or novate / terminate them (to prevent disclosure of the agreement or other related confidential information). Given that the consequences of breach of this amendment have not been specified in respect of such persons, it is important for them to make an informed assessment in light of the potential long-term consequences that may arise as well as SEBI's untrammelled powers under the SEBI Act.

2. Materiality threshold for disclosures under Para B of Part A of Schedule III

The LODR provides for certain set of events, which are not 'deemed to be material' and a listed company shall apply a materiality test to ascertain if such events are material enough to be disclosed. These events are mentioned in Para B, Part A of Schedule III. As per Amendment Regulations 2023, the existing Regulation 30 (4) (i) (a) (c) has been replaced with a new construct which provides specific materiality thresholds for when such events need to be disclosed. Prior to the Amendment Regulations 2023, the events mentioned in Para B of Part A of Schedule III would be required to be disclosed based on a three-pronged subjective test of materiality. Such criteria of materiality used to be as follows - first, whether the omission of disclosure of such an event or circumstance, which when disclosed, would lead to a change of the information already available to the public, second, whether the disclosure would result in a significant market reaction and third, in case of inapplicability of the points mentioned hereinabove, whether the information has been deemed material by the

board of directors of the listed company.

For the purposes of having a uniform system, listed companies were also required to maintain a policy for determination of materiality as per the LODR Regulations ("Materiality Policy"). However, most Materiality Policies were vague and did not provide for an objective determination of materiality, therefore providing the listed companies an option to not disclose an event.

Amendment

As per the Amendment Regulations 2023, the new criterion for determining materiality is objective in nature. The listed company shall disclose any matter which is mentioned in Para B of Part A of Schedule III, where the omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:

1. two percent of the turnover, as per the last audited consolidated financial statements of the listed company;
2. two percent of net worth, as per the last audited consolidated financial statements of the listed company, except in case the arithmetic value of the net worth is negative; or
3. five percent of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statement of the listed company.

The Amendment Regulations 2023 also includes sub-regulation (d) to Regulation 30 (4) (i) (a), the proviso to which states that any event of information which is continuing in nature and becomes material as a result of the Amendment Regulations 2023, shall be disclosed by the listed company within thirty days from the date of notification of the Amendment Regulations 2023.

Additionally, the Amendment Regulations 2023 inserts a proviso to Regulation 30 (4) (ii) which earlier required listed companies to maintain a Materiality Policy. The proviso provides that any part of the Materiality Policy framed by a listed company shall not dilute a requirement specified under the LODR and such a Materiality Policy shall also assist a relevant employee of a listed company in identifying any potential material event or information and report the same to the key managerial personnel of the listed company, for them to determine materiality and undertake disclosure.

A consultation paper dated November 12, 2022 published by SEBI for review of disclosure requirements for material events under LODR had initially proposed this amendment. While most of the proposals in relation to materiality thresholds have been implemented by SEBI through the Amendment Regulations 2023, one key deviation from the initial proposal is that it specified reliance only on the 'last audited standalone financial statement of the listed company' for the aforementioned thresholds. The actual amendments as per the Amendment Regulations 2023 connect the thresholds to the last audited consolidated financial statements of the listed company. The revamping of materiality thresholds should be read along with other steps taken by SEBI to reduce information asymmetry in the market, such as amending the definition of 'unpublished price sensitive information' ('UPSI') under SEBI (Prohibition of Insider Trading) Regulations, 2015. The amended definition of UPSI now includes any disclosure of a material event made as per Regulation 30 of LODR.

Analysis

The introduction of the quantitative thresholds will now allow for a more robust disclosure regime where any ambiguity around the determination of materiality will be eliminated to a large extent. One key impact would be on litigations and disputes. There have been multiple instances where listed companies do not disclose litigations or disputes owing to the fact that ‘pendency of any litigations or disputes or the outcome thereof which may have an impact on the listed company’ falls under Para B of Part A of the Schedule III. There are multiple instances where listed companies have not disclosed litigations and when questioned by SEBI, such listed companies take shelter on the fact that as per their analysis the litigation was not material. However, now with the quantitative thresholds coming into effect, all litigation above the thresholds would need to be disclosed mandatorily.

However, on the flip side, given that the objective criterion uses a “lower of” threshold, it might lead to nonmaterial events being disclosed in companies which are close to a break-even point, or near nil net worth companies or companies with low turnovers (such as listed holding companies).

To-do: From our analysis of the changes proposed within the Amendment Regulations 2023, the following action items emerge for Indian listed companies:

1. Update the Materiality Policy to include the new quantitative thresholds, verify that the Materiality Policy does not dilute any requirements as per the LODR and provide for a construct in the Materiality Policy for relevant employees to identify events and information that may be material and bring the same to the notice of the KMPs of the listed company.
2. Analyze the existing events or information which are ongoing in nature and if they meet the quantitative thresholds, disclose the same to the stock exchanges prior to July 14, 2023.

3. Verification of market rumours by listed companies

Amendment

Prior to the Amendment Regulations 2023, in case of any information was already leaked to the public through media or if there were market rumours, there were only two possibilities – (a) the listed company may voluntarily confirm or deny any reported event or information to the stock exchange under Regulation 30 (11); or (b) the stock exchanges would, based on the reports, ask the listed company for clarity or information on the reported event or information. One key point to note here is that the listed company ‘may’ confirm or deny such information. Therefore, it was not an obligation of the listed company. However, the Amendment Regulations 2023 now makes verification of market rumours by certain categories of listed companies mandatory.

The Amendment Regulations 2023 has inserted a proviso to Regulation 30 (11) of the LODR, per which the top 100 listed companies (with effect from October 1, 2023) and thereafter top 250 listed companies (with effect from April 1, 2024), shall have to mandatorily confirm, deny or clarify any reported event or information in mainstream media, on any of the matters dealt with in Regulation 30 of the LODR. Confirmation, denial or clarification shall only be required if the reported event or information is not general in nature and which indicates that rumours of an impending specific material event or information are circulating amongst the investing public. It must also be done as

soon as possible and not later than twenty-four hours from the reporting of the event or information.

The proviso clarifies that the top 100 listed companies and top 250 listed companies shall be determined on the basis of market capitalization, as at the end of immediately preceding financial year. The Amendment Regulations 2023 now also provide for a definition of 'mainstream media'. As per the definition, mainstream media shall include print and electronic mode of the following:

1. Newspapers registered with the Registrar of Newspapers for India;
2. New channels permitted by Ministry of Information and Broadcasting under the Government of India;
3. Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021;
4. Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India.

Analysis

The intent of this amendment is clearly to ensure that there is information symmetry in the market. However, we feel the scope of the regulation is so wide as to be completely unworkable and this rule is likely to be observed only in its breach. It would be relevant to consider this amendment in the backdrop of a recent SAT ruling on a similar subject matter. SEBI vide its order dated June 20, 2022 had penalized Reliance Industries Limited for not clarifying a market rumour in relation to the Jio-Facebook deal. The rationale given by Reliance Industries Limited for not clarifying the market rumours was that when the articles were published in the newspapers, there was only a term sheet that was signed for the Jio-Facebook deal and there was no deal certainty, a disclosure was made post execution of definitive transaction documents. SEBI, while disregarding the rationale, was of the view that a listed company should clarify, confirm or deny market rumours in order to maintain information symmetry in the market.

However, when this order was appealed in front of the Securities Appellate Tribunal ("SAT"), the SAT vide its order dated September 27, 2022 stayed SEBI's order. During the submissions in front of the SAT, one key consideration raised by the SAT was how feasible would it be for any listed company to reply to every sort of information that is disseminated from across the globe.

In the backdrop of the aforementioned orders, it is pertinent to note that the definition of mainstream media as per the Amendment Regulations 2023 has been kept very wide and specifically includes:

1. Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021;
2. Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India.

While point (b) above includes market rumours across the globe by including newspapers and news channels in jurisdictions outside India, point (a) would have to be read together with the Information

Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (“Intermediary Guidelines”). As per the Intermediary Guidelines, a “publisher of news and current affairs content” generally means an online paper, news portal, news aggregator, news agency and such other entity called by whatever name, which is functionally similar to publishers of news and current affairs content but shall not include newspapers, replica e-papers of the newspaper and any individual or user who is not transmitting content in the course of systematic business, professional or commercial activity. Given the wide range of matters covered under Regulation 30 of the LODR, the number of potential fora for news covered, and absence of any threshold for the term “investing public,” this rule seems likely to be still born. Worse, we feel that it is prone to abuse by motivated market participants who wish to get their speculations about any particular listed company, confirmed. Just write an opinion piece in any medium of their choice and then demand that the listed company confirm, deny or clarify such speculation.

To-do: From our analysis of the changes proposed within the Amendment Regulations 2023, the following action items emerge for Indian listed companies:

1. The listed company shall analyse, based on its market capitalization for the previous financial year, if its falls within the top 150 or top 250 listed companies, in order to check the extent of compliances required under the Amendment Regulations 2023.
2. Any listed company falling within the aforementioned category may also put in place a vigorous vigilance mechanism to identify and keep track of any market rumours arising from ‘mainstream media’.

4. Board permanency

Amendment

Regulation 17 (1D) has been inserted to the LODR vide the Amendment Regulations 2023, according to which, from April 1, 2024, directors of listed companies will require shareholder approval in a general meeting at least once in every five years from the date of appointment / reappointment. Additionally, in case there is a director on the board of a listed company (on March 31, 2024) who has served on the board of the listed company for five years or more (without shareholder approval), such person’s continuation on the board shall be subject to shareholder approval in the first general meeting after March 31, 2024.

However, the Amendment Regulations 2023 specify that this does not extend to: (i) whole time directors, managing directors, managers, independent directors or directors whose appointment or reappointment otherwise requires shareholders’ approval under the Companies Act 2013 or the LODR; (ii) directors appointed pursuant to an order of a tribunal or court; (iii) nominee director of the Indian government on the board of a listed company, other than a public sector company; (iv) nominee director of a financial sector regulator on the board of a listed company; (v) a director nominated by a financial institution registered with or regulated by the Reserve Bank of India under a lending arrangement in its normal course of business; and (vi) a director nominated by a SEBI registered debenture trustee Board under a subscription agreement for the debentures issued by the listed company.

These recommendations have come in the backdrop of SEBI's consultation paper released in February 2023, addressing the issue of board permanency. Within this consultation paper, SEBI noted that multiple promoter groups within listed entities were enjoying board permanency on the boards of their companies, even in cases where substantial stake had been diluted. Given the Companies Act 2013 provides that not all directors are liable to retirement by rotation SEBI adopted its proposal in this consultation paper by way of the Amendment Regulations 2023. This ensures that the shareholders of the listed company have the option to evaluate the performance of all the members of the current board of directors of the listed company. Additionally, while the consultation paper only carved out the appointment of directors by a court as an exemption to the applicability of requirement of shareholders' approval, the Amendment Regulations have extended the scope of this carve-out to nominees of the government, registered debenture trustees, and registered financial institutions.

Analysis

It is likely that within the Indian context, these amendments have been brought about in light of the board appointments of companies such as Dish TV Limited and JK Cements Ltd. Three months prior to its listing in 2007, Dish TV Limited amended its articles of association by passing of a board resolution for appointment of Jawahar Goel as an additional director "not liable to rotation". On the same day in 2007, he was also appointed as the managing director of the company. In the annual general meeting of 2022, the shareholders of Dish TV Limited (such as Yes Bank, holding substantial majority in the company) rejected the candidature of Mr. Goel as a managing director. However, due to the aforesaid clause within the articles of association and other legal issues, Mr. Goel agreed to step down as the managing director only after a long-drawn legal battle with Yes Bank, that was adjudicated by the Bombay High Court. Similarly, in the case of JK Cements Ltd., minority shareholders had rejected a resolution in 2021, wherein the company proposed to amend its articles of association to provide a lifetime tenure to the promoter directors of the company.

Lastly, given the active involvement of shareholders within such deliberations, the role of proxy advisory firms shall likely rise, and reports / studies conducted by these entities into: (i) the working of the listed company; and (ii) the general performance of a director whose approval is slated to be tabled before the shareholders, is likely to become a potential reference point.

To-do: From our analysis of the changes proposed within the Amendment Regulations 2023, the following action items emerge for Indian listed companies:

1. Since the impact of this amendment is to occur from March 31, 2024, listed companies may peruse the term of each of the directors to determine which of their appointments and reappointments shall be subject to shareholders' approval.
2. The articles of association / terms of relevant documents of listed companies will have to be amended in order to ensure that no director is, going forward, deemed to have been appointed on a "permanent" basis or is "not liable to rotation".
3. Given the increasing shareholder activism, listed companies may have to provide detailed reasons, including the work undertaken, by a director whose appointment is to be subject to shareholders' approval.

5. Approval of special rights to shareholders

Amendment

Regulation 31B (1) has been inserted vide the Amendment Regulations 2023 in order to subject any special rights, granted to any set of shareholders of a listed company, to shareholders' approval by a special resolution, once in every five years (beginning from the date on which such special right has been granted). Any such special rights available as on the date of coming into force of the Amendment Regulations is to be subject to shareholders' approval by special resolution, within five years from the date of coming into force of the Amendment Regulations. However, this approval is not required in case of special rights granted to: (i) a registered financial institution; and (ii) a registered debenture trustee, if either of these become shareholders owing to lending arrangements or debenture subscription agreements. Notably, however, the scope of the term "special rights" has not been defined.

These recommendations have been accepted pursuant to SEBI's consultation paper released in February 2023. In order to attract large investors, companies often provide a host of special rights to investors that invest in the company prior to the initial public offering ("IPO"). While the nature of rights granted differs based on the requirements of the incoming investors, these often include rights relating to nomination, anti-dilution, information rights, tag along rights, etc. However, given that the composition of shareholders of a listed company can often change radically over a period of time, the benefit of this provision will be that current shareholders would not have to live in perpetuity with special rights provided to an investor by a past set of shareholders.

While SEBI's intent may have been laudable, we feel the ultimate form of the rule is excessive and may actually be detrimental to the interests of listed companies. A better construct might have been adequate disclosure, along with approval by shareholders at the inception of the special rights package. Any future shareholder of the company would then have invested with full knowledge of the governance landscape of the company. However, with the present formulation, no large investor can be assured of a rights package beyond a period of 5 years, which may discourage significant investments by patient capital in listed companies.

To-do: From our analysis of the changes proposed within the Amendment Regulations 2023, the following action items emerge for Indian listed companies:

1. As an immediate target, listed companies should peruse their shareholders' agreements, articles of association and / or other relevant documents in order to identify special rights granted to shareholders prior to their listing. In light of the absence of "special rights" being defined in the Amendment Regulations, guidance may be taken from the consultation paper of February 2023 in order to identify the potential rights that may require shareholders' approval in the coming five years.
2. Entities proposing to pursue an IPO must also undertake a similar exercise in order to ensure that they do not run afoul of the intent of the Amendment Regulations 2023.

6. Timelines for disclosure

Amendment

The Amendment Regulations 2023 has revamped the timelines for disclosure of material events by the board of a listed company. Prior to the Amendment Regulations 2023, the timeline for disclosure was as soon as reasonably possible but not later than twenty-four (24) hours from the occurrence of the event or information. Additionally, in case of a delay in disclosing within twenty-four hours, the listed company also had to provide reasons for the delay.

The Amendment Regulations 2023 now provides for a more segregated and detailed timeline for disclosure based on the nature of the event or information. The timelines are as follows:

S. No	Type of event or information	Timeline
1.	In case the event or information arises from a board meeting of the listed company or a decision pertaining to the event or information is taken in a board meeting of the listed company	Thirty minutes from the closure of the meeting of the board of directors
2.	In case the event or information emanates from within the listed company	Twelve hours from the occurrence of the event or information
3.	In case the event or information does not emanates from within the listed company	Twenty-four hours from the occurrence of the event or information

However, if Schedule III of LODR provides for a specific timeline for any specific type of event or information, the timelines mentioned in Schedule III shall be followed.

The proposal to change the timelines for disclosure was initially proposed under the Consultation Paper dated November 12, 2022. There are no deviations from the initial proposal in relation to the same.

Analysis

In essence, the Amendment Regulations 2023 has reduced the timeline for disclosure from a standard twenty-four hours to twelve hours in case the information emanates from within the listed company and thirty-minutes if it arises in a board meeting. The reduction has been made in light of the new digital age where the presence of social media has made flow of information faster and easier. SEBI in its Consultation Paper dated November 12, 2022 also pointed out how listed companies would disclose information at the last hour, thereby increasing risk of such information being leaked on social media. Now with the reduced timelines, the risk of leakages will be considerably lower.

To-do: From our analysis of the changes proposed within the Amendment Regulations 2023, the following action items emerge for Indian listed companies:

1. Listed companies should ensure that any disclosure post July 14, 2023, is done as per the updated timelines or as per the specific timelines as provided under Schedule III for specific disclosures.

7. Extension of timelines on the applicability of the Amendment Regulations to high value listed debt entities (“HVDLEs”)

The 2021 amendments to the LODR had made the obligations under Chapter IV applicable to HVDLEs. However, HVDLEs had time until March 31, 2023, to ensure compliance on a ‘comply or explain’ basis. However, Regulation 15(1A) has been amended to extend the timeline for applicability of the obligations under Chapter IV of the LODR, in respect of HVDLEs, to a “comply or explain” basis until March 31, 2024 (as opposed to March 31, 2023). This extends the current framework of “comply or explain” for another year, after which HVDLEs must mandatorily comply with Chapter IV.

8. Introduction of new disclosure obligations under Schedule III of LODR

In addition to all the amendments mentioned above, the Amendment Regulations 2023 also makes changes to Schedule III, to include new disclosure requirements and amend certain existing disclosure requirements.

New disclosure requirements under Schedule III:

1. Disclosures in relation to any agreement entered into by a stakeholder of a listed company or its holding, subsidiary or associate company that has an impact on the management or control of the listed company or imposes any restriction or liability on the listed company (Please see point #1 above for a detailed analysis on this point).
2. Disclosure in relation to resignation of any key managerial personnel, senior management, compliance officer or director other than any independent director, along with the letter of resignation and detailed reason for resignations within seven days from such resignation coming into effect.
3. Disclosure in relation to any event where the managing director or chief executive officer of a

listed company was indisposed or unavailable to fulfill the requirements of the role in a regular manner for more than forty-five days in any rolling period of ninety days. This has to be disclosed along with the reason for such indispensability or unavailability.

4. Disclosure in relation to any announcement or communication through social media intermediaries or mainstream media by directors, promoters, key managerial personnel or senior management of a listed company, in relation to any event or information which is material for the listed company and is not already made available in the public domain.
5. Disclosure in relation to any action that is initiated, or any order passed by any regulatory, statutory, enforcement authority or judicial body against the listed company or its directors, key managerial personnel, senior management, promoter or subsidiary in relation to a listed company. The orders or actions might be in relation to any of the following: (a) search or seizure; or (b) re-opening of accounts under Section 130 of the Companies Act, 2013; or (c) investigation under the provision of Chapter XIV of the Companies Act, 2013.

Conclusion

The Amendment Regulations 2023 have brought about a flurry of far-reaching changes to the extant LODR regime in terms of the disclosures and obligations of all stakeholders concerned with the operations of listed companies, within the backdrop of increased activism of SEBI through release of amendments to multiple regulations and consultation papers analysing the present framework. The amendments aim to ensure that multiple, often conflicting interests, of stakeholders, such as transparency and accountability, fair market practices, economic growth, corporate development are balanced and maintained at the same time, with the overall intent to ensure holistic progress within the listed space. It will be interesting to observe the operation of these amendments, proposals of SEBI and their cumulative impact on listed companies in India Inc.

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1. Minutes of this board meeting are available at: https://www.sebi.gov.in/media/press-releases/mar-2023/sebi-board-meeting_69552.html.
 2.

Institutional Investor Advisory Services, “Corporate Governance Scores – Increasing Expectations” (March 2023), available at: https://ias-cms.s3.ap-south-1.amazonaws.com/CG_Scores_2022_Final_01_03_2023_140e30b57c.pdf (p. 45).
 3. Consultation Paper on Strengthening Corporate Governance at Listed Entities By Empowering Shareholders – Amendments to the SEBI (LODR) Regulations, 2015 (February 2023), available at:

https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-strengthening-corporate-governance-at-listed-entities-by-empowering-shareholders-amendments-to-the-sebi-lodr-regulations-2015_68261.html

4. Available at: <https://www.nishithdesai.com/NewsDetails/9562>
5. Outlook Business Team, “Adani Entities make Open Offer for 26% stake in NDTV”, Outlook (August 23, 2023), available at: <https://www.outlookindia.com/business/adani-entities-make-open-offer-for-26-stake-in-ndtv--news-218390>.
6. Utkarsh Anand, “Decoding the multilayered Amazon-Future-Reliance legal drama”, Hindustan Times (January 10, 2022), available at: <https://www.hindustantimes.com/india-news/decoding-the-multilayered-amazon-future-reliance-legal-drama-101641839370846.html>.
7. Ibid.
8. Please refer to our previous hotline analyzing these agreements in the context of the consultation paper: <https://www.nishithdesai.com/NewsDetails/9562>.
9. Few examples of events mentioned in Para B, Part A and Schedule III are as follows:
 - (a) Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division;
 - (b) Agreements (viz. loan agreement(s) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof
 - (c) Pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity
10. See generally, Regulation 30 of the LODR read with Schedule III of the LODR.
11. SEBI, Consultation Paper on Review of disclosure requirements for material events or information under SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (February 2023), available at: https://www.sebi.gov.in/reports-and-statistics/reports/feb-2023/consultation-paper-on-streamlining-disclosures-by-listed-entities-and-strengthening-compliance-with-sebi-listing-obligations-and-disclosure-requirements-regulations-2015_68194.html
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Some of the obligations specified in Chapter IV relate to constitution of an audit committee, nomination and remuneration committee, stakeholders’ relationship committee, risk management committee, and formulation of a vigil mechanism to address any whistleblower

complaints. Additionally, Chapter IV also discusses the manner in which related party transactions are required to be approved and reviewed.

24. Some other amendments introduced vide the Amendment Regulations 2023 include: (i) requirement of providing ESG disclosures in the annual reports of listed companies; (ii) vacancies in the offices of identified KMPs and directors must be filled by the listed company within 3 months from the date of vacancy; (iii) disclosures of any cybersecurity and data privacy incidents to be provided within the quarterly compliance report on corporate governance; (iv) disclosure requirements for non-convertible securities are to be provided to the stock exchange within 1 day from the date on which payment of interest, dividend, or repayment of principal becomes due.

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