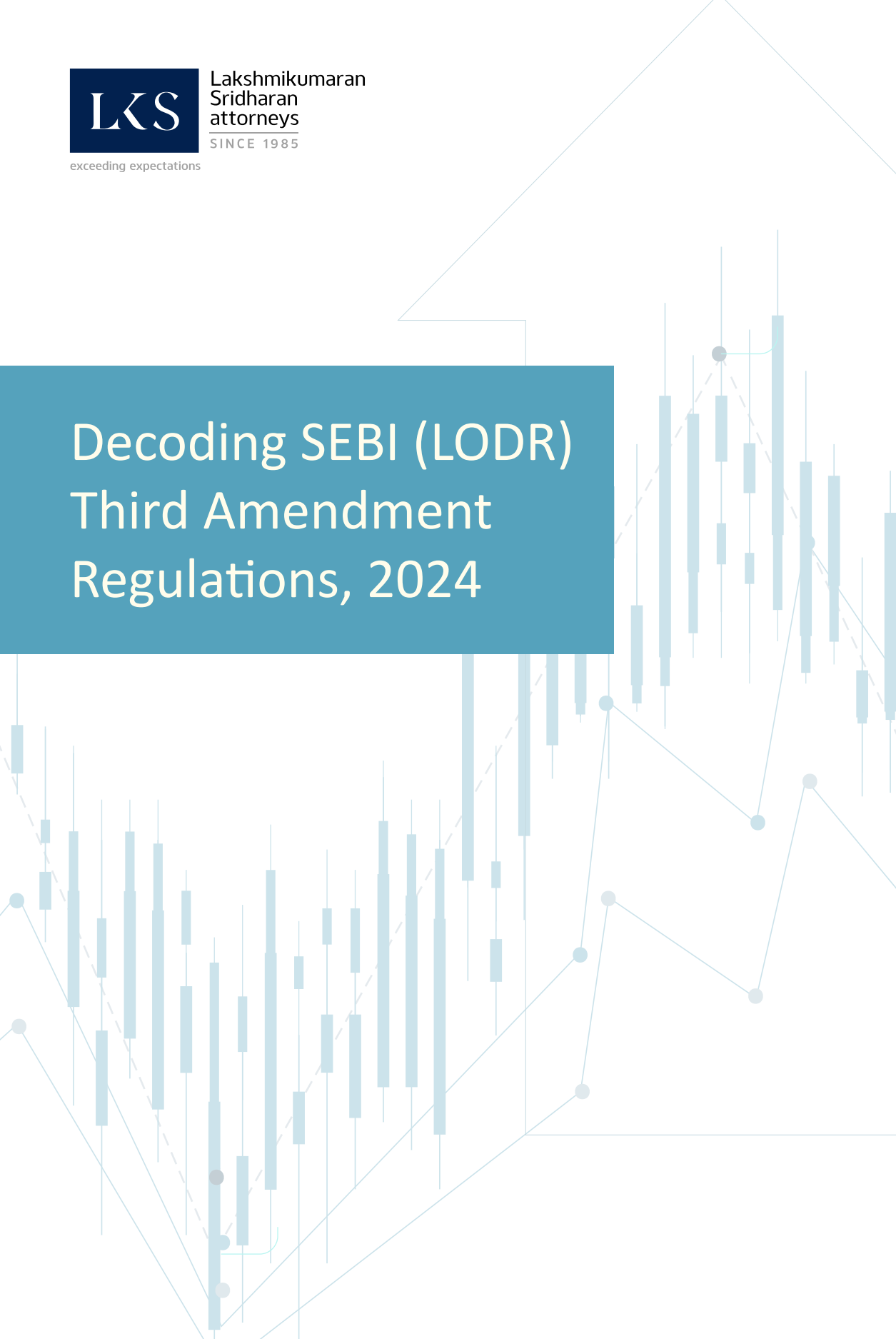




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# Decoding SEBI (LODR) Third Amendment Regulations, 2024





The Securities and Exchange Board of India ("**SEBI**") has amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("**SEBI LODR**") by way of SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2024 ("**Amended Regulations**") on December 12, 2024.

The key provisions of the Amended Regulations can be noted as under:

### **Regulation 17: Compliance Requirements for Certain Activities of the Board of Directors**

The Amended Regulations provide that for the appointment or re-appointment of a person as a non-executive director who has attained seventy-five (75) years of age, permission by way of a special resolution as prescribed under Regulation 17(1A) shall be sought at the time of such appointment/re-appointment or prior to the attainment of such age, thereby clarifying the timelines for such approvals.

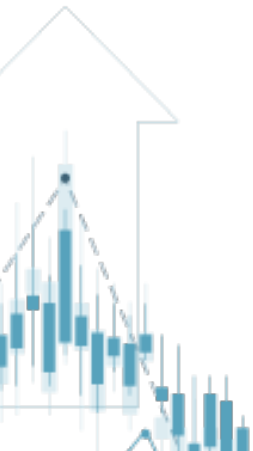
Further, Regulation 17 of SEBI LODR requires listed companies to obtain shareholders' approval for the appointment/reappointment of a director or manager at the next general meeting or within three (3) months from the date of appointment, whichever is earlier. Vide the Amended Regulations, SEBI has now prescribed that the time taken for obtaining approvals from regulatory, government, or statutory authorities, if applicable, shall be excluded from the aforementioned timeline of three (3) months. This is a welcome change for listed entities subject to approvals from the authorities as stated above.

The Amended Regulations also exclude the applicability of the requirements under Regulation 17 (1C) (a) to the appointment or re-appointment of a person nominated to the Board of Directors ("**BOD**") by a financial sector regulator, Court or Tribunal.

SEBI now requires the appointment/ re-appointment of a person who was previously rejected by shareholders to be subject to their prior approval.

Further, non-compliance with the composition of committees including the audit committee, nomination and remuneration committee, stakeholder relationship committee and risk management committee, resulting from vacancies in the office of the BOD must now be cured within three (3) months of the date of such vacancy.

The Amended Regulations now require the annual remuneration payable to a single non-executive director which exceeds fifty (50) percent of the total annual remuneration payable to all non-executive directors, to be approved by a special resolution every financial year. Previously, this approval was sought every year instead of financial year.



Prior to the Amended Regulations, the BOD was required to meet four (4) times a year with a maximum gap of one hundred and twenty (120) days between any two (2) meetings. With the amendment, the BOD is now required to meet at least four (4) times in a financial year with a maximum permissible gap of one hundred and twenty (120) days between two (2) consecutive meetings. As per Regulation 17(11), the notice of special business which is shared with the shareholders should now be annexed with a rationale for the same.

**LKS Comment:** *The reforms introduced by the Amended Regulations provide greater clarity with respect to timelines for compliance requirements with respect to BOD of listed entities. Relaxations with respect to appointments and timelines for appointments of directors is a welcome change and provides more flexibility to listed entities to determine their board composition.*

## **Regulation 2(1)(zc) and Regulation 23: Exemptions and Approvals for Related Party Transactions**

The definition of Related Party Transactions ("**RPT**") as provided under Regulation 2(1)(zc) of SEBI LODR, pursuant to the Amended Regulations, shall now exclude (a) the acceptance of current and savings account deposits by banks subject to relevant compliance with RBI norms; and (b) any retail purchase by directors or employees from their listed entity or subsidiary without establishing a business relationship at terms uniformly applicable to other employees. The deposits accepted by banks, as have been specified in the Amended Regulations, include the payment of interest.

The remuneration and sitting fees paid to directors, Key Managerial Personnel ("**KMP**") or senior management (except those forming part of the promoter or promoter group) are now exempt from prior approval of the audit committee; and from disclosure requirements under Regulation 23 (9), provided that the same is not a 'material' transaction as per Regulation 23(1) of SEBI LODR.

*Ratification of RPT:* SEBI has now permitted the ratification of certain RPT pursuant to the completion of the transactions, subject to certain conditions. Members of the audit committee, i.e., independent directors of the entity may ratify the RPT within three (3) months or in the immediate next meeting subject to fulfilment of conditions *inter alia* including (a) the RPT being not 'material' under Regulation 23(1); (b) RPT not exceeding the threshold of rupees one (1) crore; and (c) rationale for inability to seek prior approval placed before the audit committee. This relaxation does not mean that a prior approval shall be completely dispensed with as when seeking a post-facto approval, rationale explaining the failure to obtain the former must be provided by the entity. Such a transaction, if it fails to meet the approval of the audit committee, shall be voidable at the instance of the audit

committee. If the said transaction has a related party of a director or is authorised by a director, the director concerned would be required to indemnify the listed entity for any loss incurred.

The audit committee of an entity may now grant omnibus approvals for RPT proposed to be entered into by the entity itself, or by its subsidiaries subject to the conditions specified under Regulation 23(3).

The provisions relating to prior, omnibus and shareholder approvals under Regulation 23(2), (3) and (4) shall not be applicable to (a) transactions between two (2) public sector companies; (b) the payment of statutory fees, dues and charges between an entity and the State/Central Government; and (c) transactions between a public sector company and the State/Central Government or any combination thereof.

**LKS Comment:** *Introduction of post-facto ratification of certain related party transactions will ease the compliance requirement for entities to obtain prior approvals and avoid procedural delays.*

## **Regulation 24: Ease in Governance Compliance with Respect to a Subsidiary**

The threshold to determine a 'material subsidiary' for the purpose of Regulation 24 of SEBI LODR is now based on the 'turnover' and not the 'income' of the subsidiary. Thus, a 'material subsidiary', per the effect of the Amended Regulations, shall mean such a subsidiary whose turnover or net worth exceeds twenty (20) percent of the consolidated turnover or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

Regulation 24 (6) mandates a prior shareholder approval by way of a special resolution in case of the sale, lease or disposal of assets amounting to more than twenty (20) percent of the assets of the material subsidiary on an aggregate basis during a financial year. The Amended Regulations exclude such a transaction between two (2) wholly owned subsidiaries from this requirement of prior shareholder approval.

## **Regulation 30 (6): Relaxation in the Timeline for Disclosures**

*Timelines for disclosure of decisions of board meetings*

Prior to the Amended Regulations, Regulation 30 (6) of SEBI LODR mandated the disclosure of all decisions on material events or information in a board meeting within thirty (30) minutes of the closure of such a meeting. Pursuant to the amendment, entities must now make such a disclosure within three (3) hours of board meetings which close after normal trading hours of that day, but more than

three (3) hours before the beginning of trading hours of the next trading day.

It is pertinent to note that 'normal trading hours' are defined as the time period for which the recognized stock exchanges are open for trading to normal investors.

Further, for board meetings extended beyond one (1) day, financial results must be disclosed by the listed entity within thirty (30) minutes or three (3) hours, as applicable subject to the time of closure of the meeting.

*Timelines for disclosures of claims and pending litigations under Para B, Part A, Schedule III of SEBI LODR*

In cases where a listed entity is maintaining all relevant information of claims against them under any litigation or dispute, other than tax litigations or disputes, as per Clause 8, Para B of Schedule III in terms of the structured digital database under SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**SEBI PIT**"), the disclosure with respect such claims can be made within seventy-two (72) hours from receipt of notice by the listed entity.

**LKS Comment:** *The Amended Regulations have eased the timelines for disclosures under Regulation 30 from mere thirty minutes to three hours with respect to disclosure of board meeting decisions post trading hours, which shall provide relief to listed entities and ensure better accuracy of information disclosed. Similarly, the extension of timelines from twenty-four hours to seventy-two hours in case of claims already disclosed under SEBI PIT may provide relief to some extent.*

*However, it is pertinent to note that the Amended Regulations do not cover other reforms apprehended by SEBI pursuant to its 207<sup>th</sup> Board Meeting. Similarly, no clarity with respect to disclosures of taxation disputes and litigations has been provided by SEBI through this amendment.*

### **Schedule III: Relaxation in Norms Related to Disclosures of Events and Information Specified Therein**

*Schedule III, Part A, Para A*

*Sub-Para 1:* The definition of 'acquisition' has been amended and now refers to acquiring of shares or voting rights in a company such that the listed entity is holding twenty (20) percent or more of shares or voting rights or where there has been a change from the last made disclosure and this change exceeds five (5) percent. Prior to the amendment, the term 'acquisition' referred to a lower threshold of

five (5) percent as opposed to the amended twenty (20) percent and for subsequent changes two (2) percent as opposed to current five (5) percent.

Further, quarterly disclosures shall also be made when there is an acquisition of five (5) percent or more of shares or voting rights, or where there has been a subsequent change that exceeds two (2) percent in an unlisted company. The thresholds for acquisition of shares of an unlisted company were not previously specified under this clause.

*Sub-Para 4:* Disclosures related to outcomes of board meetings on cash bonuses shall no longer be required. As a result, disclosures are now only warranted in relation to dividends under Clause 4(a).

The Amended Regulations also specify certain ways of fundraising, the decisions on which shall warrant a disclosure. These broadly include the issuance of securities through further public offers, rights issues, American Depository Receipts/Global Depository receipts/ Foreign Currency Convertible Bonds, etc.

*Sub-Para 6:* Fraud by senior management (other than promoters, directors or KMPs) shall warrant a disclosure only if it is in relation to the listed entity.

*Sub-Para 15:* Presentations prepared by the listed entity for analysts or institutional investors meet, post earnings or quarterly calls should be disclosed prior to the beginning of such events. The disclosure of names of the analyst or institutional investors is optional for the listed entity.

The audio recordings from such meets shall be made available on the website before the next trading day or within twenty-four (24) hours, whichever is earlier, while video recordings shall be made available within forty-eight (48) hours. Earlier, both audio and video recordings were required to be uploaded before the next trading day or within twenty-four (24) hours, whichever is earlier.

*Sub-Para 17:* The Amended Regulations have retained the disclosure requirements relating to forensic audits while introducing a definition for the same under the Explanation to Sub-Para 17. As per the inserted definition, a '*forensic audit*' refers to any audit initiated for detecting any misstatement or misappropriation in the financial statements or siphoning/diversion of funds and *inter alia* excludes audits on matters related to product quality control practices, manufacturing practices and supply chain processes.

*Sub-Para 20:* Sub-Para 20 of Para A has been amended to omit the term 'initiated' from the details required to be disclosed. This reaffirms the understanding that only actions 'taken' and orders passed are to

be disclosed by entities under Sub-Para 20. Actions 'initiated' must only be disclosed under sub-para 19 of Para A.

Further, clarifying the disclosure requirements for fines and penalties, SEBI has prescribed the following thresholds:

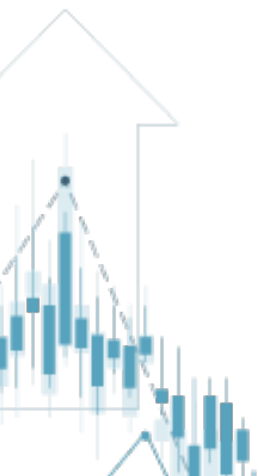
- i. *Disclosure within twenty-four (24) hours:* For fines and penalties of (a) rupees one (1) lakh or more imposed by sectoral regulators and enforcement agency; (b) rupees ten (10) lakhs or more by any other authority or judicial body.
- ii. *Quarterly disclosures in prescribed format:* For any fines and penalties below the aforementioned thresholds.

#### *Schedule III, Part B*

*Clause A, Para 17:* Information relating to frauds or defaults by persons specified therein shall be required to be promptly disclosed to the stock exchange(s). The amendment excludes the wider term 'employees' and now includes fraud by senior management or subsidiary of the listed entity as well as the arrest of KMP, senior management, promoter, director of the listed entity whether the said fraud or default has occurred in India or abroad.

**LKS Comment:** *Reforms under Schedule III of SEBI LODR are aimed at providing clarity and reducing compliance burden with respect to the disclosure requirements for specific events and information. For instance, change in the threshold for disclosures of 'acquisition' from five to twenty percent of shares or voting rights eliminates excessive or immaterial disclosures by companies. Similarly, fraud by senior management of a company shall only be disclosed if it is in relation to the company and not merely if it has an impact on the company.*

*Amendment to sub-paragraph 20 of Para A, Part A, Schedule III provides clarity with respect to disclosures of 'fines and penalties' by prescribing a threshold for disclosure. This removes the ambiguity on whether even trivial fines and penalties must be disclosed by listed entities and is thus a welcome change by SEBI.*







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