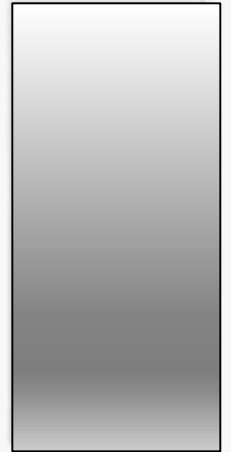


# **LEGALITE** ADVISORS

IMPORTANT LEGAL UPDATES FOR SEPTEMBER, 2021



# Companies Act

- **The Ministry of Corporate Affairs (“MCA”) – general circular no. 15/2021 on extension of last date of filing of Cost Audit Report to the Board of Directors under Rule 6(5) of the Companies (Cost Records and Audit) Rules 2014 dated September 27, 2021 (“Circular”).**
  - The MCA has pursuant to receipt of the representations from various stakeholders and taking into consideration the disruption caused due to the unprecedented COVID-19, extended the date for submitting the cost audit report by the cost auditor to the Board of Directors of the companies. The Circular states that cost auditor shall submit the cost audit report for the financial year 2020-2021 to the Board of Directors of the companies by October 31, 2021 and the same shall not be constituted as a violation of rule 6(5) of the Companies (Cost Records and Audit) Rules 2014 (“**Rules**”).
  - As per Rule 6(5) of the Rules every cost auditor shall forward his/her duly signed report to the Board of Directors of the companies within a period of 180 (one hundred and eighty days) from the closure of the financial year to which the report relates.
  - The cost audit report for the financial year 2020-2021 shall be filed in e-form CRA-4 within 30 (thirty) days from the date of receipt of the copy of the cost audit report by the companies. However, in case a company has sought an extension for holding annual general meeting under Section 96(1) of the Companies Act, 2013 (“**Act**”) then e-form CRA-4 may be filed within the timeline provided under the proviso to the Rule 6(6) of the Rules i.e. within the extended filing period of filing financial statements under section 137 of the Act.

## Companies Act (Contd...)

- **Link of the Circular.**

<https://mca.gov.in/bin/ebook/dms/getdocument?doc=MzcxOTk=&docCategory=Circulars&type=open>

## Companies Act (Contd...)

- **Extension of annual general meeting (“AGM”) for the financial year 2020-2021 *vide* orders (“Orders”) issued by various registrar of Companies (“RoC”).**
  - Various RoCs, *vide* powers conferred upon them under third proviso to Section 96(1) of the Companies Act, 2013 (“**Act**”) have issued orders extending the time limit for companies in their respective jurisdictions, to hold the AGM for financial year 2020-2021, until November 30, 2021 i.e. by providing an extension of period of 2 (Two) months, without requiring the companies to make any application under the Act.
  - It is clarified *vide* the Orders that the aforesaid extension shall also cover the following:
    - ✓ applications filed in e-form GNL-1 for the financial year ended March 31, 2021, which are pending for approval.
    - ✓ applications filed in e-form GNL-1 for the financial year ended March 31, 2021, which were rejected.
    - ✓ applications filed in e-form GNL-1 for the extension of AGM for the financial year ended March 31, 2021, where extension was approved for less than 2 (two) months.
  - It is further clarified that the extension granted under the Orders shall not include the applications filed in e-form GNL-1 for the extension of AGM for the financial year ended March 31, 2021, where approved was for a period of more than 2 (two) months.

## Companies Act (Contd...)

- **Link of the Orders.**

<https://mca.gov.in/content/mca/global/en/data-and-reports/rd-roc-info/extension-agm.html>

# Securities Law

- The Securities and Exchange Board of India (“SEBI”) – notification no. SEBI/LAD-NRO/GN/2021/47 on Securities and Exchange Board Of India (Listing Obligations and Disclosure Requirements) (Fifth Amendment) Regulations, 2021 dated September 07, 2021 (“Notification”).
  - SEBI *vide* the Notification, has further amended the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**Principal Regulations**”/“**LODR**”) which shall come into force from the date of its publication in the official gazette i.e. *w.e.f.* September 07, 2021.
  - The major highlights of the Notification are as under:
    - ✓ **Compliance for non-convertible securities listed entities:**
      - Listed entity which has listed its non-convertible debt securities and having outstanding value of listed non-convertible debt securities of INR 500 Crores (Indian Rupees Five Hundred Crores) or more as during the course of the year, shall ensure compliance with corporate governance provisions of LODR. These entities will be referred to as High Value Debt Listed Entities (“**HVDLEs**”).
      - All listed entities with non-convertible securities (“**NCS**”) shall now submit financial results on a quarterly basis against the erstwhile requirement of half yearly.

## Securities Law (Contd...)

- SEBI has enhanced intimation & disclosure requirements for all entities with listed NCS.
- ✓ **Amendments in Chapter IV- Corporate Governance requirements for debt listed entities:**
  - It is applicable to HVDLEs as defined hereinabove.
  - Which shall be applicable from:

### For HVDLEs as on March 31, 2021.

Either has to comply or explain inability till March 31, 2023.

Mandatory from April 01, 2023 and onwards.

### For listed entities that become HVDLEs subsequently.

Within 6 (six) months from the date when the listed entity becomes HVDLEs. However, shall be on comply or explain basis till March 31, 2023.

- Chapter IV of LODR is already applicable to listed entities that have issued their equity shares/convertible securities. However, with this amendment, the HVDLEs, who have their NCS listed will also have to comply with Chapter IV of the LODR upto the extent of applicability.
- Chapter V of LODR is already applicable to listed entities that have issued their NCS, and the amendment now aims to enhance disclosure requirements.

## Securities Law (Contd...)

✓ **Instantaneous compliances for HVDLEs are highlighted as under:**

○ **Change in Board Composition.**

The HVDLEs will have to comply with Regulation 17 of LODR, resulting in transformation of the board composition.

- Constitution of Committees.
- Corporate Governance requirements with respect to subsidiary of listed entity.
- Directors and Officers insurance.
- Secretarial Audit under regulation 24 of LODR.
- Disclosure on related party transactions.
- Website Disclosures provided in sub-regulation (1A) to regulation 62 of LODR.

✓ **Prior intimation to stock exchange, regulation 50 of LODR:**

- Prior intimation of at least 2 (two) working days before the board meeting shall be given for following matters:
  - Alteration in nature of NCS or rights of holders;
  - Alteration in the date of the interest/ dividend/ redemption payment of NCS;
  - Financial results viz. quarterly / annual;



## Securities Law (Contd...)

- Fund raising by way of NCS; or
- Any matter affecting the rights or interests of NCS holders.
- Prior intimation shall be given before date of dispatch of notices for:
  - AGM / EGM for approval of financial results or fund raising through NCS;
  - Meeting of NCS holders for matters affecting their rights or interests.
- **Disclosure of information, regulation 51 of LODR:**
  - The expression 'promptly inform' shall now mean within 24 (twenty-four) hours from date of occurrence of event.
  - If not made within 24 (twenty-four) hours the listed entity shall also explanation for the delay.
  - New disclosures have been added in Schedule III Part B. These are in line with disclosure requirement for equity-listed entities.
  - Disclosures made to stock exchange shall also be hosted on website of the entity for minimum 5 (five) years and thereafter as per archival policy.
- ✓ **Event based disclosures:**

New disclosures have been inserted in Schedule III Part B for entities with listed NCS which are as follows:

## Securities Law (Contd...)

- Disclosure of outcome of BM to stock exchange within 30 (thirty) minutes of the closure of the meeting for the following:
  - decision w.r.t. fund raising proposed to be undertaken by way of NCS;
  - financial results.
- Fraud/defaults by listed entity or its promoter / KMP / director / employees or arrest of KMP or promoter;
- Change in directors, KMP or Auditor;
- Detailed reasons for resignation of auditor;
- Details, as specified, w.r.t resolution plan / restructuring of loans from banks / FI;
- One-time settlement with a bank or winding-up petitions;
- Proceedings of GMs of the listed entity;
- Disclosure of events, as specified, in relation to CIRP of listed corporate debtor;
- Intimation of the following:
  - change in terms of issue or redemption;
  - exercising call/ put options;
  - change/breach of covenant;
  - forfeiture of unclaimed amount;
  - change in debenture trustee or CRA or RTA;
  - Guarantee provided to third party;

## Securities Law (Contd...)

- Other matters affecting rights of NCS holders.

### ✓ **Intimation to Debenture Trustees:**

All material events / information as disclosed to stock exchange under Reg.51 shall also be disclose to debenture trustee at the same time.

### ✓ **Submissions to stock exchange, Regulation 57 of LODR:**

- Certificate regarding status of payment of interest / dividend /principal shall be submitted within 1 working day which was earlier 2 (two) working days.
- Within 5 (five) working days prior to the beginning of the quarter, provide details for all NCS for which interest / dividend / principal obligations.
  - payable during the quarter.
  - Within 7 (Seven) working days from the end of the quarter provide:
    - a certificate confirming the payment of obligations for NCS due in that quarter; and
    - the details of all unpaid obligations w.r.t. NCS at the end of the quarter.
- The requirement of prior intimation of date of payment of interest/redemption amount at least 11 (eleven) working days before such date, under regulation 50 of LODR, now stands deleted.

## Securities Law (Contd...)

✓ **Modification in structure of non-convertible debt securities/non-convertible redeemable preference shares, Regulation 59 of LODR:**

Stock Exchange approval for material modifications in the structure shall be made only after approval of board of directors and debenture trustee and with consent in writing from atleast three-fourths of holders by value of that class of securities against the earlier requirement i.e. approval of the consent of requisite majority of holders, facility of remote e-voting is also provided.

✓ **Website, Regulation 62 of LODR:**

Additional disclosures are to be hosted on website as follows:

- Composition of the Board;
- Notice of BM where financial results shall be discussed;
- All credit ratings obtained for all listed NCS and revisions;
- Statements of deviation or variation as per regulation 52 of LODR;
- Annual return.

Any change in the content of website shall be updated within 2 (two) working day from the date of such change.

## Securities Law (Contd...)

### ✓ Financial Results, Regulation 52 of LODR:

- Entities with listed NCS shall now submit audited / unaudited quarterly financial results to stock exchange, with LRR (if unaudited), within 45 (forty-five) days from end of quarter (earlier it was on half-yearly basis); and simultaneously submit to debenture trustee in case of debt listed entity.
- Consequently, requirement of trading window closure shall be applicable on quarterly basis instead of half-yearly.
- The annual audited financial results shall be submitted to stock exchange within 60 (sixty) days from the end of the financial year.
- Timeline for filing has been aligned with Reg.33.
- Two step process for disclosure of annual financial results have been provided for entities that are audited by the CAG (first by auditor appointed by CAG within 60 (sixty) days of financial year end and then by CAG within 9 (nine) months from financial year end).
- Along with half yearly fin. results, a statement of assets and liabilities and statement of cash flows as at the end of the half year shall also be disclosed.
- New insertions of following disclosures along with half yearly / annual financial results in addition to existing disclosures:
  - current ratio;
  - long term debt to working capital;
  - bad debts to account receivable ratio;
  - current liability ratio;
  - total debts to total assets;

## Securities Law (Contd...)

- debtor's turnover;
  - inventory turnover;
  - operating margin (%);
  - net profit margin (%);
  - sector specific equivalent ratios, as applicable.
- 
- Submission of debenture trustee certificate to stock exchange within 7 (seven) days confirming submission of above contents has been done away with.
  - Submit on quarterly basis, a statement indicating the utilization of issue proceeds of NCS, till the issue proceeds are fully utilised (new insertion).
  - Material deviations in use of proceeds, if any, shall be as per format specified in circular dated January 17, 2020.
- 
- ✓ **Asset Cover disclosure and certificate:**
    - Asset cover for non-convertible debt securities shall be disclosed along with financial results in the format specified by SEBI.
    - Certificate from Statutory auditor regarding maintenance of 100% (one hundred percent) or higher asset cover shall be submitted to debenture trustee along with financial results (i.e. quarterly instead of half-yearly).
- 
- ✓ **Unclaimed securities and benefits (Reg. 61A):**

## Securities Law (Contd...)

- The listed entity shall not forfeit unclaimed interest / dividend / redemption amount.
  - It shall transfer such amount if not claimed within 30 (thirty) days, to an escrow account opened by the Company in 7 (seven) days.
  - Existing unclaimed amount shall be transferred to escrow a/c within 30 (thirty) days.
  - Amount in escrow a/c remaining unclaimed for 7 (seven) years shall be transferred to Investor Education and Protection Fund.
  - While provisions relating to Investor Education and Protection Fund were present in Companies Act, 2013, inclusion in LODR is targeted towards entities not governed by Companies Act, 2013.
- **Link of the Notification.**  
[https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021\\_52488.html](https://www.sebi.gov.in/legal/regulations/sep-2021/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-fifth-amendment-regulations-2021_52488.html)

## Securities Law (Contd...)

- **The Securities and Exchange Board of India (“SEBI”) – press release PR No. 28/2021 on SEBI Board Meeting held on September 28, 2021 to approve changes to various SEBI regulations (“Press Release”).**
  - SEBI *vide* the Press Release, has approved, *inter-alia* the following:
  - Relaxation *wrt* eligibility requirements related to Superior Voting Rights (SR) Shares as under, which it had originally been introduced in 2019 by SEBI:

Erstwhile provisions	Newly approved provisions
SR shareholder should not be part of promoter group having net worth exceeding than INR 500,00,00,000 (Indian Rupees Five Hundred Crores only).	SR shareholder, as an individual, should not have net-worth of more than INR 1,000,00,00,000 (Indian Rupees One Thousand Crores only).
Minimum gap between issuance of SR shares and filing of Red Herring Prospectus is 6 (six) months.	Minimum gap between issuance of SR shares and filing of Red Herring Prospectus is 3 (three) months.

- ✓ Amendment to SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, in relation to regulatory provisions on related party transactions (RPTs) as under:



## Securities Law (Contd...)

- Inclusions to the definition of related party:
  - All persons or entities forming part of promoter or promoter group irrespective of their shareholding;
  - any person/entity holding equity shares in the listed entity, as below, either directly or on a beneficial interest basis at any time during the immediately preceding financial year:
    - i. to the extent of 20 % or more;
    - ii. to the extent of 10% or more w.e.f. April 1, 2023.
- Inclusions to the definition of RPT as under:
  - the listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand;
  - the listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries w.e.f. April 1, 2023.

## Securities Law (Contd...)

- Prior approval of the shareholders as under:
  - for material RPTs having a threshold of lower of INR 1000 crore or 10% of the consolidated annual turnover of the listed entity.
- Approval of the Audit committee as under:
  - All RPTs and subsequent material modifications as defined by the audit committee;
  - RPTs where subsidiary is a party but listed entity is not a party subject to threshold of:
    - i. 10% of the consolidated turnover of the listed entity,
    - ii. 10% of the standalone turnover of the subsidiary w.e.f. April 1, 2023.
- Enhanced disclosure of information related to RPTs to be:
  - placed before the audit committee,
  - provided in the notice to shareholders for material RPTs, and
  - provided to the stock exchanges every six months in the format specified by the Board with the following timelines:

## Securities Law (Contd...)

- i. within 15 days from the date of publication of financials;
  - ii. simultaneously with the financials w.e.f. April 1, 2023.
- The aforesaid amendments are slated into force with effect from April 1, 2022 unless otherwise specified above
- **Link of the Press Release.**  
[https://www.sebi.gov.in/media/press-releases/sep-2021/sebi-board-meeting\\_52976.html](https://www.sebi.gov.in/media/press-releases/sep-2021/sebi-board-meeting_52976.html)

## Deets / Disclaimer

### ❑ Deets.

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**Thank You**



***There is no wealth like knowledge and no poverty like ignorance - Buddha***