

## Newsletter for November, 2015 By Amita Desai & Co.



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## MCA UPDATES:

### A. Companies (Share Capital and Debentures) Third Amendment Rules, 2015.

- The MCA Vide Notification dated November 06, 2015 has issued the Companies (Share Capital and Debentures) Third Amendment Rules, 2015.
- **The following was the amendment substituted in rule 18 sub-rule (I), in clause (a) for sub-clause (iii) of the Companies (Accounts) Rules, 2014:**

"(iii) Infrastructure Debt Fund Non-Banking financial Companies, as defined in clause (b) of direction 3 of Infrastructure Debt fund Non-Banking Financial Companies (Reserve Bank) Directions, 2011"

(iv) Infrastructure Debt Fund Non- Banking Companies with this notification are permitted by Ministry or Department of the Central Government or by Reserve Bank of India or by the National Housing Bank or by any other statutory **authority to issue debentures for a period exceeding ten years.**"

- The link of the above Notification is as follows:  
[http://mca.gov.in/Ministry/pdf/Amendment\\_Rules\\_06112015.pdf](http://mca.gov.in/Ministry/pdf/Amendment_Rules_06112015.pdf)

### B. Companies (Management and Administration) Third Amendment Rules, 2015.

- The MCA vide Notification dated November 16, 2015 has issued the Companies (Management and Administration) Third Amendment Rules, 2015.

- Format of Annual Return in E-Form MGT-7 was updated with this notification with respect to:
  1. In Public Category for Shareholding pattern provided at para VI (b) **now to include other than promoters also.**
  2. Details at Para VII regarding number of promoters, members, debenture holders **now to be provided only at the beginning** and at the end of the year (addition/cessation during the year are not to be provided).
  3. Details regarding Committee Meeting in Para IX – C, **attendance % of total number of members of committee to be given, instead of shareholding.**
  4. In Para IX A – **Now reworded to limit to Companies Act, 2013.** For Certification of Compliance and disclosures only compliance under Companies Act, 2013 are to be looked into and if there is non compliance than it needs to be mentioned in Para IX B.
  5. In Para V details regarding Turnover the word **“Total” is now removed.** Percentage of Turnover of the company for each main activity undertaken needs to be entered.
- To conclude we can say that a simplified form MGT-7 has been introduced. Clarifications regarding the ambiguous matters like Turnover and compliance certificate are made available though the fresh version of the form.
- The link of the above Notification is as follows:  
[http://mca.gov.in/Ministry/pdf/Amendment\\_Rules\\_16112015.pdf](http://mca.gov.in/Ministry/pdf/Amendment_Rules_16112015.pdf)

### **C. Relaxation of,additional fees and extension of last date of liling of AOC-4, AOC-4 XBRL and MGT-7 E-Forms under the Companies Act, 2013 - reg.**

- The MCA vide Circular No. 15 dated November 30, 2015 has extended the time of filing of E-Forms AOC-4, AOC-4 CFS, AOC-4 XBRL and MGT-7 **upto December 30, 2015**, without any additional fees.
- The link of the above Circular is as follows:  
[http://mca.gov.in/Ministry/pdf/General\\_Circular\\_No\\_15\\_2015.pdf](http://mca.gov.in/Ministry/pdf/General_Circular_No_15_2015.pdf)



## **RBI UPDATES:**

### **A. Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment) Regulations, 2015**

- The Reserve Bank of India (RBI) vide Notification No. FEMA. 345/2015-RB dated November 16, 2015 issued notification in reference to Foreign Exchange Management (Permissible Capital Account Transactions) (Fourth Amendment) Regulations, 2015.
- It shall come into force from the date of publication in the official Gazette.
- **The following was the Amendment to the Regulation:-**

In the Foreign Exchange Management (Permissible Capital Account Transactions) Regulations, 2000 (Notification No. FEMA 1/2000-RB dated 3rd May 2000), in Regulation 4, in sub-regulation (b), the existing Explanation (i) shall be substituted by the following namely:

“(i) For the purpose of this regulation, “real estate business” shall not include development of townships, construction of residential /commercial premises, roads or bridges and Real Estate Investment Trusts (REITs) registered and regulated under the SEBI (REITs) Regulations 2014”.

- The Link of the above Notification is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10129&Mode=0>

## **B. Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2015**

- The Reserve Bank of India (RBI) vide Notification No. FEMA. 355/2015-RB dated November 16, 2015 issued notification in reference to Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Eleventh Amendment) Regulations, 2015.
- It shall come into force from the date of publication in the official Gazette.
- The Link of the above Notification is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10130&Mode=0>

## **C. Prior Approval For Acquisition Of Shares Or Voting Rights In Private Sector Banks: Directions, 2015**

- The Reserve Bank of India (RBI) vide Notification No. 240 dated November 19, 2015 issued direction in reference to Prior Approval for Acquisition of Shares or Voting Rights in Private Sector Banks.
- These Directions shall be called the Reserve Bank of India (Prior approval for acquisition of shares or voting rights in private sector banks) Directions, 2015 and it shall come into effect on the day these are placed on the official website of the Reserve Bank of India.
- The Link of the above Directions is as follows.  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10126&Mode=0>

## **D. Investment by Foreign Portfolio Investors (FPI) in Corporate Bonds**

- The Reserve Bank of India (RBI) vide Circular No. 31 dated November 26, 2015 issued Circular in reference to Investment by Foreign Portfolio Investors (FPI) in Corporate Bonds.
- Attention of Authorized Dealer Category-I (AD Category-I) banks is invited to Schedule 5 to the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 notified vide Notification No. FEMA.20/2000- RB dated May 3, 2000, as amended from time to time and to A.P. (DIR Series) Circular No. 71 dated February 3, 2015 and A. P. (DIR Series) Circular No.73 dated February 6, 2015 in terms of which all future investments by Foreign Portfolio Investors (FPI) in NCDs/bonds shall be required to be made in securities with a minimum residual maturity of three years.
- On a review, it has been decided to permit FPI to acquire NCDs/bonds, which are under default, either fully or partly, in the repayment of principal on maturity or principal installment in the case of amortising bond. The revised maturity period of such NCDs/bonds, restructured based on negotiations with the issuing Indian company, should be three years or more.

- The FPI which propose to acquire such NCDs/bonds under default should disclose to the Debenture Trustees the terms of their offer to the existing debenture holders / beneficial owners from whom they are acquiring. Such investment should be within the overall limit prescribed for corporate debt from time to time (currently Rs. 2443.23 billion). All other existing conditions for investment by FPIs in the debt market remain unchanged.
- The Link of the above Circular is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10147&Mode=0>

### **E. Online Returns to be submitted by NBFCs- Revised**

- The Reserve Bank of India (RBI) vide Notification No. 246 dated November 26, 2015 issued notification in reference to Online Returns to be submitted by NBFCs-Revised.
- As refer to Master Circular no DNBS.IT.CC.No.01/24.01.191/2015-16 dated July 01, 2015 on Returns to be submitted by NBFCs:-

It has been decided to rationalize the returns' to be submitted online through COSMOS as below:

- (a) Change in periodicity of NDSI-500cr and ALM-1 returns from monthly to quarterly
  - (b) Discontinuation of NBS- 6 return as the same information is received through NBS-1 return.
- The revised list of the returns to submitted by the NBFC is given as Annexure in the said notification.
  - The Link of the above Notification is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10140&Mode=0>

### **F. Non-Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) –Revision of the loan amount with tenure not less than 24 months**

- The Reserve Bank of India (RBI) vide Notification No. 250 dated November 26, 2015 issued notification in reference to Non-Banking Financial Company-Micro Finance Institutions (NBFC-MFIs) –Revision of the loan amount with tenure not less than 24 months.
- RBI has raised the limit of loan amount, for which the tenure of the loan shall not be less than 24 months, has raised from 15,000 to 30,000/- on representation received from the sector.
- The Link of the above Notification is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10144&Mode=0>

## **G. Central KYC Records Registry (CKYCR) - template for Know Your Customer (KYC) and reporting requirements under Foreign Account Tax Compliance Act (FATCA)/ Common Reporting Standards (CRS)**

- The Reserve Bank of India (RBI) vide Notification No. 251 dated November 26, 2015 issued notification in reference to Central KYC Records Registry (CKYCR) - template for Know Your Customer (KYC) and reporting requirements under Foreign Account Tax Compliance Act (FATCA)/ Common Reporting Standards (CRS).
- The Government has vide a notification dated July 7, 2015 (copy enclosed), amended the Prevention of Money Laundering (Maintenance of Records) Rules, 2005, (Rules), for setting up of the Central KYC Records Registry (CKYCR). In terms of the notification, the proposed CKYCR would receive, store, safeguard and retrieve the KYC records in digital form of a client, for which necessary amendments to the Rules have been made.
- The KYC records received and stored by the CKYCR could be retrieved online by any reporting entity across the financial sector for the purpose of establishing an account based relationship in terms clause (a) and (b) of Rule 9. A formal announcement by the Government naming the entity which will function as the CKYCR is expected shortly. In order to facilitate collating and reporting the KYC data to the proposed CKYCR, templates finalised in consultation with other regulators and CBDT (separate for individuals and legal entity) are enclosed. It may also be noted that in case of opening of 'Small Accounts', only personal details in section 1 of the template together with the photograph, signature/thumb impression and self-certification document should be obtained. You are advised to be in readiness to share the KYC data with the CKYCR once the CKYCR is notified by the Government.
- As the KYC data captured by the template also fulfill the reporting requirement under FATCA and CRS, your attention is invited to our circular DBR.AML.BC.No.36/14.01.001/2015-16 and DBR.AML.No.3074/14.01.001/2015-16 dated August 28, 2015 and August 31, 2015, respectively, forwarding the Rules and Guidance Note on the reporting requirement under Foreign Account Tax Compliance Act (FATCA) and Common Reporting Standards (CRS). In order to enable reporting entities to comply with the FATCA and CRS reporting requirement, reporting entities are advised to take all necessary steps to ensure compliance with the reporting requirements within the timelines mentioned in the Rules and Guidance Note, expeditiously.
- The Link of the above Notification is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10145&Mode=0>



## **H.External Commercial Borrowings (ECB) Policy - Revised Framework**

- The Reserve Bank of India (RBI) vide Circular No. 32 dated November 30, 2015 issued Circular in reference to External Commercial Borrowings (ECB) Policy – Revised Framework.
- Attention of Authorised Dealer Category – I (AD Cat I) banks is invited to A.P. (DIR Series) Circular No. 5 dated August 1, 2005 containing the basic framework under which eligible resident entities can raise External Commercial Borrowings (ECB). Subsequent to issuance of this circular, the ECB framework has been incrementally calibrated taking into account the emerging financing needs of the Indian entities and the macroeconomic developments, by bringing more resident entities as eligible borrowers, recognizing more entities as lenders, expanding end-uses, etc., besides periodically reviewing the All-in-Cost (AIC) for such borrowings. Special carve outs were also made to take care of sector specific needs.
- The Link of the above Circular is as follows:  
<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=10153&Mode=0>



## **SEBI UPDATES:**

### **A. Format for Business Responsibility Report**

- For the adoption of responsible business practices in the interest of the social set –up and the environment, SEBI has given the format for the Business Responsibility Report vide circular dated 04th November, 2015.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1446638214636.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1446638214636.pdf)

### **B. Format for Quarterly holding pattern, disclosure norms for corporate governance report and manner for compliance with two-way fungibility of Indian Depository Receipts (IDRs)**

- SEBI vide its circular dated 04th November, 2015 prescribed a new format to file with the stock exchange the Indian Depository Receipt (IDR) holding pattern on a quarterly basis within fifteen days of end of the quarter.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1446701154442.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1446701154442.pdf)

### **C. Format for E-Voting Results**

- SEBI vide its circular dated 04th November, 2015 prescribed a new format for disclosure regarding the e-voting results and the small shall be submitted to Stock Exchange within 48 hours of conclusion of General Meeting.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1446631975258.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1446631975258.pdf)

## **D. Streamlining the Process of Public Issue of Equity Shares and Convertibles**

- SEBI vide its circular dated 10th November, 2015 to make more efficient the process of Public Issue of Equity Shares and Convertibles. The SEBI had made the following changes which are applicable for the Public issue opening from 1st January, 2016:-
- To reduce the time taken for the listing after the closure of issue to 6 working days as against the present requirement of 12 working days; and To Broad-base the reach of investors by substantially enhancing the points for submission of application. There were operational details reading to process for Application, Alert by Stock Exchange, Timeline and the other requirement.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1447148033366.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1447148033366.pdf)

## **E. Investor Grievance Redressal System and Arbitration Mechanism.**

- The SEBI vide its circular dated 16th November, 2015 states that to streamline and strengthen the framework of investor redressal and arbitration mechanism at commodity derivatives exchanges in line with the securities market, SEBI mandates this circular to National Commodity Derivatives Exchanges as defined in the Securities Contracts (Regulation) (Stock Exchanges and Clearing Corporations) (Amendment) Regulations, 2015.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1447679562764.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1447679562764.pdf)

## **F. Format for Financial Results for Listed entities which have listed their debt securities and/or non-cumulative redeemable preference shares**

- To ensure the compatibility, uniformity in disclosure and also to boost the Confidence of Investor, SEBI had come with the new format of Financial Statements which need to be submitted by the Listed Companies whose Debt Securities and / or non-cumulative redeemable preference shares are listed on stock exchange vide the Circular dated 27th November, 2015.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1448620165250.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448620165250.pdf)

## **G. Formats for publishing financial results**

- In order to enable investors to make well-informed investment decisions, timely, adequate & accurate disclosure of financial results on a periodical basis and to ensure comparability, uniformity and parity in disclosures made by listed entities across stock exchanges SEBI vide circular dated 30th November, 2015 prescribed the new formats for publishing financial results.

- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1448885855487.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448885855487.pdf)

## **H. Issue of No objection Certificate for release of 1% of issue amount**

- As per new Listing Agreement, SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with effect from December 01, 2015 an issuer company shall deposit, 1% security deposit related to issuance of capital.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1448883943074.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448883943074.pdf)

## **I. Manner of achieving minimum public shareholding**

- As per Regulation 38 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 the listed entity shall comply with minimum public shareholding requirements in the manner as specified by the Board from time to time. SEBI vide its circular dated 30th November, 2015 has prescribed the formats for manner of achieving minimum public shareholding.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1448885821812.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448885821812.pdf)

## **J. Disclosure of holding of Specified Securities and Holding of Specified Securities in Dematerialized form**

- As per Regulation 31 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 with effect from 02nd December, 2015 vide circular dated 30th November, 2015 SEBI has prescribed manner of maintaining 100% of shareholding of promoter(s) and promoter group in dematerialized form. Further, at least 50% of non-promoter holding shall be held in dematerialized form.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1448885798277.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448885798277.pdf)

## **K. Non-compliance with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 and Standard Operating Procedure for suspension and revocation of trading of specified securities**

- As per Circular dated 30th November, 2015, SEBI under regulation 97 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“Listing Regulations”) gives authority to recognized Stock Exchanges to monitor the compliance by listed entities. If non-compliances are identified, the recognized stock exchanges shall impose fine on listed entity and in case of subsequent and consecutive defaults shall invoke suspension of trading.

- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1448885765200.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1448885765200.pdf)

**L. Schemes of Arrangement by Listed Entities and (ii) Relaxation under Sub-rule (7) of rule 19 of the Securities Contracts (Regulation) Rules, 1957**

- In order to protect the interest of the investor of Listed entities under the Scheme of Arrangement, SEBI may at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules vide the circular dated 30th November, 2015.
- The link of the above Circular is as follows:  
[http://www.sebi.gov.in/cms/sebi\\_data/attachdocs/1449125028827.pdf](http://www.sebi.gov.in/cms/sebi_data/attachdocs/1449125028827.pdf)

Amita Desai & Co.



## **DIPP:**

### **A. Review of Foreign Direct Investment (FDI) policy on various sectors**

- DIPP Vide Press Note No. 12 dated 24<sup>th</sup> November, 2015 made amendments in Consolidated FDI Policy of 2015.
- The Government in the last few months has introduced many FDI policy reforms in a number of sectors viz. Defence, Rail Infrastructure, Construction Development, Insurance, Pension Sector, Medical Devices, White Label ATM Operations, Investments by NRIs on non-repatriation basis and has introduced composite cap for foreign investment. Measures undertaken by the Government have resulted in increased FDI inflows in the country. However, it was felt that the country has potential to attract far more foreign investment which can be achieved by further liberalizing and simplifying the FDI regime.
- Accordingly the Government has decided to introduce a number of amendments in the FDI Policy. Changes introduced in the policy include increase in sectoral caps, bringing more activities under automatic route and easing of conditionalities for foreign investment.
- Further, new sectors have also been opened to foreign investments. These amendments are path breaking and provide a new direction to foreign investment regime in the country.
- Crux of these changes are as follows:

Sector/Activity	Changes/New Cap/Route
Construction Development Sector	<p>i. Conditions of area restriction of floor area and minimum capitalization requirement have been removed.</p> <p>ii. Each phase of the construction development project would be considered as a separate project for the purposes of FDI policy.</p> <p>iii. A foreign investor will be permitted to exit and repatriate foreign investment before the completion of project under automatic route, provided that a lock-in-period of three years, calculated with reference to each tranche of foreign investment has been completed.</p> <p>iv. FDI is not permitted in an entity which is engaged or proposes to engage in real estate business, construction of farm houses and trading in transferable development rights (TDRs).</p> <p>v. Condition of lock-in period will not apply to Hotels &amp; Tourist Resorts, Hospitals, Special Economic Zones (SEZs), Educational Institutions, Old Age Homes and investment by NRIs.</p> <p>vi. 100% FDI under automatic route is permitted in completed projects for operation and management of townships, malls/ shopping complexes and business centres.</p>
Foreign Investment in Defence Sector up to 49% Under Automatic Route	<p>i. Portfolio investment and investment by FVCIs will be allowed up to permitted automatic route level of 49%.</p> <p>ii. Proposals for foreign investment in excess of 49% will be considered by Foreign Investment Promotion Board (FIPB).</p> <p>iii. In case of infusion of fresh foreign investment within the permitted automatic route level, resulting in change in the ownership pattern or transfer of stake by existing investor to new foreign investor, Government approval will be required</p>

<p>New Sectoral Caps &amp; Entry Routes in Broadcasting Sector</p>	<p>ii. Teleports , DTH, Cable Networks, Mobile TV HITS- 100% (Upto 49%-Automatic Route, Beyond 49% -under Government Route)</p> <p>ii. Up-linking of Non-‘News &amp; Current Affairs’ TV Channels ,Down-linking of TV Channels -100% Automatic route</p>
<p>Full Fungibility of Foreign Investment Permitted in Banking- Private Sector</p>	<p>FIIIs/FPIs/QFIs, following due procedure, can now invest up to sectoral limit of 74%, provided that there is no change of control and management of the investee company.</p>
<p>100% Foreign Investment Permitted in Coffee/Rubber/Cardamom/Palm Oil &amp; Olive Oil Plantations</p>	<p>Foreign investment in the plantation sector would henceforth be under automatic route.</p>
<p>Investment by Companies/Trusts/Partnerships Owned &amp; Controlled by NRIs on Non-Repatriation Basis to be Treated as Domestic Investment</p>	<p>Entities owned and controlled by NRIs will be treated at par with NRIs for investment in India</p>
<p>Permitting Manufacturers to Undertake Wholesale and/or Retail, Including Through E-Commerce Without Government Approval</p>	<p>Manufacturer will be permitted to sell its product through wholesale and/or retail, including through e-commerce without Government approval</p>
<p>Single Brand Retail Trading and Permitting 100% FDI in Duty Free Shops</p>	<p>i. In case of ‘state-of-art’ and ‘cutting-edge technology’ sourcing norms can be relaxed subject to Government approval</p> <p>ii. An entity which has been granted permission to undertake SBRT will be permitted to undertake e-commerce activities</p> <p>iii. The same brand internationally and investment by non-resident entity/ entities as the brand owner or under legally tenable agreement with the brand owner, will not be made applicable in case of FDI in Indian brands</p> <p>iv. An Indian manufacturer is permitted to sell its own branded products in any manner i.e. wholesale, retail, including through e-commerce platforms</p> <p>v.100% FDI is now permitted under automatic route in Duty Free Shops located and operated in the Customs bonded areas.</p>



Permitting Same Entity to Carry Out Both Wholesale and Single Brand Retail Trading	Single entity will be permitted to undertake both the activities of single brand retail trading (SBRT) and wholesale with the condition that conditions of FDI policy on wholesale/ cash & carry and SBRT have to be complied by both the business arms separately
100% FDI in LLPs Permitted Under Automatic Route	FDI policy on Limited Liability Partnerships (LLP) has been amended to provide that investments in LLPs will not require Government approval.
Opening up of FDI in Regional Air Transport Service	Regional Air Transport Service (RSOP) is will also be eligible for foreign investment up to 49% under automatic route
Enhancing Foreign Equity Caps in Non-Scheduled Air Transport, Ground Handling Services, Satellites-establishment and operation and Credit Information Companies	Foreign Equity caps increased from 74% to 100%. Further, sectors other than Satellites-establishment and operation have been placed under the automatic route.
Companies without Operations Not to Require Government Approval for FDI for Undertaking Automatic Route Sector Activities	For infusion of foreign investment into an Indian company which does not have any operations and also does not have any downstream investments, Government approval would not be required, for undertaking activities which are under automatic route and without FDI-linked performance conditions, regardless of the amount or extent of foreign investment.
Establishment and Transfer of Ownership and Control of Indian Companies	The approval of the Government will be required if the company concerned is operating in sectors/ activities which are under Government approval route rather than capped sectors
Simplification of Conditionalities	Certain conditions of FDI policy on Agriculture and Animal Husbandry, and Mining and mineral separation of titanium bearing minerals and ores, its value addition and integrated activities have been simplified
Raising the Threshold Limit for Approval by Foreign Investment Promotion Board	Threshold limit for FIPB approval m increased From 3000 crore to 5000 crore

- The link of the above Press Note is as follows:  
[http://dipp.nic.in/English/acts\\_rules/Press\\_Notes/pn12\\_2015.pdf](http://dipp.nic.in/English/acts_rules/Press_Notes/pn12_2015.pdf)

# ARTICLE OF THE MONTH

## **AN ANALYSIS ON NEW LISTING OBLIGATION AND DISCLOSURE REQUIREMENTS REGULATIONS, 2015**

SEBI notified the Listing Obligations and Disclosure Requirements Regulations, 2015 (“2015 Regulations”) on 02<sup>nd</sup> September, 2015 with the objectives to align clauses of the listing agreement with Companies Act, 2013 and consolidate the conditions under different securities listing agreements in one single regulation.

The 2015 Regulations is effective from December 1, 2015, except the provisions regarding approval of related party transactions and disclosure of shareholders’ class and conditions of reclassification, which are effective from the notification date i.e 02<sup>nd</sup> September, 2015.

The 2015 Regulations are applicable to any entity (whether a company or not) accessing the stock exchange, for listing equity shares (on main board, SME exchange, institutional trading platforms), debt securities, preference shares, depository receipts, securitized debt instruments, mutual fund units, and other securities as may be specified by SEBI.

This article aims to provide an analytical overview of key change under the 2015 Regulations.

### **Applicability of the regulations**

2015 Regulation will apply to the listed entity who has listed any of the following designated securities on recognised stock exchange(s):

- (a) Specified securities listed on main board or SME Exchange or institutional trading platform;
- (b) Non-convertible debt securities, non-convertible redeemable preference shares, perpetual debt instrument, perpetual non-cumulative preference shares;
- (c) Indian depository receipts;
- (d) Securitised debt instruments;
- (e) Units issued by mutual funds;
- (f) Any other securities as may be specified by the Board.

### **Chapter IV Obligations of Listed Entity Which Has Listed Its Specified Securities**

According to Regulation 15 (2) compliance with the corporate governance provisions as specified in regulations 17 to 27 and regulation 46 (2) (b) to (i) and para C, D and E of Schedule V shall not apply, in respect of –

- (a) the listed entity having paid up equity share capital not exceeding Rs.10 Crore and net worth not exceeding Rs. 25 Crore, as on the last day of the previous financial year:  
Provided that where the provisions of the regulations specified in this regulation becomes applicable to a listed entity at a later date, such listed entity shall comply with the requirements those regulations within six months from the date on which the provisions became applicable to the listed entity.s

(b) the listed entity which has listed its specified securities on the SME Exchange:

Provided that for other listed entities which are not companies, but body corporate or are subject to regulations under other statutes, the provisions of corporate governance provisions as specified in regulation 17 to 27 and regulation 46 (2) (b) to (i) and para C, D and E of Schedule V shall apply to the extent that it does not violate their respective statutes and guidelines or directives issued by the relevant authorities.

Notwithstanding sub-regulation (2) above, the provisions of Companies Act, 2013 shall continue to apply, wherever applicable.

## New Regulations which are incorporated in 2015 Regulations

NEW REGULATION	DESCRIPTION
7(2)	Ensure that all activities in relation to both physical and electronic share transfer facility are maintained either in house or by Registrar to an issue and share transfer agent registered with the Board.
7(3)	Submit a <b>compliance certificate</b> to the exchange, duly signed by both the compliance officer of the listed entity and the authorised representative of the share transfer agent, wherever applicable, within one month of end of each half of the financial year, certifying compliance with the requirements of sub-regulation (2).
9	Have a policy for preservation of documents, approved by its board of directors, classifying them in at least two categories as follows- a) documents whose preservation shall be permanent in nature; b) documents with preservation period of not less than eight years after completion of the relevant transactions: Provided that the listed entity may keep documents specified in clauses (a) and (b) in electronic mode.
12	Use any of the electronic mode of payment facility approved by the Reserve Bank of India, in the manner specified in Schedule I, for the payment of the following: (a) dividends; (b) interest; (c) redemption or repayment amounts: Provided that where it is not possible to use electronic mode of payment, 'payable-at-par' warrants or cheques may be issued: Provided further that where the amount payable as dividend exceeds one thousand and Rs. 1500, the 'payable-at-par' warrants or cheques shall be sent by speed post.
13(3)	File with the SE on a quarterly basis, within 21 days from the end of each quarter, <b>a statement giving the number of investor complaints</b> pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.
35	Submit to the SE an Annual Information Memorandum in the manner specified by the Board from time to time.

46(2)

Disseminate the following information on its website:
(a) details of its business;
(b) terms and conditions of appointment of independent directors;
(c) composition of various committees of board of directors;
(d) code of conduct of board of directors and senior management personnel;
(e) details of establishment of vigil mechanism/ Whistle Blower policy;
(f) criteria of making payments to non-executive directors , if the same has not been disclosed in annual report;
(g) policy on dealing with related party transactions;
(h) policy for determining 'material' subsidiaries;
(i) details of familiarization programmes imparted to independent directors including the following details:-
(1) number of programmes attended by independent directors (during the year and on a cumulative basis till date),
(2) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and
(3) other relevant details
(j) the email address for grievance redressal and other relevant details;
(k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
(l) financial information including:
(1) notice of meeting of the board of directors where financial results shall be discussed;
(2) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
(3) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;
(m) shareholding pattern;
(n) details of agreements entered into with the media companies and/or their associates, etc;
(o) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;
(p) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;
(q) items in sub-regulation (1) of regulation 47, viz.,
(i) notice of BM where financial results shall be discussed;
(ii) financial results;
(iii) statements of deviation(s) or variation(s);

	(iv) Notices given to shareholders by advertisement.
<b>46(3)(b)</b>	Update any change in the content of its website within two working days from the date of such change in content.

With Regulations 2015 SEBI has mandated for listed entity to formulate following policies and put it on company's website if applicable as per Regulation 15:

<b>List of Policies Required to be formulated</b>			
<b>Sr. No.</b>	<b>Regulation</b>	<b>Reg. No.</b>	<b>Policy</b>
1	Preservation of documents	9	Policy for Preservation of Documents
2	Definitions	16 (c)and 46(2)(h)	Policy for determining Material Subsidiary
3	Board of Directors	17(9)(a)	Risk Assessment and minimization policy
4	Vigil mechanism	22 and 46 (2)(e)	Vigil mechanism/ Whistle Blower policy
5	Related party transactions	23(1) and 46(2)(g)	Policy on dealing with Related Party Transaction (RPT)
6	Disclosure of events or information	30(4)(ii)	Policy for determination of materiality of event or information

### QUATERLY COMPLIANCES

<b>Regulation</b>	<b>Reg. No.</b>	<b>Description</b>	<b>Time Limit</b>
<b>Grievance Redressal Mechanism.</b>	13(3)and (4)	Submit statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter. This statement shall be placed, on quarterly basis, before the board of directors	within <b>21 days</b> from the end of each quarter
<b>Corporate governance requirements</b>	27(2)(a)	submit a quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognised stock exchange(s)	within <b>15 days</b> from the end of each quarter
<b>Shareholding pattern</b>	31(1)	Submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities	Within <b>21 working days</b> from the end of each quarter
<b>Financial results</b>	33(3)(a)	Submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter.	Within <b>45 days</b> of end of each quarter

### HALF YEARLY COMPLIANCES

Regulation	Reg. No.	Description	Time Limit
Share Transfer Agent.	7(3)	Submit a compliance certificate to the exchange, duly signed by both the compliance officer of the listed entity and authorised representative of the Share transfer agent, wherever applicable	within <b>one month</b> of end of each half of the financial year

### ANNUAL COMPLIANCES

Regulation	Reg. No.	Description	Time Limit
Annual Report	34(1)	Submit the annual report to the stock exchange within twenty one working days of it being approved and adopted in the annual general meeting as per the provisions of the Companies Act, 2013.	Within <b>twenty one working days</b> of AGM
Documents & Information to shareholders.	36(2)	The listed entity shall send annual report	Not less than <b>twenty-one days</b> before the AGM
Financial results	33(3)(d)	Submit audited standalone financial results for the financial year to the stock exchange	Within <b>60 days</b> from the end of the financial year

**2015 Regulation also prescribes timelines for prior intimation which are enumerated as under:**

Regulation	Reg. No.	Description	Time Limit
Prior Intimations	29(2)(a)	Prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered: (a) financial results viz. quarterly, half yearly, or annual, as the case may be;	Atleast <b>5 days</b> in advance excluding the date of intimation and date of BM
Prior Intimations	29(2)	Prior intimation to stock exchange about the meeting of the board of directors in which any of the following proposals is due to be considered: (b) proposal for buyback of securities; (c) proposal for voluntary delisting by the listed entity from the stock exchange(s); (d) fund raising by way of further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign	Atleast <b>2 working days</b> in advance excluding the date of intimation and date of BM

		<p>Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price:          Provided that intimation shall also be given in case of any annual general meeting or extraordinary general meeting or postal ballot that is proposed to be held for obtaining shareholder approval for further fund raising indicating type of issuance.</p> <p>(e) declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend.</p> <p>(f) the proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers</p>	
<b>Prior Intimations</b>	29(3)	<p>The listed entity shall give intimation to the stock exchange(s) before any of the following proposal is placed before the BOD: (a) any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.(b) any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.</p>	at least 11 Working days before the BM
<b>Prior Intimations</b>	29(2) Proviso	<p>Give prior intimation to Stock Exchange about the BM in which Financial results viz quarterly, half yearly, or annual, as the case may be, is due to be considered</p>	At least <b>5 days</b> in advance (Excluding the date of the intimation and date of the meeting)

<p><b>Record Date or Date of closure of transfer books</b></p>	<p>42(1)(2) and (4)</p>	<p>Intimate record date to all the stock exchange(s) where it is listed for the following purposes:  (a) declaration of dividend;  (b) issue of right or bonus shares;  (c) issue of shares for conversion of debentures or any other convertible security;  (d) shares arising out of rights attached to debentures or any other convertible security  (e) corporate actions like mergers, de-mergers, splits and bonus shares, where stock derivatives are available on the stock of listed entity or where listed entity's stocks form part of an index on which derivatives are available;  (f) such other purposes as may be specified by the stock exchange(s) Notice in advance of atleast seven working days (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date. The time gap of at least thirty days between two record dates should be maintained</p>	<p>Notice in advance of at least <b>7 working days</b> (excluding the date of intimation and the record date) to stock exchange(s) of record date specifying the purpose of the record date.</p>
<p><b>Record Date or Date of closure of transfer books</b></p>	<p>42(3)</p>	<p>The listed entity shall recommend or declare all dividend and/or cash bonuses</p>	<p>At least <b>5 Working days</b> (excluding the date of intimation and the record date)</p>

### Conclusion

The 2015 Regulations give statutory status to the contractual clauses of listing agreements and thus, breach of the 2015 Regulations will invoke penalty clauses under the SEBI Act. These regulations have stirred mixed reactions from professionals and experts. Some brand them as “old wine in new bottle” while some are concerned about implementation.

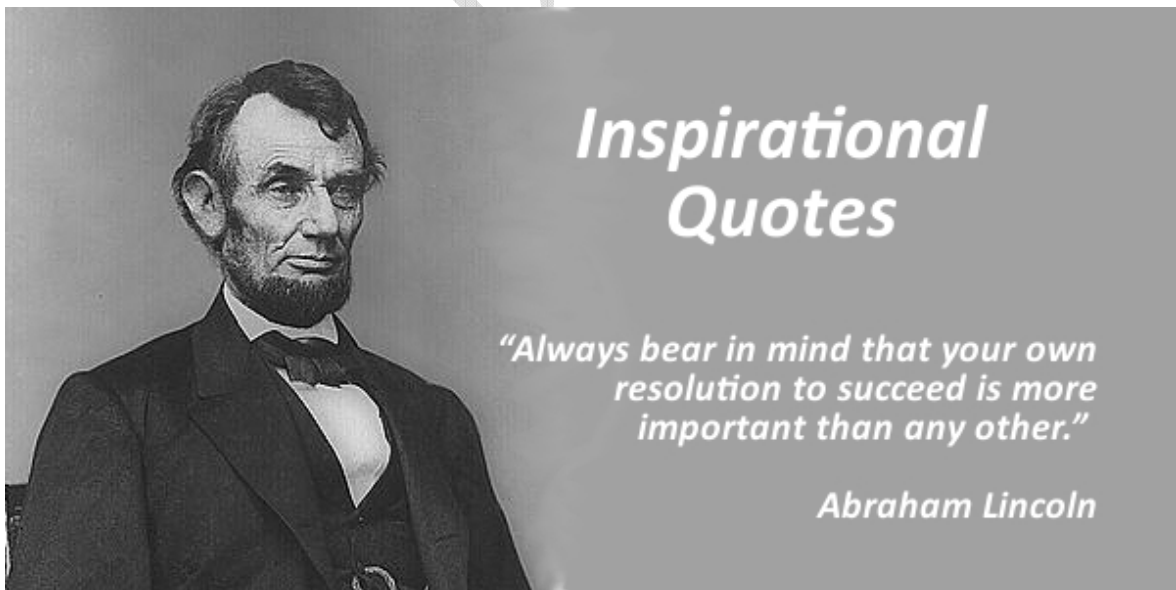


## INSPIRATIONAL QUOTES

**“DON'T WAIT FOR THE  
PERFECT MOMENT,  
TAKE THE MOMENT  
AND MAKE IT  
PERFECT.”**

**ZOEY SAYWARD**

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