

## SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) THIRD AMENDMENT REGULATIONS, 2021

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### Introduction:

The Securities and Exchange Board of India (“SEBI”) has issued a notification bearing No. SEBI/LAD-NRO/GN/2021/35 dated 3<sup>rd</sup> August 2021 amending the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (“**LODR Regulations**”), with respect to the regulatory provisions relating to Independent Directors, which shall come into effect from 1<sup>st</sup> January 2022 (“**Notification**”).

The Notification and the amendments brought therein aims to strengthen the corporate governance framework in listed companies based in India.

### Amendments:

Following critical amendments have been made to the LODR Regulations by the said Notification:

#### 1. **Definition of Independent Director**

- a) Regulation 16(1)(b)(iv) has been amended to increase the eligibility requirement of Independent Director to 3 (three) years from 2 (two) years.
- b) The amended Regulation 16(1)(b)(v) has clarified the nature of pecuniary relationship to include the following, with respect to the listed entity, its holding, subsidiary, or associate company:
  - i) holding securities of or interest during the 3 (three) immediately preceding financial years or during the current financial year of face value in excess of Rs. 50,000 (Fifty lakh rupees) or 2% (two percent) of the paid-up capital or such higher sum as may be specified;
  - ii) indebtedness, in excess of such amount as may be specified during the 3 (three) immediately preceding financial years or during the current financial year;
  - iii) provision of a guarantee or security in connection with the indebtedness of any third person, for such amount as may be specified during the 3 (three) immediately preceding financial years or during the current financial year; or
  - iv) any other pecuniary transaction or relationship, amounting to 2% (two percent) or more of its gross turnover or total income.

- c) The amended Regulation 16(1)(b)(vi) has relaxed the restrictions placed on the appointment of an employee's relative other than a relative of a Key Managerial Personnel in respect of the cooling period applicable to his proposed employment as an Independent Director.

2. **Regularisation of Director**

Insertion of this new sub-clause (1)(C) under Regulation 17 will now require listed entities appointing Directors during the year to regularise the appointment of such Director within 3 (three) months from the date of appointment of such Director, vide an EGM, if the AGM of such company is beyond such period.

3. **Composition of Audit Committee**

The amended Regulation 18(1)(b) has clarified that at least 2/3<sup>rd</sup> of the Audit Committee members shall be Independent Directors.

4. **Composition of Nomination and Remuneration Committee ("NRC")**

The amended Regulation 19(1)(c) has modified the composition of NRC to include 2/3<sup>rd</sup> of its members as Independent Directors, for all listed entities.

5. **Related Party Transaction**

Insertion of this new proviso under Regulation 23 will ensure that all related party transactions are only approved by the Independent Directors forming a part of the Audit Committee.

6. **Appointment, Removal and Re-appointment of Independent Directors**

Insertion of this new sub clause (2A) under Regulation 25 will now require listed entities to pass a special resolution before appointing, re-appointing, or removing any Independent Directors.

7. **Appointment of a new Independent Director, pursuant to Resignation of an existing Independent Director**

Regulation 25 (6) has been amended to state that in case of resignation by or removal of an Independent Director, he/she shall be replaced by a new Independent Director within 3 (three) months from the date of such vacancy.

Pursuant to the insertion of sub-clause (11A) under Regulation 25, any Independent Director who has resigned cannot be appointed as a whole-time director or an executive director unless a period of 1 (one) year has expired.

## 8. **Director and Officers' Insurance**

Regulation 25 (10) has been amended to extend the requirement of undertaking Directors and Officers insurance, for all Independent Directors by market capitalization, to the top 1000 listed companies, which was earlier top 500 listed companies.

## 9. **Information to Shareholder and Disclosures**

The amendments brought under the Notification, in particular to Regulation 36, Schedule II and Schedule III requires the listed entities to provide additional information to shareholders such as skills and capabilities of Independent Directors, entities in which such Director has interest, etc. while considering their appointment. Further, at the time of resignation of an Independent Director, the listed entity is required to disclose to the stock exchanges, letter of resignation of the Independent Director along with (i) detailed reasons of resignation as provided by him; and (ii) names of listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any.

### **Conclusion:**

The amendments brought in by the Notification aim at strengthening the corporate governance framework by bringing in more transparency in the selection, appointment, and resignation of Independent Directors. However, the efficacy of these amendments will only be understood, once effective and if similar applicable amendments are carried out in Companies Act, 2013.

### **Disclaimer**

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