Ready Reckoner on Compliance with various Clauses/Provisions of the Stock Exchange Listing Agreement and SEBI Regulations

Kailash K. Dagar, FCS, Hindustan Aeronautics Ltd., Bangalore.

Various regulatory authorities have great confidence in Company Secretaries and hence entrusted various responsibilities on Company Secretary as Compliance Officer of the Company. Compliance with the listing agreement is one such responsibility of the Company Secretary in listed company. This article provides a calendar of compliance with the provisions/clauses of the listing agreement.

e-mail : kkdagar@rediffmail.com

NEED FOR READY RECKONER

There are various statutes, bylaws, guidelines, rules, regulations and norms prescribed by the various Regulating Authorities like Ministry of Corporate Affairs, Securities and Exchange Board of India and Reserve Bank of India etc. which are required to be complied with in true spirit and purport so that all stakeholder derives the benefit due to them and also to avoid the unwarranted legal actions from regulating authorities. In the present corporate scenario, legal ethos and regulatory expectations change very fast. Every day one or other regulating authorities come out with a circular, notification, clarification or amendment concerning corporate affairs. Since laws are ever changing, one cannot escape responsibility by stating that non-compliance was the result of ignorance. Daily updates is the necessity of a Company Secretary to prove himself as a ready reckoner. The profession of Company Secretary requires a continuous learning process and it is the capacity to learn, unlearn and relearn that helps professional to steer ahead towards professional prosperity.

Listing Agreement has fastened great responsibility on Company Secretary by designating him as Compliance Officer. Clause 47 of the Listing Agreement provides for appointment of Company Secretary to act as Compliance Officer to be responsible for monitoring share transfer process, report to the Company's Board in each meeting, liaise directly with the authorities such as SEBI, Stock Exchanges, Registrar of Companies, Ministry of Corporate Affairs, Registrar and Transfer Agents, Credit Rating Agencies etc. and investors for resolving their grievances. Company Secretary also has to provide an e-mail ID of the grievance redressel division/Compliance Officer for the purpose of registering complaints by investors. Similarly clause 51 also casts responsibility on Compliance Officer for filing online the Annual Report and various information/data in the EDIFAR System.

Though a Company Secretary has to play many vital roles in the corporate world, the role of "Compliance Officer" is like the fulcrum of the profession and timely compliance with various provisions/clauses of the Listing Agreement **(LA)** executed with the Stock Exchange **(SE)** are the main thrust of a Company Secretary profession in a listed company, in order to remain continuously listed, create better brand image, enhance creditworthiness and avoid punitive action.

MEANING AND PURPOSE OF LISTING

Listing means admission of the securities to dealings on a recognized stock exchange. The securities may be of any public limited company, Central or State Government, quasi-governmental and other financial institutions/corporations, municipalities, etc. The objectives of listing are mainly to provide liquidity to securities; mobilize savings for economic development and protect interest of investors by ensuring full disclosures.

The companies desirous of getting their securities listed initially are required to enter into an agreement with the Stock Exchange called the Listing Agreement and they are required to make certain disclosures and perform certain acts. Under the Listing Agreement, a company undertakes, amongst other things, to provide facilities for prompt transfer, registration, sub-division and consolidation of securities; to give proper notice of closure of transfer books and record dates, to forward copies of unabridged Annual Reports and Balance Sheets to the shareholders, to furnish financial results on a quarterly basis; intimate promptly to the Exchange the happenings which are likely to affect materially the financial performance of the Company and its stock prices, to comply with the conditions of Corporate Governance, etc.

To remain continuously listed, the Companies are required to comply with various clauses/provisions of the Listing Agreement executed initially. The very purpose of continued listing is to ensure free transferability of securities, liquidity in trading, clear transparency and open disclosure of information relating to the affairs of the company. Hence listing is a step towards protection of interest of public in which present and prospective investors are largely involved.

The process of listing involves the following four steps : -

(1) Initial listing before offer of securities to the public and registration of prospectus with Registrar of Companies by making listing application and paying prescribed initial listing fee.

(2) Final listing of securities that has been offered to the public by execution of Listing Agreement with Stock Exchange/s.

(3) Enlist the securities openly for the trading.

(4) To list further issue of securities and to remain continuously listed until it is de-listed either by Stock Exchange or at the option of the Company.

Stock Exchange provides the market place for dealing in the listed securities by the registered member/broker on the Stock Exchanges. Section 11 of the SEBI Act, empowers SEBI for regulating the business in the Stock Exchanges, registering and regulating the Stock Brokers, Depositories, prohibiting fraudulent and unfair trade practices relating to securities market and protecting the interest of investors in securities.

Section 11B of the SEBI Act provides that SEBI has power to issue direction to any intermediaries associated with securities market (including Stock Exchanges) for protection of interest of investors and orderly development of securities market. Sections 11 and 11B of the SEBI Act vests vast power on SEBI, which include the enforcement and regulation of listing of securities.

The Listing Department of the Exchange monitors the compliance of the companies with the provisions of the Listing Agreement and takes penal action against the defaulting companies.

NATURE OF COMPLIANCES

For preparing the ready reckoner, compliances have been divided into two categories i.e Periodical compliances and Event based compliances.

Periodical Compliances

The periodical compliances are further divided into quarterly, half early and yearly compliances as under : -

[1] ***Quarterly Compliances*** *– June, September, December, March Quarters*

Clause 35 – Shareholding Pattern within 21 days of the end of each Quarter

Clause 41 – Holding Board Meeting to approve Un-audited Quarterly Financial Results

Clause 49 – Corporate Governance Report by Compliance Officer of the Company to SE within 15 days of the close of each quarter.

Regu 55A - Regulation 55A of the SEBI (Depositories and Participants) Regulations, 1996 requires submission of Quarterly Secretarial Audit Report to Stock Exchanges where company's shares are listed, from Practising Company Secretary /Chartered Accountant within 30 days of the end of each quarter w.e.f. 31.03.2003 vide SEBI Circular No. D&CC/FITTC/CIR/16-2002 dated 31st December, 2002.

[2] ***Half Yearly Compliances*** *– Half year ended 30th September & 31st March*

Clause 47(c) – Half Yearly Certificate about transfer of shares from practising Company Secretary within 1 month of end of each half year.

[3] ***Yearly Compliance***

Clause 16 - Notice about closure of Transfer Book/Record date before 21 clear days of Annual General Meeting (AGM).

Rule 8(3) – In terms of Regulation 8(3) of the SEBI(Substantial Acquisition of Shares & Takeovers) Regulations 1997, every listed company shall within 30 days from the financial year ending March 31, make yearly disclosure to SE giving details of persons holding more than 15% shares/voting rights.

Clause 31 – Submit 6 Copies of Annual Report to SE before *21 clear days of AGM.

** There is no specific time limit prescribed in Clause 31 to forward copies of Annual Report as it simply says 'forward promptly'. However, Section 171(1) of the Companies Act, 1956 requires that at least 21 days' notice (exclusive of the day of service and the day of meeting) should be given to members to call a General Meeting (AGM/EGM). Hence 21 clear days period taken into consideration.*

ASSUMPTIONS FOR PERIODICAL COMPLIANCE CALENDAR

Board Meeting (BM) for the 1st Quarter from 1st April to 30th June – on 30th July

Board Meeting for the 2nd Quarter from 1st July to 30th September – on 30th October

Board Meeting for the 3rd Quarter from 1st Oct to 31st December – on 30th January

Board Meeting for the 4th Quarter from 1st Jan to 31st March – on 30th April

Annual General Meeting – on 30th September

Compliance Calendar

Sl. No.	Particulars of Compliance	Clause of LA	Due Date
1.	Corporate Governance Report by Compliance Officer of the Company to SE within 15 days of close of 4th Quarter	49	15th April
2.	File Shareholding Pattern in the prescribed format	35	21st April
3.	Notice to Stock Exchange(SE) for holding Board Meeting (BM) to approve Un-audited Financial Results(UAFR), subject to Limited Review Report (LRR) by Statutory Auditors, for the quarter ended on 31st March/for approval of Audited results for the year ended 31st March. Give press release for the same.	41	22nd April
4.	Advance intimation to SE if it intends to hold BM for approval of Audited Results	41	22nd April
5.	Publication of Notice in 2 Newspapers (one English language circulating in substantially whole of India and in one Regional Language newspaper of the State in which Registered Office of the Company is situated)	41	22nd April
6.	Secretarial Audit Report from Practising Company Secretary to SE for the 4th Quarter end	SEBI Regulation 55A	30th April
7.	Payment of Annual Listing Fee	38	30th April
8.	To hold Board Meeting for approval of UAFR	41	30th April
9.	Approved UAFR to be submitted to SE within 15 minutes of conclusion of the BM	41	30th April
10.	Submit Certificate obtained from Practising Company Secretary certifying that all certificates have been issued within one month of lodgement for transfer, sub-division etc. for the half year ended 31st March.	47 (c)	30th April
11.	Yearly disclosure by the Company regarding persons who hold more than 15% shares/voting rights and also holding of promoters or persons having control over the company as on financial ending 31st March. – Rule 8(3) of SEBI(SAST) Regulations 1997.	Rule 8(3) of SEBI (SAST)	30th April
12.	Publish approved UAFR within 48 hours of BM.	41	1st May
13.	Copy of Limited Review Report(LRR) by the Statutory Auditors for the 4th Quarter to be submitted to SE within 2 months of Quarter end	41	30th May
14	***For 1st Quarter ended 30th June*** Corporate Governance Report by Compliance Officer of the Company to SE within 15 days of close of 1st Quarter	49	15th July
15.	File Shareholding Pattern in the prescribed format	35	21st July
16.	Notice to SE for holding BM to approve UAFR (Un-audited Financial Results) for the 1st Quarter	41	22nd July
17.	Publication of Notice in 2 Newspapers	41	22nd July
18.	Secretarial Audit Report from Practising Company Secretary to SE for the 1st Quarter	SEBI Regu. 55A	30th July
19.	To hold Board Meeting for approval of UAFR	41	30th July
20.	Approved UAFR submitted to SE within 15 minutes of conclusion of the BM	41	30th July
21.	Publish approved UAFR within 48 hours of BM	41	1st August
22.	Submit copy of Limited Review Report(LRR) by the Statutory Auditors for the 1st Quarter to SE within 2 months of Quarter end	41	30th August
23.	***For 2nd Quarter ended 30th Sept & AGM*** Notice of Closure of Transfer Book/Record date before 21 days of AGM	16	7 Sept.
24.	6 Copies of Annual Report to SE *	31	7 Sept.
25.	Supply copy of Annual Report/ **, statement containing salient features of the balance sheet, profit and loss account and auditors report to each Shareholders/members	32	7 Sept.

26.	Hold the Annual General Meeting	-	30 Sept.
27.	Corporate Governance Report by Compliance Officer of the Company to SE within 15 days of close of second Quarter	49	15th Oct.
28.	File Shareholding Pattern in the prescribed format	35	21st Oct .
29.	Notice to SE for holding BM to approve UAFR (Un-audited Financial Results) for the 2nd Quarter	41	22nd Oct.
30.	Publication of Notice in 2 Newspapers	41	22nd Oct.
31.	To hold Board Meeting for approval of UAFR	41	30th Oct.
32.	Approved UAFR submitted to SE within 15 minutes of conclusion of the BM	41	30th Oct.
33.	Submit Certificate obtained from Practising Company Secretary certifying that all certificates have been issued within one month of lodgement for transfer, sub-division etc. for the half year ended 30th September.	47(c)	30th Oct.
34.	Secretarial Audit Report from Practising Company Secretary to SE for the 2nd Quarter	SEBI Regu. 55A	30th Oct.
35.	Publish approved UAFR within 48 hours of BM held.	41	1st Nov.
36.	Submit copy of Limited Review Report(LRR) by the Statutory Auditors for the 2nd Quarter to SE within 2 months of Quarter end	41	30th Nov.
	For 3rd Quarter ended 30th December		
37.	Corporate Governance Report by Compliance Officer of the Company to SE within 15 days of close of 3rd Quarter	49	15th Jan.
38.	File Shareholding Pattern in the prescribed format	35	21st Jan.
39.	Notice to SE for holding BM to approve UAFR (Un-audited Financial Results) for the 3rd Quarter	41	22nd Jan.
40.	Publication of Notice in 2 Newspapers	41	22nd Jan.
41.	To hold Board Meeting for approval of UAFR	41	30th Jan.
42.	Secretarial Audit Report from Practicing Company Secretary to SE for the 3rd Quarter	SEBI Regu. 55A	30th Jan.
43.	Approved UAFR submitted to SE within 15 minutes of conclusion of the BM	41	30th Jan.
44.	Publish approved UAFR within 48 hours of BM held.	41	1st Feb.
45.	Submit copy of Limited Review Report(LRR) by the Statutory Auditors for the 3rd Quarter to SE within 2 months of Quarter end	41	28th Feb.

*** There is no specific time limit prescribed in Clause 32 to forward copies of Annual Report to each shareholder as it simply says 'The Company will supply a copy of complete and full Annual Report to each shareholder. However, Section 219 of the Companies Act, 1956 provides that every company is required to send to its members, copies of Annual Report not less than 21 days before the date of meeting at which the same would be laid for adoption. Hence 21 clear days period taken into consideration.*

Moreover, SEBI vide its Circular dated 26th April, 2007 has amended Clause 32 of the Listing Agreement permitting Companies to send "a statement containing salient features of the balance sheet, profit and loss account and auditors report" in prescribed Form 23AB to each shareholder (instead of Full Annual Report), Provided that the Company, on receipt of written request from a shareholder, shall send the complete and full balance sheet, profit and loss account and auditors' report to the said shareholder. Hence 2nd option also added in the particulars of compliance.

[B] Event Based Compliances

Sl. No.	Clause No. of LA	Particulars of Compliance	Advance Notice / Intimation
1.	19	Prior intimation to SE about BM having agenda of Buy Back, Dividend, Right Issue, Bonus Shares etc	7 Days
2.	20	Intimation by fax details of Dividend, Buyback etc.	Immediately after conclusion of BM
3.	22	Intimate by fax details of alteration in capital, increase in share capital, issue of forfeited shares etc.	Immediately after conclusion of BM

4.	24	File copy of Scheme/Petition proposed to be filed before any Court under section 391/394 & 101 of Companies Act, 1956.	1 month before it is presented to the Court.
5.	29	Notify promptly SE about any proposed change in the general character or nature of its business.	Notify promptly
6.	30	Notify change in Board of Directors, MD, Auditors etc.	Immediately after change
7.	31	Copy of proceedings of AGM/EGM	As early as possible after AGM/EGM
8.	33	File 6 copies of amended AOA & MOA	As soon as Changes in MOA & AOA approved at the GM
9.	36	Intimation of events/happenings having important bearings and which are likely to materially affect the financial performance of the Company and its stock prices like strikes, lock-outs, closure of units for any reason, disruption of operations due to natural calamity, litigation/dispute having material impact. Any price sensitive information like acquisition, merger, amalgamation, delisting, share forfeiture etc;	Immediately on occurrence and after such events
10.	47	Submit copy of MOU executed with RTA	Within 48 hours of execution of MOU
11.	51	EDIFAR Filing :- - Full version of Annual Report - Corporate Governance Report - Shareholding Pattern Statement - Statement of action taken against the company by any regulatory authorities	Immediately after AGM & occurrence of event.

CONCLUSION

The above calendar has been prepared cautiously based on certain assumptions and latest provisions/clauses of stock exchange listing agreement and provisions of SEBI, which are subject to changes/amendment from time-to-time. However, it is suggested that before acting on the basis of the above calendar the relevant clause may please be analysed in detail and referance be made for updation on website *"www.bseindia.com"* ❑