Law Simplifier Series

SEBI Circulars on monitoring the compliances under the Equity Listing Agreement

A brief Note on Penalizing provisions on event of Non Compliances

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SEBI Circulars on monitoring the compliances under the Listing Agreement

1. SEBI vide circular no. *CIR/MRD/DSA/31/2013* dated September 30, 2013 mandated the **actions for non compliance of certain listing conditions under the Listing Agreement** as follows:

    a. **Imposition of fines under a uniform fine structure** as below in case of such non-compliances.

Sl.	Clause	Fine for 1st Non Compliance	Fine for Subsequent Non Compliance
1	**Clause 31** : Non Submission of Annual Report	If such non-compliance continues for more than 5 days, **Rs. 1,000 per day** till the date of compliance	**Rs. 2,000 per day** till the date of compliance
2	**Clause 35**: Non Submission of Shareholding Pattern	**Rs. 1,000 per day** till the date of compliance and If such non-compliance continues for more than 15 days additional fine of **0.1 % of paid up capital of the entity** as at the beginning of Financial Year or **Rs. 1 crore**, whichever is **less.**	**Rs. 2,000 per day** till the date of compliance and If such non-compliance continues for more than 15 days additional fine of **0.1 % of paid up capital of the entity** as at the beginning of Financial Year or **Rs. 1 crore**, whichever is **less.**
3	**Clause 41** : Non Submission of Financial Results	**Rs. 5,000 per day** till the date of compliance and If such non-compliance continues for more than 15 days additional fine of **0.1 % of paid up capital of the entity** as at the beginning of Financial Year or **Rs. 1 crore**, whichever is **less.**	**Rs. 1,0000 per day** till the date of compliance and If such non-compliance continues for more than 15 days additional fine of **0.1 % of paid up capital of the entity** as at the beginning of Financial Year or **Rs. 1 crore**, whichever is **less.**
4	**Clause 49** : Non Submission of Corporate Governance Compliance Report	**Rs. 1,000 per day** till the date of compliance.	**Rs. 2,000 per day** till the date of compliance.

b. Disclosures on the websites of the Stock Exchanges, the name of non complaint companies.

c. The stock exchanges shall review the compliance status of the companies as below and will issue notices to non compliant companies to ensure compliance and pay fine within **15 days of notice**:

Sl.	Clause	Review Period
1.	Clauses 35 & 49	Within **45 days** from the end of quarter
2.	Clauses 31 & 41	Within **15 days** from the due date

d. If the non compliant company fails to pay the fine, the Stock Exchange may initiate appropriate **enforcement action including prosecution.**

e. If the non compliant company commits two or more consecutive defaults, the stock exchange shall, in addition to imposing fine, move the scrip of the listed entities to "Z" category where trades shall take place in 'trade for trade' basis.

f. The stock exchange shall move back the scrip of the company to the normal trading category, if it complies with respective clauses of the listing agreement and completely pays fine

g. SEBI has also set Standard operating procedures for **suspension of trading in the shares** as below.

Failure to comply	Period
Clause 31 (Non submission of Annual Report)	2 Consecutive FY
Clause 35 (Non submission of Shareholding Pattern)	2 Consecutive Qtrs.
Clause 41 (Non submission of Financial Results)	2 Consecutive Qtrs.
Clause 49 (Non Submission of CG Compliance Report)	2 Consecutive Qtrs.
Reconciliation of Shares and Capital Audit Report	2 Consecutive Qtrs.
On Receipt of the notice of suspension of trading of that entity by any other recognized stock exchange on any or all of the above grounds	

2. On 18th November 2013, SEBI vide circular no. *CIR/CFD/POLICYCELL/13/2013* has advised all the recognized **Stock Exchanges to implement the followings** as below:

   a. To put in place **appropriate framework** to effectively monitor the adequacy and accuracy of the disclosures made by listed companies.

b. To devise the framework by the Stock Exchanges in such a way that it **detects any non-compliance / violation** of the provisions of SCRA, SEBI Act, Listing Agreement, and any other applicable laws as indicated below:

- ✓ Preliminary check on the information received from the Companies.

- ✓ Shareholding Pattern submitted will be monitored **by comparing with the filings of the previous quarter** which shall include changes, if any, in the names of the promoters, their shareholding, encumbered shares, persons holding more than the required percentage in public category, and ensure as to whether the requisite disclosures have been made in compliance with Insider Trading Regulations, Takeover Regulations and any other applicable laws, rules and regulations.

- ✓ Disclosures with respect to **Clause-41** (including handling of complaints relating to inadequate disclosures and non-compliances) and **Clause 49** shall be monitored for quality and substantive compliance and necessary action would be initiated, if found otherwise

- ✓ Stock Exchanges shall keep themselves informed of the **updates in various media including print and mass media** while scrutinizing the disclosures made under **Clause 36**, ensure that any important information has not been omitted to be disclosed by the company.

- ✓ Stock Exchanges will follow up with the listed companies at every stage for the updates on material events reported, either suo moto or upon receipt of information from other sources.

- ✓ In case there is any deficiency in the information / clarification provided by the company, Stock Exchanges shall seek further clarification from the company within such time as they may deem fit **but not later than 2 working days from the date of the said disclosure** and the Company shall submit the requisite information / clarification within such timeframe as may be specified by the Stock Exchanges which **shall not exceed 5 working day**s from the date of the communication of Stock Exchange seeking such information / clarification.

- ✓ Any query raised by the Stock Exchange and reply received from the company shall be disseminated on the website of the Stock Exchange immediately and the same shall be tagged along with the relevant disclosures made by the company.

c. To put in place an appropriate mechanism for **handling complaints related to such inadequate and inaccurate disclosures** and non-compliances.

d. To treat inadequacy and inaccuracy of disclosure as non-compliance, wherever applicable and proceed further as per the Standard Operating Procedure laid down by SEBI.

e. To submit to SEBI an **"Exception Report"** with the details of companies which do not respond to the clarifications sought and/or where the response submitted by the company is not satisfactory in the opinion of the Stock Exchange.

f. To **obtain the details** of the **promoters** / **directors** and/or **KMP** of the listed companies who shall be responsible for ensuring compliance with the provisions of the Listing Agreement and in case of defaults, disclose such details on its website.

g. Recognized Stock Exchanges shall begin with monitoring the adequacy and accuracy of disclosures made by **top 500 listed companies** (by market capitalization as on March 31, 2013) in compliance with Clauses 35, 36, 41 and 49 of the Equity Listing Agreement for the **quarter ending December 31, 2013.**

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