S.E.B.I.
LISTING AGREEMENT
CLAUSE 49

w.e.f. 1st October 2014

Clause 49 of the Listing Agreement

SEBI came up with circular in April this year

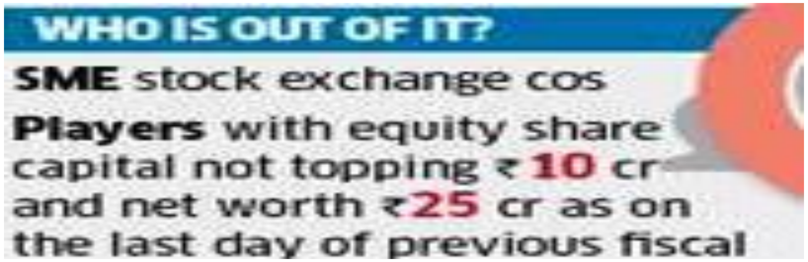
Again on 15th September 2014, amended clause 49 to be in line with Companies Act, 2013

Clause 49 of the Listing Agreement

- **Applicable to Listed Companies**
- **Not Mandatory for time being for following class of companies:**

Small companies whose equity share capital does not exceed Rs 10 crore and net worth Rs 25 crore as on the last day of the previous financial year, have been excluded from complying with the new provisions of Clause 49.

Also, those listed on the SME (small and medium enterprise) stock exchange have been exempted from the requirements.


WHO IS OUT OF IT?

SME stock exchange cos

Players with equity share capital not topping ₹10 cr and net worth ₹25 cr as on the last day of previous fiscal

WHY?

NEED TO AMEND THE PROVISIONS OF Clause 49

- To align the provisions of the listing agreement with the provisions of the newly enacted Companies Act, 2013

- To provide additional requirements to strengthen the Corporate Governance framework for the listed companies in India.

Divide mainly in two part for sack of easy understanding

- Director

- Related Party Transactions

Tenure,
Woman Director,
Independent Director

TERM OF INDEPENDENT DIRECTOR

Amendment to Clause 49(II)(B)(3)(a)

- As per Companies Act, 2013, an independent director can hold up to two 5 year terms after which there needs to be a 3 year cooling off period.
- April Circular: April Circular said an Independent Director who has already served on a company's board for 5 years can serve only one more term of 5 years.
- Amended Circular: In line with Companies Act, 2013

Summary:

Cos Act, 2013: **5years + 5 years + 3 years cooling off**

April Circular, SEBI: **One more term of 5 years if 5 yrs already served**

Amended Circular, SEBI: **In line with Cos Act**

Who is Independent Director

Amendment to Clause 49(II)(B)(1)(c)

- April Circular gave a wide meaning to it to say that a person who has or had a pecuniary relationship with the company, its subsidiary, associate, promoters, directors etc will not be considered as independent.
- SEBI has amended this to say that there should not be any ***material pecuniary relationship***.
- *Curiously, the Companies Act still doesn't talk about materiality- so the MCA may need to clarify that for companies to benefit from the dilution under amended Clause 49.*

Summary:

Cos Act, 2013: No Concept of Materiality

April Circular, SEBI: No pecuniary relationship with company. Subsidiary, promoter etc

Amended Circular, SEBI: No **material** pecuniary relationship…

Woman Director on Board

Amendment to Clause 49(II)(A)(1)

- Listed companies have now been given time until April 2015 to induct at least one woman director on their Boards

Summary:

April Circular, SEBI: **All listed companies to have 1 Woman Dir effective 1st October, 2014**

Amended Circular, SEBI: **All listed companies to have 1 Woman Dir effective 1st April , 2015**

Related Parties Definitions an Transactions threshhold

RELATED PARTIES: DEFINITIONS

Amendment to Clause 49(VII)

- The Companies Act defines related party transactions mostly in connection to directors, relatives and KMP.
- SEBI extended the definition in its April Circular to include those in control or joint control or having significant influence. That created a lot of confusion among companies who said the concept of control in itself is vague and this would just lead to interpretational issues.
- SEBI has paid heed to it and has aligned its RPT definition to that under Companies Act and Accounting Standards.

Summary:

Cos Act, 2013: Defined in connection to directors, relatives, KMP

April Circular, SEBI: Extended to those in control/ joint control/having significant influence

Amended Circular, SEBI: Cos Act + Accounting Standards definition

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

MATERIAL RELATED PARTIES TRANSACTIONS

Amendment to Clause 49(VII)(B)

- SEBI has diluted its materiality thresholds for shareholder approval.
- In its April Circular, SEBI defined material to include transaction exceeding 5% of annual turnover or 25% of networth.
- SEBI has removed the networth requirement and increased the turnover to 10%. This translates into lesser number of RPTs going to shareholders for approval.

Summary:

April Circular, SEBI: Exceeding 5% of annual turnover OR 25% of networth

Amended Circular, SEBI: Exceeding 10% of annual turnover

भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

EXEMPTED RELATED PARTIES TRANSACTIONS

Amendment to Clause 49(VII)(E)

- Transactions between two government companies or transactions between a holding company and its subsidiary- both have been exempted from the requirement of prior audit committee approval and special shareholder resolution.

- Here again, the Companies Act is silent on exemption to government companies…so MCA may issue a clarification to this effect soon.

Summary:

No Audit Committee approval or special resolution for

- Transactions between 2 government companies

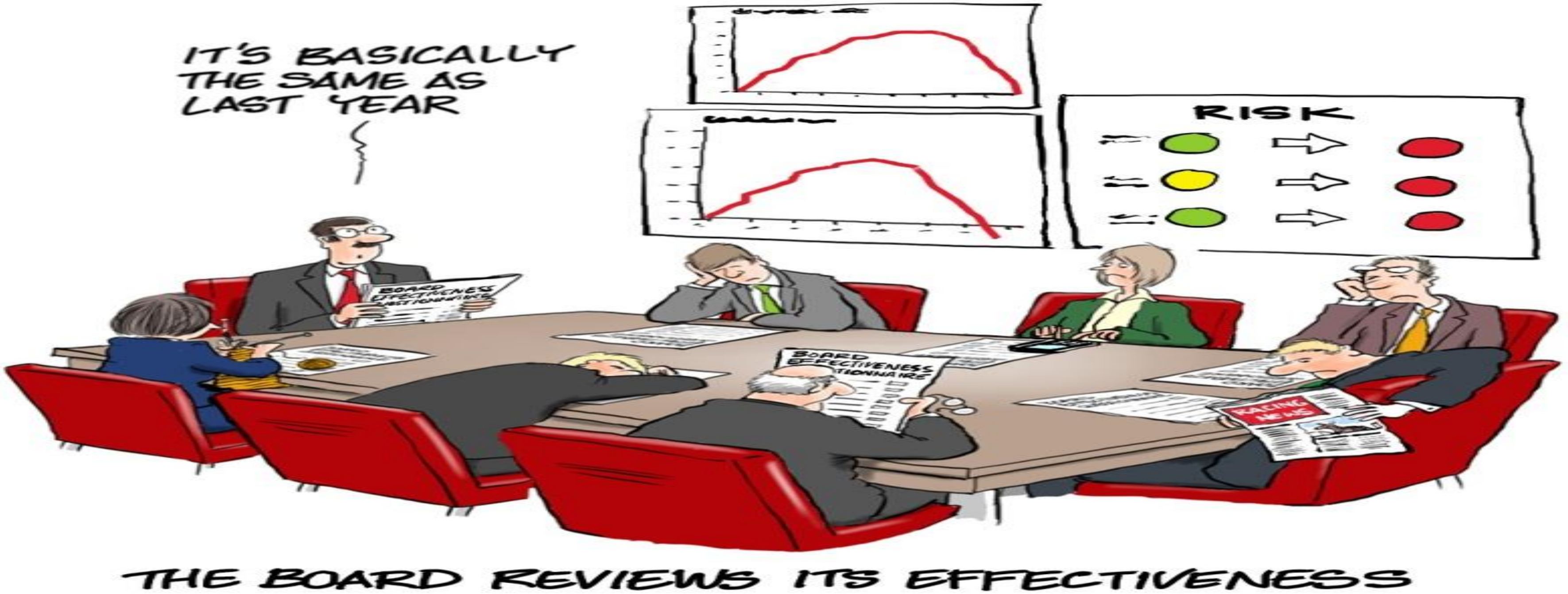
- Transaction between Holding Co & its Wholly-owned subsidiary

भारतीय प्रतिभूति और विनिमय बोर्ड

Securities and Exchange Board of India

AUDIT COMMITTEE & RPTs

Amendment to Clause 49(VII)(D)



All Related Party Transactions shall require prior approval of the Audit Committee. However, the Audit Committee may grant **omnibus approval** for Related Party Transactions proposed to be entered into by the company

Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year

OTHER AMENDMENTS

- ✓ Earlier under listing agreement, certification of certain conditions such as – having reviewed FS and DFS, maintaining internal controls etc – was required by MD/Manager and WTD/CFO.

- ✓ Now, the same has been replaced as "CEO or MD or Manager…or in their absence, a Whole time Finance Director…and the CFO"

Key Concern:

- ✓ However, the most unnerving change is brought in the Explanation (ii) wherein SEBI requires all the entities which fall under the definition of 'related party' to abstain from voting irrespective of whether the entity is a party to the particular transaction or not.

This is not in line with MCA General Circular No. 30/2014 wherein MCA categorically clarified that the term 'related party' in the context of Section 188 would refer to only such related party as may be a related party in the context of the contract or arrangement for which the said special resolution is being passed.

This new explanation under revised clause 49, takes away the entire benefit that was provided by MCA and brings back all the listed companies to the same old confusion that if a party is not related for a particular contract but falls within the definition of Section 2(76) of the Act would not be construed to be a 'related party' under the Act.

Thank You

Mihir Doshi
B.com, ACA, LCS, LLB
Ahmedabad

camihir@rediffmail.com

Disclaimer:

This presentation may have grammatical or spelling errors. Presentation is prepared based on the analysis of Circular dated 15th September 2014 bearing CIR/CFD/Policy Cell/7/2014 – SEBI and Expert view published on various Media online and offline. In case any discrepancy or variation, please refer above mentioned circular in detailed manner.