

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

Securities and Exchange Board of India (SEBI) has issued notification No. SEBI/LAD-NRO/GN/2021/35 dated 3<sup>rd</sup> August, 2021 to further amend the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“LODR”). These regulations may be called the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2021.

Earlier, the amendment was effective from date of their publication in the Official Gazette i.e. 3<sup>rd</sup> August, 2021. However, SEBI vide its corrigendum dated 06.08.2021 extended the enforcement timelines of such notification and now the same shall be effective from January 1, 2022.

Refer below links for notified amendment and corrigendum:

SEBI (LODR) (Third Amendment) Regulations, 2021 dated 03.08.2021: <https://egazette.nic.in/WriteReadData/2021/228705.pdf>

SEBI Corrigendum dated 06.08.2021: <https://egazette.nic.in/WriteReadData/2021/228797.pdf>

**Key amendments introduced in LODR by said amendment regulations, 2021 are below:**

1. Criteria of independent directors have been amended.
2. In case of appointment of directors, shareholders’ approval is required to take in next general meeting or within a time period of three months from the date of appointment, whichever is earlier.
3. In composition of NRC Committee at least two-thirds of the directors shall be independent directors.
4. Only independent directors who are member of Audit committee shall give approval of related party transactions.
5. For appointment, re-appointment or removal of an independent director, special resolution is required.
6. The listed entity must fill the vacancy of Independent Director within three months from the date of such vacancy.

7. With effect from January 1, 2022, top 1000 listed entities by market capitalization calculated as on March 31 of the preceding financial year shall take Directors and Officers insurance ('D and O insurance') for all their independent directors.
8. Only after elapse of one year from the date of resignation of independent director, he can be appointed as executive / whole time director in the listed entity and its holding, subsidiary or associate company or company belonging to its promoter group
9. Disclose additional information which is required to provide to the shareholders in case of appointment and re-appointment of a director
10. Role of Nomination and Remuneration Committee is enhanced.
11. Inserted additional disclosures which are required to made to the stock exchanges in case of resignation of independent director

For details of amendment, please find below our comparative analysis:

**COMPARATIVE VIEW OF MAJOR AMENDMENTS IN LODR VIDE THIRD AMENDMENT REGULATIONS, 2021**

BEFORE AMENDMENT	AFTER AMENDMENT	AMENDMENT	ACTIONABLES
<p><b><u>Reg. 16 (1) (b)</u></b> <b><u>Definition of Independent director</u></b></p> <p>"Independent director" means a non-executive director, other than a nominee director of the listed entity:</p> <p>(i) who, in the .....;</p> <p>(ii) who is .....;</p> <p>(iii) who is not .....;</p> <p>(iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity,</p>	<p><b><u>Reg. 16 (1) (b)</u></b> <b><u>Definition of Independent director</u></b></p> <p>"Independent director" means a non-executive director, other than a nominee director of the listed entity:</p> <p>(i) who, in the .....;</p> <p>(ii) who is .....;</p> <p>(iii) who is not .....;</p> <p>(iv) who, apart from receiving director's remuneration, has or had no material pecuniary relationship with the listed entity,</p>	<p>SEBI has made amendment in the definition of Independent director</p>	<p>The SEBI has made the followings amendments in the definition:</p> <p>- the duration for material pecuniary relationship with the listed entity has now been increased by one year. (Earlier it was <b>two immediately preceding financial years</b>, now it has been change to <b>three immediately preceding financial years</b>)</p>

<p>its holding, subsidiary or associate company, or their promoters, or directors, during the <i>two</i> immediately preceding financial years or during the current financial year;</p> <p>(v) none of whose relatives <b>has or had pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company, or their promoters, or directors, amounting to two per cent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed from time to time, whichever is lower, during the two immediately preceding financial years or during the current financial year;</b></p> <p>(vi) who, neither himself, nor whose relative(s) –</p> <p>(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;</p> <p>(B) .....</p> <p>(C) .....; or</p> <p>(D).....;</p>	<p>its holding, subsidiary or associate company, or their promoters, or directors, during the <b>three immediately preceding</b> financial years or during the current financial year;</p> <p>(v) none of whose relatives –</p> <p>(A) <b>is holding securities of or interest in the listed entity, its holding, subsidiary or associate company during the three immediately preceding financial years or during the current financial year of face value in excess of fifty lakh rupees or two percent of the paid-up capital of the listed entity, its holding, subsidiary or associate company, respectively, or such higher sum as may be specified;</b></p> <p>(B) <b>is indebted to the listed entity, its holding, subsidiary or associate company or their promoters or directors, in excess of such amount as may be specified during the three immediately preceding financial years or during the current financial year;</b></p> <p>(C) <b>has given a guarantee or provided any security in connection with the indebtedness of any third person to the listed entity, its holding, subsidiary or associate company or their promoters or directors, for such amount as may be specified during the three immediately preceding financial years or during the</b></p>		<p>- Sub-clause (v) has been aligned with the Companies Act, 2013 but SEBI has made it more stringent by increasing the duration from two years to three years and specifying the amount of Rs. 50 lacs for pecuniary relationship.</p>
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<p>(E) .....</p>	<p>current financial year; or</p> <p>(D) has any other pecuniary transaction or relationship with the listed entity, its holding, subsidiary or associate company amounting to two percent or more of its gross turnover or total income:</p> <p>Provided that the pecuniary relationship or transaction with the listed entity, its holding, subsidiary or associate company or their promoters, or directors in relation to points (A) to (D) above shall not exceed two percent of its gross turnover or total income or fifty lakh rupees or such higher amount as may be specified from time to time, whichever is lower.”</p> <p>(vi) who, neither himself/ herself, nor whose relative(s) –</p> <p>(A) holds or has held the position of a key managerial personnel or is or has been an employee of the listed entity or its holding, subsidiary or associate company <b>or any company belonging to the promoter group of the listed entity</b> in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed;</p> <p>“Provided that in case of a relative, who is an employee other than key managerial</p>		<p>- It has been clarified that if relative is an employee other than key managerial personnel then restriction under this clause shall not apply and the person can be appointed as an Independent Director.</p>
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	<p>personnel, the restriction under this clause shall not apply for his / her employment.”</p> <p>(B) .....</p> <p>(C) .....; or</p>		
<p><b>Reg. 17 (1C)</b></p> <p>No Provision</p>	<p><b>Reg. 17 (1C)</b></p> <p>“(1C). The listed entity shall ensure that approval of shareholders for appointment of a person on the Board of Directors is taken at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.”</p>	<p>SEBI has inserted a new sub-regulation (1C) after sub-regulation (1B) regarding approval of shareholders for appointment of Director.</p>	<p>Now, SEBI has made compulsory for appointment of Directors that listed entities are required to take approval of shareholders at the next general meeting or within a time period of three months from the date of appointment, whichever is earlier.</p> <p>This means that after appointment of Director as Additional director in Board Meeting, it is compulsory to take approval from shareholders maximum within in a period of three months from date of appointment.</p> <p>If any general meeting is scheduled before 3 months, then approval of appointment of director should be taken in that general meeting only.</p>

<p><b><u>Reg. 18 (1)(b)</u></b></p> <p><b><u>Audit Committee.</u></b></p> <p>(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:</p> <p>(a) .....</p> <p>(b) <b>Two-thirds</b> of the members of audit committee shall be independent directors and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.</p> <p>(c) .....</p>	<p><b><u>Reg. 18 (1)(b)</u></b></p> <p><b><u>Audit Committee.</u></b></p> <p>(1) Every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:</p> <p>(a) .....</p> <p>(b) <b>At least two-thirds</b> of the members of audit committee shall be independent directors and in case of a listed entity having outstanding SR equity shares, the audit committee shall only comprise of independent directors.</p> <p>(c) .....</p>	<p>SEBI has inserted the word "<i>At least</i>" before the words "two-thirds in clause (b).</p>	<p>SEBI has clarified that in an Audit Committee <b>at least two-thirds</b> of the members shall be independent directors</p>
<p><b><u>Reg. 19(1)</u></b></p> <p><b><u>Nomination and remuneration committee.</u></b></p> <p>(1) The board of directors shall constitute the nomination and remuneration committee as follows:</p> <p>(a) .....</p> <p>(b) .....; and</p>	<p><b><u>Reg. 19(1)</u></b></p> <p><b><u>Nomination and remuneration committee.</u></b></p> <p>(1) The board of directors shall constitute the nomination and remuneration committee as follows:</p> <p>(a) .....</p> <p>(b) .....; and</p>	<p>SEBI has substituted the words "fifty percent" by the words "two-thirds" and omitted the words "[and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and</p>	<p>SEBI has changed the composition of NRC Committee by made it compulsory to have at least <b>two-thirds</b> of the directors as independent directors. Earlier it was fifty percent (50 %).</p>

<p>(c) at least <b>fifty percent</b> of the directors shall be independent directors [<b>and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors</b>].</p>	<p>(c) at least <b>two-thirds</b> of the directors shall be independent directors [<del>and in case of a listed entity having outstanding SR equity shares, two thirds of the nomination and remuneration committee shall comprise of independent directors</del>].</p>	<p>remuneration committee shall comprise of independent directors]"</p>	
<p><u>Reg. 23 (2)</u></p> <p>(2) All related party transactions shall require prior approval of the audit committee.</p>	<p><u>Reg. 23 (2)</u></p> <p>(2) All related party transactions shall require prior approval of the audit committee.</p> <p><b>"Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions."</b></p>	<p>SEBI has inserted a proviso after sub-regulation (2).</p>	<p>Now, only members who are Independent directors in Audit committee meeting can approve related party transactions. This amendment shall also be applicable for omnibus approvals.</p>
<p><u>Reg. 25 (2A)</u></p> <p>No Provision</p>	<p><u>Reg. 25 (2A)</u></p> <p>"(2A). The appointment, re-appointment or removal of an independent director of a listed entity, shall be subject to the approval of shareholders by way of a special resolution."</p>	<p>SEBI has inserted new sub-regulation (2A) after sub-regulation (2)</p>	<p>Now, SEBI has made compulsory to pass <b>special resolution</b> for appointment, re-appointment or removal of an independent director.</p>
<p><u>Reg. 25 (6)</u></p> <p>An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest but not later than <b>the immediate</b></p>	<p><u>Reg. 25 (6)</u></p> <p>An independent director who resigns or is removed from the board of directors of the listed entity shall be replaced by a new independent director by listed entity at the earliest <b>but not later than three months from</b></p>	<p>SEBI has omitted the words "the immediate next meeting of the board of directors or" and "whichever is later".</p>	<p>Now, in case of resignation or removal of Independent Director from the board of directors, the listed entity shall replace him/her within three months from the date of</p>

<p><b>next meeting of the board of directors or three months from the date of such vacancy, whichever is later:</b></p> <p>Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.</p>	<p><b>the date of such vacancy:</b></p> <p>Provided that where the listed entity fulfils the requirement of independent directors in its board of directors without filling the vacancy created by such resignation or removal, the requirement of replacement by a new independent director shall not apply.</p>		<p>such vacancy.</p>
<p><b><u>Reg. 25 (10)</u></b></p> <p>With effect from <b>October 1, 2018</b>, the top 500 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.</p>	<p><b><u>Reg. 25 (10)</u></b></p> <p>With effect from <b>January 1, 2022</b>, the top 1000 listed entities by market capitalization calculated as on March 31 of the preceding financial year, shall undertake Directors and Officers insurance ('D and O insurance') for all their independent directors of such quantum and for such risks as may be determined by its board of directors.</p>	<p>The SEBI has substituted the date <b>October 1, 2018</b> with the new date <b>January 1, 2022</b>.</p> <p>The SEBI has changed the applicability of this sub-regulation from top 500 to top 1000 listed entities by market capitalization.</p>	<p>Now, SEBI has made compulsory with effect from January 1, 2022 for top 1000 listed entities by market capitalization calculated as on March 31 of the preceding financial year to undertake Directors and Officers insurance ('D and O insurance') for all their independent directors.</p>
<p><b><u>Reg. 25 (11)</u></b></p> <p><b><u>No provision</u></b></p>	<p><b><u>Reg. 25 (11)</u></b></p> <p>"(11). No independent director, who resigns from a listed entity, shall be appointed as an executive / whole time director on the board of the listed entity, its holding, subsidiary or associate company or on the board of a company belonging to its promoter group,</p>	<p>SEBI has inserted a new sub-regulation (11) after sub-regulation (10).</p>	<p>Now, any person who resign as independent director can only be appointed as executive / whole time director on the board of the listed entity, its holding, subsidiary or associate</p>



	unless a period of one year has elapsed from the date of resignation as an independent director.”		company or on the board of a company belonging to its promoter group, only after elapse of one year from the date of his resignation.
<p><b><u>Reg. 36 (3)</u></b></p> <p>(3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:</p> <p>(a) .....;</p> <p>(b) .....;</p> <p>(c) .....;</p> <p>(d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board; and</p> <p>(e) .....</p> <p>(f) <b>No provision.</b></p>	<p><b><u>Reg. 36 (3)</u></b></p> <p>(3) In case of the appointment of a new director or re-appointment of a director the shareholders must be provided with the following information:</p> <p>(a) .....;</p> <p>(b) .....;</p> <p>(c) .....;</p> <p>(d) names of listed entities in which the person also holds the directorship and the membership of Committees of the board <b>along with listed entities from which the person has resigned in the past three years;</b> and</p> <p>(e) .....</p> <p>(f). <b>In case of independent directors, the skills and capabilities required for the role and the manner in which the proposed person meets such requirements.</b></p>	<p>SEBI has inserted words “along with listed entities from which the person has resigned in the past three years” in clause (d)</p> <p style="text-align: center;">and</p> <p>SEBI has also inserted a new clause (f) after clause (e)</p>	<p>Now, for appointment of a new director or re-appointment of a director, the company must also provide to the shareholders the following additional information:</p> <ol style="list-style-type: none"> <li>1. names of listed entities from which the person has resigned in the past three years;</li> <li>2. In case of appointment of independent directors, the skills and capabilities required for the role and the manner in which the proposed person meets such requirements.</li> </ol>

<p><b>Schedule II, Part D, Para A</b></p> <p><b>ROLE OF NOMINATION AND REMUNERATION COMMITTEE</b></p> <p>Role of committee shall, inter-alia, include the following:</p> <p>(1).....;</p> <p><b>(1A) No Provision;</b></p>	<p><b>Schedule II, Part D, Para A</b></p> <p><b>ROLE OF NOMINATION AND REMUNERATION COMMITTEE</b></p> <p>Role of committee shall, inter-alia, include the following:</p> <p>(1) .....</p> <p><b>(1A). For every appointment of an independent director, the Nomination and Remuneration Committee shall evaluate the balance of skills, knowledge and experience on the Board and on the basis of such evaluation, prepare a description of the role and capabilities required of an independent director. The person recommended to the Board for appointment as an independent director shall have the capabilities identified in such description. For the purpose of identifying suitable candidates, the Committee may:</b></p> <p><b>a. use the services of an external agencies, if required;</b></p> <p><b>b. consider candidates from a wide range of backgrounds, having due regard to diversity; and</b></p> <p><b>c. consider the time commitments of the candidates."</b></p>	<p>SEBI has inserted a new role of Nomination and Remuneration Committee (NRC Committee) by inserting new sub-clause (1A) after clause (1).</p>	<p>Now, for appointment of independent director, NRC committee is required to:</p> <ul style="list-style-type: none"> <li>- Evaluate the balance of skills, knowledge and experience on the Board.</li> <li>- prepare a description of the role and capabilities required of an independent director</li> <li>- The person must have the capabilities identified in such description.</li> </ul> <p>For identifying suitable candidates, the committee may take assistance or services of an external agencies, if required; OR consider candidates from a wide range of backgrounds, having due regard to diversity; OR consider the time commitments of the candidates."</p> <p>Board should amend the roles of NRC in line with such amendment.</p>
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<p><b>Schedule III, Part A, Para A, clause (7B)</b></p> <p>(7B) Resignation of independent director including reasons for resignation: In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities:</p> <p>i. Detailed reasons for the <b>resignation of independent directors</b> as given by the said director <b>shall be disclosed by the listed entities to the stock exchanges.</b></p> <p><b>(ia) No Provision</b></p> <p>ii. ....</p> <p>iii. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the <b>detailed reasons</b> as specified in sub-<b>clause (i)</b> above.</p>	<p><b>Schedule III, Part A, Para A, clause (7B)</b></p> <p>(7B) Resignation of independent director including reasons for resignation: In case of resignation of an independent director of the listed entity, within seven days from the date of resignation, the following disclosures shall be made to the stock exchanges by the listed entities:</p> <p>i. <b>The letter of resignation along with detailed reasons for the resignation as given by the said director.</b></p> <p><b>“(ia). Names of listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any.”</b></p> <p>ii. ....</p> <p>iii. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the <b>disclosures</b> as specified in sub-<b>clause (i) and (ii)</b> above.</p>	<p>SEBI has inserted additional disclosures which are required to be made to the stock exchanges in case of resignation of independent director</p>	<p>Now, the listed entities in case of resignation of independent directors shall make the following additional disclosures to the stock exchanges:</p> <ul style="list-style-type: none"> <li>- The letter of resignation.</li> <li>- Names of listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any</li> </ul> <p>Earlier only details reasons for the resignation were required to be disclosed on stock exchange but now along with detailed reasons, letter of resignation and name of listed entities in which he/she holds directorships and membership of board committees is also required to be disclosed on the stock exchanges.</p>
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