




CRITICAL ASPECTS OF THE LODR

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PRACTISING COMPANY SECRETARY

PRINCIPLES

- ▶ Unique regulation in the sense it is both a principle based as well as rule based
- ▶ On disclosures
 - ▶ Adequate, relevant, timely and appropriate
 - ▶ Cost effective and equitable
- ▶ Corporate governance
 - ▶ Seeks to protect the rights of the shareholders
 - ▶ Right to participate in meetings and exercise their voting rights
 - ▶ Right to redressal of their grievance
 - ▶ Effective whistle blower mechanism to enable stakeholders to freely communicate their concerns about illegal or unethical practices


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- ▶ Minutes to be recorded explicitly, including dissenting opinions
 - ▶ Responsibilities of board of directors
 - ▶ To disclose material interest in any transaction or matter
 - ▶ To provide operational transparency and at the same time maintain confidentiality to foster the culture of good decision making
 - ▶ Ensuring integrity
 - ▶ Allowing participation of independent directors
 - ▶ Set a corporate culture and values by which all the executives will follow
 - ▶ In case of ambiguity, principles shall prevail


Certificate under Regulation 7(3)

- ▶ To be given by the Compliance Officer
- ▶ Within 30 days of each half year

Corporate Governance

- ▶ Applicability
 - ▶ Paid Up Capital – Rs.10 crores
 - ▶ Networth – Rs.25 crores
 - ▶ In case it reduces, will continue to apply unless they remain below the threshold for a continuous period of 3 years
- ▶ Directors
 - ▶ Minimum 6 directors for those which are in the top 2000 companies by market cap
 - ▶ One Woman Independent Director for the top 1000 companies by market cap
 - ▶ Wherever market capitalisation criteria is applicable, the same will continue to be applicable even if they fall below the threshold limits

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- ▶ Any Non-Executive Director to be appointed or to be continued over the age of 75 – special resolution
 - ▶ Quorum for Board Meetings of top 2000 companies with effect from 01.04.2020 – 3 or 1/3rd and 1 shall be independent
 - ▶ Participation by audio visual means considered
 - ▶ Remuneration payable to Non Executive Directors – one director is more than 50% of remuneration payable to all the NEDs – approval every year from the shareholders by way of special resolution.

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- ▶ Evaluation of the Independent Directors
 - ▶ By the Board as a whole
 - ▶ On their performance
 - ▶ Fulfilling their criteria of independence – by definition and contribution
 - ▶ Director being evaluated not to participate
 - ▶ The Director being evaluated shall not participate
 - ▶ CHAIRMAN
 - ▶ With effect from 01.04.2022 for top 500 companies by market cap
 - ▶ Chairman must be non executive
 - ▶ Must not be related as “relative” as defined under the companies act, 2013 to the Managing Director or the CEO

Directorships

- ▶ Not a director in 7 listed companies with effect from 01.04.2020
- ▶ Not an independent director in more than 7 listed entities
- ▶ Cannot be an independent director in more than 3 listed entities if a Managing Director or Whole Time Director
- ▶ Will consider only those entities whose equity shares are listed on a stock exchange

Committees


- ▶ Audit Committee
 - ▶ Constitution, Frequency of Meeting, Quorum and role
- ▶ Nomination and Remuneration Committee
 - ▶ Constitution, Frequency of Meeting, Quorum and role
- ▶ Stakeholders Relationship Committee
 - ▶ Constitution, Frequency of Meeting, Quorum and role

Risk Management Committee

- ▶ Applicable to the top 1000 companies by market cap
- ▶ Minimum 3 members
- ▶ Majority board members
- ▶ One independent director
- ▶ Meet twice a year
- ▶ Quorum – 2 or 1/3rd whichever is higher and one of them shall be a director
- ▶ Gap between two meetings shall not be more than 180 days
- ▶ Role of the committee has been enhanced
- ▶ Risk management policy to be reviewed once every 2 years
- ▶ Appointment, removal and fixing of remuneration of the Chief Risk Officer shall be the review of the risk management committee

Related Party Transactions

- ▶ Who are related parties
 - ▶ As per section 2(76) of the Companies Act, 2013
 - ▶ Or relevant Accounting Standards
 - ▶ Any person belong to the promoter or promoter group holding more than 20% of the shareholding of the listed entity
- ▶ What are Related Party Transactions
- ▶ Prior Approval of the Audit Committee

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- ▶ Omni bus approvals
 - ▶ Material Related Party Transactions
 - ▶ Policy - Reviewed at least once in 3 years
 - ▶ Material transactions – cross verify
 - ▶ Approval of the shareholders
 - ▶ Related Parties not to vote
 - ▶ To submit within 30 days from the date of publication of its standalone and consolidated financial results for the half year,
 - ▶ Disclosures of related party transactions on a consolidated basis in the format specified in the relevant accounting standards for annual results
 - ▶ To the stock exchanges and publish it on its website



▶ Remuneration to Non Executive Directors


- ▶ Any payment to an non executive director by way of fees / compensation requires approval of the shareholders in a general meeting
- ▶ Approval by way of a special resolution every year in case the payment to any single non executive director is more than 50% of the total compensation paid to all the non executive directors

Subsidiaries

- ▶ Material Subsidiary Threshold – 20% - to appoint one independent director on the board of material subsidiary
- ▶ Review the minutes, financials and significant transactions of all subsidiaries – in the board meeting – 10% of total assets / total liabilities / total expenses / total revenues.
- ▶ Cannot divest holding in a material subsidiary, to bring the holding to less than 50% without approval of the shareholders
- ▶ Selling, disposing or leasing of the assets of the subsidiary aggregating to 20% of the assets of the material subsidiary in a financial year shall be done only with the approval of the shareholders

Independent Directors

- ▶ Definition
 - ▶ Shall also not belong to the promoter group
 - ▶ Who is not a non-independent director of another company on the board of which any non-independent director of the listed entity is an independent director
- ▶ Confirm independence based on the definition every financial year
- ▶ Board to confirm the veracity after due assessment
- ▶ No alternate director for an independent director
- ▶ Top 500 companies by market cap must take a D&O Insurance policy for their independent directors

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- ▶ Not more than 7 listed companies and if a whole time director in any company, not more than 3 companies
 - ▶ To be appointed for such term as specified in the companies act
 - ▶ To have a separate meeting in the financial year to review the performance of the Board, other non independent directors, quality of agenda and timeliness of receipt of notice
 - ▶ If resigns, the vacancy shall be filled up by the next board meeting or three months from the date of vacancy, whichever is later
 - ▶ To have a separate familiarization program
 - ▶ Not entitled to ESOP

Secretarial Audit


- ▶ Of the listed entity and its material subsidiary
- ▶ Material subsidiary
 - ▶ That which contributes to 10% of the consolidated turnover
- ▶ Annual Secretarial Compliance to be done by a PCS
- ▶ Report in the format specified by SEBI
- ▶ Covers all the regulations of SEBI
- ▶ Should comment on any action taken by SEBI on the Company, its directors, promoters and KMPs
- ▶ Company to submit to the stock exchanges within 60 days of the financial year
- ▶ Must be hosted on the website.


REGULATION 30 – Material Events

- ▶ Disclosure of events and information
 - ▶ Para A of Part A of schedule III– to disclose without applying the test of materiality
 - ▶ Para B of Part A of schedule III – to disclose after applying the test of materiality
 - ▶ When material
 - ▶ Omission leads to alteration or discontinuity in information available in the market
 - ▶ Omission of information leads to a significant market reaction, when the information comes to light later
 - ▶ Suitable policy on deciding materiality of information to be drawn up. To be disclosed on the website

CG Report

- ▶ In the prescribed format
- ▶ On a quarterly basis
- ▶ To be submitted within 21 days of the quarter

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- ▶ To identify a Key Management Person who shall be responsible for determining materiality and disclosure of the information
 - ▶ Disclose all events as per part a within 24 hours of the occurrence to the stock exchange.
 - ▶ Outcome of board meetings – within 30 minutes of conclusion of board meeting
 - ▶ To keep the event updated until it is finally resolved
 - ▶ To host the same information on the website for a period of 5 years and after which the same may be archived

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- ▶ To give information regarding material subsidiary
 - ▶ To provide replies to all queries raised by stock exchanges with respect to any event
 - ▶ Listed entity may on its own initiative confirm or deny any event to the stock exchange
 - ▶ Can also report any information which is not specified but which may have a material impact



- ▶ Resignation of auditor

- ▶ Detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than twenty four hours of receipt of such reasons from the auditor.

- ▶ Resignation of independent director


- ▶ Detailed reasons for the resignation of independent directors as given by the said director shall be disclosed by the listed entities to the stock exchanges.
- ▶ The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided
 - ▶ ***To be given within 7 days of resignation***

WHEN IS THE EVENT SAID TO HAVE OCCURED

- ▶ Stage of discussion, negotiation or approval
- ▶ Dividend, issuance of capital, etc – on approval by the board
- ▶ Natural calamity – when you become aware
- ▶ Important cases
 - ▶ NDTV
 - ▶ Suzlon
 - ▶ In case of a natural calamity??
 - ▶ Reporting of positive news , hesitant while giving negative news


REGULATION 31A - RECLASSIFICATION


- ▶ Receipt of request from the shareholder
- ▶ Must be placed before the Board after analysis within 30 days of request
- ▶ Placed at the Shareholders meeting not later than 3 months and not earlier than one month of receipt.
- ▶ Cannot vote on the resolution – however if they hold less than 1% can vote and can vote if pursuant to a divorce
- ▶ Conditions
 - ▶ Must not hold more than 10%
 - ▶ The applicant and his immediate relatives shall not hold any position as a director or a KMP
- ▶ Apply to the stock exchanges
- ▶ Reclassify after approval

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- ▶ The requirement of application for reclassification shall not apply if the same is pursuant to a resolution plan under the IBC and the person does not remain in control of the company
 - ▶ The requirement of application for reclassification shall not apply pursuant to an open offer if the intention not to remain as a promoter is mentioned in the letter of offer

REGULATION 33 – Financial Results

- ▶ Quarterly results - audited or unaudited subject to limited review
- ▶ Auditors subject to peer review
- ▶ Financial results to be signed by the chairperson or managing director or whole time director
- ▶ Before placing to the board the CEO / CFO to certify that the results do not contain any misleading information or does not omit any material fact.
- ▶ To submit quarterly results within 45 days of the end of each quarter
- ▶ To submit only consolidated results every quarter
- ▶ Half yearly results — shall contain the cash flow statement

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- ▶ For the purpose of quarterly consolidated financial results, 80% of the consolidated revenue, assets and profits shall be subject to audit / limited review
 - ▶ Annual results
 - ▶ Within 60 days
 - ▶ Only audited
 - ▶ To be submitted with the audit report within 60 days
 - ▶ If qualified to submit statement of impact of audit qualifications.

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- ▶ A Dividend Distribution Policy
 - ▶ For top 1000 companies by market cap
 - ▶ E voting
 - ▶ Compulsory
 - ▶ Results of the Voting to be submitted to the stock exchange within 2 working days of the declaration of the results
 - ▶ AGM
 - ▶ Top 100 companies – to have AGM within 5 months of close of financial year
 - ▶ To provide one way live webcast

Business Responsibility Report

- ▶ Applicable to the top 1000 by Market Cap
- ▶ Done away with the requirement for the Financial Year 21-22.
- ▶ But to include BRR and sustainability report from the Financial Year 22-23 for the top 1000 companies by market capitalisation


REGULATION 45


▶ CHANGE OF NAME


- ▶ One year from the change in the last name
- ▶ 50% of the revenues for the last one year has been accounted from the new activity suggested by the new name
- ▶ 50% of the assets of the listed entity invested in the new activity
- ▶ If new activity carried on by company, name change to be carried out within 6 months of the change in activity
- ▶ The explanatory statement sent to the shareholders for approval shall include a certificate from a practicing chartered accountant that all the conditions have been complied with
- ▶ If compliant with the above conditions, apply to ROC for availability of name
- ▶ On confirmation apply to stock exchange for confirmation
- ▶ Thereafter change name at ROC


REGULATION 46

- ▶ FUNCTIONAL WEBSITE – REGULATION 46 – SEPARATE SECTION ON ITS WEBSITE
 - ▶ Name of the company
 - ▶ Business of the company
 - ▶ Terms and conditions of appointment of independent directors
 - ▶ Composition of its board and committees
 - ▶ Code of conduct
 - ▶ Vigil mechanism
 - ▶ Familiarisation programme of independent directors
 - ▶ Number of hours attended and the number of programs

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- ▶ Policy for determining material subsidiaries
 - ▶ Contact details of officer handling investor grievance
 - ▶ Dedicated email for grievance redressal
 - ▶ Financials
 - ▶ Shareholding pattern
 - ▶ New name and old name for a period of one year
 - ▶ Policy on dealing with related party transactions

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- ▶ Agreements with media companies
 - ▶ Dividend distribution policy
 - ▶ Credit ratings obtained for the debt instruments
 - ▶ Audited accounts of subsidiaries –
 - ▶ If not subject to audit, sufficient to include unaudited results. ‘
 - ▶ If not in English, must be translated
 - ▶ Submissions to stock exchange of schedule of the investors meet or the analysts meet done away with

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- ▶ Audio video recordings of the meet should be uploaded immediately but not later than 24 hours and transcripts not later than 5 working days (also to be sent to the stock exchange) – to be hosted on the website for 5 years and archived later / preserved as per the preservation policy
 - ▶ Secretarial compliance report
 - ▶ Policy on determining materiality of events
 - ▶ Names of the key managerial persons who have been appointed to determine materiality


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- ▶ All material information disclosed under regulation 30 of the LODR
 - ▶ Statement of deviation and variation under regulation 32 of the LODR
 - ▶ Dividend distribution policy for the top 1000 companies as per market capitalisation
 - ▶ Annual Return under section 92 of the companies act, 2013
 - ▶ Code of Fair Disclosure under the PIT Regulations.


Regulation 47 – Newspaper Publication


- ▶ Financial Results
 - ▶ Within 48 hours
- ▶ In one English and vernacular daily
- ▶ Reference to the website where full details will be available
- ▶ Done away with the requirement of
 - ▶ Intimation of board meeting
 - ▶ Statement of deviation and variation of utilisation of funds

ANNUAL REPORT

- ▶ Inclusion of related party disclosures as per accounting standards
- ▶ Loans and advances to subsidiaries and associates by name and account
- ▶ Loans and advances in the nature of loans to firms / companies in which directors are interest by name and amount
- ▶ Disclosures of transactions of the entity with any person or entity belonging to the promoter / promoter group which holds 10% or more shareholding in the format prescribed in the accounting standards

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- ▶ Management Discussion and Analysis
 - ▶ Discussion on the limits set by the competitive position of the listed entity
 - ▶ In case a procedure different from the stated accounting policy has been followed, the fact to be disclosed and the explanation of the management for following a different method to be given
 - ▶ Corporate governance requirements
 - ▶ The philosophy
 - ▶ Composition of Board of directors – also include the names of the other listed companies in which the directors are directors and the category of directorship

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- ▶ Weblink where the details of familiarisation program imparted to the directors is to be found
 - ▶ Matrix chart giving the details of the skills / expertise / competence of the board of directors required and the name of the directors who possess the skill sets.
 - ▶ Confirmation that the independent directors meet the conditions specified to be met and is also independent of the management.
 - ▶ Reasons for the resignation of the independent director before his tenure and there are no reasons other than that specified.

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- ▶ Give details of all the ratings received by the company for all debt securities including the ratings received for fixed deposits for funds mobilisation both in India and abroad
 - ▶ Utilisation of funds mobilised through preferential allotment or qualified institutional placement.
 - ▶ Disclosure in relation to the Sexual Harassment of Women at Workplace Act, 2013 – number of complaints received, number of complaints disposed and number of complaints pending
 - ▶ Include Business Responsibility Report and Sustainability Report



▶ THANK YOU