

SEBI

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Key Circular updates:

- SEBI pursuant to circular issued on 26th August, 2021 has approved the framework for Accredited Investors by amending the Alternative Investment Fund, Investment Advisers and Portfolio Managers Regulations. Investors may avail flexibility in minimum investment amount or concessions from specific regulatory requirements applicable to investment products, subject to conditions applicable for specific products/ services under the aforesaid Regulations.
- SEBI has granted recognition to BSE Administration & Supervision Limited (BASL), a wholly owned Subsidiary of BSE limited for the purpose of Administration and supervision of Investment Advisers for another 3 years till May 30, 2024 further SEBI has decided to extend the timeline for seeking membership of BASL by existing Investment Advisers by a period of two months till October 31, 2021.
- SEBI vide it's circular dated 02nd September, 2021 has issued Mutual Fund Amendment Regulations, 2021 as per the amended regulations, asset management companies are required to invest certain amount in such scheme of the mutual fund, based on the risk associated with the scheme, as may be specified by the Board from time to time.
- SEBI issued a Circular on 02nd September, 2021 which focuses on improving the mechanism for Investor Grievance Redressal by issuing guidelines.
- SEBI pursuant to circular on 07th September, 2021 has allowed stock exchange to offer T+1 settlement cycle on any of the scrips, after giving an advance notice of at least one month, regarding change in the settlement cycle, to all stakeholders, including the public at large, and also disseminating the same on its website.
- SEBI has issued a circular on 20th September, 2021 stating clarification for Alignment of interest of Key Employees of Asset Management Companies with the Unitholders of the Mutual Fund Schemes.

SEBI has made several significant decisions at meeting of its Board on 29th September 2021.

Gold Exchanges

SEBI has given approval for setting up of gold exchanges. Indians are reportedly the second highest consumers of gold. Gold exchanges will help them invest and deal in it digitally with ease, transparency, reliability and safety. This will be in the form of Electronic Gold Receipts (EGRs). The whole chain from converting physical gold into digital receipts, to their trading on exchanges, to the clearance of transactions and to the eventual reconversion to physical gold has been meticulously laid down. Indians, however, consider the decorative value of gold in the form of jewelry as important.

Social Stock Exchanges

SEBI has also given go ahead for setting up of new Social Stock Exchanges (“SSEs”). SSEs will help social enterprises raise funds/investment for their projects having a social intent and impact. For this, they need a language and framework to approach investors, to communicate with them in commonly understood terms, to raise funds through securities that are suitable for such projects and finally to report to them in terms of well recognized benchmarks whether their activities are successful. The reporting also needs to be audited by persons having expertise in the area. There also needs to be an exchange to deal exclusively with this too. SEBI will notify regulations dealing with all this – and more. The mandate for setting up a directorate of social auditors is given to the Institute of Chartered Accountants of India who will function as a self regulatory organization for such auditors. However, this new system is not only complex but almost totally new to India, even in terms of basic concepts. Hence, it may take a long time, perhaps at least a couple of years, for it to become fully operational and active on a wide scale. None the less, this is a fascinating new field which will not only streamline philanthropic, social welfare and other similar work but will increase their productivity and investors will be encouraged to participate in an atmosphere of trust and transparency.

Related party transactions

Corporates often function as groups of entities. The sheer demands of business means these entities have to deal with each other. Such dealings, called related party transactions, thus are necessary evils. But the needs of business should be balanced with the conflict of interest since the persons benefitting from such transactions are also the decision makers. Hence, the present Regulations lay down several safeguards. The Audit Committee approves all such transactions. In case of material transactions, shareholders approval is with the related parties themselves banned from participating. SEBI has made some changes in the provisions. Presently, there is a fairly wide definition of related parties. Promoters, unless already covered otherwise, are considered as related parties only if they hold 20% of the equity of the company. SEBI has now said that all the promoters, without any exception, will be related parties. Thus, transactions with any of them will be subject to the rigors of law.

Further, holding and subsidiary companies will now be seen as a group. Thus, related parties of subsidiaries will now also be related parties of the parent. Another important change relates to material related party transactions, which ordinarily require approval of shareholders. Now the benchmark of materiality is lowered. Presently, a transaction is material if its value is at least 10% of the consolidated turnover. This is now modified by redefining it at 10% of consolidated turnover or Rs. 1000 crores, whichever is lower. This will impact large companies with consolidated turnover of more than Rs. 10,000 crores. More detailed disclosures of related party transactions are now required to be made to Audit Committee and to the shareholders.

Superior Voting Rights Shares (SR Shares)

The provisions relating to Superior Voting Rights Shares (SR Shares) have been amended. SR Shares are issued to a group, usually the founders, to give them disproportionate voting rights. It helps them retain control. The Regulations presently permit a limited structure of such SR Shares with a limited shelf life and with safeguards. One condition for issue of such shares is that the SR Shareholder should not be part of promoter group having net worth of more than Rs. 500 crores. The intention is persons with innovative minds but relatively emptier pockets get such shares. The purpose is defeated if high net worth groups can also acquire such shares. To strike a better balance, SR Shares now can be issued if the individual holder of SR Shares does not have net worth of more than Rs. 1000 crores. To emphasise, the net worth of the individual is now considered and thus the group as a whole could have a multiple of this net worth.

Fit and Proper test

It is important for the regulator that persons with dubious reputation and track record are kept away from the markets. But how does one decide who is 'fit and proper'? Presently, the tests are subjective. But this not only results in uncertainty but also in heartburn. To make the criteria more transparent, SEBI has proposed a new formula having a mix of principle based and ruled based criteria for passing this test. A conviction for an offence involving moral turpitude or being declared as a willful defaulter are examples of rule-based specific criteria that could fail a person. Integrity, honesty, character, etc. are examples of principle-based criteria.

Delisting through open offer

The present Regulations present difficulties in case of a situation where a person wants to make an open offer for a listed company and thereafter carry out delisting. The Regulations for takeovers and for delisting are not aligned well in this regard. SEBI has proposed amendments to enable such takeover-cum-delisting but with necessary safeguards.

Investor Charter

A comprehensive set of documents in the form of Vision Statement of SEBI for investors, rights and responsibilities of investors and do's and don'ts for them, etc. have been approved along with other similar material. This will help investors in gaining knowledge about their rights, about how to get them addressed, etc.

Other changes

SEBI has also made other changes such as introduction of Silver Exchange Trade Funds, permitting Cost Accountants to carry out share reconciliation audit, etc.

The fine print in terms of actual regulations or formal amendments are awaited and will be released gradually with different dates from which they will come into effect.