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HIGH VALUE DEBT LISTED COMPANIES: NEW REGIME FOR COMPLIANCES

INTRODUCTION:

Initially when Companies got an option to list their equity shares on stock exchanges (SEs) through Initial Public Offers (IPOs) and Further Public Offers (FPOs), they must have thought that SEs were the platform for trading and that would be the only role to play to SEs in issuance of Securities. Gradually the trend changed and SEs started regulating companies through various circulars, notifications, regulations issued by Securities and Exchange Board of India (SEBI). In India, regulators try their best to safeguard the interest of general public and for that they notify various rules, regulations, etc. However, time and again someone finds the loophole in the law and try to create a new scam like Satyam, IL&FS, DHFL, etc. Regulators consider these new cases and amend the guidelines to avoid repetition of same in the country. Securities and Exchange Board of India (SEBI) has amended the regulations from time to time including but not limited to SEBI (Listing Obligations and Disclosures Requirement) Regulations, 2015 (hereinafter referred as LODR).



Interesting thing is initially the regulator had the focus on Equity Listed Companies and tried to stringent the guidelines for the said companies to avoid the scams for the public funds invested by people. However, considering the increased scope and demand of people for debt funds and debt listing, now people can see the focus getting increased towards the debt listed companies more.

Since last one year till date, SEBI has come up with more than 15 amendment guidelines addressed to the Debt Listed Companies and the major amendment therein includes making Regulation 16 to 27 applicable to High Value Debt Listed Companies w.e.f. September 07, 2021.

Basically, for borrowings, Companies used to borrow monies from Banks / Financial Institutions, however, now trend is to issue the Debt Securities instead of borrowing funds from Banks. Reason for such change in trend is Companies prefer getting the amount directly from the market in the form of Debt Funds depending on their requirement instead of getting it from Bank as Bank / FIs may not grant the loan for the required amount. They can directly pay the interest on such funds to the debt securities holder instead of the Bank / FIs. However, it is not that simple as it seems to be. If a Company raised Debt Securities for the amount to be borrowed from the proposed investor, there are several compliances which now have become more stringent. Specially the Big Size Companies planning to get its Debt Securities Listed should definitely check all the Compliances applicable in case of Listing of Securities in terms of SEBI Guidelines.

TRADING IN BOND MARKET

FY 2021-22

Date	BSE		NSE		MCX-SX		GRAND TOTAL	
	No. of Trades *	Amount (Rs. cr)*	No. of Trades *	Amount (Rs. cr)*	No. of Trades *	Amount (Rs. cr)*	No. of Trades *	Amount (Rs. cr)*
Apr-21	7236	60888.55	4940	90992.76	0	0.00	12176	151881.31
May-21	6259	54135.76	4925	79923.94	0	0.00	11184	134059.70
Jun-21	8007	61390.57	5665	91924.45	0	0.00	13672	153315.02

Jul-21	6745	48404.69	5099	66672.29	0	0.00	11844	115076.98
Aug-21	7356	55957.11	5758	88259.38	0	0.00	13114	144216.49
Sep-21	7886	63765.97	6038	126974.72	0	0.00	13924	190740.69
Oct-21	7224	49075.25	5423	97201.37	0	0.00	12647	146276.62
Nov-21	6303	39177.13	4583	71902.03	0	0.00	10886	111079.16
Dec-21	7396	51214.41	5468	94733.69	0	0.00	12864	145948.10
Jan-22	7322	45282.34	4804	82333.56	0	0.00	12126	127615.90
Feb-22	7841	60639.96	4886	81448.21	0	0.00	12727	142088.17
Mar-22	10745	77798.28	7712	133288.00	0	0.00	18457	211086.28
Total	90320	667730.01	65301	1105654.40	0	0.00	155621	1773384.41

Source: <https://www.sebi.gov.in/statistics/corporate-bonds/corpbondsarchivesnew.html>

There are so many benefits in case of getting the securities listed in the Market may it be Debt or Equity. Required Funds, Goodwill, Recognition, and what not. However, the pros get cons as well. Therefore, if people want recognition, value, goodwill in market, they need to be a white-collar company for public and hence they need to comply with all the regulations notified by the Regulators. Investors nowadays are aware of the applicable laws and importance thereof, they know that if the Company is compliant of various regulations and is following the good corporate governance practice, their funds will be safe and they will get the good returns being an investor in such company. Therefore, Companies, if they want to grow, do not have any other option except for complying with various regulations notified and applicable to them.

Coming back to debt listed companies, SEBI vide amendment in LODR on September 07, 2021 made the drastic change in the Compliances for the Debt Listed Companies.

HVDLES MEANING:

Non-Convertible Debentures (NCD)-listed entities having outstanding value of listed NCDs of Rs.500 crore or more as on March 31, 2021 will have to comply with Corporate Governance provisions



of LODR. These entities will be referred to as High Value Debt Listed Entities (HVDLEs).

WHAT IS THE AMENDMENT?

The provisions regulation 16 to regulation 27 of

SEBI LODR Regulations shall apply to a listed entity which has listed its non-convertible debt securities and has an outstanding value of listed non-convertible debt securities of Rupees Five Hundred Crore and above. (Hereinafter referred as High Value Debt Listed Companies / HVDLEs)

WHAT DOES IT MEAN?

It means that initially what all Corporate Governance provisions including but not limited to Board of Directors, Committees, Framework, Roles, Responsibilities and Approvals, Related Party Transactions, Disclosures, Reporting's etc. those were applicable to only Equity Listed Companies are now applicable to High Value Debt Listed Companies.



Initially SEBI notified the amendment with comply or explain option for companies upto March 31, 2023 and mandatory from April 01, 2023. However, it's a challenging scenario for companies as only six months are left for the provisions to become mandatory for all the High Value Dent Listed Companies.

WHAT IS THE IMPACT?

Now let's come to the point, what is the Impact of the amendment on the Debt Listed Companies:

List of Enhanced Compliances for High Value Debt Listed Companies:

1	Board Composition: <ul style="list-style-type: none"> ✓ One Woman Director (Independent) ✓ 50% of Board to be Non-Executive Director ✓ If Chairperson is Non-Executive Director, then 1/3rd of the Board with Independent Directors ✓ If Company does not have a regular Non-Executive Director as Chairperson – at least ½ of the board shall with Independent Directors ✓ Minimum six Directors
2	Mandatory Board Level Sub-Committees: <ul style="list-style-type: none"> ✓ Audit Committee ✓ Nomination & remuneration Committee ✓ Stakeholder Relationship Committee ✓ Risk Management Committee
3	Directors and Officers Insurance: <ul style="list-style-type: none"> ✓ Company has to undertake D & O Insurance for all the Independent Directors for a sum of risks as decided by the Board of Directors.
4	Secretarial Audit Report: <ul style="list-style-type: none"> ✓ Secretarial Audit Report to form part of Annual Report ✓ To be filed within 60 days with SEs ✓ It should include a comment by Auditor on compliance of Reg. 17 to 27 of LODR
5	Related Party Transactions: <ul style="list-style-type: none"> ✓ Companies to monitor RPTs in terms of Co. Act, 2013, Accounting Standards and LODR as well ✓ Definition of RPTs enhanced from Entities to Related Parties of such entities i.e. Listed Co, its Subsidiaries, Related Parties of Listed Co / its subsidiaries. It has covered almost everything between the related entities. ✓ Half Yearly Disclosure to be made along with the Financial Results of the Company. ✓ RPTs to be approved by Independent Directors only
6	Additional Website Disclosures:

	<ul style="list-style-type: none"> ✓ Composition of Board and Board Level Subcommittees ✓ Policy on Related Party Transactions ✓ Whistle Blower Policy ✓ Code of Conduct of Board & Senior Management ✓ Secretarial Compliance Report ✓ Familiarization programmes imparted to independent directors
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Apart from the above, there are other compliances like placing the additional policies before the Board i.e. Related Party Transaction Policy, Succession Policy, Whistle Blower Policy, Code of Conduct of the Board and Senior Management, etc. which needs to be approved by the Board. Thereafter, Companies need to place the following on quarterly basis before the Board Meeting for noting in due compliance with LODR:

- ✓ Review of Related Party Transactions;
- ✓ Whistle Blower Complaints, if any;
- ✓ Secretarial Audit Report u/r 24;
- ✓ Compliance report on corporate governance u/r 27;
- ✓ Minimum information as specified in Part A Schedule II of LODR

As mentioned hereinabove, these are the additional compliances which the High Value Debt Listed Companies are required to be complied with apart from their regular compliances covered in Regulation 49 to 62 which are applicable to all Debt Listed Companies. Now let's see the list of all Compliances (Stock Exchange Intimations) a High Value Debt Listed Companies need to comply with under LODR. This checklist is prepared basis of guidelines of LODR, SEBI Operational Circulars applicable to Debt Listed Entities, Emails received from the Stock Exchanges to the Entities for Compliances / reporting, etc.

LIST OF COMPLIANCES – HVDLES:
ANNUAL COMPLIANCES:

Regulation No	Particulars	Timelines
7(3)	Compliance Certificate (signed by Registrar and Transfer Agent & Company Secretary)	Within 30 days from the end of the financial year
61(4) & 40(9)	Compliance Certificate of Practicing Company Secretary	Within 30 days from the end of the financial year
SEBI Operational Circular August 10, 2021 - Chapter XII	Initial Disclosure of classification as large corporate borrower	Within 30 days from the end of the financial year
SEBI Operational Circular August 10, 2021 - Chapter XII	Annual Disclosure on incremental borrowing by Large Corporate Borrower	Within 45 days from the end of the financial year
24A	Annual Secretarial Compliance Report (Forms part of Annual Report)	Within 60 days from the end of the Financial Year
50 (2)	Intimation of Annual General Meeting / Extra Ordinary General Meetings Meeting of NCS holders affecting their rights or interests.	On / Before the date of dispatch of notices to members
53 (2)	Annual Report	On / Before the date of dispatch of Annual Report to members
Part B Schedule III of LODR	Proceedings of Annual General Meeting / Extra Ordinary General Meetings	

HALF YEARLY COMPLIANCES:

Regulation No	Particulars	Timelines
23 (9)	Disclosures for related party transactions	Along with the Financial Results to be intimated to stock exchange within 45

		days from the end of the Half Year.
SEBI Operational Circular August 10, 2021 - Chapter VIII	ISIN Reportings	Within 15 days of end of the half year

QUARTERLY COMPLIANCES:

Regulation No	Particulars	Timelines
6(1)	Intimation for Appointment of Compliance Officer	Within 30 days from the end of the quarter
7(1)	Intimation for Appointment of Share Transfer Agent	Within 30 days from the end of the quarter
13(3)	Grievance Redressal Statement	Within 21 days from the end of the quarter
27	Compliance Report on Corporate Governance	Within 21 days from the end of the quarter
50(2)	Prior Intimation about the Board Meeting (For Financial Results / Fund Raise through Debt Securities)	02 Working Days in advance (excluding Date of Intimation and Meeting)
51	Outcome of the Board Meeting	Within 30 Minutes of the conclusion of the Meeting
52 (1)	Financial Results along with Statement of Assets and Liabilities and Statement of cash flows	Within 30 Minutes of the conclusion of the Meeting
52 (3)	Declaration of modified / unmodified opinion of Statutory Auditors	Along with the Financial Results
52 (7)	Statement of Utilisation of Proceeds	Within 45 days from the end of the quarter
52 (8)	Publication of Financial Results in the newspaper	Within 02 working days from the conclusion of the Board Meeting
54 & 56(D)	Asset Cover Certificate	Along with the Financial Results

57 (4)	Details of all NCS for which interest/principal payable during the quarter	Within 05 working days prior to the beginning of the quarter
57 (5)	Details of all NCS for which interest/principal were due in that quarter and details of which were unpaid	Within 07 working days from the end of the quarter

EVENT BASED COMPLIANCES:

Regulation No	Particulars	Timelines
57 (1)	Interest / Principal Payment	within 01 working day of the interest or dividend or principal becoming due
60	Intimation of Record Date	Seven working days in advance

ADDITIONAL COMPLIANCES IN CASE OF COMMERCIAL PAPERS:

In case of Companies issuing Listed Commercial Papers, it needs to comply with the following compliances in addition to the above:

Regulation No	Particulars	Timelines
SEBI Operational Circular August 10, 2021 - Chapter XVII	Submission of ALM statements to the Stock Exchanges	As and when it is submitted to Reserve Bank of India
SEBI Operational Circular August 10, 2021 - Chapter XVII	Certificate to the Stock Exchanges certifying that CP proceeds are used for disclosed purposes, and adherence to other listing conditions	Quarterly

INTIMATIONS TO DEBENTURE TRUSTEES:

Apart from the above, debt listed companies, whose Debentures are listed, are required to make several disclosures to Debenture Trustees as follows:

Regulation No	Particulars	Timelines
56 (1) (a)	Annual Report	Annually as and when it is submitted to Members
56 (1) (a)	Certificate from Statutory Auditors on Utilisation of Proceeds	Annually
56 (1) (b)	all notices, resolutions and circulars relating to New issue of Debt Securities Meetings of Debt Security Holders	
56 (1) (c)	Intimations: any revision in the rating; any default in timely payment of interest or redemption for Debt Securities failure to create charge on the assets all covenants of the issue	Event Based
56 (1) (d)	Half Yearly Certificate issued by Statutory Auditors for maintenance of 100% Security Cover	Half Yearly
56 (1A)	all material events and/or information as disclosed under regulation 51	at the same time as it has intimated to the stock exchange
SEBI Circular SEBI/ HO/ MIRSD/ DOS3/CIR/P/ 2019/68 dated May 27, 2019	Details of Debenture Holders (Benpos)	Monthly: by 7th working day of the succeeding month

APPLICABLE LAWS ENSURING COMPLIANCES:

High Value Companies having the Debt Listed Securities need to ensure compliances of the below mentioned Regulations as the most important to be complied with apart from the other:

1. Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015
Reference Regulations: 01 to 27, 40 and 49 to 62
Applicable Schedules: Schedule I, II and III- Part B
2. Securities and Exchange Board of India Operation Circular No. SEBI/HO/DDHS/P/CIR/2021/613 dated August 10, 2021

Through this Circular SEBI has bifurcated all the circulars with reference to the debt listed companies' chapter-wise to make it easier to ensure compliances of all the guidelines / notifications / circulars applicable to companies.



It covers the following:

- ✓ Chapter I - Application process in case of public issues of securities and timelines for listing
- ✓ Chapter II - Application form and Abridged Prospectus
- ✓ Chapter III - Day count convention, disclosure of cash flows and other disclosures in the offer document
- ✓ Chapter IV - Additional Disclosures by Non-Banking Finance Company or Housing Finance Company or Public Financial Institution
- ✓ Chapter V - Denomination of issuance and trading of Non-convertible Securities
- ✓ Chapter VI - Electronic Book Provider platform
- ✓ Chapter VII - Standardization of timelines for listing of securities issued on a private placement basis

- ✓ Chapter VIII - Specifications related to ISIN for debt securities
- ✓ Chapter IX - Green Debt Securities
- ✓ Chapter X - Structured or market linked debt securities
- ✓ Chapter XI - Operational framework for transactions in defaulted debt securities post maturity date/ redemption date
- ✓ Chapter XII - Fund raising by issuance of debt securities by large corporate
- ✓ Chapter XIII - Issuance, listing and trading non-equity regulatory capital
- ✓ Chapter XIV - Centralized Database for corporate bonds/ debentures
- ✓ Chapter XV - Reporting of primary issuances
- ✓ Chapter XVI - Reporting of trades
- ✓ Chapter XVII - Listing of Commercial Paper
- ✓ Chapter XVIII - Additional interest for non-payment of interest/ redemption
- ✓ Chapter XIX - Publishing Investor Charter and Disclosure of Complaints by Merchant Bankers on their Websites
- ✓ Chapter XX - Bank account details for payment of fees

3. Securities and Exchange Board of India Operation Circular No. SEBI/HO/DDHS/DDHS_Div1/P/CIR/2022/0000000103 dated July 29, 2022

Through this circular, SEBI has prescribed all the formats of intimations to be made to Stock Exchange to maintain uniformity and to avoid using wrong formats while making intimations to SEs.

It covers the following:

- ✓ Chapter I - Formats for filing financial information
- ✓ Chapter II - Formats for Limited Review Report/ Audit Report for issuers of Non-convertible Securities
- ✓ Chapter III - Disclosure of the Impact of Audit Qualifications by Listed Entities
- ✓ Chapter IV - Format of Statement indicating utilization and Statement indicating deviation/ variation in the use of proceeds of issue of listed Non-convertible Securities

- ✓ Chapter V - Disclosures by listed entities of defaults on payment of interest/ repayment of principal amount on loans from banks/ financial institutions and unlisted debt securities
 - ✓ Chapter VI - Schemes of Arrangement involving NCDs/ NCRPS issued in lieu of specified securities
 - ✓ Chapter VII - Formats specifying disclosure of Corporate Governance by
 - ✓ Chapter VIII - Disclosure obligations of listed entities in relation to its Related Party Transactions
 - ✓ Chapter IX - Non-compliance with provisions related to continuous disclosures
 - ✓ Chapter X - Format for statements/ reports to be submitted to Stock Exchange(s) by listed entity which has listed its Securitized Debt Instruments
 - ✓ Chapter XI - Formats relating to review of rating and payment obligations
4. Securities and Exchange Board of India (Issue and Listing of Non-Convertible Securities) Regulations, 2021:
Compliance of these regulations to be ensured for the proposed listing of the Debt Securities to be ensured. It covers various Disclosures to be made by the Companies in the Offer Document / Memorandum Information / Shelf Disclosure Documents / Listing Applications / Electronic Book Mechanism, etc. It also covers the timelines for making an application for Listing, Uploading of Information memorandum in EBP Platform, also it differs for Public and Private Issue of Securities.

However, these regulations form an important part while ensuring compliances of the Debt Listed Companies.

GOVERNANCE BEYOND COMPLIANCE!!!!