



Monthly Updates - SEBI February 2019.

1. CIRCULARS

- **Relaxation to transfer securities from Non-Residents to their relatives- PAN card not required**
[Circular no. SEBI/HO/MIRSD/DOS3/CIR/P/2019/30, dated February 11 ,2019]

1. Para (A) (1) of Schedule VII of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“SEBI (LODR) Regulations”) specifies that the transferee(s) as well as transferor(s) shall furnish a copy of their PAN card to the listed entity for registration of transfer of securities. Due to this many non-resident such as Non-Resident Indians (NRIs), Overseas Citizens of India (OCIs), Persons of Indian Origin (PIOs) and foreign nationals have been facing difficulties in transferring shares held by them since many of them do not possess PAN card. In order to address these difficulties SEBI has decided to grant relaxation to non-residents (such as NRIs, PIOs, OCIs and foreign nationals) from the requirement to furnish PAN and permit them to transfer equity shares held by them in listed entities to their immediate relatives’ subject to the following conditions:

- a. The relaxation shall only be available for transfers executed after January 01, 2016.
- b. The relaxation shall only be available to non-commercial transactions, i.e. transfer by way of gift among immediate relatives.
- c To provide copy of an alternate valid document to ascertain identity as well as the non-resident status.

- **Format for annual secretarial audit report -listed entities and their material subsidiaries.**
[Circular no. CIR/CFD/CMD1/27/2019 dated February 08 ,2019]

1. The Committee on Corporate Governance, constituted under the Chairmanship of Shri Uday Kotak, in its report dated October 05, 2017, recommended *inter alia* the following in view of the criticality of secretarial functions to efficient board functioning:

- a. Secretarial audit to be made compulsory for all listed entities under the SEBI LODR Regulations, 2015 in line with the S.204 of the Companies Act, 2013 read with Rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. (prescribed under Companies Act, 2013)

b. Secretarial audit to be extended to all material unlisted Indian subsidiaries in line with the recommendations of the Committee for strengthening group oversight and improving compliance at a group level for Listed Entities.

SEBI has mandated under the said Circular that a Listed Entity in addition to the Form No.MR-3 prescribed under Companies Act, 2013, shall also obtain from Practicing Company Secretary a report in a format prescribed thereunder regarding compliance with SEBI Regulations and Circulars.

While ICSI may be issuing a guidance note, the said report contemplates PCS to Check on levels of compliance, Deviations, note of PCS regarding Deviations, Action taken report and observations of PCS on such Report.

4. This is made a requirement for compliance with Regulation 24A of SEBI (LODR) Regulations, 2015 and the said report needs to be submitted to Stock Exchange within 60 Days from end of Financial Year.

SUPREME COURT JUDGEMENT

➤ Criteria for determining quantum of penalty- Chapter VIA of SEBI Act, 1992

The Adjudicating Authority vs. Bhavesh Pabari (CIVIL APPEAL NO(S).11311 OF 2013 before Hon'ble Supreme Court of India. (Judgement dated February 28, 2019)

Issue : Whether the conditions stipulated in clauses (a), (b) and (c) of Section 15J of SEBI Act, 1992 are exhaustive to govern the discretion in the Adjudicating Officer to decide on the quantum of penalty or the said conditions are merely illustrative?

Ratio Decidendi: The Honourable Court observed that “Having dealt with the submissions advanced by the rival parties, we are inclined to take the view that the provision of clauses (a), (b) and (c) of Section 15J are illustrative in nature and have to be taken into account whenever such circumstances exist. But this is not to say that there can be no other circumstance(s) beyond those enumerated in clauses (a), (b) and (c) of Section 15J that the Adjudicating Officer is precluded in law from considering while deciding on the quantum of penalty to be imposed”.

The court also set out the difference between Continuing offence and Repeated Offence

“Continuing offence constitutes a fresh offence every time or occasion it occurs. The liability continues until the rule or its requirement is obeyed or complied with. On every occasion when disobedience or non-compliance occurs and reoccurs, there is an offence committed. A recurring or successive wrong, on the other hand, are those which occur periodically with each wrong giving rise to a distinct and separate cause of action “

This was explained in view of clause (c) of Section 15J of the SEBI Act which refers to repetitive nature of default and not a continuing default. The bench clarified that the word "repetitive" used in Section 15J(c) would refer to a recurring or successive default. This factum has to be taken into consideration while deciding upon the quantum of penalty. At the same time, the bench also added that "this dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty".

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