

Covid-19: Listed Companies' Disclosure Obligations On Coronavirus

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In the wake of the [novel coronavirus outbreak](#), the Government of India and local authorities have been continuously [initiating measures](#) to contain the pandemic such as the prohibition on large gatherings, the imposition of a ban on travel, closure of certain outlets with large footfalls, asking establishments to have their employees work from home, and finally, on Tuesday, [a nationwide lockdown](#). Global markets and business operations are also in a state of turmoil.

Extension of applicability of the revised standard operating procedure

On January 22, 2020, SEBI had issued a revised standard operating procedure on the imposition of fines and other enforcement actions for non-compliance of the Listing Regulations. The revised SOP superseded those issued by SEBI on May 3, 2018, and was to become applicable from compliance periods ending on or after March 31, 2020. However, SEBI has extended the date of applicability of the revised SOP. This will now be applicable from compliance periods ending on or after June 30, 2020.

Also Read: [Extension Of Deadline For Submitting Financials Proactive, Experts Say](#)

Publication of advertisements in newspapers

The Listing Regulations require a listed company to publish certain information in newspapers, such as notice of a board meeting (where financial results will be discussed), financial results and notices given to shareholders. SEBI has granted a relaxation from this requirement till May 15, 2020.

Further, because of the Covid-19 outbreak, Finance Minister Nirmala Sitharaman announced several relief measures relating to statutory and regulatory compliance requirements on March 24, 2020.

Some of these relaxations are:

- Waiver of late-filing fees in respect of documents or returns to be filed with the Registrar of Companies;
- The mandatory requirement of holding board meetings within prescribed intervals under the Companies Act, 2013, has been extended by a period of 60 days;
- If the independent directors of a company are unable to hold at least one meeting without non-independent directors in FY20, the same will not be treated as a violation; and
- The Companies (Auditor's Report) Order, 2020, will be made applicable from FY21 instead of FY20.

Also Read: [SEBI Takes Measures To Check Short Selling, Curb Volatility](#)

While these relaxations will give some breather to a listed company, it is relevant to understand the potential implications that Covid-19 may have on the business operations and the regulatory challenges that a company may face to comply with its continuous disclosure obligations of keeping the market and investors informed of material events and information under the listing regulations.

Legal Requirement

The regulations require every listed company to make disclosures of any event or information which, in the opinion of its board of directors, is material. Broadly, the listing regulations prescribe two categories of events namely, deemed material events and materiality-based events, in relation to which a listed company is required to make a disclosure.

Deemed material events: These events are deemed to be material events, and therefore the company is mandatorily required to make disclosures in relation to such events. An acquisition or merger; the disposal of assets; issuance of securities; and changes in directors, key managerial personnel, auditor and compliance officer; are some of the examples of deemed material events for a listed company.

Materiality based events: The company may be required to make disclosures in relation to these events if the applicable materiality limits prescribed in the listed company's materiality policy are breached. Disruption of operations; and amendment or termination of orders or contracts not in the normal course of business; are some of the examples of materiality based events.

Disclosure under Regulation 30 of the Listing Regulations is required to be made as soon as reasonably possible but not later than 24 hours from the occurrence of an event. A monetary penalty may be imposed by SEBI if the listed company fails to ensure timely compliance with the disclosure obligations.

Also Read: [The Legal Process Behind The 21-Day National Lockdown Order](#)

Challenges

At an operational level, a company may broadly face the following challenges:

- **Disruption of supply-chain:** Due to a lockdown situation, a listed company may face supply chain challenges that could have long term implications on inventory, revenues, and operations – including delays and low production.
- **Production/business capacity:** the pandemic directly impacts the workforce and production facilities. An outbreak at one of the manufacturing facilities may force the company to shut down that facility and place its workers in quarantine.
- **Material contracts:** ‘force majeure’ clauses may be triggered by a listed company or its counterparty to justify non-performance.
- **Financing constraints:** A company may face challenges in freely receiving funding from lenders and/or may end up entering into financing agreements that are lender-friendly.

Most of these challenges that a listed company may face are likely to fall within the ambit of materiality based events. Therefore, a well thought-out materiality policy would come in handy during these times. A company will, therefore, have to assess the impact of the event, take corrective measures and simultaneously analyse whether the applicable materiality limits prescribed in its materiality policy have been breached. In case any materiality limit is breached, the company would be required to make a timely disclosure.

A listed company may also face practical challenges in assessing the impact of the pandemic and complying with its disclosure obligations, since efforts may be primarily focussed on taking measures to contain the pandemic. For instance, if there is an outbreak in one of the manufacturing facilities or offices of the firm, the focus would be on evacuating the facility or office and ensuring that the workmen and employees are quarantined or hospitalised, as needed. Simultaneously, the company would be required to absorb the information, assess its impact on the financial and business operations, analyse whether the materiality limits prescribed in its policy have been breached and if so, then make a disclosure. If the company is not well prepared, it may face challenges in complying with its disclosure obligations within the 24-hour deadline.

Further, it is possible that an event may neither fall within deemed material events nor materiality based events but have a potential impact on the financials and business operations of the listed company. For instance, challenges in sourcing raw material may not squarely fall within any of the specified events but are likely to have an impact on the business operations. In such a scenario, the company should assess the impact, deliberate on whether the impact is material and make the disclosure, only if the impact is material.

Consequence Of Non-Compliance

For non-compliance with disclosure obligations, SEBI can impose a penalty on the listed company. In case of delayed disclosure, a company is required to provide an explanation for the delay in making the disclosure. While a belated disclosure with reasonable or genuine explanation for the delay may not exonerate the company from the imposition of penalty, it is likely to act as a mitigating factor in requesting SEBI to reduce the quantum of penalty.

Other Relevant Considerations

SEBI (Prohibition of Insider Trading) 2015, amongst other things, prohibits a person from trading in securities of a listed company while in possession of unpublished price sensitive information. This is a rapidly-evolving situation if a company becomes aware or has information relating to any development or information which is not publicly available and is likely to materially affect the price of the securities of the listed company – the promoters, directors, employees, and officers (who are aware of such development or information) should avoid trading in the securities of the company until such development or information becomes generally available and disclosed in the public domain.

In view of the prohibition on large public gatherings, listed companies may face a challenge in convening physical shareholders' meeting. While a shareholders' meeting may be convened through a postal ballot process, however this model can only be adopted for obtaining shareholders' approval for certain prescribed items.

Conclusion

Considering the far-reaching consequences of Covid-19, it would be prudent for a listed company to be mindful of its obligations and it should take all preparatory steps to ensure timely compliance. These companies should also proactively keep an eye out for any relaxations/ additional requirements that may be issued by regulators in wake of the pandemic.

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