

Revised framework of penalizing for non-compliance under the Listing Regulations

Jyoti Shaw
Corplaw Division | Vinod Kothari and Company
corplaw@vinodkothari.com

Background

SEBI vide its various circulars dated November 30, 2015, October 26, 2016 and May 13, 2018 (hereinafter referred to as 'Previous Circulars') laid down the framework for imposing penalty and taking action against such listed entities which violate the provisions of the SEBI Listing Regulations. Considering the various amendments under the SEBI Listing Regulations pursuant to the Kotak Committee recommendations, SEBI thought fit to bring yet another circular making amendments to the existing framework.

The circular dated January 22, 2020¹, is in supersession to the earlier circular dated May 13, 2018² (Earlier Circular') and shall be enforceable for the period ending March 31, 2020. While the penalty section under this circular shall be applicable from such date, however, the Standard Operating Procedures (SOP) for suspending or freezing or delisting the scrip of such entities shall continue to be dealt with as per the earlier circular. Our write-up on the earlier circular can be viewed [here](#).

While this circular is similar to the earlier circular, however, it contains reference to certain additional regulations which are either existing or introduced pursuant to SEBI Listing Amendment Regulations.

Revised Penalty Structure

Following is a tabular presentation on the revised penal structure containing the 11 amended / additional provisions on which the fine shall be levied under the instant circular:

Sl. No.	Regulation	Fine	Remarks
1.	Regulation 17 (1A) Non-compliance with the requirements pertaining to appointment or	INR 2000 per day	New Insertion for a new requirement under the Listing Regulations

¹ <https://www.sebi.gov.in/legal/circulars/jan-2020/non-compliance-with-certain-provisions-of-the-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-the-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-45752.html>

² <https://www.sebi.gov.in/legal/circulars/may-2018/non-compliance-with-provisions-of-sebi-listing-obligations-and-disclosure-requirements-regulations-2015-and-standard-operating-procedure-for-suspension-and-revocation-of-trading-of-specified-securi-38841.html>

Sl. No.	Regulation	Fine	Remarks
	continuation of Non-executive director who has attained the age of seventy five years.		
2.	Regulation 17 (2) Non-compliance with the requirements pertaining to the number of Board meetings.	INR 10,000 per instance	New Insertion for an existing provision under the Listing Regulations. Section 173 of the Companies Act, 2013 (Act) provides for a penalty of INR 25,000 on a person who fails to give notice under the said section.
3.	Regulation 17 (2A) Non-compliance with the requirements pertaining to quorum of Board meetings.	INR 10,000 per instance	New Insertion for a new requirement under the Listing Regulations. There is no specific penalty provided for under the Act for non-compliance with the provisions of section 174 dealing with quorum requirements under the Act, however, section 450 is applicable in such case where the company and every officer of the company who is in default or such other person shall be punishable with fine which may extend to INR 10,000, and where the contravention is continuing one, with a further fine which may extend to INR 1,000 for every day after the first during which the contravention continues.
4.	Regulation 20 (2A) Non-compliance with the constitution of Stakeholder Relationship Committee (SRC)	INR 2000 per day	New Insertion for a new requirement under the Listing Regulations. Pursuant to the amendments, the Listing Regulations provide for quorum

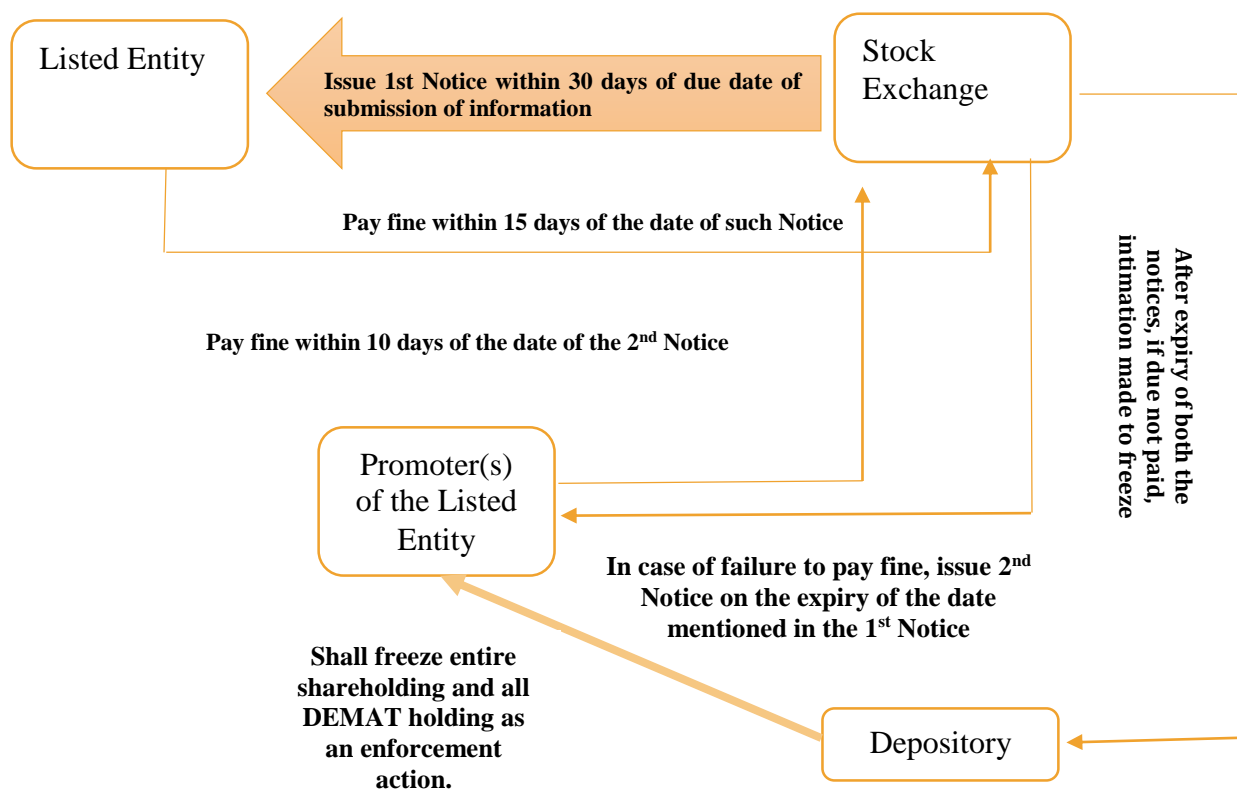
Sl. No.	Regulation	Fine	Remarks
			requirements for meeting of SRC.
5.	Regulation 23 (9) Non-compliance with disclosure of related party transactions on consolidated basis.	INR 5,000 per day	New Insertion for a new requirement under the Listing Regulations.
6.	Regulation 24A Non-compliance with submission of secretarial compliance report.	INR 2000 per day	New Insertion for a new requirement under the Listing Regulations.
7.	Regulation 28 (1) Non-compliance with obtaining in-principle approval of stock exchange(s) before issuance of securities.	INR 50,000 per instance	New Insertion for an existing provision under the Listing Regulations.
8.	Regulation 31A (3) (a) Non-compliance pertaining to delay in submission of reclassification application to stock exchanges	INR 5,000 per day	New Insertion for an amended provision under the Listing Regulations.
9.	Regulation 43A Non-disclosure of Dividend Distribution Policy in the Annual Report and on the websites of the entity.	INR 25,000 per instance	New Insertion for an existing provision under the Listing Regulations.
10.	Regulation 44 (5) Non-convening of annual general meeting within a period of five months from the close of financial year.	INR 25,000 per instance	New Insertion for a new requirement under the Listing Regulations.

Sl. No.	Regulation	Fine	Remarks
11.	Regulation 45 (3) Non-obtaining approval of stock exchange(s) before filing request for change of name with Registrar of Companies.	INR 25,000 per instance	New Insertion for an existing provision under the Listing Regulations.

In addition to the aforesaid fine structure, fine on Regulation 39 (3) with respect to non-submission of information regarding loss of share certificates and issue duplicate share certificates has been removed considering the fact that shareholders in a listed company cannot transfer their shares unless they hold it in dematerialized form.

Timeline for taking cognizance of the non-compliance and levy of fine

While the earlier circular laid down the timeline for payment of fine from the date of notice issued by the stock exchange, the instant circular provides a slightly different procedure for levying fine which is diagrammatically given below:



Standard Operating Procedure

Procedure relating to moving the scrip of listed company to “Z” Category and suspension of trading in shares is same as the provisions of the earlier circular **except**:

In case of moving the scrip to "Z" Category:

- i. before moving the scrip to “Z” category, the concerned recognize stock exchange(s) shall send written intimation to the non-compliant listed entity calling upon it to comply with respective (fine) requirement(s) within 7 days of the date from the intimation.
- ii. Also stock exchange shall give 10 days prior notice to investors before moving the scrip to "Z" category or while moving the scrip out of "Z" category. In earlier circular 7 days' notice was required instead of 10 days.
- iii. If the listed entity complies with fine requirements within two working days before the proposed date of movement of scrip to “Z” category then scrip shall not be moved into such category and and the concerned recognized stock exchange(s) shall give a public notice on its website informing compliance by the listed entity. While issuing the said notice, the recognized stock exchange(s) shall send intimation of notice to other recognized stock exchange(s) where the shares of the entity are listed.

Conclusion

Amendments are brought by the law to protect of interest of investors. Now in this new circular additional fines have been brought by the SEBI for the non-compliances by the listed companies. Hence, companies are required to be more stringent regarding their legal compliances.

Further, all non-compliances made, fines payable shall also be disclosed on the website of the company as well as on the website of the stock exchange. Hence companies are bound to follow all rules & regulations. Any kind of negligence may lead to damage the brand value (goodwill) of the company.