

Listing Agreements

Amendments by SEBI

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Introduction

SEBI vide its Circular dated August 13, 2012 has amended Clause 31(a) of the Listing Agreement, by including two new forms A and B, for unqualified and qualified auditor reports respectively which are to be submitted by the listed companies along with the copies of annual reports submitted to the stock exchanges.

The objectives of listing are mainly to:

- Provide liquidity to securities;
- Mobilize savings for economic development;
- Protect interest of investors by ensuring full disclosures.

The listing agreement sets various guidelines and mandates compliance of the guidelines by the companies with the stock exchanges for the securities to be listed on the exchange.

Clause 31(a) of the Listing Agreement?

Clause 31 of the Listing Agreement states that a Company must forward to the Stock Exchange "six copies of the Statutory and Directors' Annual Reports, Balance Sheets and Profit and Loss Accounts and of all periodical and special reports as soon as they are issued and one copy each to all the recognized stock exchanges in India."

Amendment:

Listed companies shall now be required to submit to stock exchanges form A for Unqualified/matter of Emphasis Report & Form B for Qualified/Subject to/Except for Audit Report along with copies of annual reports submit

What is Unqualified and Qualified audit report?

An audit report is said to be **unqualified** when the Auditor concludes that the Financial Statements give a true and fair view in accordance with the financial reporting framework used for the preparation and presentation of the Financial Statements, however, with a few comments suggested for improvement in the manner of reporting or presentation of the facts. The comments mentioned or suggested by the auditor here do not mean that the necessary compliances to the

accounting principles and standards are not implemented or reflected, but in fact it indicates only the suggestions for areas in improvement.

An Unqualified Audit report usually indicates the following:

- (1) The Financial Statements have been prepared using the Generally Accepted Accounting Principles(GAAP) which have been consistently applied;
- (2) The Financial Statements comply with relevant statutory requirements and regulations;
- (3) There is adequate disclosure of all material matters relevant to the proper presentation of the financial information subject to statutory requirements, where applicable;
- (4) Any changes in the accounting principles or in the method of their application and the effects thereof have been properly determined and disclosed in the Financial Statements.

A **Qualified Report** which states that the financial statements give a true and fair view except for certain qualifying remarks. The qualifications may concern the under- or overstatement of profit (loss) and assets or liabilities, infringement of company law or accounting standards. The wording of the qualified report is very similar to the Unqualified opinion, but an explanatory paragraph is added to explain the reasons for the qualification.

The auditor shall express a qualified opinion when:

- The auditor, having obtained sufficient/appropriate audit evidence, concludes that misstatements, individually or in the aggregate, are material, but not pervasive, to the financial statements; or
- The auditor is unable to obtain sufficient/appropriate audit evidence on which to base the opinion, but the auditor concludes that the possible effects on the financial statements of undetected misstatements, if any, could be material but not pervasive.

Amendment vide Circular CIR/CFD/DIL/7/2012 dated 13th August, 2012

1. Listed companies shall now be required to submit the following forms, as may be applicable, along with copies of annual reports submitted to stock exchanges:

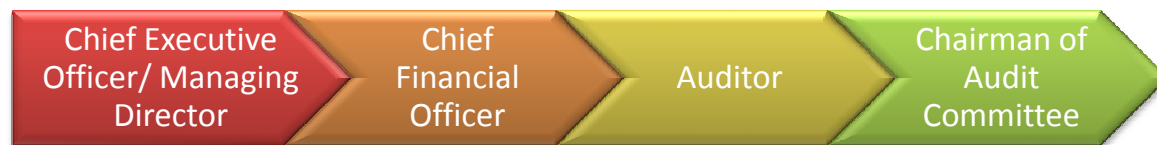
Form A

- Unqualified/ Matter of Emphasis Report

Form B

- Qualified/ Subject To/ Except For Audit Report

2. These forms shall be signed by :



3. **Form A** is to be filed when the auditor report is **unqualified**, it should contain the type of Audit observation and frequency of such observation (first time/ repetitive) and it must be signed by all the persons mentioned as above along with copies of annual reports submitted to the stock exchanges.

4. In the case of Form B, the Stock exchanges shall adopt the following procedure to process the audit reports submitted by listed companies :

- carry out preliminary scrutiny of reports accompanied by Form B.

- Upon examining the audit reports based on the above parameters, stock exchanges shall refer those cases, which, in their opinion, need further examination, to SEBI.

- SEBI has constituted the 'Qualified Audit Review Committee' (QARC) with representatives from Institute of Chartered Accountants of India (ICAI), stock exchanges, etc. The QARC shall review the cases received from the stock exchanges and guide SEBI in processing the qualified annual audit reports referred to by the stock exchanges

5. After analyzing the qualifications in audit reports, QARC may make following recommendations:

(i) If, prima facie, QARC is of the view that an audit qualification is not significant, it may suggest steps for rectification of such qualification;

(ii) If, prima facie, QARC is of the view that an audit qualification is significant and the explanation given by the listed company concerned / its Audit Committee is unsatisfactory, the case may be referred to the Financial Reporting Review Board of ICAI (ICAI-FRRB) for their opinion on whether the qualification is justified or requires restatement of the books of accounts of the listed company;

(iii) If an audit qualification is not quantifiable, QARC may suggest rectification of the same within a stipulated period.

6. If ICAI-FRRB opines that an audit qualification is justified, SEBI may ask the listed company concerned to restate its books of accounts in compliance with the statutory requirements and inform its shareholders about the same by making an announcement to the stock exchanges.

7. If ICAI-FRRB is of the view that an audit qualification is not justified, ICAI may ask the statutory auditor of the listed company concerned to provide necessary clarifications and may take appropriate action.

Applicability :

The said recent amendment to the Clause 31(a) is applicable to all annual audited financial results submitted for the period ending on or after December 31, 2012.

Impact :

The below clause has been included vide this amendment:

After Clause 31, a new Clause 31A shall be inserted, viz., :- "31A. The issuer agrees to restate its books of accounts on the directions issued by SEBI or by any other statutory authority, as per the provisions of the extant regulatory framework".

The above implies that after examination of audit reports and if ICAI-FRRB opines that an audit qualification is justified, SEBI may ask the listed company to restate its books of accounts in compliance with the statutory requirements and inform its shareholders about the same by making an announcement to the stock exchanges, also mandating the companies to reflect the restatement adjustment in the annual report of the subsequent financial year.

Conclusion

This recent circular has thus brought in more transparency and imposes huge responsibility on the Statutory Auditors who present their report to the Management. The said amendment further captures the special attention of all the stakeholders of the company as to the qualification raised by the Auditors. Also, the information submitted in these forms shall also draw attention to relevant notes in the annual financial statements, management's response to qualifications in the Directors' report and comments of the Board/ Chair of the Audit Committee, to maintain and check uniformity of the details provided in the financial statements and thus understand the overall picture of the state of affairs of the company.

This amendment as stated by SEBI in the circular is to put in place a system to monitor the audit qualifications thereby enhancing the quality of financial reporting by listed companies.

Business Responsibility Reports

Introduction:

SEBI vide its Circular dated August 13, 2012 amended of the Listing Agreement a new Clause 55. As the expansion of the business to Global level they are not responsible only for their shareholder but also for the larger public interest. So the Ministry of Corporate Affairs, Government of India, in July 2011, came out with the 'National Voluntary Guidelines on Social, Environmental and Economic Responsibilities of Business. These guidelines contain sets of principle to be implemented in their routine business practice.

Need for the Business Responsibility Report:

In line with the above guidelines the report is designed to disclose the steps taken by listed entities from Environmental, Social and Governance (“ESG”) perspectives for the interest of the society. The decision has been to mandate inclusion of Business responsibility Report as a part of Annual Report. It plays a vital role in the financial and the operational performances of the business. As per the clause 55 in the equity Listing Agreement the following annexure are to be produced.

Annexure-1: Amendments

Annexure-2: Principles to assess compliance with ESG norms

What is the Clause 55 of the Listing agreement?

“Listed entities shall submit, as part of their Annual Reports, Business Responsibility Reports, describing the initiatives taken by them from an environmental, social and governance perspective”

Applicability of the BR Report:

- This report is mandatory for 100 listed entities based on market capitalization at BSE and NSE as on March 31, 2012
- BSE and NSE has draw up a list of listed entities based on the certain criteria
- This provision shall be applicable with the effect from financial year ending on or after December 31, 2012 for all the listed entities.
- The listed entities who are yet to submit the annual report for the financial year ended on March 31, 2012 can submit the BR report on a voluntary basis.

Criteria for the BR report:

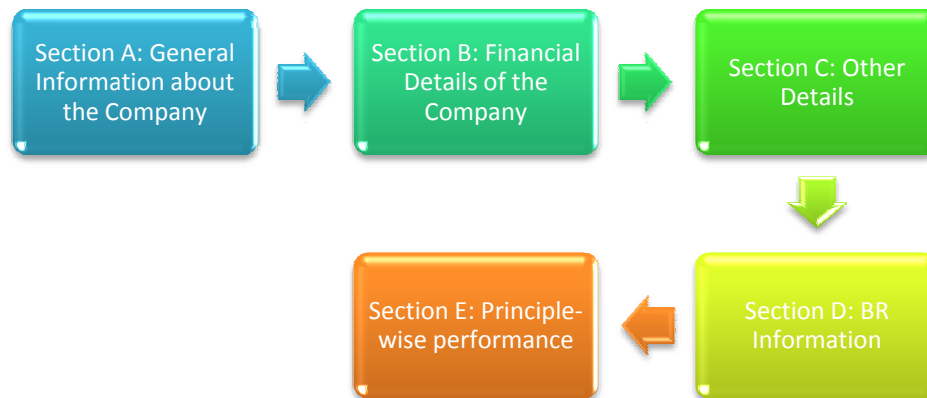
The listed entities who have been submitting sustainability reports to overseas regulatory agencies/stakeholders based on internationally accepted reporting frameworks need not prepare a separate report for the purpose of these guidelines but only furnish the same to their stakeholders along with the details of the framework under which their BR Report has been prepared and a mapping of the principles contained in these guidelines to the disclosures made in their sustainability reports.

The above listing conditions are specified in exercise of the powers conferred under Section 11 read with Section 11A of the Securities and Exchange Board of India Act, 1992.

Amendment vide Circular CIR/CFD/DIL/8/2012 dated 13th August, 2012

Business Responsibility Report – Suggested Framework

Annexure-1



Annexure-2

Principles to assess compliance with Environmental, Social and Governance norms

Principle 1: Businesses should conduct and govern themselves with Ethics, Transparency and Accountability

Businesses should ensure that it follows ethical conduct at all level, transparency and assure to access information and responsible for discharging their financial and other mandatory disclosures

Principle 2: Businesses should provide goods and services that are safe and contribute to sustainability throughout their life cycle

Businesses should adapt the current technology and design product life cycle in such a way. They must educate customer about their product

Principle 3: *Businesses should promote the wellbeing of all employees*

Businesses should motivate, give equal opportunities, various facilities to the employee and there by upgrade their skills and knowledge

Principle 4: *Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalized.*

Businesses should systematically identify their stakeholders, understand their concerns, define purpose and scope of engagement, and commit to engaging with them.

Principle 5: *Businesses should respect and promote human rights*

Businesses should understand and integrate respect for human rights. They promote the awareness and realization of human rights across their value chain.

Principle 6: *Business should respect, protect, and make efforts to restore the environment*

Businesses should use optimal resources and have control check over pollution, including the assessment of potential environmental risks associated with their operations, to the stakeholders in a fair and transparent manner.

Principle 7: *Businesses, when engaged in influencing public and regulatory policy, should do so in a responsible manner*

While pursuing policy advocacy, must ensure that their advocacy positions are consistent with the Principles and Core Elements contained in these Guidelines.

Principle 8: *Businesses should support inclusive growth and equitable development*

Business should innovate and invest in products which has impact on socio-economic development

Principle 9: *Businesses should engage with and provide value to their customers and consumers in a responsible manner*

Business should disclose the fact truthfully and do not restrict their freedom of choice while serving the needs of their customer.

Conclusion :

Thus vide this recent amendment, is issued by SEBI considering the fact that the Listed Companies have accessed funds from the public, have an element of public interest involved, and are obligated to make exhaustive continuous disclosures on a regular basis . Listed entities are accountable not merely to their shareholders from a revenue and profitability perspective but also to the larger society which is also its stakeholder. Hence, adoption of responsible business practices in the interest of the social set-up and the environment are as vital as their financial and operational performance.