

# SEBI advisory on disclosure of material impact of COVID-19 pandemic by listed entities in India

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SEBI has recently advised listed entities in India to make suitable disclosures regarding the financial impact of Covid-19 on its operations as part of its disclosure obligations to shareholders and investors.

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) require listed companies to disclose material information on account of natural calamities or force majeure events that result in '*disruption of operations of any one or more units or divisions of the listed entity*' based on the listed entity's materiality policy and the relevant LODR Regulations.

While the ensuing lockdown and disruption caused by Covid-19 is dynamic and unpredictable, SEBI has felt that such events can lead to distortions in the market if there are gaps in the information being disclosed and available about the operations of a listed entity during the pandemic. There is therefore a need for key information about the impact of the pandemic on the company and its operations to be made known to investors and stakeholders in a timely and cogent manner.

While many listed entities have made disclosures under the LODR Regulations, primarily relating to shutdown of operations and actions taken towards sanitation relating to Covid-19, very few entities have disclosed the financial impact of the pandemic. Taking a cue from listed entities around the world that have been making fairly detailed disclosures regarding the financial impact of the pandemic, including that on financial condition and results of operations, future operations, liquidity, assets, demand for products/services etc., the SEBI has issued an advisory on 20 May 2020 (**SEBI Advisory**) advising listed entities in India to make suitable disclosures relating to the financial impact of Covid-19 on its operations as part of its disclosure obligations to shareholders and investors. Listed companies have been encouraged to evaluate and disseminate the impact of the Covid-19 pandemic on their business, performance and financials, both qualitatively and quantitatively, to the extent possible.

The SEBI Advisory prescribes an indicative (and not exhaustive) list of information that listed entities may consider disclosing, as set out below:

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## UPDATES

- a. Impact of the Covid-19 pandemic on the business;
- b. Ability to maintain operations including the factories/units/office spaces functioning and closed;
- c. Schedule for restarting the operations;
- d. Steps taken to ensure smooth functioning of operations;
- e. Estimation of the future impact of Covid-19 on its operations;
- f. Details of impact of Covid-19 on the listed entity's:
  - Capital and financial resources;
  - Profitability;
  - Liquidity position;
  - Ability to service debt and other financing arrangements;
  - Assets;
  - Internal financial reporting and control;
  - Supply chain;
  - Demand for its products/services;
- g. Existing contracts/agreements where non-fulfilment of the obligations by any party will have significant impact on the listed entity's business; and
- h. Other relevant material updates about the listed entity's business.

Additionally, the SEBI Advisory specifically sets out that while submitting financial statements under the relevant provision of the LODR Regulations, listed entities may specify the impact of the Covid-19 pandemic on their financial statements, to the extent possible. Further, as an overarching guideline, the regulator has encouraged listed entities to provide regular updates on any material developments in this regard and to avoid resorting to selective disclosures.

In terms of timeline, the LODR Regulations prescribe that:

- a. material information on account of natural calamities/force majeure events that result in '*disruption of operations of any one or more units or divisions of the listed entity*' will have to be disclosed as soon as reasonably possible and no later than 24 hours from the occurrence of such event. If such disclosures are made after 24 hours, then it will have to be accompanied with relevant explanations. Further, a listed entity is obligated to make disclosures updating material developments regularly, till such time the event is resolved/closed, with relevant explanations;
- b. specifically, for non-convertible instruments (non-convertible debentures/non-convertible redeemable preference shares), prompt dissemination is required to the stock exchange(s) of all information having a bearing on the performance/operation of the listed entity, price sensitive information or any action that would affect payment of interest or dividend.

## 1 Analysis

The SEBI Advisory guides listed entities regarding financial disclosures to be made on account of the Covid-19 pandemic and builds upon the existing disclosure obligations of listed entities under the LODR Regulations. The SEBI Advisory provides for several Covid-19 related factors to be assessed by listed entities from a financial

impact perspective. The list of disclosure items has been stated to be indicative and not exhaustive, which means that companies would have to assess whether the above indicators are relevant to disclose or whether there are any other additional and relevant factors that may have an impact on the financial condition and operations of such company. The SEBI's emphasis seems to be for listed companies to address their current operational and financial condition and disclose how such operational and financial conditions may change due to Covid-19. Also important is a disclosure of how a listed company has adjusted and expects to adjust in the future, its operational and financial affairs to most effectively work through the Covid-19 crisis. These disclosures will benefit investors and give an accurate indication of the market valuation of the listed company. Historical information may, therefore, be less relevant.

However, based on the indicative factors prescribed by the SEBI, compliance burden and costs for companies in the short term will increase to enable them to make an accurate assessment of the financial impact that the pandemic will have on their business operations. Since state governments in India are following their own protocol and timing for opening and easing of the lockdown measures, companies with operations and manufacturing in different parts of the country may also find it harder to make an assessment on these grounds. Moreover, many listed entities are still assessing the financial impact of the Covid-19 pandemic on their operations since a large part of the migrant workforce have only now been able to leave their workplaces for their hometowns.

Since the objective of the SEBI Advisory is to provide public shareholders of a listed company with a true and fair picture of the company's existing and future financial position and operations in the wake of Covid-19, any inconsistency in reporting or selective disclosures or approaches being adopted by companies in similar or competing businesses (on account of the indicative nature of the guidance and room left for companies to decide on what they would disclose under the SEBI Advisory) could have an adverse impact on the way that these companies are valued by investors and could result in greater volatility of their stock prices. Listed entities have also been asked to revisit, refresh and update all previous disclosures as may be relevant to their business as and when circumstances change during the pandemic.

## 2 Conclusion

Currently, there is little clarity on how a good-faith forward-looking disclosure of the impact of the Covid-19 pandemic on the business and operations of a listed company will be evaluated by the regulator for potential litigation and liability concerns for listed companies. In the United States, the Securities Exchange Commission issued a similar advisory on Covid-19 related disclosures under which it specified that listed entities could provide forward-looking information (in an effort to keep investors informed about material developments, including known trends or uncertainties regarding Covid-19), in a way to avail of the relevant safe harbour provisions. Given the evolving nature and uncertain future events relating to Covid-19, SEBI could consider issuing similar guidelines on safe harbour provisions to limit potential liability in relation to any forward-looking statements made in good faith by listed entities.

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