

25th February, 2025

To,

The Secretary,
Securities and Exchange Board of India (SEBI),
Mumbai, India.

Subject: Response to the Consultation Paper on Aspects Relating to Secretarial Compliance Report, Appointment of Auditors, and Related Party Transactions of a Listed Entity.

Dear Sir/Madam,

The Asian Corporate Governance Association (ACGA) welcomes SEBI's efforts to strengthen corporate governance practices in India through this consultation. We appreciate the regulator's openness to stakeholder feedback and the opportunity to comment. However, we would respectfully request that SEBI consider extending the feedback period beyond the current four weeks, as this timeframe may be insufficient for thorough analysis of the proposals.

ACGA is a non-profit membership association founded in 1999. We conduct research on corporate governance and ESG in 12 markets in Asia-Pacific and advocate at the regulatory and corporate level across the region to improve standards and practices. ACGA is entirely funded by a network of 102 member firms from 18 markets, of which 80% are institutional investors with more than US\$40 trillion in assets under management globally.

Please see our feedback below on the specific proposals.

Strengthening secretarial compliance reports

Proposal 1: Revised format of Annual Secretarial Compliance Report (ASCR)

ACGA supports enhancing disclosure and transparency. The proposed revised format appears comprehensive, although we suggest SEBI consider phasing in some of the more detailed requirements to allow companies time to adapt.

Proposal 2: Disclosure of ASCR in Annual Report

ACGA agrees that the ASCR should be disclosed as part of the Annual Report. This will provide shareholders with comprehensive insights into compliance status.

Proposal 3: Exemption for separate certificates

We believe that obtaining separate certificates on compliance with corporate governance should not be exempted if the ASCR is annexed to the Annual Report, as each serves a distinct purpose.

Proposal 4: Certificate from secretarial auditor

The requirement for a certificate from the secretarial auditor should remain, as it ensures thorough oversight.

Proposal 5: Compliance with secretarial standards

It's important to note that while many countries have corporate governance and compliance requirements, the specific concept of a "secretarial audit" as defined and implemented in India is not widely replicated elsewhere. Instead, other jurisdictions may have their own unique mechanisms for ensuring corporate compliance and governance. We support the proposal to amend Regulation 48 to mandate compliance with applicable secretarial standards, as this will enhance governance.

Auditor appointment criteria

Proposal 6: Change or resignation of secretarial auditor

While statutory audits are common across many countries, secretarial audits are more common in certain jurisdictions, such as India, and may not have comparable disclosure requirements in the UK or the US. There is a growing trend globally for compliance management services, which often include elements similar to secretarial audits. We agree that the change or resignation of a secretarial auditor should be deemed a material event, ensuring timely disclosure.

Proposal 7: Disclosure of fees and changes

Mandatory disclosures regarding total fees paid and changes in secretarial auditor should be implemented to maintain transparency.

Proposal 8: Amendment of LODR Regulations to insert provisions on Audit

ACGA would support a provision similar to that specified in Rule 3(1) of the Companies (Audit and Auditors) Rules, 2014 be incorporated in the LODR Regulations. The proposed eligibility criteria and disclosures should help improve audit oversight. However, care should be taken not to overly restrict the pool of qualified auditors, especially for smaller listed companies.

Proposal 9: Audit committee's consideration

The audit committee should evaluate the qualifications and experience of signing partners to ensure they align with the company's size and needs.

Proposal 10: Mandatory disclosures to audit committee

ACGA supports the proposal to mandate disclosures to the audit committee, board of directors, and shareholders during auditor appointments. While the proposed minimum disclosures list is useful, SEBI could consider streamlining the list to ensure it remains decision-useful and avoids disclosure overload.

Proposals 11 & 12: Proposed formats for disclosure

We agree with the proposed formats for disclosures, as they standardize the information provided to stakeholders. This consistency is important for investors to be able to compare across various companies.

Related party transaction (RPT) approvals

Proposals 13 & 14: Approvals for RPTs

The proposed monetary thresholds in addition to percentage-based limits for subsidiary RPTs are a positive step. This addresses potential loopholes in the current rules. We suggest SEBI also consider enhancing disclosure requirements for RPTs to shareholders. We support the introduction of monetary thresholds for RPTs and the proposed framework for subsidiaries without a financial track record.

We would also urge SEBI to take a look at the royalty subclause as highlighted in ACGA's [India CG Watch 2023 report](#). Regulation 23(1A) of SEBI's Listing Obligations and Disclosure Requirements (LODR) specifically addresses royalty payments to related parties by listed entities. This regulation stipulates that such payments are considered material and thus require shareholder approval if they exceed 5% of the annual consolidated turnover of the listed entity. The absence of a specific monetary limit means large royalty payments can avoid shareholder approval if they remain below the 5% turnover threshold. Even if the combined total of royalty payments and other RPTs exceeds materiality thresholds, shareholder approval is not required if these transactions individually remain within their respective limits.

SEBI's [recent study](#) highlighted poor disclosure levels in royalty payment transactions, with many companies failing to provide adequate justification for such payments. The study revealed that in 25% of cases, listed companies paid royalties exceeding 20% of their net profits, raising concerns about the impact on shareholder value.

Proposals 15 & 16: Clarifications on RPT provisions

Clarifications regarding related party definitions and exemptions in RPT provisions are necessary for compliance consistency. The proposed clarifications on identifying related parties of subsidiaries and exemptions for transactions between wholly owned subsidiaries are helpful.

Conclusion

Overall, while supportive of SEBI's objectives, we wish to recommend the regulator consider implementation timelines and provide adequate transition periods for companies to comply with the new requirements. We would also urge to include provisions on monetary thresholds and disclosures for Royalty payments to related parties by listed entities.

ACGA stands ready to engage further with SEBI on these important corporate governance matters and would be pleased to elaborate on any of the above or to discuss these points on a call. Thank you for the opportunity to provide comments to the Consultation.

Yours sincerely,

Amar Gill Secretary General, ACGA
amar@acga-asia.org

Anuja Agarwal, Head of Research for Japan and India
anuja@acga-asia.org