KPMG

First Notes

SEBI amends disclosure requirements of material events or information

11 August 2023

First Notes on

Financial reporting

Corporate law updates

Regulatory and other information

Disclosures

Sector

All

Banking and insurance

Information, communication, entertainment

Consumer and industrial markets

Infrastructure and government

Relevant to

All

Audit committee

CFO

Others

Transition

Immediately

Within the next three months

Post three months but within six months

Post six months

Forthcoming requirement

Introduction

The Securities and Exchange Board of India (SEBI) (Listing Obligations and Disclosure Requirements) (LODR) Regulations, 2015 (Listing Regulations) lays down the provisions for effective corporate governance and fair disclosures by listed companies in India.

Regulation 30 of the Listing Regulations requires a listed entity that has listed specified securities[1], to provide disclosure of material events or information to the stock exchange in accordance with Part A of Schedule III of the LODR Regulations. The events disclosed under Schedule III of the Listing Regulations are as below:

- Para A of Part A of the Schedule III are deemed to be material events which are required to be disclosed
- Para B of Part A of Schedule III are to be disclosed on the basis of the materiality policy formulated by a listed entity.

SEBI on 12 November 2022 issued a consultation paper which proposed certain amendments in Regulation 30 and Part A of Schedule III of the Listing Regulations. Further, SEBI issued another consultation paper on 21 February 2023 in order to strengthen the corporate governance aspects of listed entities with respect to disclosure and approval requirements for certain types of agreements that bind listed entities.

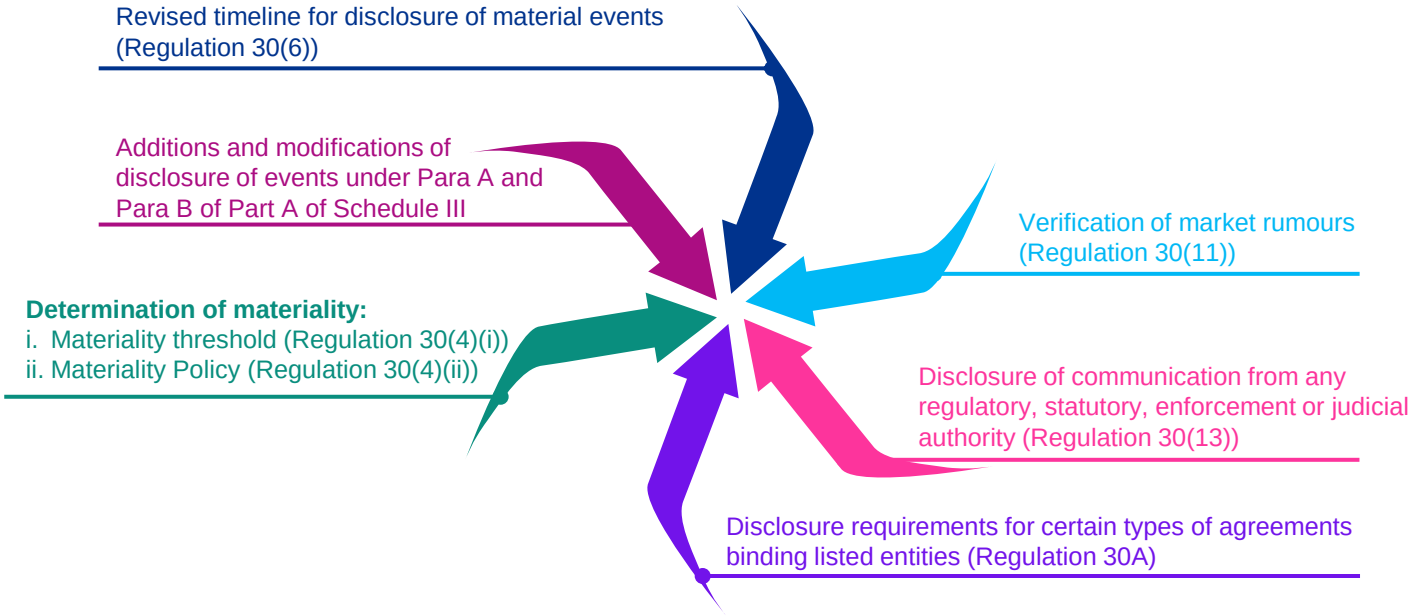
New development

SEBI, through a notification dated 14 June 2023, issued various amendments with respect to disclosure of material events or information by issuing the SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2023 (the amendment). Subsequently, SEBI issued a Circular (the circular) on 13 July 2023 which specifies the details which a listed entity needs to disclose for the events specified under Para A and Para B of Part A of Schedule III, the timeline for disclosure of such events and guidance on when an event/information can be said to have occurred and for determination of materiality. These amendments are effective from 15 July 2023.

In this issue of First Notes, we aim to provide an overview of the key amendments made by SEBI relating to disclosure of material events or information.

[1]Regulation (2)(1)(zl) of Listing Regulations defines specified securities as equity shares and convertible securities as defined under Regulation 2(1)(eee) of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Overview of the SEBI amendments



(*Source: Source: KPMG in India's analysis read with SEBI notification no. No. SEBI/LAD-NRO/GN/2023/131 dated 14 June 2023*)

Revised timeline for disclosure of material events (Regulation 30(6))

This sub-regulation stipulates the timeline within which material events or information should be disclosed to the stock exchange. As per the erstwhile provision, all material events or information were to be disclosed within 24 hours from the occurrence of such an event or information. The amendment has brought in specific timelines for disclosure of material events or information to the stock exchange. The revised timelines for disclosure are as follows:

a) **Outcome of meetings of Board of Directors:** Within 30 minutes from the closure of the meeting of the Board of Directors (for example; decision on declaration of dividend, buy-back of securities, other such events as enumerated in Sub-para 4 of Para B of Part A of Schedule III of Listing Regulations[2], etc.)

b) **Emanating from within the listed entity:** Within 12 hours from occurrence of an event or information (for example; events pertaining to issuance or forfeiture of securities, amendments to memorandum and articles of association of listed entity, etc.)

c) **Not emanating from within the listed entity:** Within 24 hours from occurrence of an event or information (for example resignation of the auditor of a listed entity, effects arising out of change in a regulatory framework applicable to the listed entity, etc.)

Other important points to be considered:

- **Explanation for delay in disclosure:** The amendment further states that, where there is a delay in disclosure, the listed entity is also required to provide an explanation for such delay. Further, in case of those events for which specific timelines have already been provided under Part A of the Schedule III of LODR Regulations, disclosure of those events would be required to be done as per the said specified timelines.
- **Timing of occurrence:** The Circular provides guidance as to when an event/information can be said to have occurred for making disclosures. The circular states:

  a) In instances wherein the disclosure depends upon the stage of discussion, negotiation or approval, the disclosure should be made upon the receipt of approval of the Board of Directors e.g. decision on declaration of dividends, etc. In case in-principle approval or approval to explore (which is not final approval) is given by the Board of Directors, then disclosure of such approval should not be made under regulation 30 of the Listing Regulations.

[2] Sub-para 4 of Para A of Part A of Schedule III of Listing Regulations lists down the events emanating from an outcome of the meeting of the Board of Directors

b) In instances wherein there is no such discussion, negotiation or approval required e.g. in case of natural calamities, disruptions, etc., the disclosure should be made when a listed entity becomes aware of the events/information, or as soon as, an officer of the entity has, or ought to have reasonably come into possession of the information in the course of the performance of his/her duties. It is further clarified that, irrespective of the above instances, the listed entities should confirm, deny or clarify any reported event or information in the mainstream media in terms of Regulation 30(11) of the Listing Regulations.

Additions and modifications of disclosure of events under Para A and Para B of Part A of Schedule III

Part A of Schedule III of the Listing Regulations stipulates the events or information which are required to be disclosed by a listed entity in accordance with Regulation 30. Part A of the Schedule III of the Listing Regulations is further bifurcated into Para A and Para B.

Disclosure of material events
Schedule III - Part A

Para A
(Mandatory disclosures)

The events enumerated in Para A are deemed to be material and hence, mandatory disclosure is required for all such events in Para A.

For example, the disclosure of

- Sale or disposal of any unit(s), division(s), whole or substantially the whole of an undertaking(s) or subsidiary of a listed entity, sale of stake in an associate company of a listed entity
- New ratings or revision in ratings
- Resignation of KMP, senior management, compliance officer or director other than an independent director

Para B
(Quantitative + Qualitative factors)

Quantitative factors
(Regulation 30(4)(i))

Determined as per the materiality criteria including the quantitative threshold for assessment

Note: If in the opinion of the Board of Directors of a listed entity that an event or information is considered as material, then the same should be disclosed.

For example, if the value of a pending litigation(s) or dispute(s), which has an impact on a listed entity, exceeds the materiality threshold stipulated under Regulation 30(4)(i) then the listed entity is required to disclose the same.

Qualitative factors
(Regulation 30(4)(ii)

Based on the materiality policy formulated by a listed entity

(Source: KPMG in India's analysis)

The amendment has introduced certain additions and modifications with respect to events/ information enumerated in Para A and Para B of Part A. The revised version of Schedule III, Part A – Para A, and Para B are as follows:

Para A: The following table lists down the events which should be disclosed mandatorily (without application of the materiality policy i.e. deemed to material events).
(*Emphasis added to highlight the amendment*)

Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
Within 30 minutes of closure of the meeting:		
1.	4	Outcome of meetings of the Board of Directors: A listed entity shall disclose to the exchange(s), within 30 minutes of the closure of the meeting, held to consider the following: a) dividends and/or cash bonuses recommended or declared or the decision to pass any dividend and the date on which dividend shall be paid/dispatched; b) any cancellation of dividend with reasons thereof; c) the decision on buyback of securities; d) the decision with respect to fund raising proposed to be undertaken e) increase in capital by issue of bonus shares through capitalisation including the date on which such bonus shares shall be credited/dispatched; f) reissue of forfeited shares or securities, or the issue of shares or securities held in reserve for future issue or the creation in any form or manner of new shares or securities or any other rights, privileges or benefits to subscribe to; g) short particulars of any other alterations of capital, including calls; h) financial results; i) decision on voluntary delisting by the listed entity from stock exchange(s). If the board meetings being held for more than one day, the financial results shall be disclosed within 30 minutes of end of the meeting for the day on which it has been considered.
Within 12 hours*:		
2.	1	Acquisition(s) (including agreement to acquire), scheme of arrangement (amalgamation, merger, demerger or restructuring), sale or disposal of any unit(s), division(s), **whole or substantially the whole of the undertaking(s) or subsidiary of the listed entity, sale of stake in an associate company of a listed entity or any other restructuring** Explanation 1- For this purpose 'acquisition' shall mean: i) acquiring control, whether directly or indirectly; or ii) acquiring or agreement to acquire shares or voting rights in a company, **whether existing or to be incorporated**, whether directly or indirectly, such that – a) the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company; or b) there has been a change in holding from the last disclosure made under subclause above point and such change exceeds two per cent of the total shareholding or voting rights in the said company; or **c) the cost of acquisition or the price at which the shares are acquired exceeds the quantitative materiality threshold specified above in Regulation 30(4)(i)(c).** **Explanation 2 – The term, 'sale or disposal of a subsidiary' and 'sale of stake in an associate company' shall include:** **(i) an agreement to sell or sale of shares or voting rights in a company such that the company ceases to be a wholly owned subsidiary, a subsidiary or an associate company of the listed entity; or** **(ii) an agreement to sell or sale of shares or voting rights in a subsidiary or an associate company such that the amount of the sale exceeds the quantitative materiality threshold specified above in Regulation 30(4)(i)(c).**

***Note:** In case the event or information emanates from a decision taken in a meeting of the Board of Directors, the same shall be disclosed within 30 minutes from the closure of such meeting as against the timeline indicated in the table above.

Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
		Explanation 3 – The term 'undertaking' and 'substantially the whole of the undertaking' shall have the same meaning as specified under Section 180 of the Companies Act, 2013 (2013 Act)[3].
3	2	Issuance or forfeiture of securities, split or consolidation of shares, buyback of securities, any restriction on transferability of securities or alteration in terms or structure of existing securities including forfeiture, reissue of forfeited securities, alteration of calls, redemption of securities, etc.
4	5	Agreements (viz. shareholder agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of the listed entity), agreement(s)/treaty(ies)/contract(s) with media companies) which are binding and not in normal course of business, revision(s) or amendment(s) and termination(s) thereof. Note: The above disclosure should be made within 12 Hours* for agreements where listed entity is a party. However, the disclosure should be made within 24 hours for agreements where listed entity is not a party.
5	5A	**Agreements entered into by the shareholders, promoters, promoter group entities, related parties, directors, KMPs, employees of the listed entity or of its holding, subsidiary or associate company, among themselves or with the listed entity or with a third party, solely or jointly, which, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or impose any restriction or create any liability upon the listed entity, shall be disclosed to the stock exchanges, including disclosure of any rescission, amendment or alteration of such agreements thereto, whether or not the listed entity is a party to such agreements. However, if such agreements entered into by a listed entity are in the normal course of business, they shall not be required to be disclosed unless they, either directly or indirectly or potentially or whose purpose and effect is to, impact the management or control of the listed entity or they are required to be disclosed in terms of any other provisions of these regulations.** **It has been clarified that, the term 'directly or indirectly' includes agreements creating obligation on the parties to such agreements to ensure that a listed entity shall or shall not act in a particular manner.** **Note:** ▪ **The above disclosure should be made within 12 Hours* for agreements where a listed entity is a party. However, such disclosures should be made within 24 hours for agreements where a listed entity is not a party.** ▪ **The Circular requires a listed entity to disclose the following information:** **a) a listed entity is a party to the agreement,** **i. details of the counterparties (including name and relationship with the listed entity);** **b) If a listed entity is not a party to the agreement,** **i. name of the party entering into such an agreement and the relationship with the listed entity;** **ii. details of the counterparties to the agreement (including name and relationship with the listed entity);** **iii. date of entering into the agreement.** **c) purpose of entering into the agreement;** **d) shareholding, if any, in the entity with whom the agreement is executed;**

[3] As per Section 180 of the 2013 Act:

i) "undertaking" shall mean an undertaking in which the investment of the company exceeds 20 per cent. of its net worth as per the audited balance sheet of the preceding financial year or an undertaking which generates 20 per cent. of the total income of the company during the previous financial year;

ii) "substantially the whole of the undertaking" in any financial year shall mean 20 per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;

Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
		e) significant terms of the agreement (in brief); **f) extent and the nature of impact on management or control of the listed entity;** **g) details and quantification of the restriction or liability imposed upon the listed entity;** **h) whether, the said parties are related to promoter/promoter group/ group companies in any manner. If yes, nature of relationship;** **i) whether the transaction would fall within related party transactions? If yes, whether the same is done at "arm's length";** **j) in case of issuance of shares to the parties, details of issue price, class of shares issued;** **k) any other disclosures related to such agreements, viz., details of nominee on the board of directors of the listed entity, potential conflict of interest arising out of such agreements, etc.;** **l) in case of rescission, amendment or alteration, listed entity shall disclose additional details to the stock exchange(s):** **i. name of parties to the agreement;** **ii. nature of the agreement;** **iii. date of execution of the agreement;** **iv. details and reasons for amendment or alteration and impact thereof (including impact on management or control and on the restriction or liability quantified earlier);** **v. reasons for rescission and impact thereof (including impact on management or control and on the restriction or liability quantified earlier).**
6	7	Change in directors, KMP (Managing Director, Chief Executive Officer, Chief Financial Officer, Company Secretary**, senior management**, etc.), Auditor and Compliance Officer **Note:** This disclosure should be made within 12 hours*, except in case resignation. In the case of resignation, the disclosure should be made within 24 hours.
7	7D	**In case the Managing Director or Chief Executive Officer of the listed entity was indisposed or unavailable to fulfil the requirements of the role in a regular manner for more than 45 days in any rolling period of 90 days, the same along with the reasons for such indisposition or unavailability, shall be disclosed to the stock exchange(s).**
8	8	Appointment or discontinuation of share transfer agent
9	12	Issuance of Notices, call letters, resolutions and circulars sent to shareholders, debenture holders or creditors or any class of them or advertised in the media by the listed entity
10	13	Proceedings of Annual and extraordinary general meetings of the listed entity
11	14	Amendments to memorandum and articles of association of listed entity, in brief
12	17	Initiation of Forensic audit: In case of initiation of forensic audit, (by whatever name called), the following disclosures shall be made to the stock exchanges by listed entities: a) The fact of initiation of forensic audit along-with name of entity initiating the audit and reasons for the same, if available; b) Final forensic audit report (other than for forensic audit initiated by regulatory / enforcement agencies) on receipt by the listed entity along with comments of the management, if any **Note:** The disclosure should be made within 12 hours if forensic audit is initiated by the listed entity. However, if it is initiated by an external agency then the disclosure should be made within 24 hours.
13	**21**	**Voluntary revision of financial statements or the report of the board of directors of the listed entity under section 131 of the Companies Act, 2013.**

Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
Within 24 hours		
14	3	**New ratings or** revision in ratings **Note: The Circular clarifies that disclose of rating is also applicable to the following:** **a) Revision in rating even if it was not requested for by the listed entity or the request was later withdrawn by the listed entity** **b) Revision in rating outlook even without revision in rating score** **c) ESG ratings by registered ESG Rating Provider.**
15	6	Fraud or defaults by a listed entity, its promoter, **director**, KMP, **senior management or subsidiary** or arrest of KMP, **senior management**, promoter **or director of the listed entity, whether occurred within India or abroad.** **It is clarified that the terms:** • **'Fraud' shall include fraud as defined under Regulation 2(1)(c) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003.** • **'Default' shall mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable.** • **In case of revolving facilities like cash credit, an entity would be considered to be in 'default' if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, for more than 30 days.** • **Default by a promoter, director, key managerial personnel, senior management, subsidiary shall mean default which has or may have an impact on a listed entity.**
16	7A	In case of resignation of the auditor of the listed entity, detailed reasons for resignation of auditor, as given by the said auditor, shall be disclosed by the listed entities to the stock exchanges as soon as possible but not later than 24 hours of receipt of such reasons from the auditor
17	9	Resolution plan/restructuring in relation to loans/borrowings from banks/financial institutions including the following details: i. Decision to initiate resolution of loans/borrowings; ii. Signing of Inter-Creditors Agreement (ICA) by lenders; iii. Finalisation of resolution plan; iv. Implementation of resolution plan; v. Salient features, not involving commercial secrets, of the resolution/ restructuring plan as decided by lenders.
18	10	One time settlement with a bank
19	11	Winding-up petition filed by any party/creditors
20	16	Specifies events in relation to the Corporate Insolvency Resolution Process (CIRP) of a listed corporate debtor under the Insolvency Code
21	18	**Announcement or communication through social media intermediaries or mainstream media by directors, promoters, key managerial personnel or senior management of a listed entity, in relation to any event or information which is material for a listed entity in terms of regulation 30 of these regulations and is not already made available in the public domain by the listed entity.** **Explanation – 'social media intermediaries' shall have the same meaning as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**
22	19	**Action(s) initiated or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to a listed entity, in respect of the following:** **a) search or seizure** **b) re-opening of accounts under section 130 of the Companies Act, 2013; or** **c) investigation under the provisions of Chapter XIV of the Companies Act, 2013;**

Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
		along with the following details pertaining to the actions(s) initiated, taken or orders passed: **i. name of the authority;** **ii. nature and details of the action(s) taken, initiated or order(s) passed;** **iii. date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority;** **iv. details of the violation(s)/contravention(s) committed or alleged to be committed;** **v. impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible.**
23	20	**Action(s) taken or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity, in respect of the following** **a) suspension;** **b) imposition of fine or penalty;** **c) settlement of proceedings;** **d) debarment;** **e) disqualification;** **f) closure of operations;** **g) sanctions imposed;** **h) warning or caution; or** **i) any other similar action(s) by whatever name called;** **along with the following details pertaining to the actions(s) initiated, taken or orders passed:** **i. name of the authority;** **ii. nature and details of the action(s) taken, initiated or order(s) passed;** **iii. date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority;** **iv. details of the violation(s)/contravention(s) committed or alleged to be committed;** **v. impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible**

Timeline a specified in the respective sub-para:

Sr. No	Sub-Para Ref to Schedule	Description of the event/information to be disclosed	Timeline specified
24	7B	Resignation of an independent director of the listed entity should be disclosed within seven days from the date of resignation. The following disclosures shall be made to the stock exchanges by the listed entities: i. The letter of resignation along with detailed reasons for the resignation as given by the said director. ii. Names of listed entities in which the resigning director holds directorships, indicating the category of directorship and membership of board committees, if any. iii. The independent director shall, along with the detailed reasons, also provide a confirmation that there is no other material reasons other than those provided. iv. The confirmation as provided by the independent director above shall also be disclosed by the listed entities to the stock exchanges along with the as specified in above sub-clauses	Within seven days
25	**7C**	**Resignation of KMP, senior management, Compliance Officer or director other than an independent director should be disclosed to the stock exchanges within seven days from the date that such resignation comes into effect.** **The letter of resignation along with detailed reasons for the resignation as given by the KMP, senior management, Compliance Officer or director shall also be disclosed.**	Within seven days

Sr. No	Sub-Para Ref to Schedule	Description of the event/information to be disclosed	Timeline specified
26	15.a	Schedule of analysts or institutional investors meet, **at least two working days in advance (excluding the date of the intimation and the date of the meet)** and presentations made by the listed entity to analysts or institutional investors. Explanation: For the purpose of this clause 'meet' shall mean group meetings or group conference calls conducted physically or through digital means	At least two working days in advance
27	15.b	Audio or video recordings and transcripts of post earnings/quarterly calls, by whatever name called, conducted physically or through digital means, simultaneously with submission to the recognised stock exchange(s), in the following manner: i. the presentation and the audio/video recordings shall be promptly made available on the website and in any case, before the next trading day or within 24 hours from the conclusion of such calls, whichever is earlier;	Before the next trading day or within 24 hours
		i. the transcripts of such calls shall be made available on the website within five working days of the conclusion of such calls. The requirement for disclosure(s) of audio/video recordings and transcript shall be voluntary with effect from 1 April 2021 and mandatory with effect from 1 April 2022.	Five working days of the conclusion of such calls

Our comments

The amendment has introduced a lot of new disclosure requirements and modified certain existing disclosure requirements with respect to the events or information enumerated in Para A and B of Part A of the Schedule III to the Listing Regulations. The amendments aim to remove ambiguity and enhance transparency with respect to the disclosures. The key take aways are as follows:

Para A (i.e. deemed to be material events):

- **Disclosure of acquisition and sale based on quantitative material threshold(Sub-para 1)**: The amendment has expanded the scope of this disclosure as now listed entities are required to disclose acquisition, sale or disposal if the cost of acquisition or the price at which the shares are acquired or the amount of sale exceeds the quantitative materiality threshold specified in Regulation 30(4)(i)(c). Before the amendment, the disclosure of acquisition (i.e acquiring or agreeing to acquire shares or voting rights in, a company) was required where:

  a) the listed entity holds shares or voting rights aggregating to five per cent or more of the shares or voting rights in the said company, or

  b) there has been a change in holding from the last disclosure made under sub-clause (a) (above point) and such change exceeds two per cent of the total shareholding or voting rights in the said company.

  Now SEBI has expanded the scope of this disclosure requirement to include transactions where acquisition does not affect the shareholding of the company but the cost of acquisition or the price at which the shares are acquired exceeds the specified materiality threshold under Regulation 30(4)(i)(c). Further, it is clarified that the acquisition of shares or voting rights can be in an existing entity or an entity which is to be incorporated.

  Additionally, considering sale of stake in an associate company and sale or disposal of whole or substantially the whole of the undertaking(s) or subsidiary of the listed entity is also material information, SEBI requires disclosure of the same by the listed entities. For this purpose, amendment has clarified the meaning of sale or disposal of a subsidiary or stake in an associate and it shall include:

  i. An agreement to sell or sale of shares or voting rights in a company such that the company ceases to be a wholly owned subsidiary, a subsidiary or an associate company of the listed entity, or

  ii. An agreement to sell or sale of shares or voting rights in a subsidiary or associate company such that the amount of the sale exceeds the specified materiality threshold under Regulation 30(4)(i)(c).

  The circular further states that, in case there is a sale, lease or disposal of the undertaking is outside the Scheme of Arrangement, then the details of the same including compliance with Regulation 37A of Listing Regulations should also be disclosed.

- **New ratings or revision in ratings (Sub-para 3):** The amendment requires a listed entity to disclose its ESG ratings provided by the registered ESG rating providers. Additionally, they need to disclose any revision in ratings even if it was not requested by the listed entity or the request was later withdrawn by the listed entity. The listed entity will also disclose revision in rating outlook even if there is no change in the rating score.

Our comments (cont.)

- **Fraud and defaults (Sub-para 6):** The amendment now requires listed entities to not only disclose fraud and defaults by the promoter, KMP or listed entity but also those committed by a director, senior management or subsidiary of a listed entity. The amendment has provided a detailed explanation with respect to the term 'default'. The amendment states that default would mean non-payment of the interest or principal amount in full on the date when the debt has become due and payable.

  It further clarifies that, in case of revolving facilities like cash credit, an entity would be considered to be in default if the outstanding balance remains continuously in excess of, the lower of the sanctioned limit or drawing power, for more than 30 days. Further, it should be noted that defaults by a promoter, director, KMP, senior management, subsidiary would be considered as default if it has or may have an an impact on the listed entity. On similar lines, the amendment has also expanded the disclosure with respect to arrests. Accordingly, an arrest of KMP, senior management, promoter or director of the listed entity, whether occurred within India or abroad, should also be disclosed.
- **Resignation by a listed entity's officials (Sub-para 7C):** Prior to the amendment, Para A of Part A of Schedule III required a listed entity to provide details of resignation of auditors and independent directors (Sub-para 7 and sub-para 7A). The amendment has expanded the scope to include KMP, senior management, compliance officer or director (other than an independent director). This amendment has been introduced due to the recent events of fraudulent activities that have been identified wherein key personnel of the entity resigns before the fraudulent activity is detected by a regulatory authority. It should be noted that the disclosure should include the letter of resignation and detailed reasons for the resignation provided by the resigning personnel. The information required under the sub-para should be disclosed to the stock exchange within seven days from the date such resignation comes into effect.
- **Regulatory actions against listed entity or its officials (Sub-para 19 and 20):** The amendment requires listed entities to provide details of action(s) initiated or orders passed by regulatory, statutory, enforcement authority or judicial body. This disclosure is required to be made irrespective of the quantum of fines or penalties. This requirement should be read along with Regulation 30(13) of the Listing Regulations regarding disclosure of communication from any regulatory, statutory, enforcement or judicial authority.

Determination of materiality (Regulation 30(4))

The events specified under Para B of Schedule III are required to be disclosed based on the criteria of materiality specified under Regulation 30(4) of the Listing Regulations.

I. **Materiality threshold (Regulation 30(4)(i)):** This sub-regulation lays down criteria for determination of materiality for disclosure of events/information to be made by listed entities. The amendment now requires listed entities to also perform a quantitative assessment for the purpose of determination of materiality. Accordingly, a listed entity should consider the following criteria for determination of materiality of events/information:

   a) The omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

   b) The omission of an event or information which is likely to result in significant market reaction if the said omission came to light at a later date; or

   c) The omission of an event or information, whose value or the expected impact in terms of value, exceeds the lower of the following:

      i. Two per cent of turnover, as per the last audited consolidated financial statements of the listed entity;

      ii. Two per cent of net worth, as per the last audited consolidated financial statements of the listed entity, except in case the arithmetic value of the net worth is negative;

      iii. Five per cent of the average of absolute value of profit or loss after tax, as per the last three audited consolidated financial statements of the listed entity; or

   d) In case the criteria specified in (a), (b) and (c) is not applicable, then an event or information may be treated as being material if in the opinion of the Board of Directors of the listed entity, the event or information is considered as material.

   (Emphasis added to highlight the change)

   The amendment further clarifies that any continuing event or information which becomes material on account of the above amendments, should be disclosed by the listed entity by 14 August 2023.

Our comments

- **Definition of materiality:** The definition of materiality applies to events included in Para B of Part A. These events pertain to or have an impact on the operations of a listed entity. The amendment to the definition of materiality reduces the scope of use of a 'generic materiality policy' and the discretion of non-disclosure of material events (specified under Para B) on the ground that they were not considered material by a company as per its materiality policy. A quantitative approach will bring uniformity and reduce diversity in determining materiality of events or information for the purpose of disclosure to the stock exchange. This is likely to reduce ambiguity in the expectations from the listed entities regarding disclosure of material events/information. Therefore, listed entities would need to also undertake a quantitative assessment regarding events specified in Para B of Part A and accordingly identify and disclose material events/information. This will help stakeholders to become aware of material events/information enabling them to make informed investment decisions at the appropriate time.
- **Manner of determining quantitative threshold of materiality:** It is important to note that the quantitative assessment should be made on the basis of the Consolidated Financial Statements (CFS). This is a welcome step since in the consultation paper issued by SEBI in November 2022, it was recommended that materiality threshold should be on the basis of Standalone Financial Statements.

  The materiality threshold will be based on lower of three parameters i.e**. turnover, net worth, and profit or loss after tax based on the specified formula.**

  The amendments state that in cases where the net worth of a listed entity is negative, the assessment should be done based on other two criteria i.e. based on the turnover and average of absolute value of profit or loss after tax.

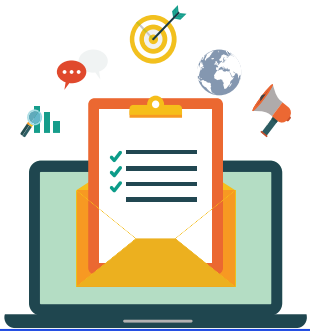
  Further, to calculate average profit or loss after tax an entity will determine an average of absolute value of profit or loss after tax, as per the last three audited CFS of the listed entity. The circular clarifies that the average of absolute value of profit or loss is required to be considered by disregarding the positive or negative sign that denotes such value as the said value/figure is required only for determining the threshold for materiality of the event and not for any commercial consideration.

  An illustration with respect to the same is as follows:

	Profit/loss after tax	Absolute value of profit/loss after tax	Average of absolute value of profit/loss after tax for the 3 years
FY 2020-21	(20)	20	(20+50+20)/3 = 30
FY 2021-22	50	50	
FY 2022-23	(20)	20	

(Source: SEBI circular (SEBI/HO/CFD/CFD-PoD-1/P/CIR/2023/123) on Disclosure of material events/information by listed entities under Regulations 30 and 30A dated 13 July 2023)

  It is further clarified that in case a listed entity does not have a track record of three years of financial statements, say in case of a demerged entity, the aforesaid average may be taken for the period/number of years as may be available.
- **Qualitative and quantitative benchmarking for material events and information:** Companies should conduct a combined assessment of both qualitative and quantitative factors to assess and disclose material events/information. There could be instances where the materiality benchmark is not met as per the amendment but such an event could be material to the users of the financial statements. Therefore, companies should formulate a materiality policy based on qualitative and quantitative factors and the same should be regularly monitored and revised basis the business and regulatory developments.
- **Continuing events and information:** The amendment requires an entity to undertake a retrospective review with respect to any continuing event or information which becomes material pursuant to these amendments. In such instances, a listed entity is required to provide disclosures of such continuing events and information by 14 August 2023.



II. **Materiality Policy (Regulation 30(4)(ii)):** As per this regulation, the materiality policy formulated by a listed entity should be approved by its Board of Directors. Further, the policy should also be disclosed on the listed entity's website.

The amendment has inserted a proviso which requires a listed entity to consider the following aspects while framing its materiality policy:

a) The materiality policy should not dilute any requirement specified in the regulations

b) The materiality policy should assist relevant employees of the listed entity in identifying any potential material event or information and reporting the same to the authorised Key Managerial Personnel (KMP) for determining the materiality of the event or information and for making the necessary disclosures to the stock exchange(s).

Our comments

Awareness regarding concept of material events: The listed entities should invest in developing a culture or develop a widespread structure to create awareness about the concept of material events and disclosure timelines specified by SEBI. They should provide adequate training regarding material events to their relevant employees to enable them to assess and identify material events/information that should be reported in a timely manner.

Disclosure of material events Schedule III - Part B:

The following table lists down the events which shall be disclosed based the application of the materiality policy (*Emphasis added to highlight the amendment*)

Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
Within 12 hours*		
1.	1	Commencement or any postponement in the date of commencement of commercial production or commercial operations of any unit/division
2	2	**Any of the following events pertaining to the listed entity:** **a) arrangements for strategic, technical, manufacturing, or marketing tie-up; or** **b) adoption of new line(s) of business; or** **c) closure of operation of any unit, division or subsidiary (in entirety or in piecemeal)**
3	3	Capacity addition or product launch.
4	5	**Agreements (viz. loan agreement(s)) or any other agreement(s) which are binding and not in normal course of business) and revision(s) or amendment(s) or termination(s) thereof.** **Note:** The disclosure should be made within 12 hours* for agreements where listed entity is a party. However, for agreements where listed entity is not a party, the disclosure should be made within 24 hours.
5	10	Options to purchase securities including any ESOP/ESPS Scheme
6	11	Giving of guarantees or indemnity or becoming a surety **by whatever named called** for any third party
7	13	**Delay or default in the payment of fines, penalties, dues, etc. to any regulatory, statutory, enforcement or judicial authority**
Within 24 hours:		
8	4	Awarding, bagging/ receiving, amendment or termination of awarded/bagged orders/contracts not in the normal course of business.
9	6	Disruption of operations of any one or more units or division of the listed entity due to natural calamity (earthquake, flood, fire, etc.), force majeure or events such as strikes, lockouts, etc.

***Note:** In case the event or information emanates from a decision taken in a meeting of the Board of Directors, the same shall be disclosed within 30 minutes from the closure of such meeting as against the timeline indicated in the table above.

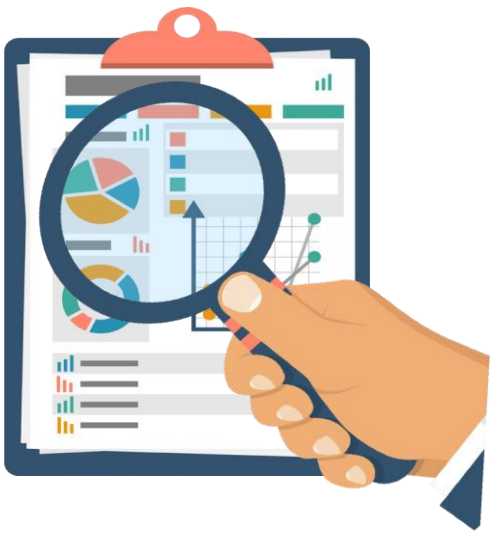
Sr. No.	Sub-Para Ref to Schedule	Description of the event/information to be disclosed
10	7	Effect(s) arising out of change in the regulatory framework applicable to a listed entity
11	8	**Pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on a listed entity**
12	9	**Frauds or defaults by employees of the listed entity which has or may have an impact on a listed entity.**
13	12	Granting, withdrawal , surrender , cancellation or suspension of key licenses or regulatory approvals

Our comments

Awareness regarding concept of material events: The listed entities should invest in developing a culture or develop a widespread structure to create awareness about the concept of material events and disclosure timelines specified by SEBI. They should provide adequate training regarding material events to their relevant employees to enable them to assess and identify material events/information that should be reported in a timely manner.

Para B (i.e. disclosure based on materiality policy): The key take aways relating to Para B are:

- **Material tie-ups, new lines of business and closure of operations (Sub-para 2):** Prior to the amendment, material tie-ups, adoption of new line(s) of business and closure of operations were disclosed only if there was a change in the general character or nature of business of a listed entity. However, the amendment has now dropped the word 'change'. Accordingly, listed entities are now required to disclose any material tie-ups, adoption of new line(s) of business and closure of operations irrespective of whether there is a change in the nature of the business.
- **Disclosure of a loan agreement (Sub-para 5):** Prior to amendment, disclosures were provided for loan agreements wherein a listed entity was a borrower. However, SEBI in its consultation paper highlighted that material loan agreements in which the listed entity is a lender should also be disclosed to provide such material information to the investors. Therefore, the amendment removed the word borrower and now the disclosure is required to be provided for the loan agreements wherein the listed entity is either a borrower and/or a lender.
- **Pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity (Sub-para 8):** The circular clarifies that a listed entity should notify the stock exchange(s) upon it or its director or its key management personnel or its senior management or its promoter or its subsidiary becoming a party to any litigation, dispute, or the outcome may have an impact on the listed entity. It further clarifies that, in case the amount involved in the ongoing litigations or disputes with an opposing party becomes material on a cumulative basis, then the same shall also be required to be disclosed to the stock exchange(s).
- **Giving of guarantees or indemnity or becoming a surety, by whatever name called, for any third party (Sub-point 11):** The SEBI circular clarifies that the details for giving of guarantees or indemnity or becoming a surety, by whatever name called, including comfort letter, side letter, etc., is required to be disclosed in case the amount involved in terms of outstanding guarantees, indemnity or surety for a third party become material on a cumulative basis.



Verification of market rumours (Regulation 30(11)):

The provisions of this sub-regulation states that, every listed entity should on its own initiative, confirm or deny any reported event or information to stock exchange(s). In addition to the above-mentioned general provision, the amendment has introduced a glide path for the following listed entities:

Listed entities	Effective date for applicability
Top 100 by market capitalisation as at the end of the immediately preceding financial year	From 1 October 2023
Top 250 by market capitalisation as at the end of the immediately preceding financial year	From 1 April 2024

The listed entities falling within the above thresholds are required to confirm, deny, or clarify any reported event or information in the mainstream media which is not general in nature and which indicates that rumours of an impending specific material event or information, which is in terms of the provisions of this regulation, are circulating amongst the investing public. This confirmation should be made as soon as reasonably possible but not later than 24 hours from the reporting of the event or information.

Further, the listed entity should also provide the current stage of such an event or information. For this purpose, the amendment defines 'mainstream media', which includes print or electronic mode of the following:

i) Newspapers registered with the Registrar of Newspapers for India

ii) News channels permitted by the Ministry of Information and Broadcasting under Government of India

iii) Content published by the publisher of news and current affairs content as defined under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021; and

iv) Newspapers or news channels or news and current affairs content similarly registered or permitted or regulated, as the case may be, in jurisdictions outside India.

Our comments

- **Negative impact of rumours:** Over the past few years, a growing influence is noticed of not just print media but also television and digital media. rumours of a material event or information circulating through mainstream media could have an impact on a listed entity and could also establish a false market sentiment. In order to address this concern, SEBI requires top 100 (from 1 October 2023) and top 250 (from 1 April 2024) companies to confirm, deny, or clarify any reported event or information in the mainstream media. This confirmation should be made as soon as reasonably possible but not later than 24 hours from the reporting of the event or information.
- **Implementation challenges for listed entities:** Although this amendment would bring more transparency and governance in the corporate reporting, there are certain implementation challenges such as:

  a) List of newspapers/news channels for tracking market rumours: A large number of newspapers are registered with Registrar of Newspapers for India and similarly a large number of news channels are permitted by the Ministry of Information and Broadcasting under Government of India. Further, information about an entity could be published in a number of newspapers and appearing in many news channels in jurisdictions outside India. The amendment requires a listed entity to track and confirm, deny, or clarify rumours reported in such registered newspapers and new channels. Tracking this information could be a cumbersome process for a listed entity. Considering the vast number of newspapers and news channels in India and outside India, tracking such newspapers and news channels could be a cumbersome process for the listed entity. For this purpose, processes and controls should be established by the listed entities for the purpose of tracking market rumours. This is an important task which would help avoid establishment of a false market sentiment with respect to the securities of an entity.

  b) Internal systems and processes: It is also important to note that if an entity's confidential information circulates/leaks in the mainstream media, then it may imply that there has been a breach of the non-disclosure agreement. Thus, listed companies would need to build appropriate, robust systems and internal controls to prevent leakage of such confidential and price sensitive information. The process would also require a listed entity to sensitise on a continuous basis, not only its employees, but also other parties involved in the confidential transactions e.g. bankers, advisors, etc.

Our comments (cont.)

c) **General vs specific market rumours:** The amendment requires specified listed entities to confirm specific material event or information that is reported in the mainstream media. In practice, there could situations wherein a rumour relates to the information which is general in nature e.g. about the future outlook of an entity and does not relate to a specific material event or information. As a result, not every rumour would be easily amenable to confirm, deny, or clarify. A listed entity would need to evaluate whether the rumour relates to a specific material event or information which could affect price of its securities.

Disclosure of communication from any regulatory, statutory, enforcement or judicial authority (Regulation 30(13))

The amendment now requires a listed entity to disclose communication received from any regulatory, statutory, enforcement or judicial authority with respect to an event or information which is required to be disclosed in terms of the provisions of this regulation. However, the disclosure of such communication should not be made if the listed entity is prohibited to do so by such an authority.

Our comments

Usually, listed entities make disclosures under Regulation 30 of LODR Regulations on the basis of the communication (notice, order, direction, etc.) received from a regulatory, statutory, enforcement or judicial authority. The amendment now requires a listed entity to also disclose the communication received from such an authority, unless prohibited by the authority. The regulation uses the term 'prohibition'. It is important to note that certain communications from regulators could be marked as 'confidential' or 'private' information and not use the term 'prohibition to disclose'. Therefore, in such cases, listed entities must consider engaging with the relevant authority to determine whether such communication is prohibited from disclosure.

Another point to note is that the requirement to disclose regulatory actions falls within Para A and Para B of Part A of Schedule III. As stated in the earlier section, events stipulated under Para A are deemed to be material events and are required to be disclosed, whereas the events stipulated under Para B are to be disclosed on the basis of the materiality policy formulated by the listed entity. Therefore, the communication received from an authority with respect to the regulatory action stipulated under sub-para 19 and 20[4] of Para A of Part A of Schedule III are mandatorily required to be disclosed e.g. suspension, imposition of penalty, settlement of proceedings, etc. Whereas the communication for the regulatory actions as stated under sub-para 8[5] of Para B of Part A of Schedule III are required to be disclosed if the listed entity considers it material as per the provisions of Regulation 30(4) of the Listing Regulations e.g. delay or default in the payment of fines, penalties, dues, etc.

Disclosure requirements for certain types of agreements binding listed entities (Regulation 30A)

The existing requirements of Clause 5 of Para A of Part A of the Schedule III of the Listing Regulations requires listed entities to disclose the agreements that are binding and not in the normal course of business to the stock exchange. Such agreements include shareholders' agreement(s), joint venture agreement(s), family settlement agreement(s) (to the extent that it impacts management and control of a listed entity), agreement(s)/treaty(ies)/contract(s) with media companies.

In addition to the above requirement, the amendment has inserted a new requirement. As per the amendment, now listed entities are also required to disclose agreements (including rescission, amendment or alteration), **which directly, indirectly or potentially impacts the management, or control of a listed entity, or imposes any restriction, or creates any liability on a listed entity, whether or not the listed entity is a party to such agreements.**

[4] Sub-para 19 and 20 of Para A of Part A of Schedule III requires the listed entity to disclose the action(s) initiated or orders passed by any regulatory, statutory, enforcement authority or judicial body against the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary, in relation to the listed entity.

[5] Sub-para 8 of Para B of Part A of Schedule III requires the listed entity to disclose pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity.

Such agreements can be entered into by the shareholders, promoters, promoter group entities, related parties, directors, Key Managerial Personnel (KMP) and employees of a listed entity or of its holding, subsidiary and associate company (collectively known as the party).

For this purpose, the timeline for disclosure of such events as per schedule III is a follows:

- **Intimation by the party to the listed entity:**

  a) Future agreements: The parties to the agreement should inform the listed entity about such agreement to which listed entity is not a party within two working days of entering into such agreements or signing an agreement to enter into such agreements.

  b) Subsisting agreements: The parties to such subsisting agreements to which such a listed entity is not a party should inform the listed entity about the agreement by 31 July 2023.

- **Intimation by the listed entity to the stock exchange and on website:**

  a) The listed entity should disclose such agreements under Sub-para 5A of Para A of Part A of Schedule III of the Listing Regulations.

  b) In case of agreements subsisting as on 14 June 2023, the intimation to the listed entity and stock exchange and on its website should be made by 14 August 2023.

Disclosures of such binding agreements should be made by the listed entity also in its annual report forming part of Schedule V of the Listing Regulations containing the:

a) Information regarding number of agreements,

b) Their salient features, including the link to the webpage containing complete details of such agreements should be provided.

c) In case of agreements subsisting as on 14 June 2023, disclosure of such agreements should be disclosed in the Annual Report for the financial year 2022-23 or for the financial year 2023-24.

Our comments

- **Widening the scope for disclosures:** The amendment has widened the scope for disclosures as listed entities are now required to disclose details of binding agreements in which the listed entity is not a party but such an agreement would impact the management, or control, or impose restrictions on the listed entity.
- **Onus on the concerned party and timelines for compliance:** The amendment casts a responsibility on the shareholders, promoters, promoter group entities, related parties, directors, KMP and employees of a listed entity or of its holding, subsidiary and associate company, to ensure that the information regarding such binding contracts is disclosed to the listed entity in a timely manner. In order to comply with this sub-regulation, the concerned party should provide details of such agreements in a timely manner to the listed entity within two days of entering into such agreements.

  Therefore, a listed entity should set up a process to ensure that it captures information from promoters and controlling shareholders about any third-party agreements with respect to the management or control of a listed entity or which restrict or create any liability on the listed entity. As a good practice, a listed entity could obtain regular confirmations from such parties to ensure timely disclosure of material events and information for reporting to SEBI.

The bottom line

The recently issued amendments would enhance transparency with respect to disclosure of material events/ information by listed entities. However, given the timeline of disclosure, entities would need to invest in systems and controls to capture information about material events. They may consider use of technology-based solutions for ease of compliance and faster disclosure of all material events/information.

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Missed an issue of Accounting and Auditing Update or First Notes?

Issue no. 84 – July 2023

The topics covered in this issue are:

- Effects of climate related matters on financial statements
- Sustainable finance
- Regulatory updates

To access the publication, please click here

SEBI framework on BRSR Core and value chain – disclosures and assurance by listed entities

16 July 2023

Given the growing importance of ESG disclosures for investors and other stakeholders, there was a need for entities to obtain assurance on these disclosures. Considering this SEBI through a notification dated 14 June 2023 amended the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Listing Regulations) to introduce the BRSR Core and BRSR Core for a company's value chain. Subsequently, on 12 July 2023, SEBI issued the framework (the framework) prescribing the disclosure and assurance requirements for BRSR Core, ESG disclosures for value chain, and assurance requirements.

The key aspects enumerated in the framework are with respect to:

- BRSR Core and updated BRSR
- BRSR Core for value chain
- Assurance requirements for BRSR Core (including value chain) This issue of the First Notes provides an overview of the key aspects of the framework issued by SEBI.

To access the First Note, please click here.

Voices on Reporting - Quarterly updates publication

On 28 July 2023, KPMG in India released its VOR – Quarterly updates publication which provides a summary of the of key updates from the Securities and Exchange Board of India (SEBI), the Ministry of Corporate Affairs (MCA), the Reserve Bank of India (RBI), the National Financial Reporting Authority (NFRA), the Institute of Chartered Accountants of India (ICAI) and the Insurance Regulatory and Development Authority of India (IRDAI).

To access the publication, please click here.

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