

SEBI LODR (SECOND AMENDMENT) REGULATIONS, 2023

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- ❑ Vinod Kothari and Company, company secretaries, is a firm with more than 35 years of vintage
 - ❑ Based out of Kolkata, Mumbai, New Delhi and Bengaluru
- ❑ We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

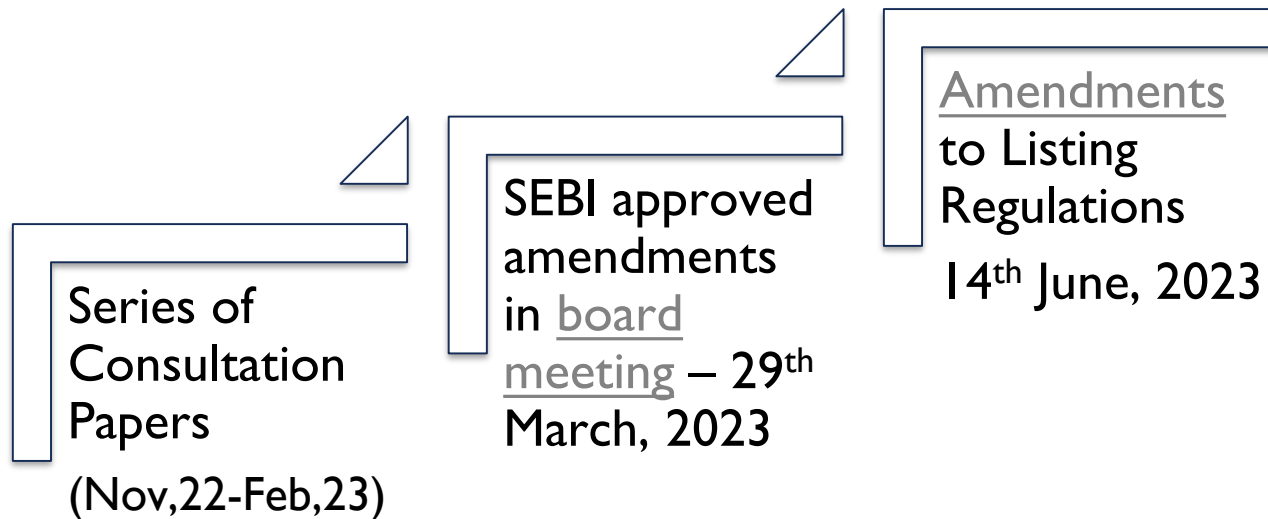
Our Organization's Credo:

Focus on capabilities; opportunities follow

Outline

- Background & objectives
- Applicability schedule
- Disclosure of material events and information
 - Overview of amendments under Reg 30
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- Determination of “materiality” for disclosure of information or events
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 - Identification of undertaking
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- Timelines for filling up vacancies in key positions
- Periodic shareholders’ approval
 - for continuation of permanent directors
 - for agreements with special rights
- Reporting on BRSR Core and assurance requirements
- Enhanced reporting in Annual Report
- Relaxation to HVDLEs

Background and objectives of the amendments



Broad objectives of present amendments

- ❑ Removing ambiguity on timelines of disclosure
- ❑ Enhanced disclosures and transparency
- ❑ Protection of minority shareholders
- ❑ Relaxations to HVDLEs through extending timelines for mandatory compliance with corporate governance provisions
- ❑ Empowering minority shareholders
- ❑ Enhanced corporate governance

Applicability of various amendments

Date of applicability	Relevant Regulation
14 th June, 2023 (Immediately applicable)	<ul style="list-style-type: none"> • Regulation 37A – Disposal of undertaking by listed entity outside scheme of arrangement • Compliance of Reg 15-27: Extension of relaxation for HVDLEs • Regulation 57: Intimation to stock exchange regarding status of payment of dividend, interest, repayment or redemption of principal of NCS • BRSR to be immediately effective; Core and assurance requirements: to be notified separately
14 th July, 2023 (1 month from notification of Amendment Regulations)	<ul style="list-style-type: none"> • Regulation 6(1A) : Vacancy in office of compliance officer • Regulation 17(1E) : Vacancy in office of director • Regulation 26 : Vacancy of office of CEO, CFO to be filled within 3 months • Regulation 27(ba) : Disclosure of cyber security incidents • Regulation 30: Disclosure of material events and information • Regulation 30A : Disclosure of agreements binding listed entities • Regulation 31B :Special Rights to Shareholders • Regulation 33(3)(j) : Submission of Financial Results by new listed entities: for IPO commencing on or after 14th July, 2023
FY 24-25	<ul style="list-style-type: none"> • Re-approval of shareholders for continuation of directors beyond 5 years • Disclosures under CG Report pertaining to particulars of SMPs



Disclosure of material events and information

Regulation 30 read with Schedule III of Listing Regulations



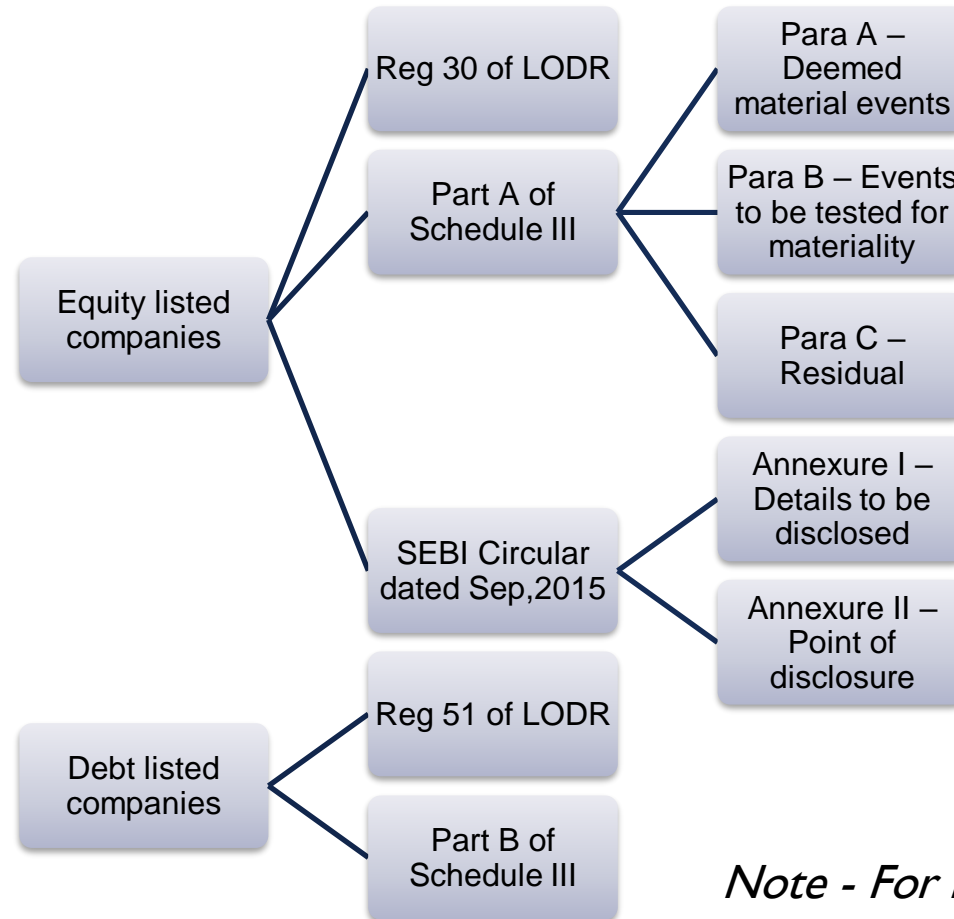
Overview of amendments in Reg 30

- **Quantification of criteria** for determination of “materiality” of events and/ or information
 - Based on a thresholds of turnover, net worth or net profit/ loss after tax on a consolidated basis
- **Amendments in policy** for determination of materiality of events/ information
 - To assist “relevant employees” in escalation of material information to authorized KMPs; to incorporate new thresholds
- **Revision in timelines** for disclosure of material event/ information
 - Reduced to 12 hours in case of information emanating within the listed entity
- **Mandatory verification of market rumours**
 - Top 100 (250 w.e.f. FY 24-25) to mandatorily confirm, deny or clarify reported event pertaining to impending material information reported on mainstream media
- **Disclosure of communication** received from any regulatory, statutory, enforcement or judicial authority
 - If an event or information is required to be disclosed pursuant to receipt of such communication
 - Not required if disclosure of the communication is prohibited by the authority
- Amendments to the list of events/information indicated under **Schedule III**
 - **New disclosures** and change in existing disclosures, along with **shuffling from “tested” material to “deemed” material**

Need for disclosure of material events and information

- Timely and seamless flow of information is a critical aspect of stakeholder governance
 - Various domestic and international principles also enunciate the same
- OECD Principles of Corporate Governance -
 - The corporate governance framework should ensure that **timely and accurate disclosure is made on all material matters** regarding the corporation, including the financial situation, performance, ownership, and governance of the company
- Corporate Governance Principles and Recommendations , Australia -
 - A listed entity should make **timely and balanced disclosure of all matters concerning it that a reasonable person would expect to have a material effect on the price or value of its securities**
- **Reg 4 of SEBI LODR Regs**
 - The listed entity shall provide **adequate and timely information** to recognised stock exchange(s) and investors.
 - The listed entity shall **refrain from misrepresentation** and ensure that the information provided to recognised stock exchange(s) and investors is not misleading.
 - The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are **adequate, accurate, explicit, timely and presented in a simple language.**

Provisions governing disclosure of material events and information



Note - For HVDLEs, regulations pertaining to debt-listed companies attract

Broad overview of Reg 30

- Disclosure of material events or information - Reg 30 (1)
 - Deemed material event - Sched III.A.A
 - Tested for materiality - Sched III.A.B
 - Other events which may be material - 30 (12), Sched III.A.C
- Criteria for materiality: significant impact on price discovery. Reg 30 (4)
 - Now complemented with numerical standards
- Information to SE first, and ASAP
 - Timelines reduced to 12 hours for info emanating within the listed entity
 - Existing timeline of 24 hours continue for those originating outside the listed entity
 - specific timelines for events listed in Sched III.A.A (4)
- Material information about subsidiaries also to be disclosed - 30 (9)
- responses to rumours - earlier, the LE has the option to confirm or deny any reports - Reg 30 (11)
 - Now, mandatory for top 250 LEs in a phased manner
- Sched III.A.A – “deemed” material events
 - events to be disclosed without testing for materiality
 - 21 events are currently listed post amendment
 - as the intent is informational, entities should do a liberal reading of the entries, and go by intent
- Sched III.A.B – “tested” material events
 - 13 listed events, to be tested for materiality, based on materiality policy and Reg 30(4)
- Penalties for non-disclosure or delayed disclosure
 - not covered under SOP for penalties levied by SEs
 - to be adjudicated by SEBI
 - Penalty u/ s 23A of SCRA
 - Minimum Rs. 1 lac
 - Continuing Rs. 1 lac per day
 - Maximum Rs. 1 crore

Adjudication proceedings against listed entities due to non-disclosure

- Non-disclosure of objection of lender to buyback
 - when no-objection was a precondition
 - voting through postal ballot ongoing at that time
 - subsequently withdrawal of buyback
 - objection was considered material to be disclosed during ongoing voting
 - Settlement order passed at Rs. 19.12 lacs
- Non-disclosure of significant regulatory actions already appearing in media
- Failure to address queries of stock exchanges
- Delay in disclosure of deemed material events
 - Penalty of Rs. 10 lacs imposed
- Non-disclosure of final assessment order imposing tax demand having material effect on financials
 - relying on opinion on professional, and
 - pending appeal on tax demand order
 - considered to be non-compliance with Clause 36 of Listing Agreement (presently Reg 30) read with PIT Regs
 - Penalty of Rs. 10 lac on company
 - Rs. 3 lac on each non-ID
 - Order upheld by SAT on appeal
- Failure to disclose change in management (SAST Regs) as material event under Clause 36 of Listing Agreement
 - necessary public announcement made
 - Penalty of Rs. 2 lacs imposed

Responsibilities of Compliance Officer vis-a-vis Practising Company Secretary

Compliance Officer of Listed Entity

- Reg 6 of LODR deals with responsibilities of CO
 - ensuring **conformity with the regulatory provisions** applicable to the listed entity in letter and spirit
 - co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.
- May also be designated as authorized KMP under Reg 30(5)
- To ensure timely dissemination of material events and information
 - Including disclosure of complete information as reqd.

Practising Company Secretaries

- Reg 24A of LODR requires PCS to conduct Annual Secretarial Compliance of listed entities
- Revised format of ASC requires additional affirmation
- Clause (9) of Para (C) states following –
Disclosure of events or information:
The listed entity has provided all the required disclosure(s) under Regulation 30 along with Schedule III of Listing Regulations within the time limits prescribed thereunder.

Interplay with PIT Regulations

PIT Regulations	LODR Regulations
Provision: “No person shall procure from or cause the communication by any insider of unpublished price sensitive information”	Provision: “Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material”
Prohibition in flow of information which is unpublished	Continuous flow of information
Mandatory restriction on sharing information	Mandatory release of information
Creation of artificial Chinese wall for disallowing flow of information	Ensure transparency of information

Provisions are complementary and not conflicting

SEBI's proposal of linking UPSI with Reg 30

- SEBI vide its Consultation paper dated 18th May, 2023 has proposed to **re-include “material event in accordance with Regulation 30** of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015” in the definition of UPSI.
- Potential consequences:
 - Even events which are though material but not in the nature of UPSI will also come into the purview of same
 - Given the proposed changes under Regulation 30 read with Schedule III (approved by SEBI in its meeting dated 29th March, 2023), several new items will be included under the list, thereby adding to the frequency and probability of intimations
 - Leading to the formalities like entry in SDD, closure of trading window etc. even for those events which are not in the nature of UPSI
- **What could be the way out?**
 - Including only the following under the defn of UPSI
 - Matters included in Part A : Para A and Para B
 - Which have been tested for materiality using the given thresholds
 - From the point of germination and identification
 - Till the same is made publicly available

Trigger point for disclosure of material events and information

- Reg 30(6) specifies timelines for disclosure
 - requires disclosure to SEs as soon as reasonably possible, but not later than
 - 30 mins from conclusion of board meeting in which decision pertaining to event/information has been taken
 - 12 hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity
 - 24 hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity
- **When is an event considered to have occurred?**
 - should be disclosed once the happening of the event can be determined with reasonable certainty
 - SEBI Circular dated 9th Sep, 2015 also provides guidance on the same

For events involving stages of discussion, negotiation and approval	For events not involving such stages
on receipt of requisite approval (generally board approval)	as and when the listed entity becomes aware of the same 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 duties
E.g. - rights issue, acquisitions etc	E.g. - strikes, lock-outs etc

The trajectory of information in an organisation

□N: The MD spots a tender/scheme of the Orissa Govt whereby there will be allotment of land, provided the entrepreneur makes an minimum capex of Rs 500 crores in a new plant. Other conditions are there.

□N+1 Captivated by the idea, the MD would want to examine the feasibility of setting up a new unit in Orissa.

□N+3 The MD discusses the matter with the CFO and the two agree to engage one of the consulting firms to do a feasibility study for setting up the Orissa plant

□N+15 At this stage, an in-principle board approval is taken by circulation for carrying the feasibility study, to be reported back to the Board.

□N+ 75 The feasibility study comes a couple of months later. The study inter alia recommends an investment of Rs 650 crores. This will nearly doubling the current capacity of the company

□N+ 90 After doing further work on the matter, the MD and the CFO set up an internal team to identify the technology/machinery vendor, make financial projections, identify land parcel, etc.

□N+ 115 A board meeting is to be called by the CS, setting up the details as currently available.

□N + 123 Board resolution passed for making application to the Govt of Orissa for the plant; if the application succeeds, the matter to come back to the board.

□N+ 125 Application made

□N+ 155 Govt of Orissa sanctions the application

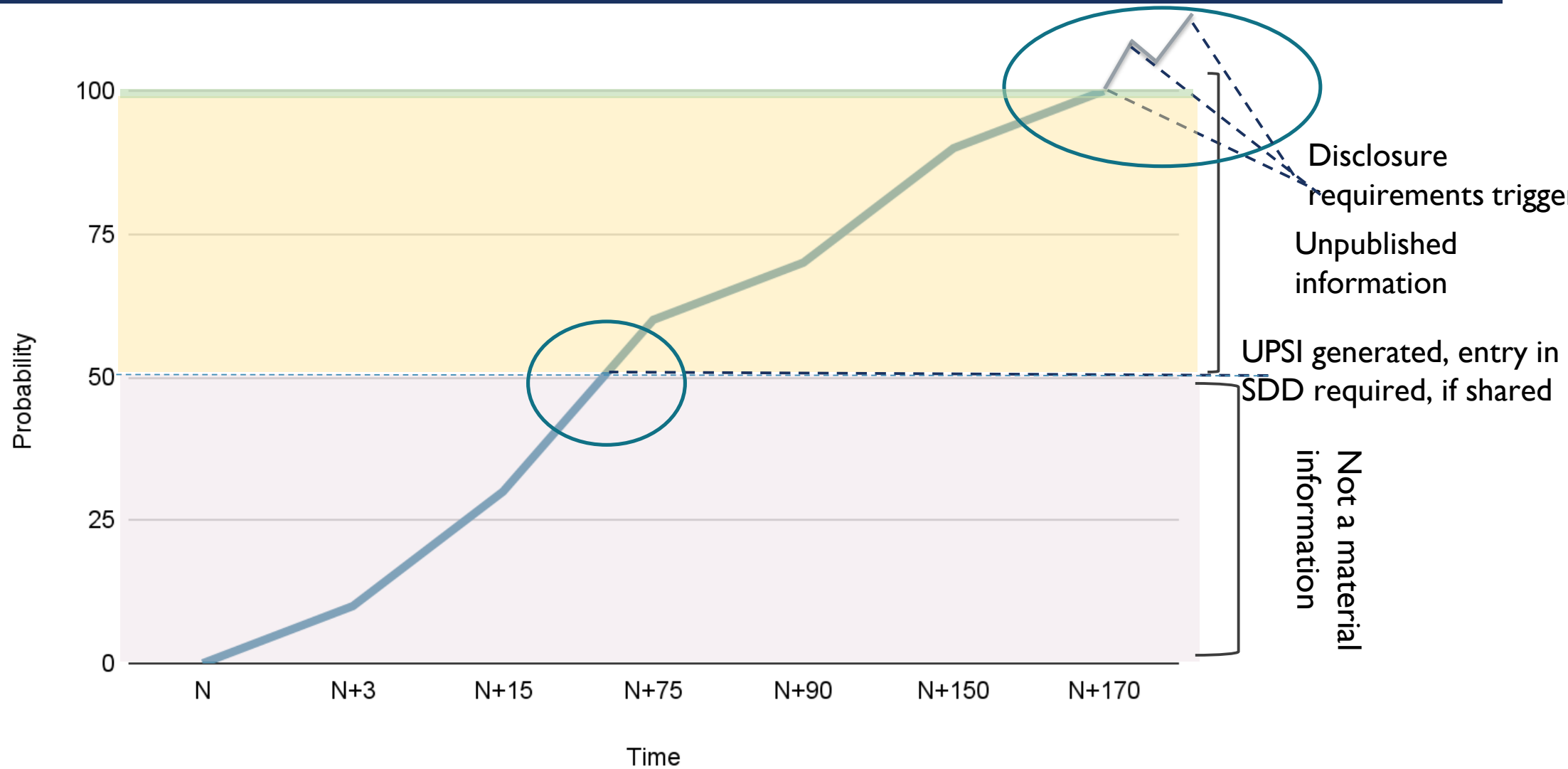
□N+ 170 Further board resolution for setting up a WOS

□N+ 170 At this stage, the information is disclosed to SE

□ **N+200 Subscription to shares of WOS**

□ **N+300 Tender cancelled for uncontrollable reasons**

Metamorphosis of “information” from “origin” to “publication”





Determination of “materiality” for disclosure of information or events

Quantitative thresholds and along with subjective and tests of determination



Tests for determination of materiality of information or events

- Reg 30(4) specifies guidelines for determination of material events and information
- The extant guidelines are subjective
 - (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 is **likely to result in significant market reaction if the said omission came to light at a later date**;
 - (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the **opinion of the board of directors of listed entity**, the event / information is considered material.
- Amended regulations specify “**quantitative**” thresholds for determining “materiality”
 - the same is in addition to and not in substitution of subjective thresholds
- the omission of an event or information, whose **value or the expected impact in terms of value, exceeds the lower** of the following:
 - **two percent of turnover**, as per the last **audited consolidated** financial statements of the listed entity;
 - **two percent 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;
 - **five percent 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.

Need for specifying quantitative thresholds

- Apart from the ‘deemed material events’ listed in Para A Part A of Schedule III, determination of materiality of other events depends on materiality policy of the listed entity
 - Unreasonable discretion applied by listed entities, in determining materiality of an event
 - Amendments seek to make the provision more objective and less discretionary
 - Quantitative thresholds in addition to abstract tests of materiality
- Extracts from Consultation Paper:
 - “...make the provision of regulation 30(4) of LODR Regulations **more objective and non-discretionary**”
 - “...**uniformity in the guidance** to the listed entities is required for determining materiality of events or information”
 - “...importance of **ensuring timely disclosure** of material events by all listed entities at all times.”
 - “...timely dissemination of information would help in **reducing information asymmetry.**”
 - “...aim to keep **pace with the changing market dynamics.**”
 - “...it is expected that the listed entities adopt technology based solutions for ease of compliance”

Understanding thresholds of materiality

- ❑ **“Enterprise” based and not “entity” based**
 - ❑ consolidated financial statements to be considered
- ❑ **The least of the 3 values; all based on audited financial statements**
- ❑ **“Value” v/s “expected impact in terms of value”**
 - ❑ Value would generally be certain,
 - ❑ Expected impact does not necessarily mean immediate impact; it may be spread over a period of time, on reaching the full effect of the corporate action.
 - ❑ **Whether impact needs to be positive or negative or both need to be considered?**
- ❑ **“Negative” Net Worth**
 - ❑ to be ignored completely while considering materiality
- ❑ **“Absolute” value of average profit/ loss after tax**
 - ❑ Absolute values of profit/ loss to be taken for last 3 FYs
 - ❑ Averaging does not mean netting off
 - ❑ For example, suppose a listed company reported a profit of Rs. 5 crores in FY 20-21, profit of Rs. 3 crores in FY 21-22 and loss of Rs. 1 crore in FY 22-23. The limit of materiality in the instant case will be derived as [5% of $\{(5+3+1)/3\}$], i.e., Rs. 15 lacs.

Applicability of amendments : prospective or retrospective?

- ❑ Amendments are **prospective** in nature
 - ❑ effective from 14th July, 2023
 - ❑ however, events occurring prior to the amendments having **continuing impact post amendments**
 - ❑ to be tested on the basis of revised materiality tests
 - ❑ if not already available in public domain
 - ❑ to be disclosed to stock exchanges as material event in terms of Regulation 30
 - ❑ **within 30 days** of effective date, i.e., **by 13th August, 2023**

“Provided that any continuing event or information which becomes material pursuant to notification of these amendment regulations shall be disclosed by the listed entity”

How back is a listed company required to go to re-evaluate “materiality” of events?

Identifying continuing events or information

- **Product launch on 3rd June, 2023**
 - Expected impact on turnover 5% by the end of half year ended 30th Sept, 23
 - Threshold of materiality fixed by co. in policy: 10%
- **Technical tie-up with start-up for technological assistance**
 - Expected impact on net profits 5.5% within a period of 3 years
 - Threshold of materiality fixed by co in policy 10%
- **Commencement of commercial production: 10th Jan, 2023**
 - Expected impact on turnover 7% by the end of FY 23-24
 - Threshold of materiality fixed by co. in policy: 10%
- **Adoption of new brand logo on 31st January, 23**
 - Expected impact on turnover/ profit/ net worth NIL
 - Threshold of materiality fixed by co. in policy: 10%
- **Closure of factory unit on 15th February, 23**
 - Expected impact on turnover 9%
 - Expected impact on profits 3.5%
 - Threshold of materiality fixed by co in policy 10%
- **Non-renewal of license as on 3st March, 23**
 - Expected impact on turnover NIL
 - Threshold of materiality fixed by co. in policy: 10%

Materiality tests in international jurisdictions (1/3)

- Determination of “materiality” is important before disclosure
 - to ensure information is “relevant” and not “redundant”
- Materiality is understood as a filtering mechanism
 - Re. TSC Industries, Inc. v. Northway, Inc
*“Some information is of such **dubious significance** that **insistence on its disclosure may accomplish more harm than good.**”*
- “Material” is defined under Rule 405 to the Securities Act
 - The term *material*, when used to qualify a requirement for the furnishing of information as to any subject,
 - **limits the information** required to those matters
 - to which there is a **substantial likelihood**
 - that a **reasonable investor would attach importance in determining whether to purchase the security** registered.
- Re. Mills v. Electric Auto-Lite Co., the US SC stated that
 - *“here the misstatement or omission in a proxy statement has been shown to be ‘material,’ as it was to be here, that determination itself indubitably embodies a conclusion that the **defect was of such a character that it might have been considered important by a reasonable shareholder who was in the process of deciding how to vote**”*
- Re-affirmed in Halliburton Co. v. Erica P. John Fund, Inc.
 - Doctrine of “**buried facts**”
 - Re. Werner v. Werner, 267 F.3d 288, 297 (3d Cir. 2001)
 - when the **fact in question is hidden in a voluminous document** or is disclosed in a piecemeal fashion which **prevents a reasonable shareholder from realizing the ‘correlation and overall import of the various facts interspersed throughout’** the document.

Materiality tests in international jurisdictions (2/3)

UK Listing Rules

- Rule 9.6 requires disclosure of material information to RIS
- Ch 10 deals with premium listing companies
 - requires additionally disclosure of Class 1 and Class 2 transactions
 - Class 2 transaction: a transaction where any percentage ratio is **5% or more** but each is less than 25%;
 - Class 1 transaction: a transaction where any percentage ratio is **25% or more**.
 - to be determined as per class test

- Class test include the following -
 - (1) the gross assets test;
 - (2) the profits test;
 - (3) the consideration test; and
 - (4) the gross capital test

UK Listing Rules	SEBI LODR
5% of gross assets	
5% of profits before tax	5% of three-years' average profit after tax
5% of consideration	2% of turnover
5% of gross capital	2% of net-worth

Materiality tests in international jurisdictions (3/3)

□ Article 27-36 of Financial Instruments and Exchange Act of Japan read with Cabinet Office Order

- mandates disclosure of “material information” at the same time as the provision of information
- with regard to the company's business, undisclosed material information about the operations, business, or assets of the listed company, etc. which has a **material influence on investors' investment decisions**

□ Section 202.05 of NYSE Manual

- release quickly to the public any news or information which might **reasonably be expected to materially affect the market for its securities**

□ Rule 703 of SGX Rules

- mandates disclosure concerning the issuer/ its subsidiaries/ associates which -
 - (a) is necessary to avoid the establishment of a false market in the issuer's securities; or
 - (b) would be likely to materially affect the price or value of its securities.
- as per the Corporate Disclosure Policy (Appendix 7.1)
 - provides subjective conditions
 - no definitive tests for materiality



Mandatory verification of market rumours



Verification of market rumours by listed entities

Existing provision	Insertions pursuant to amendments
<ul style="list-style-type: none">● Reg 30(11) - The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).● Clause (5) of Code of Fair Disclosures under PIT Regulations<ul style="list-style-type: none">○ Appropriate and fair response to queries on news reports and requests for verification of market rumours by regulatory authorities	<p>Provided that the top 100 listed entities (with effect from October 1, 2023) and thereafter the top 250 listed entities (with effect from April 1, 2024) shall 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 in terms of the provisions of this regulation are circulating amongst the investing public, as soon as reasonably possible and not later than twenty four hours from the reporting of the event or information:</p> <p>Provided further that if the listed entity confirms the reported event or information, it shall also provide the current stage of such event or information.</p>

Understanding mandatory verification of market rumour (1/2)

- **Applicable from?**
 - 1st October, 2023 - for top 100 listed entities
 - 1st April, 2024 - for top 250 listed entities
- **Applicable on whom?**
 - Top 100 listed entities based on market capitalization as on 31st March, 2023
 - Top 250 listed entities based on market capitalization as on 31st March, 2024
 - Once applicable, always applicable – reg 3(2)
- **Type of reported event?**
 - rumours of an impending specific material event or information in terms of Reg 30
 - Not general in nature, specific to LE
 - Indicates leakage of UPSI
- **Reported where?**
 - On mainstream media (refer definition)
- **Obligation of LE?**
 - To confirm, deny or clarify reported event
- **By when?**
 - ASAP and not later than **24 hours from reporting** of event or information
- **Mainstream media** (definition u/ Reg 2(1)(ra))

“mainstream media” shall include **print or electronic mode** of the following:

 - i. Newspapers registered with the Registrar of Newspapers for India;
 - ii. News channels permitted by 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;

Some intriguing questions

- Is the LE required to continuously monitor all sources of mainstream media?
 - Need for response by the LE arise only once the LE becomes aware of the same
 - Practically impossible for LE to keep track of all sources of mainstream media
- Is the LE required to respond to all rumours?
 - Only such rumours that relate to material information under Reg 30
- What if the rumour pertains to an UPSI that has not reached the desired level of certainty so as to disclose the same?
- What if the LE confirm the rumour?
 - In such cases, current stage of such information is required to be disclosed

Suggestive approach

- Rumours that are **specific** to the company
- They relate to something which is internal to the company, or in case of external event, the Company has more knowledge than the public in general
- The company becomes aware, or reasonably, is deemed to be aware of the rumour
- There is a significant impact on the Company's securities

International rules on verification of market rumours

□ Part VI of Appendix 7A (SGX Rules)

- require prompt confirmation and clarification of
- Public circulation of information, whether by an **article published in a newspaper, by a broker's market letter, or by word-of-mouth**
- likely to have, or has had,
 - an **effect on the price of the issuer's listed securities**
 - a **bearing on investment decisions**

□ Section 202.3 of NYSE Manual

- Relates rumours with unusual market activity. If unusual market activity is arising out of rumours, then the company to give prompt clarification.
- Listed entities to contact the Exchange on becoming aware of rumours.
- Prompt investigation by Exchange on such rumours



Amending timelines for disclosure of events or information

Stricter timelines for events emanating within the listed entity



Stricter timelines for disclosure of material events and information (1/2)

- Reg 30(6) specifies timelines for disclosure of material events and information
- Guidance on information emanating/ not emanating within the organization may be referred to in Consultation Paper

Extant Regulations	Amendment Regulations
<p>The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:</p> <p>Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:</p> <p>Provide further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein</p>	<p>The listed entity shall first disclose to the stock exchange(s) all events or information which are material in terms of the provisions of this regulation as soon as reasonably possible and in any case not later than the following:</p> <p>(i) thirty minutes from the closure of the meeting of the board of directors in which the decision pertaining to the event or information has been taken;</p> <p>(ii) twelve hours from the occurrence of the event or information, in case the event or information is emanating from within the listed entity;</p> <p>(iii) twenty four hours from the occurrence of the event or information, in case the event or information is not emanating from within the listed entity:</p> <p>Provided that disclosure with respect to events for which timelines have been specified in Part A of Schedule III shall be made within such timelines:</p> <p>Provided further that in case the disclosure is made after the timelines specified under this regulation, the listed entity shall, along with such disclosure provide the explanation for the delay.</p>

Stricter timelines for disclosure of material events and information (2/2)

Nature of information	Timelines for disclosure
Developments happening or information originating within a listed entity	Within 12 hours
Information originating outside a listed entity that is informed to the same by a third party	Within 24 hours
Outcome of board meeting for matters specified in Schedule III	Within 30 minutes from conclusion of board meeting
Detailed reasons and other disclosures pertaining to resignation of independent director, KMP, SMP, Compliance Officer, directors	Within 7 days from date of resignation
Schedule of analysts or institutional investors meet	At least 2 clear working days in advance
Presentation and audio/ video recording of analyst/ investor meet	before the next trading day or within 24 hours from the conclusion of such calls, whichever is earlier
Transcripts of analyst/ investor meet	Within 5 working days of conclusion of such call

Events/ information to be disclosed within 12 hours

- Acquisition (including agreement to acquire), Scheme of Arrangement (amalgamation/ merger/ demerger/restructuring), or sale or disposal of any unit(s), division(s), the whole or substantially the whole of the undertaking, or subsidiary, or sale of the stake in associate company of the listed entity or any other restructuring
- 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
- Agreements impacting listed entity where listed entity is a party
- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer , Company Secretary etc.), senior management, Auditor and Compliance Officer (except for resignation)
- Managing Director or the Chief Executive Officer of the listed entity is indisposed or unavailable to fulfil requirements of his/her role in a regular and consistent manner
- Appointment or discontinuation of share transfer agent.
- 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.
- Amendments to memorandum and articles of association of listed entity, in brief
- Initiation of Forensic audit

Events/ information to be disclosed within 24 hours

- New Ratings(s) or Revision in Rating(s)
- Agreements impacting listed entity where listed entity is not a party
- Fraud/defaults by promoter or director or key managerial personnel or senior management or subsidiary or by listed entity or arrest of key managerial personnel or senior management or promoter or director.
- Change in directors, key managerial personnel (Managing Director, Chief Executive Officer, Chief Financial Officer , Company Secretary etc.), senior management,Auditor and Compliance Officer due to resignation
- Resolution plan/ Restructuring in relation to loans/borrowings from banks/financial institutions
- One time settlement with a bank
- Winding-up petition filed by any party / creditors
- Proceedings of Annual and extraordinary general meetings of the listed entity
- CIRP related events



Amending policy on materiality of events or information

Guidance to KMPs and relevant employees for timely disclosure



Amendments required to Materiality Policy

- Reg 30(4)(ii) of LODR
 - Requires LE to frame a policy for determination of materiality
 - Based on criteria specified in Reg 30(4)
 - Amendments further require policy to assist “relevant” employees
 - In identifying any potential material event, and
 - Reporting the same to authorized KMP
- Who can be “relevant employees”?
 - Depending on the nature of event; events may be diverse and may arise anywhere within the LE
 - Material event/ information may flow from any department of LE
 - Hence HoD of all departments may be included
 - Are DPs the “relevant employees” for escalating the information?
- Are the “relevant employees” required to determine materiality of an event or information?
 - No, ultimate responsibility rests with authorized KMPs
 - Relevant employees are required to identify any potential material event and report to KMP for further determination and disclosure
- How can “relevant employees” assist in the same?
 - Needs to be sensitized on events/ information that are usually considered material
 - Quantitative thresholds may be provided with
 - Additional guiding criteria to supplement
- Amendments required in the Policy?
 - Guidance on some specific items in Schedule III
 - Guidance on determination of “impact”
 - Indisposal/unavailability of CEO/MD - circumstances
- Can LE have internal SOPs instead of complete disclosure in the policy?
 - Seems to be so, policy, in turn, may refer to the SOP



Amendments to Schedule III

Broadening the indicative list of disclosure requirements



Amendments to Schedule III

- Schedule III provides an indicative list of events and information that require disclosure under Reg 30
- Classified into 5 parts on the basis of nature of securities
 - Part A deals with specified securities
 - Sub-divided into 4 Paras
 - Para A deals with events which shall be disclosed without any application of the guidelines for materiality as specified in sub-regulation (4) of regulation (30)
 - “deemed” material events
 - Para B deals with events which shall be disclosed upon application of the guidelines for materiality referred sub-regulation (4) of regulation (30)
 - “tested” material events
 - Para C further requires disclosure of –
 - Any other information/event viz. **major development that is likely to affect business**, e.g. emergence of new technologies, expiry of patents, any change of accounting policy that may have a significant impact on the accounts, etc. and brief details thereof and any other information which is exclusively known to the listed entity which **may be necessary to enable the holders of securities of the listed entity to appraise its position and to avoid the establishment of a false market in such securities.**
 - Specific cases followed by general clause
 - Para D requires disclosure of all other events and information as may be specified by SEBI from time to time.

Acquisition and/ or disposal by LE – Deemed material event

What is covered?

- 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
 - Meaning of “undertaking” to be ref to from sec 180(1)(a)
 - subsidiary of the listed entity,
- sale of stake in associate company of the listed entity** or
- any other restructuring

Whether following covered?

- Divestment of stake in Joint Venture

Meaning of “acquisition” and “disposal”

Acquisition

- Explanation 1 – provides ‘exhaustive’ definition
- acquiring **control**, whether **directly or indirectly**; or
- acquiring or agreement to acquire **shares or voting rights** in a company, **whether existing or to be incorporated**, whether **directly or indirectly**, such that -
 - 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
 - there has been a **change in holding from the last disclosure** made under sub-clause (a) of clause (ii) of the Explanation to this sub-paragraph and such change **exceeds two per cent of the total shareholding or voting rights in the said company**; or
 - **the cost of acquisition or the price at which the shares are acquired exceeds the threshold specified in sub-clause (c) of clause (i) of sub-regulation (4) of regulation 30.**

Disposal

- Explanation 2 – provides ‘inclusive’ meaning
- 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
- 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 threshold specified in sub-clause (c) of clause (i) of sub-regulation (4) of regulation 30.**

Reporting of frauds and/ or defaults by key stakeholders

Fraud or defaults by

- a listed entity,
- its promoter,
- director**,
 - Shifted from “tested” material to “deemed” material
- key managerial personnel,
- senior management**
- or subsidiary** or

arrest of

- key managerial personnel,
- senior management**,
- promoter
- or director** of the listed entity,
 - whether occurred within India or abroad:

Meaning of ‘fraud’

- shall include fraud as defined under Regulation 2(1)(c) of Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003
 - Indicates that frauds pertaining to capital markets are covered, however, definition is **‘inclusive’**

Meaning of ‘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 - if the outstanding balance remains continuously in excess of the sanctioned limit or drawing power, whichever is lower, **for more than thirty days**.
- Only such ‘default’ which **has or may have an impact on the listed entity**

- *Default of a director in payment of credit card bills require disclosure?*
- *Is the LE required to obtain confirmation from the director, KMP, promoter etc regarding no defaults on a periodic basis?* 44

Disclosure of certain agreements impacting listed entities

□ Reg 30A read with Schedule III

□ Parties to the agreement

- the shareholders, promoters, promoter group entities, related parties, directors, key managerial personnel, 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
- Listed entity may not be a party

□ Nature of agreement

- either **directly or indirectly or potentially or whose purpose and effect** is
 - impact the **management** or
 - **control** of the listed entity or
 - impose any **restriction** or
 - create any **liability** upon the listed entity

□ Exclusions to the requirement of disclosure

- If entered into in normal course of business
- Except where the same has an impact on management/control of the listed entity

□ Any subsisting agreements as on date of notification also requires to be reported

- Timelines to be specified by SEBI

□ Cycle of disclosure

- Entering into agreement or signing agreement to enter into agreement
 - Disclose to listed entity within 2 working days
- On becoming aware of the same
 - Listed entity to disclose within 24 hours
 - If LE is a party – within 12 hours
- Any recission, alteration, amendment
 - to be reported as per aforesaid timelines
- Disc. in website
 - Complete details of such agreements

□ Disclosure in Annual Report (for FY 22-23 or FY 23-24)

- No. of subsisting agreements as on date of notification
- Salient features of agreement
- Link of the webpage where complete details are available

Disclosure of regulatory actions in relation to the listed entity

- Newly inserted clauses under Sch. III. A.A – (19) and (20)
- Actions covered under Clause (19) -**
 - Action(s) **initiated** or orders passed by any regulatory, statutory, enforcement authority or judicial body, in respect of
 - search or seizure; or
 - re-opening of accounts under section 130 of CA, or
 - investigation under the provisions of Chapter XIV of CA
- Actions covered under Clause (20) –**
 - Action(s) **taken** or orders passed by any regulatory, statutory, enforcement authority or judicial body, in respect of
 - suspension;
 - imposition of fine or penalty;
 - settlement of proceedings;
 - debarment;
 - disqualification;
 - closure of operations;
 - sanctions imposed;
 - warning or caution; or
 - any other similar action(s) by whatever name called**
- Against whom?**
 - the listed entity or its directors, key managerial personnel, senior management, promoter or subsidiary,
 - in relation to the listed entity
- What is required to be disclosed?**
 - name of the authority;
 - nature and details of the action(s) taken, initiated or order(s) passed;
 - date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority;
 - details of the violation(s)/contravention(s) committed or alleged to be committed;
 - impact on financial, operation or other activities of the listed entity, quantifiable in monetary terms to the extent possible.
- Event covered under Sch. III.A.B**
 - Pendency** of any litigation(s) or dispute(s) **or the outcome thereof** which may have an impact on the listed entity
 - Delay or default in the payment** of fines, penalties, dues, etc. to any regulatory, statutory, enforcement or judicial

Other insertions/ modifications under Schedule III

□ **Absence of CEO/ MD**

- to fulfil the requirements of the role in a regular manner
- for more than 45 days in any rolling period of 90 days
 - Eg.
- To be disclosed along with reasons
 - May generally include instances of prolonged illness, serious ailments, etc.

□ **Announcements/ communications not already in public domain**

- by directors, promoters, key managerial personnel or senior management of a listed entity
- through social media intermediaries or mainstream media
- in relation to any event or information which is material for the listed entity in terms of regulation 30

□ Change in SMPs also to be disclosed

□ Detailed reasons of resignation along with letter of resignation

□ For KMP, SMP, Co or director

□ Voluntary revision of financial statements u/s 131 of CA

Other events and information - whether material?

- Disrupted operations on account of earthquake
- Demand notice from income tax department
- Changes in senior management
- Show cause notice from a regulatory body to conduct search operations in one of the factory premises
- Pendency to pay penalty imposed by regulatory body on account of waiver application filed
- Fraud committed by senior management in connection with disclosures to a bank
- A senior manager held for some financial crime in personal capacity
- Grant of options to eligible employees under an ESOP
- Newspaper advertisement for transfer shares to IEPF
- Bagging of PhD by one of the KMPs
- Warning letter by regulatory body for certain transactions related to securities market
- JV agreement execution by listed entity
- Amendment in IND AS with respect to recording and recognizing trade receivables
- Re-affirmation of credit rating
- Invocation of performance guarantee given to a bank on behalf of subsidiary
- One to one meeting with proposed investors
- Temporary break down of machinery in one of the plants



Framework for sale, lease or disposal of undertaking by a listed entity

Insertion of Regulation 37A of Listing Regulations



Disposal of undertaking by listed entity outside scheme of arrangement

- Applicable on sale, lease or otherwise disposal of
 - Whole or substantially the whole of 'undertaking' of LE
 - As defined u/s 180(1)(a) of CA (*refer next slides*)
- **Exclusions from requirement**
 - Transfer to WoS exempt
 - However, subsequent transfer from WoS is covered
 - Compliance to be ensured prior to dilution of stake below 100%
 - by virtue of a covenant covered under an agreement with an RBI reg. financial institution or SEBI regd. DT
- **Approvals required**
 - Prior approval of shareholders through special resolution (**SR**), and
 - Approval of majority of public shareholders (**MoM**)
 - Votes of public shareholder being a party to such disposal, directly or indirectly, to be excluded
- **Disclosures required (in expl. statement to SH)**
 - object and commercial rationale of such sale/disposal
 - Use of proceeds arising therefrom

Meaning of “undertaking” and “substantially whole of undertaking”

- Explanation (i) to Section 180(1)(a) of CA
- “*undertaking*” shall mean an **undertaking** in which
 - *the investment of the company exceeds twenty per cent. of its net worth as per the audited balance sheet of the preceding financial year*
 - *or an undertaking which generates twenty per cent. of the total income of the company during the previous financial year;*
- Therefore, ‘undertaking’ u/s 180 require meeting the twin tests –
 - Subjective meaning of ‘undertaking’ to be met
 - Quantitative thresholds of investment or income to be triggered
- “Undertaking” is not a defined term
 - Reference may be drawn from other laws and judicial precedents on the subject
- Explanation (ii) to Section 180(1)(a) of CA
- *the expression “substantially the whole of the undertaking” in any financial year shall mean*
 - ***twenty per cent. or more of the value of the undertaking as per the audited balance sheet of the preceding financial year;***

Interpretation of the term “undertaking”

□ Explanation to sec 2(19AA) of IT Act

*“any part of an undertaking or a unit or division of an undertaking or a business activity **taken as a whole, but does not include individual assets or liabilities** or any combination thereof **not constituting a business activity.**”*

□ Sec 2(v) of the Monopolies and Restrictive Trade Practices Act

*“undertaking” means an **enterprise** which is, or has been, or is proposed to be, **engaged in the production, storage, supply, distribution, acquisition or control of articles or goods, or the provision of services**, of any kind, either directly or through one or more of its units or divisions, whether such unit or division is located at the same place where the undertaking is located or at a different place or at different places.*

□ Rustom Cavasjee Cooper vs Union of India

- SC held that 'undertaking' means the entire organization
- entire business of the going concern is embraced within the word 'undertaking'

□ International Cotton Corpn. (P.) Ltd. v. Bank of Maharashtra

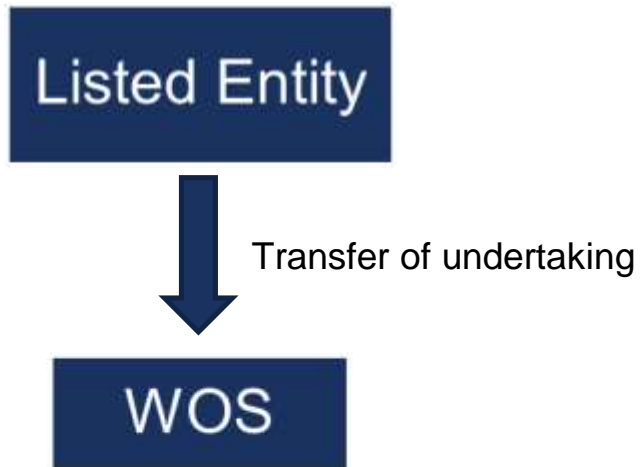
- undertaking of the company must be distinguished from the other properties belonging to the company

□ Madras Gymkhana Club Employee's Union v. Management

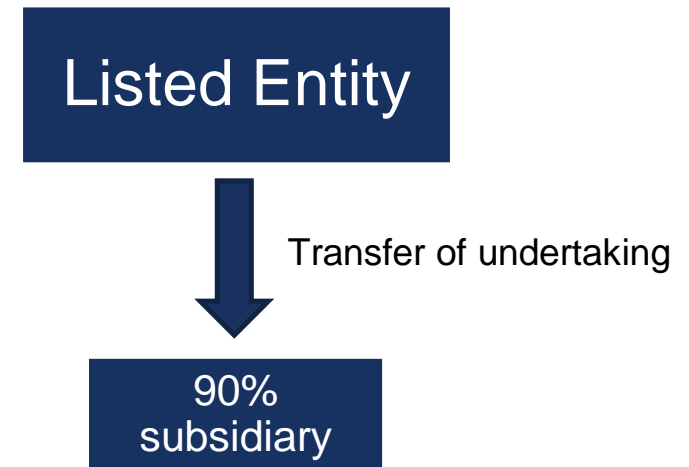
- any business or any work or project which one engages in or attempts as an enterprise analogous to business or trade

Applicability of Regulation 37A: Various Cases

CASE 1

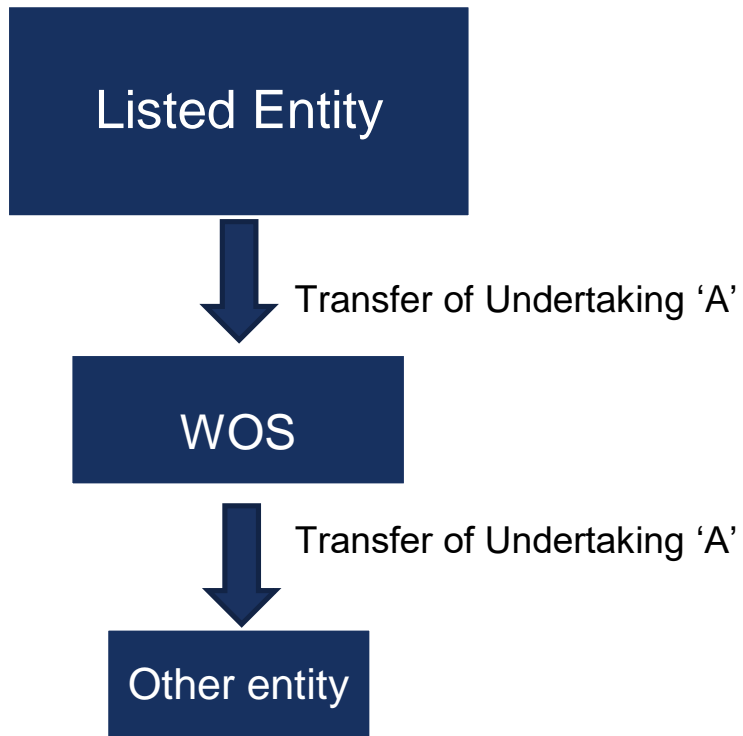


CASE 2

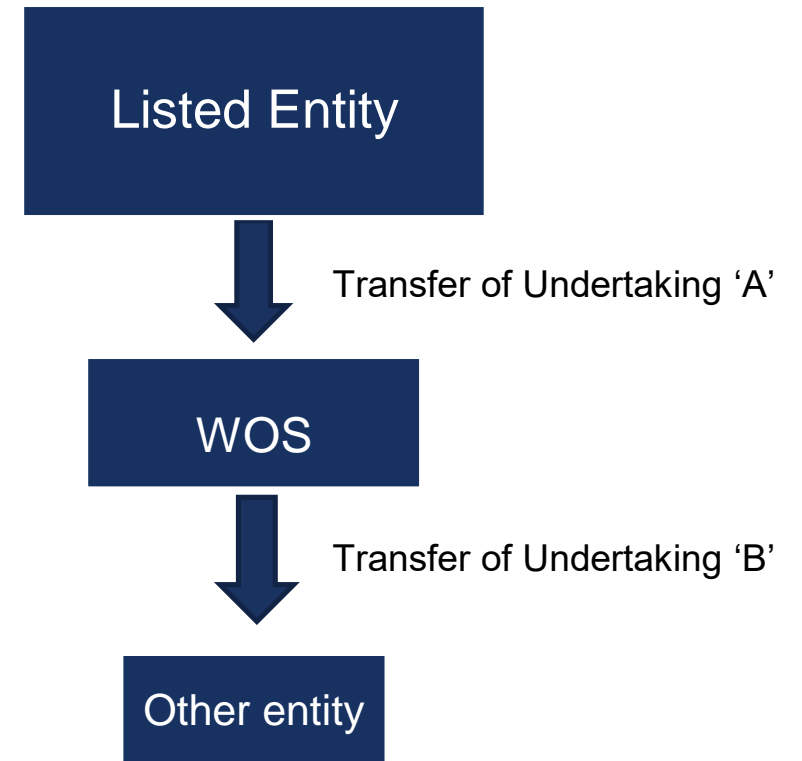


Applicability of Regulation 37A: Various Cases

CASE 3

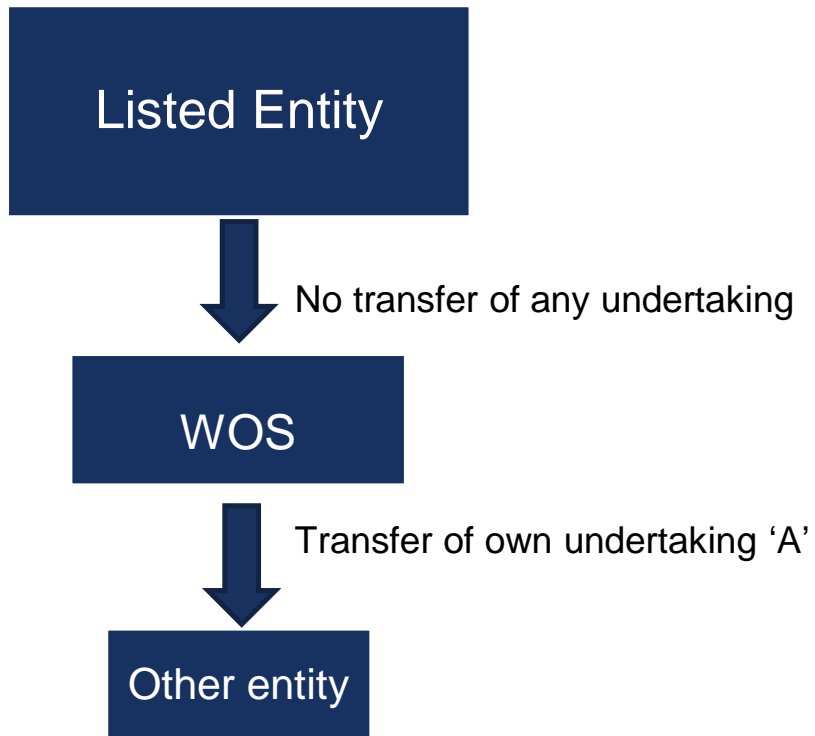


CASE 4

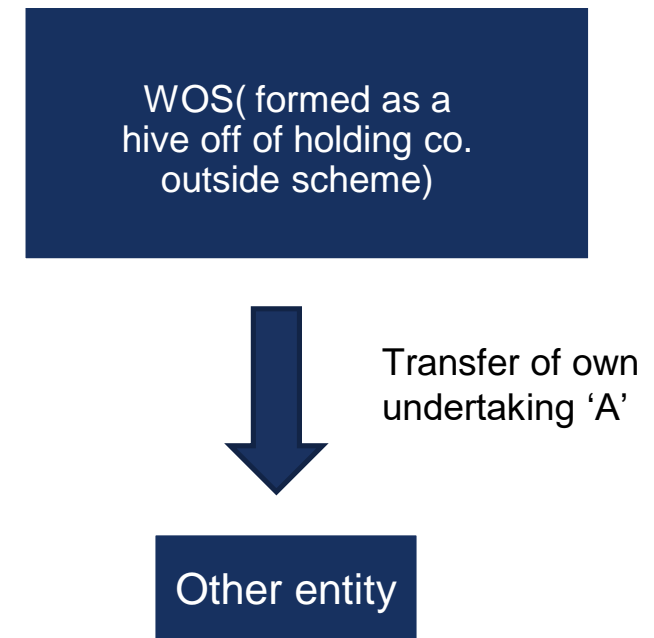


Applicability of Regulation 37A: Various Cases

CASE 5

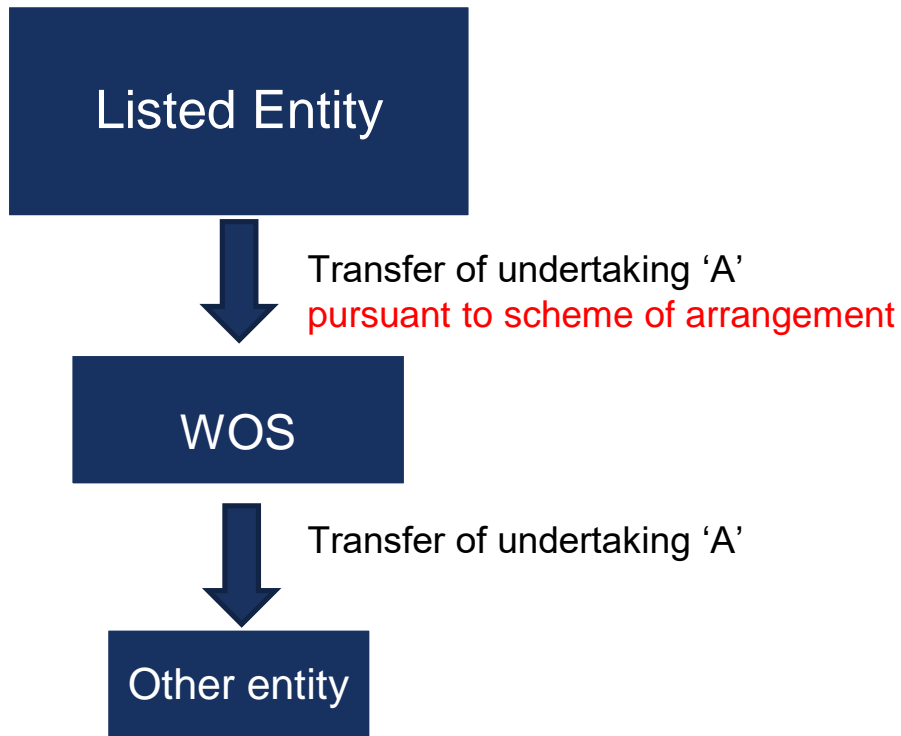


CASE 6

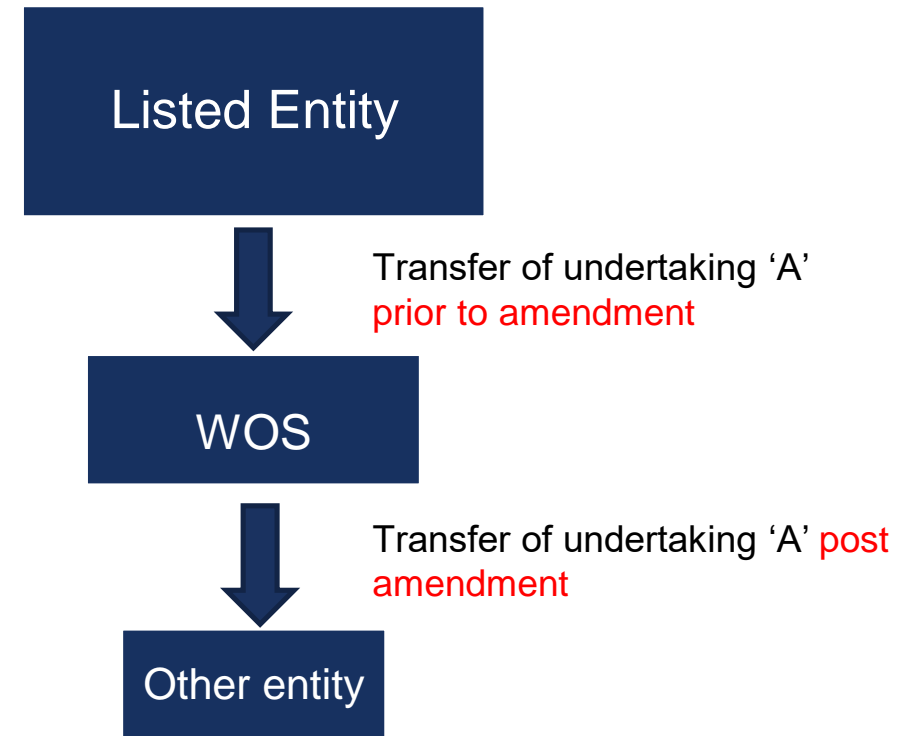


Applicability of Regulation 37A: Various Cases

CASE 7

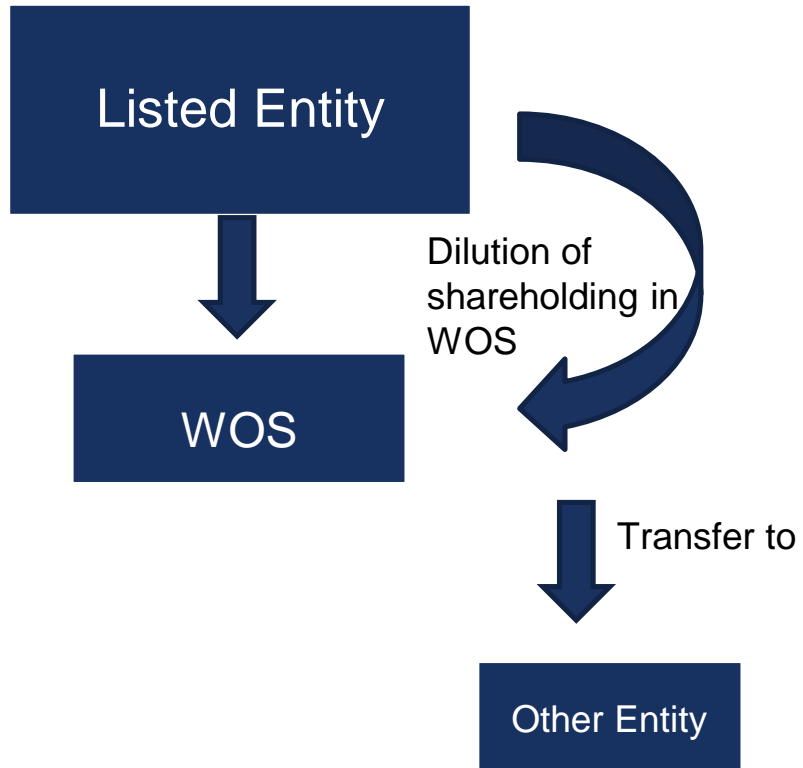


CASE 8

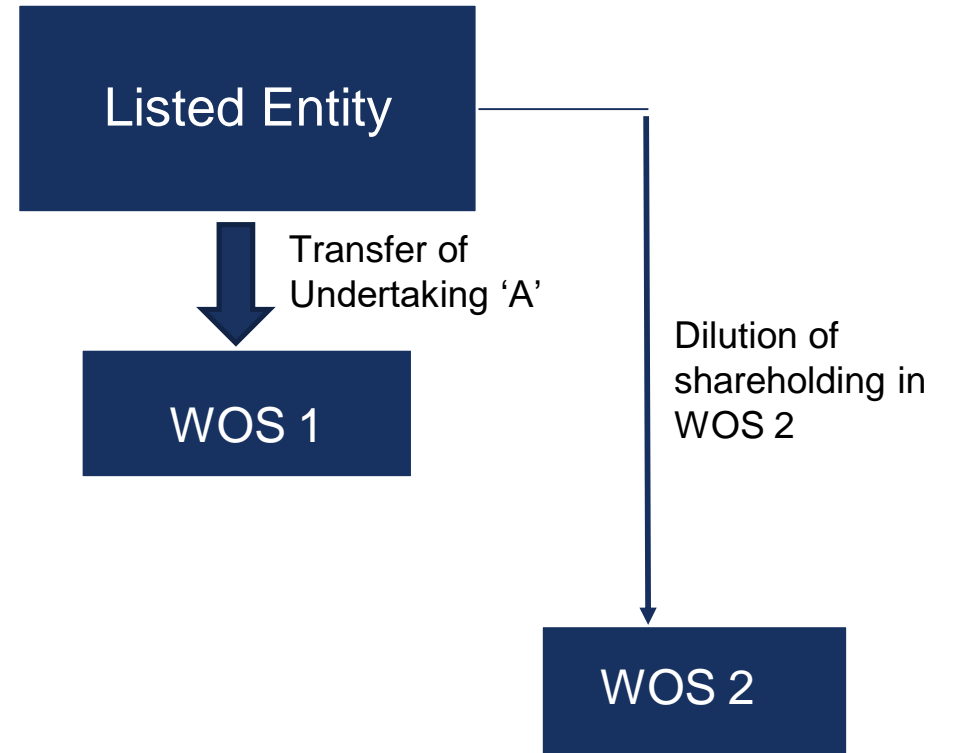


Applicability of Regulation 37A: Various Cases

CASE 9



CASE 10



Approval requirement for Sale, Lease or Disposal

❑ Requirement: SR & MoM approval

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	50%	11%			61%
% of total valid votes against	0	25%	5%	9%	39%
Whether resolution passed u/r 37A?	<ul style="list-style-type: none"> •SR not passed; •Majority votes not passed by public shareholders (50% passed by promoters) •Resolution not passed. 				

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	68%	12%(6% interested)			80%
% of total valid votes against	12%	8%			20%
Whether resolution passed u/r 37A?	<ul style="list-style-type: none"> •SR passed; •Majority votes passed by public shareholders •Majority votes not passed by eligible shareholders (12-6, i.e., 6% in favor,8% against) •Resolution not passed. 				

Approval requirement for Sale, Lease or Disposal

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	50%	39%			89%
% of total valid votes against	5%	6%			11%
Whether resolution passed u/r 37A?	<ul style="list-style-type: none"> •SR passed; •Majority votes passed by public shareholders •Resolution passed. 				

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	62%	18% (5% by interested)			80%
% of total valid votes against	15%	5%			20%
Whether resolution passed u/r 37A?	<ul style="list-style-type: none"> •SR passed; •Majority votes passed by public shareholders (18-5,i.e.,13% in favour and 5% against) •Resolution passed. 				

Approval requirement for Sale, Lease or Disposal

Sale of undertaking amounting to material RPT

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	50%	39%			89%
% of total valid votes against	5%	6%			11%
Whether resolution passed u/r 37A?	<ul style="list-style-type: none"> •SR passed; •Majority votes passed by public shareholders •Resolution passed. 				
Whether resolution passed u/r 23?	<ul style="list-style-type: none"> • Majority votes passed by unrelated shareholders (assuming no public shareholder is a related party) • this should be calculated as 51% of total public voting, i.e., 51% of 45% in the instant case 				

Voting by	Promoters	Public Institutional	Public - SG/ CG	Public - Non-Institutional	Total
% of total valid votes in favor	65%	10%			75%
% of total valid votes against	10%	15%			25%
Whether resolution passed u/r 37A?	<ul style="list-style-type: none"> •SR passed; •Majority votes not passed in favour by public shareholders •Resolution not passed. 				
Whether resolution passed u/r 23?	<ul style="list-style-type: none"> • Majority votes not approved by unrelated shareholders (assuming no public SH is RP) • this should be calculated as 51% of total public voting, i.e., 51% of 25% in the instant case 				



Other major amendments under Listing Regulations

Mixed bag of amendments providing relief to debt-listed entities and additional compliances to equity-listed companies



Removing permanent board seats in listed entities

- Reg 17(ID) of Listing Regulations
- Fresh approval of shareholders **once in every 5 years**
 - W.e.f. 1st April, 2024
- For directors continuing for more than 5 years as on 31st March, 2024
 - Approval to be obtained in the **first general meeting held after 31st March, 2024**
- Who would be covered?
 - Generally promoter NEDs who are appointed without a fixed term

- **Non-applicability**
 - WTD, MD, Manager, ID
 - Term cannot exceed 5 years at a time as per extant provisions already
 - Director retiring as per Sec 152(6) of CA
 - 1/3rd of rotational directors retire at every AGM and placed before shareholders for approval
 - Director appointed pursuant to the order of a Court or a Tribunal
 - Nominee director of the Government on the board of LE
 - other than a public sector company
 - Nominee director of a financial sector regulator on the board of LE
 - Nominee director of RBI reg fin institution or SEBI regd DT
 - Under an existing lending/ debenture subscription agreement

Filling up vacancies in key positions – timelines specified to remove ambiguity

- Which positions are covered?

Relevant Regulation	Deals with whom
Reg 17(IE)	Director
Reg 6(IA)	Compliance Officer
Reg 26A(1)	CEO, MD, WTD, Manager
Reg 26A(3)	CFO

- Timelines within which vacancy to be filled
 - Not later than 3 months from date of vacancy
- Timelines specified under CA
 - Sec 203 specifies 6 months in case of vacation of office of KMP
- **Is CS not covered?**
 - Same gets covered under Compliance Officer

- Vacancy arising from expiration of term of director
 - Timeline of 3 months is not applicable
 - To be filled not later than the date of vacation
 - Not required if the composition is in accordance with applicable laws
- Appointment in interim capacity
 - To be made in accordance with the laws applicable in case of a fresh appointment to such office,
 - **what does it imply?**
 - interim appointees should also be qualified to hold office as such
 - manner of appointment to be similar as that for a regular appointee
 - the obligations under such laws are made applicable to such person

Other amendments under Listing Regulations

- **Fresh shareholders' approval for special rights granted to shareholders**
 - once in every 5 years starting from the date of grant of such rights.
 - Existing special rights shall be subject to approval within 5 years from date of notification
 - Exclusions to the requirement of re-approval
 - RBI reg fin institution or SEBI regd DT
 - Under a lending arrangement in normal course of business or debenture subscription agreement
 - If it becomes shareholder as a consequence of such agreement
- **Cyber Security Incidents**
 - cyber security incidents/breaches or loss of data/documents to be disclosed in quarterly corporate governance report
- **Disclosures under Annual Report**
 - Particulars of senior management including the changes therein since the close of the previous financial year.
 - Information of agreements disclosed under Clause (5A) of Sch.III.A.A.
- **BRSR Core and mandatory assurance**
 - Applicable to top 1000 listed entities
 - Core shall comprise of key performance indicators as specified by SEBI
 - To be also extended to value chain of listed entities
 - Meaning to be specified by SEBI
 - Effective date and manner to be specified by SEBI
 - Other listed entities – may voluntarily disclose
- **Timelines for compliance with corporate governance provisions by HVDLEs**
 - Compliance on “comply or explain” basis extended till 31st March, 2024
- **Disclosure of payment status to SEs by debt-listed entities**
 - Certificate regarding status of payment of interest or dividend or repayment or redemption of principal of non-convertible securities, within one working day of it becoming due
 - Details to be submitted during beginning and end of quarter has been omitted

Actionables on listed companies

- Multiple actionables arise on account of amendments
 - Some of them are immediate in nature
- Major actionables include –
 - Amending the Materiality Policy
 - Framing SOP for assistance by “relevant employees” in reporting potentially material information
 - Identification of events that escaped disclosure and becomes material as per revised criteria of materiality
 - Identification of agreements binding listed entity