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**ELP Corporate Update:**  
**Listed Companies - *To Disclose or Not?***  
**SEBI Attempts to Provide Clarity**

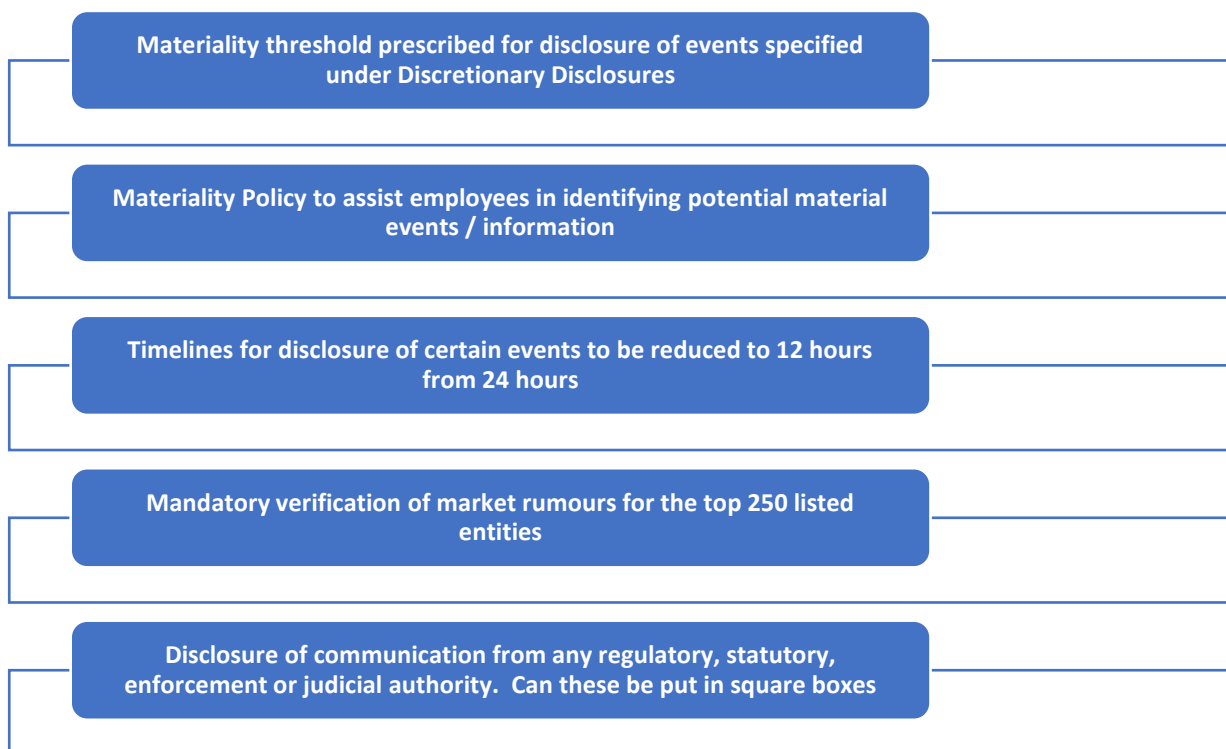
**LISTED COMPANIES - TO DISCLOSE OR NOT? SEBI ATTEMPTS TO PROVIDE CLARITY**

Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) requires listed entities to disclose material events and information to the stock exchanges. Events specified in Para A of Part A of Schedule III of LODR Regulations (**Para A / Mandatory Disclosures**) are deemed to be material events which listed entities are required to disclose. Events enumerated in Para B of Part A of Schedule III of LODR Regulations (**Para B / Discretionary Disclosures**) are required to be disclosed based on application of the guidelines for materiality, which the listed entities are required to frame (**Materiality Policy**) based on the criteria specified in regulation 30(4) of LODR Regulations.

Further, Annexure I to SEBI circular no. CIR/CFD/CMD/4/2015 dated September 09, 2015 ([available here](#)) on ‘Continuous Disclosure Requirements for Listed Entities’ (**Circular**) specifies the details which a listed entity needs to disclose for the events specified under Para A and Para B.

With a view to streamline the disclosure requirements for material events and information under Regulation 30 of the LODR Regulations, SEBI has issued a consultation paper (**Consultation Paper**) to review various aspects of the disclosure requirements prescribed under the LODR Regulations and propose modifications/ amendments to the same. Key proposals include:

**A. Amendments to Regulation 30 of LODR Regulations:**



**B. Amendments to Para A and Para B – Additional events proposed to be added:**

▪ **Mandatory disclosure of inter alia the following events:**

Announcements/ communications made to any form of mass communication media;	Specific regulatory actions that need to be disclosed including suspension, fine, penalties, settlement, etc	Voluntary revision of financial statements or report of the board of directors;	Letter of resignation of KMP/ senior management/ director;
Indisposition / unavailability of MD / CEO for more than 1 month;	“Sale of stake in an associate company” / “sale or disposal of the whole or substantially the whole of an undertaking(s)” – explanation added to clarify what constitutes “sale”	New ratings and disclosure of ratings even if not requested by company / withdrawn by company;	Frauds/default by and/or arrest of director/senior management/ of subsidiary of the listed entity whether happened in India or not;
	Change in senior management;	Timeline for disclosure of analysts or institutional investors’ meet.	

▪ **Disclosure of inter alia the following events depending upon the Materiality Policy of the listed entity:**

Delay or default in payment of fines, penalties, dues, etc.	
Material tie-ups, adoption of new line(s) of business and closure of operations	
Material loan agreements where the listed company is either a lender or a borrower	
Instances where subsidiary/director is party to litigations, etc	
Disclosures in respect of guarantees, indemnity, or surety	

**C. Disclosures in relation to “cyber security incident” or “cyber security breaches” or loss of data / documents of the listed entity in the quarterly report on corporate governance**

The above proposals have been analysed in detail below.

**A. AMENDMENTS TO REGULATION 30 OF LODR REGULATIONS**

Proposal	Need for modification/addition	Details of Proposal
<p><b>Materiality Threshold prescribed for disclosure of events specified under Para B</b></p>	<p>It was observed that many entities do not disclose such events specified under Para B on the ground that they are not considered material by them as per their Materiality Policy framed in terms of the criteria prescribed in regulation 30(4) of LODR Regulations. Further, most entities are seen to be following a very generic Materiality Policy, simply reproducing therein merely the regulatory provisions under LODR Regulations, affording them a lot of discretion to decide as to whether or not to disclose an event specified under Para B.</p>	<p>It is therefore proposed to make the provision of Regulation 30(4) of LODR Regulations more objective and non-discretionary by introducing a quantitative criteria of minimum threshold for disclosure of events specified under Para B, which will also bring in uniformity in the Materiality Policy across listed entities.</p> <p>Accordingly, it has been proposed that the listed entities shall disclose an event or information specified under Para B whose threshold value or the expected impact in terms of value exceeds the lower of the following:</p> <ul style="list-style-type: none"> <li>▪ 2% of turnover, as per the last audited standalone financial statements of the listed entity;</li> <li>▪ 2% of net worth, as per the last audited standalone financial statements of the listed entity;</li> <li>▪ 5% of three-year average of absolute value of profit/loss after tax, as per the last 3 audited standalone financial statements of the listed entity.</li> </ul>
<p><b>Materiality Policy to assist employees in identifying potential material events / information</b></p>	<p>Under Regulation 30(4), listed entities may provide additional quantitative threshold or criteria for determining materiality of events in their Materiality Policies.</p> <p>The Consultation Paper envisages a situation in a listed entity when a certain material event or information may originate at ground level to which the key managerial personnel (<b>KMPs</b>) authorized by the board of directors to determine the materiality of an event or information as per the Materiality Policy of the entity may not have immediate access to. This may lead to non-disclosure of the event</p>	<p>It is proposed to specify the following under clause (ii) of Regulation 30(4) of LODR Regulations:</p> <ul style="list-style-type: none"> <li>▪ Materiality Policy of the listed entity shall not dilute any requirements specified under this regulation.</li> <li>▪ Materiality Policy of the listed entity shall be framed in a manner so as to assist employees in identifying potential material event or information which shall be escalated and reported to the relevant Key Managerial Personnel for determining materiality of the event or information and for making disclosure to stock exchange(s).</li> </ul>

Proposal	Need for modification/addition	Details of Proposal
	on time even if the said event or information is material.	
<b>Timelines for disclosure of certain events to be reduced to 12 hours</b>	<p>As per Regulation 30(6) of LODR Regulations, the timeline for disclosure of events or information is within twenty-four hours from the occurrence of the event or information.</p> <p>In certain instances, it was observed that the disclosure of an event by the listed entity was made at the last hour, by which time the information about the said event had already been circulated publicly in the media. It was also observed that at times, the information had to be disclosed by the listed entities only after queries were raised by stock exchanges based on media reports.</p>	<p>It is proposed that for certain material events or information which emanate from the listed entity, the timeline for disclosure by the entity shall be reduced from 24 hours to 12 hours.</p> <p>The proposed timeline for disclosure of events specified under Part A of Schedule III of LODR Regulations has been provided in Annex II of the Consultation Paper.</p>
<b>Mandatory verification of market rumours for the top 250 listed entities</b>	<p>As per Regulation 30(11) of LODR Regulations, a listed entity may on its own initiative, confirm or deny any reported event or information to stock exchange(s).</p> <p>Verification of reported events or information which may have material effect on the listed entity is essential to avoid establishment of a false market sentiment or impact on the securities of the entity. With the growing influence of print, television and digital media, companies need to keep pace and ensure verification of such rumours, in order to stay contemporary.</p>	<p>In addition to the general provision of Regulation 30(11) of LODR Regulations, it is proposed to add a proviso to regulation 30(11) as below:</p> <p><i>“Provided that top 250 listed entities shall necessarily confirm or deny any event or information reported in the mainstream media, whether in print or digital mode, which may have material effect on the listed entity under this regulation.</i></p> <p><i>Explanation – The top 250 listed entities shall be determined on the basis of market capitalization, as at the end of the immediate previous financial year.”</i></p>
<b>Disclosure of communication from any regulatory, statutory, enforcement or judicial authority</b>	Often, disclosures under regulation 30 of LODR Regulations are made by listed entities pursuant to receipt of a communication (notice, order, direction, etc.) from any regulatory, statutory, enforcement or judicial authority. As a best practice, many listed entities also disclose a copy of the said communication or its web link, if	It is proposed that a provision may be added in Regulation 30 of LODR for enabling SEBI to come out with a guidance for disclosure of such communications.

Proposal	Need for modification/addition	Details of Proposal
	<p>available. However, some companies use their discretion to their advantage and do not disclose such communication(s). Hence, for those companies such material information may not be available to the investors.</p> <p>It is noted that some of these communications may contain confidential information or may have regulatory restriction on disclosure and hence, it may pose a challenge for some companies to make upfront disclosure of such communications.</p>	

## B. AMENDMENTS TO PARA A AND PARA B – ADDITIONAL EVENTS PROPOSED TO BE ADDED

In order to address the gaps identified, remove ambiguity and to enhance transparency and availability of information to the investors, the Consultation Paper proposes to include certain additional events and also to modify certain events specified under Para A and Para B.

PROPOSALS IN RESPECT OF PARA A / MANDATORY DISCLOSURES		
Events proposed to be added to Para A		
Proposal	Requirement for modification	Details of Proposal
<b>Announcements/ communications made to any form of mass communication media by directors or promoters or key managerial personnel or senior management</b>	<p>Keeping track of all the announcements and communication made by the listed entity or its officials from time to time and through different media forums can be difficult and impractical for investors. It may give rise to information asymmetry despite the necessary announcement having been made by the listed entity at different forums. In general, such media announcements are made since they are considered significant from the perspective of the listed entity.</p>	<p>For the benefit of the investors, mandating disclosure of all such announcements and communication at one place will promote equal access to information to all the stakeholders, and accordingly, the following language is proposed to be added:</p> <p><i>“Announcement or communication to any form of mass communication media by directors or promoters or key managerial personnel or senior management of a listed entity, in relation to the listed entity, which is not already made available in the public domain by the listed entity.”</i></p>
<b>Disclosure of regulatory actions</b>	<p>Although disclosure of “regulatory action(s) with impact” is covered under sub-para 8 of Para B, the Circular does not explicitly specify regulatory action(s) that need to be disclosed.</p>	<p>Mandating such disclosures under Para A will provide necessary information to the investors, and accordingly the following language is proposed:</p>

PROPOSALS IN RESPECT OF PARA A / MANDATORY DISCLOSURES		
Events proposed to be added to Para A		
Proposal	Requirement for modification	Details of Proposal
		<p><i>“Action(s) taken or initiated by any regulatory, statutory, enforcement or judicial authority against the listed entity or its directors or key managerial personnel or senior management or promoter or subsidiary, in relation to the listed entity, towards the following: suspension; imposition of fine/penalty; settlement of proceedings; debarment; disqualification; closure of operations; sanctions imposed; warning or caution; search or seizure; inspection; investigation into affairs of the entity; and re-opening of accounts under section 130 of the Companies Act, 2013.”</i></p> <p>It is also proposed to specify disclosure of the following details along with the disclosure of the above-mentioned event:</p> <ol style="list-style-type: none"> <li>i. <i>Name of the authority.</i></li> <li>ii. <i>Nature and details of the action(s) taken or initiated.</i></li> <li>iii. <i>Date of receipt of direction or order, including any ad-interim or interim orders, or any other communication from the authority.</i></li> <li>iv. <i>Details of the violation(s) committed.</i></li> <li>v. <i>Impact on financial, operational or other activities of the listed entity.</i></li> </ol>
<b>Voluntary revision of financial statements or report of the board of directors</b>	Revision of financial statements or report of the board of directors of a listed entity is a material event which may impact investment decisions of the investors.	<p>Mandating such disclosure under Para A will provide necessary information to the investors, and accordingly, the following language has been proposed:</p> <p><i>“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.”</i></p>
<b>Disclosure of letter of resignation of KMP/ senior management/ director</b>	At present, disclosure of letter of resignation, along with detailed reasons for the resignation, is mandated only in case of resignation of auditors and independent directors under sub-para 7A and 7B of Para A, respectively. Additionally, reasons for resignation of key managerial personnel, senior	<p>Following language has been proposed:</p> <p><i>“In case of resignation of a key managerial personnel or a senior management or a director other than independent director, the letter of resignation along with detailed reasons for the resignation as given by the key managerial</i></p>

PROPOSALS IN RESPECT OF PARA A / MANDATORY DISCLOSURES		
Events proposed to be added to Para A		
Proposal	Requirement for modification	Details of Proposal
	management and directors other than independent director is also material information for investors.	<i>personnel or the senior management or the director shall be disclosed to the stock exchanges by the listed entities within seven days from the date of resignation."</i>
<b>Disclosure of indisposition / unavailability of MD / CEO for more than 1 month</b>	The MD / CEO of a company has significant roles and responsibilities in the management of the company who also instils confidence among the investors and other stakeholders regarding proper functioning of the company. In case the MD / CEO is not available to perform his roles and responsibilities for a long period of more than a month, the same should be disclosed to the investors.	Following language has been proposed:  <i>"The 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 for more than one month."</i>
Events proposed to be modified in Para A:		
<b>Meaning of "acquisition" under sub-para 1 of Para A</b>	At present, listed entity acquiring control, or 5% or more of the shares or voting rights in a company is required to be disclosed. However, there may be a situation where a listed entity acquires shares in a company without effecting any change in its shareholding in the company. This may occur due to equal investment in the company by all the shareholders of the company. Such an acquisition may however need to be treated as material event if the cost of acquisition exceeds the materiality threshold as discussed in the Consultation Paper.	The said minimum threshold is proposed to be added in the explanation of 'acquisition' under sub-para 1 of Para A. Further, it may be clarified that acquisition can be in an existing company or in a newly incorporated company as well.
<b>Disclosure of "sale of stake in an associate company" and "sale or disposal of the whole or substantially the whole of an undertaking(s)" in</b>	At present, disclosure of sale or disposal of any unit(s), division(s) or subsidiary of a listed entity is required. The sale of stake in an associate company or sale or disposal of an undertaking of the listed entity are also material information for the investors.	Accordingly, it is proposed to add disclosure of sale of stake in an associate company and sale or disposal of the whole or substantially the whole of an undertaking(s) of the listed entity by modifying sub-para 1 of Para A.



PROPOSALS IN RESPECT OF PARA A / MANDATORY DISCLOSURES		
Events proposed to be added to Para A		
Proposal	Requirement for modification	Details of Proposal
sub-para 1 of Para A		
<b>Explanation for “sale or disposal of subsidiary” and “sale of stake in associate company” in sub-para 1 of Para A</b>	No explanation is provided for ‘sale’ or ‘disposal’ under sub-para 1 of Para A, especially with respect to subsidiaries or associate companies, which creates an ambiguity. Since any additional 2% acquisition of shares or voting rights in any company requires disclosure under sub-para 1 of Para A, the same threshold is proposed for selling of shares or voting rights of the subsidiary or associate company.	Accordingly, the following explanation is proposed to be added in sub-para 1 of Para A: <i>“sale or disposal of subsidiary” and “sale of stake in associate company” shall include –</i> <i>(i) ceasing control in the subsidiary; or,</i> <i>(ii) sale or agreeing to sell more than two per cent of shares or voting rights in the subsidiary or associate company.”</i>
<b>Exemption from disclosure of inter-se transfer of shares in sub-para 1 of Para A</b>	It is noted that an <i>inter-se</i> transfer of the shares or voting rights in a subsidiary or an associate company between the listed entity and any of its wholly owned subsidiary(ies) may not result in any change in the ultimate ownership of the shares or voting rights of the listed entity.	The Consultation Paper has invited comments on whether such <i>inter-se</i> transfer of shares may be exempted from disclosure.
<b>Disclosure of revision ratings and new ratings in sub-para 3 of Para A</b>	The Circular specifies disclosure of both revision in ratings as well as new ratings.	Sub-para 3 of Para A which currently states ‘ <i>Revision in Rating(s)</i> ’ may be modified as ‘ <i>New rating(s) or revision in rating(s)</i> ’ to remove ambiguity.
<b>Disclosure of ratings or revision in ratings under sub-para 3 of Para A</b>	Credit rating agencies disclose on their websites, ratings or revision in ratings provided by them even if the same was not requested for by the listed entity or the request was later withdrawn.	To avoid information asymmetry, it is, proposed to add the following language in the Circular for the disclosure:  <i>“The disclosure of rating or revision in rating shall be made even if it was not requested for by the listed entity or the request was withdrawn by the listed entity.”</i>
<b>Disclosure of frauds/default by and/or arrest of director/senior</b>	At present, disclosure of fraud/defaults by listed entity or its key managerial personnel or promoter, and arrest of key managerial personnel or promoter	Sub-para 6 of Para A may be modified to include the following:  i. <i>fraud/defaults by director of the listed entity (moved from sub-para 9 of Para B).</i>

PROPOSALS IN RESPECT OF PARA A / MANDATORY DISCLOSURES		
Events proposed to be added to Para A		
Proposal	Requirement for modification	Details of Proposal
<b>management/ subsidiary under sub-para 6 of Para A</b>	are mandated. Additionally, fraud/defaults by director or senior management of the listed entity, fraud/defaults by subsidiary of the listed entity, and arrest of director or senior management of the listed entity are also material information for investors.	<ul style="list-style-type: none"> <li>ii. <i>fraud/defaults by senior management of the listed entity.</i></li> <li>iii. <i>fraud/defaults by subsidiary of the listed entity.</i></li> <li>iv. <i>arrest of director or senior management of the listed entity.</i></li> </ul> <p>Further, In order to remove ambiguity, an explanation of the term ‘default’ may be added in sub-para 6 of Para A as defined in SEBI Circular no. SEBI/ HO/ CFD/ CMD1/ CIR/ P/ 2019/ 140 dated November 21, 2019 (<a href="#">available here</a>). It may also be clarified that fraud/default/arrest is required to be disclosed whether it has happened in India or abroad.</p>
<b>Disclosure of change in senior management under sub-para 7 of Para A</b>	At present, disclosure of change in directors, key managerial personnel, auditor and compliance officer are mandated. However, change in senior management is not mandated to be disclosed. Given that details of senior management are required to be disclosed at the time of filing of public offer documents, change in such senior management is a material information for investors.	Sub-para 7 of Para A may be modified to mandate disclosure in case of change in senior management.
<b>Removal of disclosure regarding reference to Board for Industrial and Financial Reconstruction (BIFR)</b>	In sub-para 11 of Para A, disclosure regarding BIFR may be removed since the same is no longer in existence. Disclosure of events in relation to the corporate insolvency resolution process (CIRP) has already been specified under sub-para 16 of Para A.	-
<b>Timeline for disclosure of analysts or institutional investors’ meet</b>	Sub-para 15 of Para A requires disclosure of schedule of analysts or institutional investors’ meet. This disclosure is required to be made prior to the investors’ meet. However, no timeline has been specified for making	It is proposed to specify that the schedule of such meets should be disclosed at least 2 working days in advance (excluding the date of the intimation and the date of the meet).

PROPOSALS IN RESPECT OF PARA A / MANDATORY DISCLOSURES		
Events proposed to be added to Para A		
Proposal	Requirement for modification	Details of Proposal
	such disclosures which creates ambiguity and also does not provide enough time to the investors to register or attend such meets.	

PROPOSALS IN RESPECT OF PARA B / DISCRETIONARY DISCLOSURES		
Events proposed be added in Para B		
Proposal	Requirement for modification	Details of Proposal
<b>Disclosure of delay or default in payment of fines, penalties, dues, etc.</b>	Delay or default in payment of fines, penalties, dues, etc., if material, may impact operations and/or performance of the entity.	The following event is proposed to be added in Para B:  <i>“Delay or default in payment of fines, penalties, dues, etc. to any regulatory, statutory, enforcement or judicial authority.”</i>
Events proposed to be modified in Para B		
<b>Disclosure of material tie-ups, adoption of new line(s) of business and closure of operations</b>	Sub-para 2 of Para B requires disclosure of material tie-ups, adoption of new line(s) of business and closure of operations. However, the above events are required to be disclosed by a listed entity only if they bring change in its general character or nature of business of the listed entity. This limitation may be removed since the events may be material even if they don’t change the general character or nature of business. Additionally, closure of operation of any subsidiary of the listed entity having material impact on the operations or performance of the entity is also significant event requiring disclosure.	Sub-para 2 of Para B is proposed to be modified as below:  <i>“Any of the following events pertaining to the listed entity:  (i) arrangements for strategic, technical, manufacturing, or marketing tie-up; or  (ii) adoption of new line(s) of business; or  (iii) closure of operation of any unit/division/subsidiary (entirety or piecemeal)”</i>
<b>Disclosure of material loan agreements where the listed company is either</b>	Sub-para 5 of Para B requires disclosure of material loan agreements in which the listed entity is a borrower which are binding and not in normal course of business. However, material loan	It is proposed to remove the term ‘as a borrower’ in reference to loan agreements in sub-para 5 of Para B in order to mandate disclosure of all material loan agreement(s), which are binding and not in normal course of business, entered into by

PROPOSALS IN RESPECT OF PARA B / DISCRETIONARY DISCLOSURES		
Events proposed be added in Para B		
Proposal	Requirement for modification	Details of Proposal
<b>a lender or a borrower</b>	agreements in which the listed entity is a lender should also be disclosed to provide such information to the investors.	the listed entity <i>either as a lender or as a borrower</i> . It may be clarified that disclosure of loan agreement for lending shall not be applicable to a listed entity which is a bank or a non-banking financial company.
<b>Exemption from disclosure for certain loan agreements</b>	It is noted here that loan agreement(s) for lending to wholly owned subsidiaries of the listed entity may not be material and would usually be in normal course of business.	Comments are invited on whether such loan agreement(s) for lending to wholly owned subsidiaries may be exempted from disclosure under sub-para 5 of Para B.
<b>Disclosure of instances where subsidiary/direct or is party to litigations, etc.</b>	At present, material litigations or disputes where the listed entity/ its key managerial personnel/ promoter/ ultimate person in control becomes a party are required to be disclosed as specified in the Circular for disclosure under sub-para 8 of Para A. Additionally, information pertaining to material litigations or disputes where the subsidiary or director of the listed entity becomes a party is also material information for investors.	The Circular may be modified to include instances where any subsidiary or director of the listed entity becomes party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings.
<b>Disclosures in respect of guarantees, indemnity, or surety</b>	Sub-para 11 of Para B requires disclosure when the listed entity gives guarantees, indemnity or becomes a surety for any third party. The rationale of this disclosure is to inform investors about the material financial obligations on the listed entity for any third party.	In order to cover all such obligations, it is proposed to add in the sub-para, the words "by whatever name called" in reference to the guarantees, indemnity, or surety, which are required to be disclosed.

### C. PROPOSAL FOR DISCLOSURE OF CYBER SECURITY INCIDENTS OR BREACHES AND LOSS OF DATA / DOCUMENTS IN THE CORPORATE GOVERNANCE REPORT

With the advancements in technology and the companies adopting such newer technologies, cyber security incidents or breaches and loss of data / documents have become a major concern. Such incidents may impact the operations and/or performance of the listed entity. Disclosure of such events are necessary for investors to understand the associated risks and impact. However, immediate disclosure of such events may not be desired since the entity may be vulnerable to further attacks.

The disclosure with root cause analysis and remedial measures taken, etc. may be mandated under the quarterly compliance report on corporate governance (**CG Report**) required to be submitted by listed entities under Regulation

27 of LODR Regulations. It is proposed that the listed entities may be required to make disclosures in relation to “cyber security incident” or “cyber security breaches” or loss of data / documents of the listed entity in the quarterly CG Report in the format given below:

S. No.	Nature of the event (cyber security incident / cyber security breach / loss of data or documents)	Date of the event	Brief of the event	Impact on the operations of the listed entity	Corrective action taken	Compliance with the guidelines of CERT-In or other concerned authority

The above changes to the LODR Regulations have been proposed vide the Consultation Paper dated November 12, 2022 ([available here](#)) and public comments are invited till **November 27, 2022**.

*We trust you will find this an interesting read. For any queries or comments on this update, please feel free to contact us at [insights@elp-in.com](mailto:insights@elp-in.com) or write to our authors:*

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