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# The Crucial Role of a Company Secretary in CSR Audits: Navigating Corporate Social Responsibility with Precision

**Introduction:**

Corporate Social Responsibility (CSR) has evolved into a cornerstone of modern business practices, with companies increasingly recognizing the importance of contributing to social and environmental well-being. As organizations strive to meet their CSR commitments, the role of a Company Secretary has gained prominence, becoming pivotal in ensuring the successful implementation and audit of CSR initiatives.

**I. Understanding the Company Secretary's Role in CSR:**

1. **Policy Formulation:** A Company Secretary is instrumental in the formulation and implementation of CSR policies. This involves collaborating with various departments to integrate CSR strategies into the overall business plan. For example, the Company Secretary might work closely with the sustainability team to develop policies aligned with global sustainability goals.

2. **Regulatory Compliance:** One of the primary responsibilities of a Company Secretary is to ensure that the company complies with all relevant laws and regulations. In the context of CSR, this includes adherence to local and international standards. For instance, a Company Secretary might navigate compliance with the ISO 26000 standard for social responsibility, ensuring that the company's CSR initiatives align with established guidelines, Section 135 of Companies Act 2013, CSR Rules, 2014, Annual Action Plan, accounting of unspent amount are some aspects which needs to be carefully evaluated.

**II. CSR Audit Planning and Execution:**

1. **Internal Audit Coordination:** Company Secretaries play a crucial role in coordinating internal audits of CSR activities. They work alongside internal audit teams to assess the effectiveness of CSR programs, ensuring that they align with the company's goals and meet regulatory requirements. An example would be conducting an internal audit to assess the environmental impact of a company's manufacturing processes.

2. **Stakeholder Engagement:** Effective CSR audits involve engaging with stakeholders to gather insights and feedback. The Company Secretary facilitates this communication, ensuring that the interests of shareholders, employees, communities, and other stakeholders are considered in the audit process. This could involve organizing town hall meetings or conducting surveys to gather community perspectives on the impact of the company's CSR initiatives.

The Company Secretary (CS) plays a pivotal role in the Corporate Social Responsibility (CSR) audit process, ensuring the company's adherence to legal and regulatory CSR provisions. One of the primary responsibilities involves overseeing compliance with statutory CSR spending requirements and contributing to the development and revision of the company's CSR policy.

The CS acts as a vital link between the company and its stakeholders, facilitating transparent communication on CSR initiatives and performance. In addition to overseeing the alignment of

CSR activities with the company's risk appetite and business strategy, the CS plays a key role in identifying and mitigating potential risks associated with CSR endeavours.

Robust record-keeping and documentation are integral to the CS's responsibilities, ensuring that all CSR-related information is accurate, up-to-date, and easily accessible for audit purposes.

Furthermore, the CS provides regular reports to the board and senior management, offering insights into the progress and impact of CSR initiatives while addressing any challenges or deviations from planned activities. This comprehensive approach ensures that the CSR audit process is not only a compliance exercise but also a strategic effort to integrate responsible business practices within the company's framework.

**Evolving role of CS**

The role of a Company Secretary (CS) is experiencing a dynamic evolution, extending far beyond the traditional boundaries of CSR audit responsibilities. While CSR audit remains a critical facet of the CS's duties, there is a noticeable shift towards a more holistic and strategic involvement. Modern CS professionals are increasingly recognized as key contributors to the overall governance framework, engaging in a spectrum of activities ranging from regulatory compliance and risk management to fostering transparent communication between the board, management, and stakeholders. In addition to overseeing CSR initiatives, CS professionals are now actively participating in shaping corporate strategy, facilitating ethical decision-making, and ensuring that the organization operates with a commitment to environmental sustainability, social responsibility, and sound governance practices. This expanded role positions the CS as a central figure in navigating the intricate landscape of corporate ethics and responsibility, where their influence extends well beyond the confines of traditional compliance and audit functions.

In the contemporary corporate landscape, the role of a Company Secretary (CS) has evolved into a multifaceted position that encompasses responsibilities far beyond traditional realms. While CSR audit remains a pivotal aspect, the modern CS now actively engages in program assessment of CSR initiatives. This includes a meticulous examination of the financial aspects of each project, ensuring not only regulatory compliance but also effective resource allocation and utilization. Moreover, when CSR initiatives involve collaborations with Non-Governmental Organizations (NGOs), the CS is tasked with the critical responsibility of evaluating the compliance and authenticity of these partners. This expanded role underscores the CS's strategic involvement in the entire CSR lifecycle – from program conception and financial oversight to due diligence in selecting and vetting external partners. The CS, in this capacity, becomes an integral guardian of ethical practices and sound governance, playing a vital role in shaping the corporate narrative towards a more responsible and sustainable future.

**Conclusion:**

The role of a Company Secretary in CSR audits goes beyond regulatory compliance; it involves active participation in policy formulation, internal audit coordination, and stakeholder engagement. A well-engaged Company Secretary is crucial for navigating the complex landscape of CSR, contributing to the company's overall sustainability and positive social impact. As businesses continue to embrace CSR as a strategic imperative, the Company Secretary's role will remain integral in ensuring that these initiatives align with corporate goals, legal standards, and societal expectations.

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# Disclosures from Value Chain Partners - Navigating the challenges and embracing the rewards!

In today's fast-paced and ever-evolving business landscape, sustainability and responsible business practices have become paramount. With increasing focus on sustainability and Corporate Social Responsibility, BRSR reporting provides a framework for companies to transparently communicate their environmental, social, and governance (ESG) performance. In the current scenario, companies are increasingly demanding to demonstrate their commitment to sustainability, making BRSR reporting a valuable tool for showcasing responsible business practices.

SEBI vide its amendment notification dated 14th June 2023 read with SEBI circular dated 12th July 2023 required the top 1000 listed entities from the FY 2023-24 to make disclosures as per the updated Business Responsibility & Sustainability Reporting [BRSR] as part of their Annual Reports. Pursuant to the ESG Advisory Committee recommendations and public comments, the Board further decided to introduce disclosures and assurance for the value chain of listed entities, as per the BRSR Core. The top 150 listed entities identified on the basis of market capitalization are required to mandatorily undertake reasonable assurance of the BRSR Core from FY 23-24. Further, ESG disclosures for the value chain shall be applicable to the top 250 listed entities (by market capitalization), on a comply-or-explain basis from FY 2024-25. The limited assurance of the above shall be applicable on a comply-or-explain basis from FY 2025-26.

The transfer of ESG responsibilities, including reporting and regulatory compliance, to value chain suppliers represents a significant transition. However, it's crucial to recognize that this shift can present a substantial challenge for these suppliers, who may perceive it as a formidable undertaking. These challenges can vary depending on factors such as the Company's size, Industry, and Geographical scope. Below mentioned are some common hurdles:

1. **Acquiring data from foreign companies and vendors:** For multinational companies, gathering data from foreign companies and vendors can be daunting. Challenges may arise due to differences in **accounting years** between countries, **local legal requirements**, and **data privacy policies**. Foreign entities may also perceive the reporting process as an unnecessary obligation imposed by local laws.

2. **Identification of 75% of the value chain partners:** Within the framework of BRSR Core, disclosure pertaining to the value chain holds paramount importance. Specifically, BRSR Core necessitates the inclusion of the most significant upstream and downstream partners of a listed entity within this disclosure. These partners should collectively constitute 75% of the entity's purchases and sales, measured by their respective values.
   However, a formidable challenge that companies encounter in the process of making this disclosure lies in the **identification** of these vital value chain partners. The sooner a Company can identify and engage with these partners that meet the 75% criteria, the smoother their compliance journey becomes. Timely identification streamlines the process and enhances the Company's ability to meet BRSR Core reporting requirements effectively.

3. **Compiling the vast value chain data:** Once the identification of value chain partners constituting 75% of the entity's purchases and sales, measured by their respective values, is accomplished, a subsequent challenge emerges—the compilation of this extensive dataset. For numerous corporations, their value chain ecosystem can encompass a multitude of partners, often with intricate layers of sub-partners. Managing and aggregating data from this expansive network can be an exceptionally time-consuming endeavour. This criterion can be challenging for companies with extensive value chains that **involve numerous partners**. Collecting data from a vast number of value chain partners can be resource-intensive and complex.

4. **Acquiring data from small value chain suppliers and vendors:** Small value chain partners may lack the awareness and resources to participate effectively in BRSR Core reporting. Acquiring data from small value chain partners such as MSMEs, SMEs and sole proprietors may pose multiple obstacles to the Company such as:

   - **Availability of data:** Small businesses often lack the resources or infrastructure to collect and maintain detailed data. They may not have dedicated personnel or systems in place for data tracking or recording, making it difficult to obtain the required information.

   - **Unwillingness to invest:** Small value chain partners may be hesitant to invest in collecting and reporting sustainability data due to limited financial resources. They might view the process as costly and time-consuming, with uncertain returns on investment or be hesitant to allocate resources for extensive data provision.

   - **Reliability of the data:** Inconsistent data collection methods, varying data quality, and limited validation processes can undermine the accuracy of the reported information.

   - **Convincing the value chain partners:** The onus of complying with BRSR requirements and obtaining limited assurance lies squarely with the listed entity, not the value chain partners. Consequently, it becomes the responsibility of the listed entity to engage, persuade, and guide value chain partners to fulfil these compliance obligations. This can include encouraging partners to embrace the various aspects of ESG reporting, which may indeed prove to be a formidable task.

While mandatory assurance for value chain data is set to take effect in FY 25-26, it is advisable for companies to proactively conduct some sort of voluntary assurance well in advance. This proactive approach serves to bolster the reliability of data obtained from value chain partners. To address the above issues effectively, listed entities must consider implementing a regimen of **periodic audits and due diligence** to ensure the accuracy and reliability of data received from value chain partners. Establishing a structured framework with predefined criteria or checkboxes can prove invaluable in helping listed entities ascertain the quality and conformity of the data provided. This framework serves as an internal assurance mechanism, allowing listed entities to confidently validate the data obtained from their smaller partners and thereby enhance the credibility of their ESG reporting efforts.

**Importance of ESG disclosures from Value chain partners:**

BRSR Core reporting transcends the realm of mere regulatory compliance; it embodies a strategic imperative that can yield substantial advantages for organizations. It is imperative for value chain partners to perceive this reporting not merely as an obligatory checkbox but as an earnest commitment to ethical business practices, encompassing standards such as the **Global Reporting Initiative (GRI)** and the **Sustainability Accounting Standards Board (SASB).**

In the realm of value chain dynamics, a notable challenge emerges as the listed entity endeavours to persuade its value chain partners to adhere to the framework. This challenge arises because compliance primarily benefits the listed entity, fostering improvements in its own ESG score, while the value chain partners may not see direct advantages in this regard.

Moreover, ESG reporting presents value chain partners with a dual opportunity. Firstly, it can serve as a compelling marketing tool, allowing organizations to showcase their commitment to sustainability and responsible business practices to consumers and investors alike. Secondly, by becoming ESG compliant and consistently demonstrating their dedication to these principles, companies position themselves as ethical industry leaders, setting a benchmark for others to follow. By demonstrating a commitment to sustainability and responsible business practices, value chain partners can enhance their **reputation and build trust** among consumers, investors, and the community.

To fully embrace the essence of ESG reporting, companies must genuinely comprehend its necessity and significance. In this era marked by climate change and global sustainability goals, ESG reporting assumes a pivotal role. Companies must recognize that their engagement in ESG reporting is not solely a response to regulatory mandates but a conscientious acknowledgement of their responsibilities.

By acknowledging the urgent need to address **climate change**, aligning their efforts with **Sustainable Development Goals (SDGs)**, and adhering to recognized ESG standards like GRI and SASB, companies can harness ESG reporting as a powerful tool for both mitigating risks and seizing opportunities in an increasingly complex and interconnected world.

**Here are several strategic approaches that corporations can employ to tackle the previously mentioned challenges related to ESG disclosures by their value chain partners:**

- **Enhancing Stakeholder Engagement:**

Effective collaboration between the Company and its value chain partners is paramount. To move in unison towards ESG compliance, organizations should foster strong relationships and open lines of communication. This engagement should extend beyond financial transactions to include discussions about ESG goals and objectives. Shared values and a collective commitment to sustainability can pave the way for more transparent and efficient disclosures.

- **Contractual Agreements and Amendments:**

  To ensure ESG compliance throughout the value chain, companies can consider entering into contractual agreements with their partners. These agreements should outline specific ESG disclosure requirements and obligations for each party involved. In cases where existing contracts do not address ESG concerns, proactive amendments can be made to incorporate these crucial provisions. This approach not only enforces compliance but also demonstrates a mutual commitment to sustainable practices.

- **Investing in Training and knowledge centres:**

  Regular training programs can be implemented to equip value chain partners with the knowledge and tools required to provide accurate ESG disclosures. By setting clear mechanisms and parameters, companies can maintain a consistent flow of accurate ESG data, reducing the likelihood of errors or omissions.

- **Establishing controls, conducting audits and due diligence:** Establishing controls and conducting audits can help monitor compliance and ensure that partners meet their disclosure obligations. Through regular due diligence and audits of data provided by value chain partners, companies gain a powerful tool for assessing the performance and reliability of their existing partners. This data-driven evaluation enables companies to make informed decisions, including the potential appointment, engagement, or transactions with new value chain partners when necessary.

**Conclusion:**

In the realm of ESG reporting and sustainability, the integration of value chain partners presents a labyrinth of challenges and opportunities. While navigating, the intricacies of ESG disclosures may seem daunting, proactive measures such as stakeholder engagement, contractual agreements, training, and regulatory support serve as guiding stars to overcome these hurdles. In an era where environmental and social responsibility is imperative, collaboration among all stakeholders is vital in achieving ESG objectives and fostering a more sustainable future for businesses and society as a whole.

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## Can the company go into liquidation if the corporate guarantee by the company is not invoked?

## In the matter of Iskon Infra Engineering Pvt Ltd (Appellant) v/s Central Bank of India Respondent at the National Company Law Appellant Tribunal (NCLAT) dated 1st April, 2024

**Facts of the Case:**

- The application was filed with the National Company Law Tribunal (NCLT) by the Liquidator u/s 59 of the Insolvency and Bankruptcy Code, 2016 (Code/IBC) r/w Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 seeking dissolution of M/s Iskon Infra Engineering Private Limited (Appellant/CD).
- The NCLT directed the CD to issue a notice to the Registrar of Companies (RoC) and also to Punjab National Bank and Oriental Bank of Commerce (now merged with PNB) since the CD had given Corporate Guarantee to them.
- Pursuant to the notice issued - the RoC, PNB and Central Bank of India (Respondent) participated in the proceedings.
- The RoC filed its report that against the CD towards Corporate Guarantee of more than Rs. 1257 Crores approximately beginning from year 2010 onwards and as on the date of report - as per MCA-21 record, no satisfaction of charge has been filed till date by the CD.
- The Respondent had also filed objections wherein it was stated that M/s Abhinav Steels and Power Limited, was granted a term loan and working capital facilities by consortium of banks namely Oriental Bank of Commerce, Punjab National Bank and Central Bank of India in which CD was one of the Corporate Guarantors.
- The CD claimed that the Corporate Guarantee they provided was a contingent liability, as mentioned in the Financial Statements of the CD. It is pertinent to note that the Respondent had not filed any claim with the CD for the amount covered by the guarantee.
- NCLT dismissed the application on the ground that Guarantor's liability is co-extensive with that of the principal debtor.
- Aggrieved by the order of the NCLT – the appeal was filed at NCLAT.

**Arguments by the Appellant:**

- It was contended that the guarantee had not been invoked by any of the financial creditors, nor had any claim been filed before the liquidator; hence, the NCLT committed an error in rejecting the liquidation application.
- Also, the reliance was placed on the judgment passed in the case of ***"Pooja Ramesh Singh Vs. State Bank of India & Anr" which supported*** *that liability against the Corporate Guarantor shall arise only when guarantee is invoked.*

**Held:**

- It was noted that the guarantee had not been invoked; however, this does not absolve the Corporate Guarantor from the debt. The Corporate Debtor had provided a corporate guarantee and undertaken to pay the debt, as mentioned in paragraph 10 of the executed Deed.
- The liability of the Corporate Guarantor is coextensive with that of the Lenders, and the Lenders are at liberty to require the Guarantor to fulfill its obligations. The NCLT, after

considering the facts presented by the RoC and the Respondent, rightly concluded that the present case is not suitable for liquidating the Company through voluntary liquidation.

- The Appellant's submission that there is no debt since the guarantee has not been invoked cannot be accepted. The guarantee continues to bind the Corporate Guarantor to discharge its liability, and the fact that the guarantee has not been invoked to date cannot be grounds for the Appellant to be liquidated u/s 59 of the IBC.

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# Assistance for identification of beneficial interests – Who is responsible?

**Introduction:**

After International Financial Reporting Standards have laid importance on reporting of beneficial owners of corporate entities, the regulators across the world have become vigilant in this behalf. In India, the Ministry of Corporate Affairs ('MCA') is taking multiple steps to ensure proper disclosure of beneficial interest in the company by the shareholders.

In its constant endeavor to improve reporting on beneficial ownership, MCA through its notification dated 27th October 2023, mandated the companies to designate a person who shall be responsible for giving information to Registrar of Companies(ROC) regarding beneficial interest in the company whenever asked by ROC. These provisions relating to designation of person were inserted in rule 9 of management and administration rules 2014. In this article, we shall try to deliberate upon the intricacies of rule 9 sub-rules (4) to (8) of Companies (Management and Administration) Rules, 2014 ('Management rules') prescribing the requirement of designating a person for giving information to ROC.

**Legal provisions:**

As per rule 9(4) of Management rules, each company is required to designate one person who shall be responsible for extending co-operation to ROC with respect to beneficial interest in the company. Rule 9(5) of Management rules provides a list of persons who can be designated for this purpose and rule 9(6) clarifies that what shall be the consequences of not designating any person for this purpose. Sub-rules 7 & 8 of rule 9 specify the method of intimating ROC about the details of person designated for this purpose.

**Priority for designation:**

As stated above, rule 9(5) of Management rules provides list of persons who can be designated for co-operating with ROC with respect to beneficial interest. The sub-rule 5[i] states that, company may designate Company Secretary ('CS') (wherever required to be appointed) or Key Managerial Person ('KMP') other than CS or if there is no CS or KMP, then every director. In case of directors, it is clearly mentioned that if there is no CS or any other KMP in the company, then every director can be designated person, but no such condition is present between CS and KMP, that is, there is no provision in rule which states that KMP can be designated only if there is no CS. This situation gives rise to 2 questions.

- Is it that KMP can be designated only if there is no CS, or its board's call who to designate? And
- If a company has CS, KMP and directors, but none of them is agreeing to be designated person, then what shall be the solution to this?

**Priority amongst CS and KMP:**

As mentioned earlier, unlike clause 3, clause 2 of rule 9(5) of Management rules does not state that, KMP can be designated only if there is no CS. The conjoint reading of clauses 1 and 2 give a meaning that company can designate either CS or KMP other than CS. Further clause 3 states that, if there is no CS or KMP then, directors can be designated. That means, who shall be the designated person for the purpose of assisting registrar of companies in identifying beneficial ownerships has to be decided by the board of directors of the company.

**Whether every director would be held responsible for compliance?**
But if CS or KMP are not ready to take up the responsibility as stated above then can the board of directors designated one amongst them for the purpose of compliance?
Simple reading of the language of clause 3 of rule 9(5) of Management rules gives the impression that if no person from clauses 1 and 2 are available, then every director can be designated. This language gives rise to one question that, whether company can designate any one of the directors or it must designate all directors or board of directors as a whole?

The answer to this question can be found in opening statement of rule 9([ii]5) of Management rules. Conjoint reading of opening lines of rule 9(5) with clause 3 says that company may designate every director if there is no CS or KMP. The use of word 'may' in the language of rule 9(5) of Management rules gives option to company to either designate one single director or all of them. In other words, it is the board's call whether to designate one director or all/every director.

**Consent of individual for responsibility:**
Designating a person for a specific task means making him responsible for that task. Therefore, no person can be designated unless he is willing to be so designated. If none of the CS or KMP or any of the members of the board of directors give consent to be designated under this provision, then provisions of sub-rule 6 of rule 9[iii] of Management rules come into play. This sub-rule states that, till the time no person is designated, the company secretary will be deemed to have been designated, if there is no CS then managing director or manager will deemed to be designated and if there is no CS as well as MD or manager, then every director of the board will have deemed to be designated. Therefore, if none of the above-mentioned entities are willing to take up the responsibility under rule 9 sub-rule (5) then the entire board of directors by default will become responsible by virtue of deeming provision under sub-rule 6.

**Intimation to ROC:**
The next step after designating the person is to intimate the ROC. Reading rule 9 sub-rule 6 of Management rules makes it clear that the details of designated person must be intimated to ROC through annual return. So, this intimation would be given in the month of October or November every year. However, the information provided through this form is as of 31$^{st}$ March, that is, as at year end. Therefore, although intimation must be given to ROC after conducting AGM, it is advisable for the companies to designate a person through board resolution before 31$^{st}$ March or year end.

**Intimation of change in designated person:**
Since the details regarding designated person must be given in annual returns and annual returns are filed only ones in a year, there arises a difficulty with respect of intimating to ROC about the change in details of designated person. Rule 9(8) of Management rules says that, change in details of designated person should be intimated to ROC in form GNL-2. That means, if the designated person is changed or there is any change in particulars of the designated person in between filing of annual returns, then such changes can be intimated to ROC in this form GNL-2.

**Name or designation of person?**
While intimating the details of designated person to ROC, there arises a question that, whether the company should intimate the designation/position of the person being designated or should it give the name of the person?

For example, if the company has designated its CS, then whether it should say that it has designated its CS, or it should say that it has designated its CS Mr. X? this question becomes significant in case where the person on the designated post like CS resigns and new person is appointed on that post.

The answer to this question is difficult as on date because the form in which intimation is to be given, that is form MGT-7 has not yet been modified to include space for providing details of designated person under this position. Ones the form is amended, the answer to this question shall be clear. However, if we look at the purpose of introducing this provision, it aims at designating one specific person whom ROC shall contact in case of any enquiry inspection etc. looking at this purpose, it appears relevant to give name and other contact details of designated person to the ROC.

**Conclusion.:**
Complete reading of the provisions of rule 9 sub rule (4) to (8) of Management rules gives answers to most of the questions. The intention of bringing this provision in the Act is to designate one person who can be one single point of contact in case of enquiry or inspection etc. also since one specific person is designated for maintaining and providing records, the liability on the other directors and KMPs is comparatively reduced. This provision is advantageous for both, company, and the regulator.

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*https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023862/assistance-for-identification-of-beneficial-interests-%E2%80%93-who-is-responsible-experts-opinion*

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[i] (5) For the purpose of sub -rule (4), the company may designate -
(i) a company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
(ii) key managerial personnel, other than the company secretary; or
(iii) every director if there is no company secretary or key managerial personnel.
[ii] supra (1)
[iii] (6) Until a person is designated as referred under sub -rule (4), the following persons shall be deemed to have been designated person.
(i) company secretary, if there is a requirement of appointment of such company secretary under the Act and the rules made thereunder; or
(ii) every Managing Director or Manager, in case a company secretary has not been appointed; or
(iii) every director if there is no company secretary or a Managing Director or Manager.

# Vicarious Liability: Navigating Legal Frontiers in Contemporary Contexts

**Introduction:**

Since the time of very origin of law, the basic concept of law is that, only the actual wrong doer should be punished and not the innocent one. However, as far as the law of torts is concerned, there can be found an exception to this basic principle of law. In general parlance, torts refer to A wrongful act or omission for which damages can be obtained in a civil court by the person who is injured or affected by such tort. Whereas the exception that the law of torts provides to the basic principle of punishing the guilty only, is called the 'doctrine of vicarious liability'.

The concept of vicarious liability is an exception to general law of torts. This doctrine fastens the liability of wrongdoing of one person on the other. In this article, we shall deliberate upon the multiple facets of doctrine of vicarious liability. Also we shall study this concept from the point of view of Companies Act 2013 and shall try to understand the relevance of this concept in today's dynamic business environment.

**What is vicarious liability?**

As discussed above, the concept of vicarious liability is found in the law of torts. In law of torts, the intention of the wrongdoer does not have any importance. The only important factor is that if any person has violated anyone else's legal right, then he is bound to pay damages to such other person. However, the doctrine of vicarious liability is a rare exception to law of torts, wherein the person is liable for the torts of some other person.

Vicarious liability owes its origin to two Latin phrases "Qui facit per alium facit per se[i]" which means, "one who does acts through another one in law is considered to do it himself". The situation of fastening vicarious liability mostly arises when the tortfeasor is acting on behalf of another person. The word 'vicarious' literally means "on behalf of someone".

For example, if a servant injures a third person while performing the task assigned to him by his master, then in such a case, the master shall be responsible to the third person for the injury caused by the servant.

Even though this may appear to be unjust on the outset, it is a very logical doctrine. The master is held liable for the acts of the servant, because servant was acting on behalf of and on the authority of the master. In such a case, the master is deemed to have acted through his servant, and therefore the master is held liable for the acts of the servant. Had the servant injured any person while he was not on his duty, the master would not have been held liable.

**Applicability of vicarious liability:**

although vicarious liability fastens liability of wrongdoing of one person on other, it is not in every situation that doctrine of vicarious liability can be applied. The very basic condition for application of this doctrine is that there should exist some relationship between the person who has committed the tort and the one who is held liable to pay damages. Therefore, this doctrine is applied only in cases where there exists a definite relationship which can be proved. One more criteria for applicability is that, the injury or damage should be caused in the course of duty. In other words, vicarious liability can arise only if the tortfeasor was doing the work assigned to him by the person who is held vicariously liable.

The examples of such relationships wherein there can arise a vicarious liability include the relationships between principle and agent, master and servant and employer and employee. For example, if any employee of any company has committed any tort while on duty of the company, then such company will become vicariously liable for the acts of the employee. Whereas if the company itself creates any tort, then, company being the artificial person, its alter ego, that is the persons through whom the company acts, shall be held liable.

**Vicarious liability with respect to companies:**

Company is an artificial person and therefore acts through its directors. therefore, it is generally held that the guilty mind behind the wrongdoing of the company is that of its directors. hence the directors of the company are held vicariously liable for the wrong doing of the company. as discussed above, there has to be some relationship between the wrongdoer and the person held liable. In this case, the relationship between the company and its directors is a fiduciary relationship, that is, directors take decision on behalf of company in their fiduciary capacity and hence are liable for its wrongdoings.

**Conditions for vicarious liability of directors:**

Although the directors are fiduciaries of the company, it is not that every time the directors can be held vicariously liable. There are certain conditions which are to be looked at before fastening vicarious liability on the directors.

a. **specific allegation:**
   The first amongst such conditions is that there should be a specific allegation against the directors backed with sufficient evidence to prove his involvement in wrongdoing. The only exception to this condition is with respect to [ii]managing director. Since the managing director is responsible for day-to-day management of the company, he is any way liable for company's Acts and therefore, there is no need of specific allegations against him. In case of all other directors, there has to be specific allegation backed with evidence. Simple vague statements are not adequate to fasten vicarious liability on directors.

b. **specific legal provision**

   The second condition pertains to legal provision. There must exist a specific provision regarding vicarious liability in the statute under which the liability is being fastened. In absence of such legal provision, the vicarious liability cannot be fastened. For example, section 22A of minimum wages Act 1948 and section 141 of the Negotiable instruments Act 1881 clearly fasten vicarious liability on the directors of the company. Whereas there is no such express provision in the Criminal Procedure Code (CrPC). Therefore, directors can be made vicariously liable under minimum wages Act or Negotiable instrument Act, but cannot be so made under CRPC.

   Supreme court of India highlighted these 2 conditions with respect to fastening of vicarious liability on directors in its judgment in the matter of Sunil Bharti Mittal vs CBI. In its judgment dated 9th January 2015, the honourable supreme court he*ld that, "Thus, an individual who has perpetrated the commission of an offence on behalf of a company can be made accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent.*

*Second situation in which he can be implicated is in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.*

*When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect."*

**c. Company should be a party to the petition:**

One more point worth noting here is with respect to company being party to litigation involving vicarious liability. In case of any petition trying to fasten vicarious liability on the directors, it is very essential that the company of which the persons are directors and who has committed the offence should be made party. If the company is not made party to such petition, then the petition is liable to be dismissed.

This condition has been affirmed by the supreme court in its judgment in the matter of DAYLE DE'SOUZA ..... APPELLANT(S) VERSUS GOVERNMENT OF INDIA THROUGH DEPUTY CHIEF LABOUR COMMISSIONER (C) AND ANOTHER ..... RESPONDENT(S)**. In this judgment dated 29th October 2021, the supreme court has stated that,**

*"Provision imposes vicarious liability by way of deeming fiction which presupposes and requires the commission of the offence of the Company itself as it is a separate juristic entity. Therefore, unless the company as a principal accused has committed the offence, the director would not be liable and cannot be prosecuted.*

*The liability of the persons in charge of the Company only arises when the contravention is by the Company itself.*

*The exception would possibly be when the company itself has ceased to exist or cannot be prosecuted due to a statutory bar. However, such exceptions are of no relevance in the present case. Thus, the present prosecution must fail for this reason as well."*

**Vicarious liability under Companies Act 2013:**

As far as companies and their directors are concerned, the companies Act 2013 is the basic law governing the companies and its directors. therefore, the provisions under Companies Act with respect to vicarious liability are of paramount importance. Section 166 of the Companies Act 2013states that the directors have fiduciary duty towards the company. Also, the multiple penal provisions under companies act which prescribe penalties for procedural non-compliance also hold the directors responsible for such non-compliance and impose penalties on them along with the company. Also, certain sections of the Companies Act like section 76A provide for criminal imprisonment for directors for non-compliance of law by the company. This shows that the Companies Act 2013 also has an express provision fastening vicarious liability on the directors.

**Relevance of vicarious liability under current context:**

As noted above, the Companies Act fastens vicarious liability on directors even in case of small procedural non-compliances and as seen in the supreme court judgment in the matter of Sunil Bharti Mittal vs CBI, if legal provision provides for vicarious liability, then it is by default fastened. However, if we study today's professionally managed companies, there arises a question that, are the directors and especially non-executive and independent directors really liable for all the acts of the company?

If we look at the language of the penal provisions, it fastens liability on all directors without bifurcating between executive and non-executive directors. Whereas the practical situation says that the non-executive directors are not involved in day-to-day activities of the company. Even though they are involved in collective decision-making process, they are generally dependent upon the information supplied by the management in this regard. Same is the case with independent directors. The very basic charactery stick of independent director is that he is not involved in daily matters of the company. In such a situation, is it correct to treat non-executive independent directors of the company vicariously liable for procedural non-compliance of which they are not a part.

Also, with respect to managing director, it is observed in professionally managed companies that different persons are responsible for different functions and such responsible person's information is duly provided to the regulator. For example, compliance function is looked after by the company secretary whereas, the taxation matters are taken care of by Chief finance officer. In such a case is it correct to hold the managing director responsible for procedural lapses which did not involve the managing director at all?

**Conclusion:**

The concept of vicarious liability is introduced under the law of torts for ensuring safety and protection to the innocent citizens. However, in case of companies and its directors, it is observed that the provision that is made for the protection of one person, is unjustly harming the other. This difficulty may be addressed by amending the provisions of law by taking a considerate view to words all possible stake holders.

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https://www.taxmann.com/research/fema-banking-insurance/top-story/105010000000023693/vicarious-liability-navigating-legal-frontiers-in-contemporary-contexts-experts-opinion

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[i] https://en.wikipedia.org/wiki/Qui_facit_per_alium_facit_per_se#:~:text=Qui%20facit%20per%20alium%20facit%20per%20se%20(anglicised%20Late%20Latin,in%20terms%20of%20vicarious%20liability.%22

[ii] supreme court of India in the matter of DAYLE DE'SOUZA ..... APPELLANT(S) VERSUS GOVERNMENT OF INDIA THROUGH DEPUTY CHIEF LABOUR COMMISSIONER (C) AND ANOTHER ..... RESPONDENT(S)

# Compliance or Control: Unpacking the Audit Committee's Role in Subsidiary Transactions

**Introduction:**

As per clause (b) of second proviso to sub-regulation (2) of regulation 23 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements), Regulations 2015 ['SEBI LODR'], "*related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity*". This provision gives authority to the audit committee of listed entity to give prior approval to related party transactions entered into by subsidiary of listed entity. This situation gives rise to a question that, does this authority given to audit committee of listed holding company undermine the role of audit committee and board of subsidiary? Also, it raises question as to whose approval shall be taken first viz. audit committee and board of director approval of subsidiary company or audit committee of listed entity?

**Background:**

Clause (b) of second proviso to sub-regulation (2) of regulation 23 was inserted vide SEBI LODR (sixth amendment) regulations, 2021 with effect from April 1, 2022. Before the notification of the said amendment, SEBI had released a report titled, "Report of the Working Group on Related Party Transactions" under the chairmanship of Mr. Ramesh Shrinivasan, MD & CEO, Kotak Mahindra Capital Company Ltd.

Working group members raised concerns regarding the control of the listed entity on related party transactions of its subsidiary highlighting that the listed entity might transfer the resources to its subsidiaries to unlisted subsidiaries and then the unlisted subsidiaries might transfer the same outside the consolidated group by circumventing the legal requirement of obtaining shareholder approval. Considering the above, the Working Group felt the need to strengthen the laws for regulation and oversight of RPTs undertaken by a subsidiary with the related parties of the listed entity or its subsidiaries. Accordingly, a provision was inserted in SEBI LODR whereby listed companies were mandated to give prior approval of audit committee of listed company for related party transactions proposed to be undertaken by unlisted subsidiary.

**Do these provisions lead to undermining the authority of audit committee and board of directors of unlisted subsidiary?**

Before dwelling into this question, we will glance through various provisions of SEBI LODR wherein board of directors of listed company are expected to review documents / information from subsidiary company. The audit committee of listed entity shall review the financial statements, particularly the investments made by the unlisted subsidiary. Further management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary. Minutes of the meetings of the board of directors of the unlisted subsidiary shall be placed at the meeting of the board of directors of the listed entity[i]. Audit committee is also empowered to review utilisation of loans and / or advances from / investments by the holding company in the subsidiary company exceeding Rs 100 crores or 10% of asset size of the subsidiary whichever is lower.[ii] On perusal of above provisions it is seen that role of board of directors and audit committee is to review and take note of certain information relating to unlisted subsidiary companies but when it comes to material related party transactions the role is not to review but to give prior approval.

The purpose of bringing material related party transactions of unlisted subsidiary before the audit committee of listed entity was to ensure that subsidiary companies are not used as conduits for transfer of assets out of the consolidated group. While highlighting the importance of related party transactions at subsidiary level for listed companies the Working Group on Related Party Transactions noted that, "*In light of the above, the Working Group felt the need to strengthen the laws for regulation and oversight of RPTs undertaken by a subsidiary with the related parties of the listed entity or its subsidiaries. It is of significance that the need to regulate the consolidated entity as a whole was also recognised specifically in the report of the Kotak committee on corporate governance dated October 5, 2017 in the following terms– "The Committee notes that several listed entities in India operate through a network of entities– where some companies have over 200 subsidiaries, step-down subsidiaries, associates, and joint ventures. While investors hold direct equity only in the listed holding company, they have valued the entire business structure at the time of investment. Therefore, it is important for boards to ensure that good governance trickles down to the entire structure."*[iii]. So, even if investor has bought shares of listed company but the value of shares of listed company includes the value of subsidiary as well.

The audit committee and board of directors of unlisted subsidiary would be reviewing the transaction at subsidiary level but audit committee of listed entity need to review the proposed related party transaction at group level. Audit committee of listed entity shall ensure that the related party transactions being entered at subsidiary level are genuine business transactions entered into the best interest of shareholders. The purpose of reviewing related party transactions by two levels of committees and board of directors being different it cannot be said that powers of board and audit committee of unlisted subsidiaries are usurped.

**Whose approval shall be taken first viz. audit committee and board of director approval of subsidiary company or audit committee of listed entity?**

Unlisted subsidiary companies have to take approval of audit committee, if any and board of directors of the company for approval of related party transactions. This compliance is applicable even before the amendment to SEBI LODR mandating prior approval of audit committee of listed company for material related party transactions was made effective. Management of unlisted subsidiary being with the board of directors of unlisted subsidiary approval of board of directors and audit committee is necessary of unlisted subsidiary is necessary before placing the transactions before audit committee of listed entity. Further as Companies act 2013 mandates approval of audit committee and board of directors for related party transactions, approval of same in case of unlisted subsidiary needs to be taken first in case of related party transactions that are required to be brought before audit committee of listed entity. Recommendations or observations, if any of the audit committee or board of directors of unlisted subsidiary shall be highlighted to the audit committee of listed entity when the matter is placed before them for approval.

**Audit Committee of listed company to review or reassess?**

SEBI vide its circular dt: November 22, 2021[iv], has stated that audit committees of listed entities should review the status of long-term (more than one year) or recurring RPTs on an annual basis. Purpose of having this provision is to mandated audit committees to review the nature of related party transaction, need for such related party transactions, need for having such transactions with related parties, time limit for which these transactions are continued and terms at which these transactions are being continued. While approving the material related party transactions at subsidiary level, the audit committee is required to assess various macro parameters with respect to related party transactions being entered at group level. For example, if the subsidiary is taking maximum amount of its raw material from one of its group companies despite having other options, then audit committee should raise a question that the subsidiary and the other group entity are largely dependent on each other and if operations of any one entity are stopped, then the other shall also be adversely affected. The listed holding company being answerable for all its subsidiaries, it should ensure that the independence and wellbeing of all group entities should be safeguarded. As the audit committee and board of directors would have reviewed the minor part of related party transactions the role of audit committee of listed entity is to view related party transactions from a broader perspective.

**Conclusion:**

Further as per regulation 4(2)(f)(i)(2)(ii)(6) of SEBI LODR it is responsibility of board of directors to prevent abuse of related party transactions[v]. Further it is responsibility of board of directors to monitor governance practices in the listed entity[vi]. With these responsibilities it is necessary that contents of the documents reviewed by the board of directors and list of documents brought before them are comprehensive. SEBI's initiative with respect to scrutiny of material related party transactions would surely have far reaching positive impact.

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[i] Reg 24(2) of SEBI LODR
[ii] Schedule II, Part C, Para B, Point 21.
[iii] https://www.sebi.gov.in/reports-and-statistics/reports/jan-2020/report-of-the-working-group-on-related-party-transactions_45805.html - Page 19

[iv] https://www.sebi.gov.in/legal/circulars/nov-2021/disclosure-obligations-of-listed-entities-in-relation-to-related-party-transactions_54113.html
v Monitoring and managing potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions.
vi Reg 4(2)(f) (2(ii) of SEBI LODR

# Varied practices while disclosing details of newly incorporated entity by listed Entity

**Introduction:**

As per schedule III, Part A, Para A, Point 1 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 ['SEBI LODR'] disclosure of acquisition including incorporation of subsidiary, increase in stake of subsidiary etc needs to be disclosed to stock exchanges. It has been observed that many listed companies are not disclosing these details to stock exchange. This article highlights different practices observed in disclosure of details of incorporation to stock exchanges

**Analysis of disclosures relating to incorporation:**

We analyzed disclosure of around 15 to 20 listed companies with respect to disclosure made regarding incorporation of companies. On analysis of these disclosures following practices were observed:

a. **By listed company:** Disclosures are given regarding incorporation of subsidiary, wholly owned subsidiary or associate company by listed company

b. **By subsidiary or wholly owned subsidiary company of listed company:** Disclosures are also made of incorporation of subsidiary, wholly owned subsidiary or associate company by wholly owned subsidiary or subsidiary of listed company.
E.g. A ltd ('listed company') has B Ltd ('wholly owned subsidiary') then disclosures are given even if B Ltd has incorporated a wholly owned subsidiary. It is observed that recently Red Tape Ltd[i], Trent Ltd[ii] and UPL Ltd[iii] has given disclosure of incorporations of such nature.

c. **Incorporation in India or outside India:** It is observed that details of incorporation of a subsidiary in India or outside India both are given by listed company or its subsidiary or wholly owned subsidiary. While disclosing that that subsidiary or wholly owned subsidiary is incorporated outside India then it is also disclosed as to who paid the initial subscription amount at the time of incorporation.

d. **Change of name of subsidiary or associate company:** It is observed that disclosure is given to stock exchange when there is change in the name of subsidiary or associate company or there is a change in nature of subsidiary or associate company. Viz. when the associate or subsidiary company becomes public company to private company or vice versa.

e. **Disclosure of incorporation of as a material update:** It is observed that disclosure of incorporation is given by giving reference to disclosure of board meeting outcome where in-principle was given by board of directors for incorporation of subsidiary. After this a material update is given stating that now the subsidiary is incorporated.

f. **What details of incorporation are given?** Listed companies have been disclosing Corporate Identification Number ('CIN') of the newly incorporated entity. If the entity is based in foreign country, then the relevant registration number or identification number is disclosed to the stock exchange. If an entity is incorporated outside India listed companies have been giving disclosure as to when the disclosure was received from foreign country. As per Bombay Stock Exchange and National Stock Exchange Circular dt: July 14, 2023[iv] listed companies while giving disclosures shall also disclose the time when the disclosure was received and when the disclosure was made by the listed entity. Ciruclar also states that if there is any delay in disclosure being made from the stated timeline then the disclosure shall also stated the reasons for delay.

g. **Newly incorporated entity as a related party?** Once an entity is newly incorporated either in India or foreign country then it becomes a related party for the listed entity. Whatever dealings are to be done with the newly incorporated entity would be considered as related party transactions. Listed companies would need to be aware of the fact whether requisite approvals have been approved before entering into the transactions with related party.

h. **Disclosure within what time and when?** Disclosure of incorporation of entity is given as soon as certificate of incorporation is received by the listed entity. Further at the time of disclosure if in the newly incorporated entity any director or promoter is going to take up the position of director then it is also being disclosed by listed entity. Further disclosure is also made if the director or promoter has subscribed to share capital of the newly incorporated entity.

i. **Disclosure of additional investment made in subsidiary or wholly owned subsidiary:** Whenever an additional capital funding is given to the subsidiary or wholly owned subsidiary listed companies have been disclosing details of the funding made. Also, in due to additional funding if the entity becomes a subsidiary company or wholly owned subsidiary company then the same is also stated in the disclosures.

j. It was also observed that entities have been disclosing objective as to why a new entity was incorporated.

**Conclusion**

Stock markets function based on publicly available information. It is the responsibility of listed companies to disclose details as specified by SEBI LODR in a timely and comprehensive manner. The above description of disclosures would help one strengthen its disclosure regime further to ensure fair play of all forces in the market.

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[i] https://www.bseindia.com/corporates/anndet_new.aspx?newsid=9aa1ea58-2f03-4941-8111-e2127e2e2ced
[ii] https://www.bseindia.com/xml-data/corpfiling/AttachHis/da7b75f7-b652-4790-8dcf-dcc21670e562.pdf
[iii] https://www.bseindia.com/xml-data/corpfiling/AttachHis/09a155f6-e5fe-407d-908f-53389c192850.pdf
[iv] https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20230714-34
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# Deciphering the Commencement of Unpublished Price Sensitive Information (UPSI)

In the labyrinth of insider trading regulations, the inception of Unpublished Price Sensitive Information (UPSI) serves as a critical focal point, yet its determination is far from straightforward and varies markedly from case to case. While conventional wisdom often ties UPSI's genesis to the closure of the trading window, a deeper understanding reveals a more intricate process rooted in the crystallization of financial data. This article endeavours to delve into the complexities surrounding UPSI's initiation, shedding light on its multifaceted nature and the nuanced considerations that dictate its start date.

Financial results serve as a crucial barometer of a company's performance and financial health, influencing investment decisions and market sentiment. However, determining the precise start date of UPSI in the context of financial results is not a one-size-fits-all proposition; rather, it varies on a case-by-case basis. Factors such as the nature of the industry, the complexity of financial reporting, and the specific circumstances surrounding the company's operations play a significant role in determining when UPSI begins. While regulatory guidelines provide some framework for identifying UPSI, companies must exercise prudence and diligence in determining the start date of UPSI to ensure compliance with insider trading regulations and maintain market transparency.

**UPSI – Definition as per SEBI Prohibition of Insider Trading Regulations (PIT), 2015**

UPSI is defined under SEBI PIT Regulations, 2015 under **clause 2(1)(n)**:

"**Unpublished Price Sensitive Information**" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:

i. Financial Results
ii. Dividends
iii. Change in capital structure
iv. Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions
v. Changes in key managerial personnel

The trading window closure, a standard practice for equity and debt listed entities, occurs quarterly in conjunction with the announcement of financial results. However, the specifics of this closure vary among companies. While some choose to close the window at the end of the quarter, others opted to do so 15, 10, or 5 days prior to the quarter end. Consequently, the commencement of UPSI related to financial results hinges on this window closure is a common hunch. Determining precisely when UPSI begins remains a nuanced question.

Various cases concerning UPSI, particularly in the context of financial results, have yielded diverse interpretations from SEBI. In certain instances, SEBI has asserted that UPSI commences upon the availability of the trial balance, while in others, it aligns the start date with the moment the financial results reach the auditor. Additionally, there are cases where SEBI considers UPSI to have originated once sales volumes have been finalized. These discrepancies underscore the complexity surrounding the determination of UPSI's start date and highlight the need for clarity and consistency in regulatory interpretation.

In a notable case, an incident involving a fire at a factory occurred approximately three months prior, prompting disclosure to the stock exchange due to its material significance. The aftermath of this event was substantial, leading to losses and significant impacts on the company's financials. With production capacity hampered, machinery in disrepair, and product quality compromised, the implications were far-reaching. Consequently, the occurrence of the fire event was deemed the starting point of UPSI, reflecting its criticality in shaping market dynamics and investor sentiment.

Let us now delve into several instances where the duration of Unpublished Price Sensitive Information (UPSI) periods varied, and the start date of UPSI was accordingly considered.

1. **Apex Frozen Foods limited[i] –**

   Company had practice of sharing following reports every quarter – Sales report, purchase report, Inventory valuation, Outstanding debtors, Outstanding creditors, and Export incentive reports. The company further stated that it is common practice to share the reports among staff, auditors, and management for finalization of books of accounts and declaration of results. Company submitted that UPSI relating to financial results came into existence.

   Only 10 days before board meeting scheduled on November 14, 2017, to consider the unaudited results was not held tenable.

   Hence it was observed that any recipient of the reports, generated and shared by the company with the Directors / CFO / Auditor and their respective staff, would have had an understanding of the financial performance of the company. Thus, by the end of the quarter, any person whom the reports earlier were shared, would have known whether the company had made profit in the said quarter.

   ***SEBI in this very case held that UPSI period is first date of the relevant quarter i.e., Oct 03, 2017, to November 14, 2017. Thus, the mentioned period (Oct 03, 2017, to Nov 14, 2017) has been taken as UPSI period.***

2. **Cerebra Integrated Technologies Limited (CITL)[ii] –**

   It was noted that company initiated the process of preparation of the un-audited financial results for the quarter ending September 30, 2021, from October 01, 2021.

   In this case on October 1, 2021, statutory audit activity, activity relating to giving access to the company's accounting system and solving auditors' queries as raised during the audit on daily basis. Noticees in this case submitted that it was too early to know the income for the said quarter and while it was fairly obvious that there would be substantial improvement in the financial results, we were certainly not aware of the actual financial results as the accounts were in the process of being finalized and lot of final accounting was required to be carried out before arriving at the net profit. It was too early to derive the revenue it was too early to know the income for the said quarter and while it was fairly obvious that there would be substantial improvement in the financial results, we were certainly not aware of the actual financial results as the accounts were in the process of being finalized and lot of final accounting was required to be carried out before arriving at the net profit. It was too early to derive the revenue. SEBI without accepting the argument concluded that UPSI came into existence from October 1, 2021.

While concluding in this case SEBI also made reference to decision of Hon'ble Securities Appellate Tribunal in Manoj Gaur vs SEBI, wherein Hon'ble SAT clarified that UPSI relating to financial results cannot be said to only arise on the date of finalization of the results. SAT held as follows, "*...15. It was strenuously argued by the learned senior counsel for the appellant that the corporate announcement dated October 11, 2008, made to the stock exchange regarding three issues viz. financial results for the quarter, dividends and rights issue were in public domain and could not be considered as UPSI. We are unable to accept this argument. As stated above, the definition of price sensitive information as provided in regulation 2(ha) of the Regulations is wide enough to include information relating to periodical financial results. What has been disclosed to the stock exchange is that these issues will be considered in the board meeting to be held on October 21, 2008. What has not been disclosed are the financial results or the amount of dividend or details of the rights issue. If we accept this argument of the learned senior counsel for the appellant that the moment a notice is sent to the stock exchange with regard to consideration of certain issues without details thereof, the same cannot be considered to be UPSI, it will be narrowing down the scope of the regulations defeating the very purpose of framing the regulations to prohibit insider trading while in possession of UPSI. When the company receives trial balances which are to be collated and ultimately examined by the internal committees, only those persons who are dealing with the issue are privy to such information and such information cannot be said to be in public domain. In the facts and circumstances of this case, the availability of the trial balances from the various units in the corporate office, which were discussed with the Executive Chairman of the company, leads us to the only conclusion that on the basis of trial balances, the UPSI was in existence on October 11, 2008 and Mr. Manoj Gaur being the Executive Chairman of the company was in possession of the same..*"

3. **Dynamatic Technologies Limited (DTL)[iii] -**

In this case, there was a decline in revenue of DTL for the quarter ended September 30, 2016, was mainly attributable to decline in revenue of two subsidiaries of DTL, namely Dynamatic Ltd, UK and Eisenwerk Erla GmbH, Germany.

Noting from the chronology of events submitted by DTL vide their letter dated June 14, 2019, that financials were received from Dynamatic Ltd, UK on October 18, 2016, and from Eisenwerk Erla GmbH on October 20, 2016.

Thereby, adjudicating officer is of the view that the information regarding possible decrease in profit of DTL for the quarter ending September 30, 2016, existed since October 18, 2016, when the financials of Dynamatic Ltd, UK were received. The information became public, with the declaration of financial results by DTL on November 11, 2016.

The information regarding decrease in profit after tax of DTL was technically a UPSI which existed since October 18, 2016, when financials of Dynamatic Ltd, UK were received, till the declaration financial results on November 11, 2016 *(hereinafter referred to as **"UPSI period"**)*.

***SEBI in the above case stated that the start date of UPSI was from October 18, 2016, as information regarding possible decrease in profit of DTL for the quarter ending***

***September 30, 2016, existed since October 18, 2016, when the financials of Dynamatic Ltd, UK were received.***

4. **L&T Finance Holdings Ltd[iv] -**

Based on the chronology of events related to corporate announcement made on July 20, 2018, by L&T Finance, the UPSI related to financial results for the quarter ended June 30, 2018, had come into existence on July 07, 2018 when draft standalone financial statements were shared with financial planning & analysis (FP&A) team.

***SEBI in this case considered the start date of UPSI as July 07, 2018, as that is when FP&A team received the standalone financial statements.***

5. **Lux Industries Ltd[v] -**

As per information furnished by the *Company*, the drafting of the *Financials Results* started on April 20, 2021, which means, the period of UPSI commenced from April 20, 2021 and ended on May 25, 2021 i.e., the day when the said information was announced to public at large, thereby making the period (i.e. April 20, 2021 to May 25, 2021) to be considered as the UPSI period.

***In the given case SEBI considered the start date of UPSI as April 20, 2021,*** because from the same date i.e. April 20, 2021 onwards with the sharing of various information related to financials of the company by the Senior Manager, Accounts and Finance, to the Chief Financial Officer (CFO) of the Company as evident from the email submissions of the Company.

6. **Deepak Fertilizers & Petrochemicals Corporation Limited (DFPCL)[vi]**

The SEBI adjudicating officer noted that the Trial Balance and other related information was extracted from the system and then compiled by Corporate Accounts Team in the reporting format on July 11, 2020. Therefore, the UPSI pertaining to the financial results of quarter ending on June 30, 2020, came into existence on July 11, 2020.

***Therefore, in the given case the start date of UPSI was July 11, 2020, as was considered by SEBI when information was extracted and compiled by corporate accounts team in reporting format.***

7. **Sharon Biomedicine Limited[vii]**

SEBI on investigation noted that there was a fire in factory of Sharon Biomedicine Ltd on June 3, 2014, due to which there was stock, material, and capital loss. Subsequently, Sharon had outsourced the manufacturing of its products, which resulted in several quality issues leading to rejection of sales and therefore the standalone sales went down from Rs.131,544.53 lacs to Rs.83,658.66 lacs during the FY 2014-15 in comparison to FY 2013-14 which resulted in accumulation of huge loss to the company. SEBI further observed that Sharon had started to receive the products back due to rejection from customers after around three months of fire incident. SEBI further stated that issues related to rejection/ return of products of the company which started from September 2014 resulting in accumulation of huge losses that have significant impact on the financial results of the company. Therefore, I hold that anyone in possession of material information about any such part would have reasonably known/understood the possible impact of such action on the company. Accordingly, they have access to UPSI regarding financial results of Sharon for QE December 2014, from September 01, 2014, itself (when the company started facing rejection/ return of its products and accumulation of losses). It is, therefore, evident that information with regard to rejection/ return of products on quality issues and accumulation of huge losses to the extent of Rs.103.37 crores within the period of three months which the company has not observed in the past as per the available financial statements of the company, is indeed an UPSI within the meaning of Regulation 2(ha) and 2(k) of the PIT Regulation which came into existence for the first time in September 2014

In this case SEBI took a very different view on the basis of chronology of events. SEBI stated that start date of UPSI relating to financial results for quarter ended December 2014 started from September 1, 2014, as against general practice of January 1.

8. **Godfrey Philips India Limited**[viii]

In this case the company had a practice of preparing Key Management Information System (MIS) report containing overall financial performance of the company on IGAAP basis referred to as 'CEO report.' This report was prepared and circulated by CFO with various relevant officials including president finance, managing director etc. On perusal of the CEO Report, it was observed that it contained clear figures relating to profit of the company in comparison to the respective quarter of the last financial year and also to the last year. Hence circulation of this report was considered as start date of UPSI by SEBI.

On perusal above stated judgments, it is clear that closure of the trading window does not mark the initiation of UPSI concerning financial results. Instead, UPSI originates when the profit figures or financial results attain a definitive and credible status, suitable for dissemination to the public.

**Conclusion:**

SEBI's meticulous scrutiny of UPSI initiation, particularly in high-profile cases such as WhatsApp leaks, underscores the need for a nuanced approach. Contrary to widespread belief, UPSI is not a mere byproduct of the trading window's closure; rather, its inception is intricately linked to the availability of concrete financial metrics. This could encompass various stages, including the preparation of financial results, auditor validation, or the distribution of board meeting agendas alongside financial statements, each representing a crucial milestone in UPSI's journey. Also, the above cases highlight that identification of start of UPSI relating to financial results would differ each company wise.

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https://www.taxmann.com/research/company-and-sebi/top-story/105010000000023850/deciphering-the-commencement-of-unpublished-price-sensitive-information-upsi-experts-opinion

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[i] https://www.sebi.gov.in/enforcement/orders/dec-2022/adjudication-order-in-the-matter-of-apex-frozen-foods-limited-_66762.html

[ii] https://www.sebi.gov.in/enforcement/orders/oct-2023/adjudication-order-in-the-matter-of-insider-trading-by-certain-entities-in-the-scrip-of-cerebra-integrated-technologies-limited_77947.html

[iii] https://www.sebi.gov.in/enforcement/orders/nov-2020/adjudication-order-in-the-matter-of-dynamatic-technologies-ltd-in-respect-of-nitin-ajage-and-rashmi-ajage_48240.html

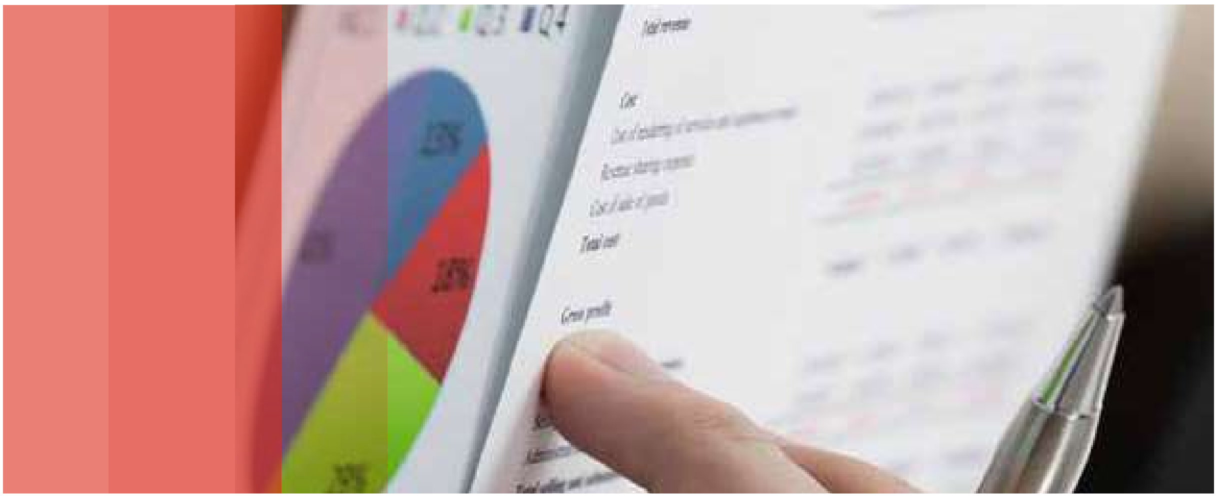
[iv] https://www.sebi.gov.in/enforcement/orders/nov-2021/adjudication-order-in-respect-of-uday-agarwal-in-the-matter-of-l-and-t-finance-holdings-ltd-_54150.html

[v] https://www.sebi.gov.in/enforcement/orders/jan-2022/interim-order-in-the-matter-of-insider-trading-in-the-scrip-of-lux-industries-limited_55523.html / https://www.sebi.gov.in/enforcement/orders/may-2022/confirmatory-order-in-the-matter-of-insider-trading-in-the-shares-of-lux-industries-ltd-_59267.html

[vi] https://www.sebi.gov.in/enforcement/orders/dec-2022/adjudication-order-in-respect-of-two-entities-in-the-matter-of-deepak-fertilizers-and-petrochemicals-corporation-limited_66484.html

[vii] https://www.sebi.gov.in/enforcement/orders/jul-2023/adjudication-order-in-respect-of-insider-trading-activities-of-certain-entities-in-the-scrip-of-sharon-bio-medicine-ltd-_73850.html

[viii] https://www.sebi.gov.in/enforcement/orders/apr-2022/adjudication-order-in-the-matter-of-godfrey-philips-india-limited_58625.html



# NEWS UPDATES/AMENDMENTS FOR THE MONTH OF MAY 2024:

| Sr. No. | News Updates/Amendments | Link & Brief Summary |
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| **NEWS** | | |
| 1 | SEBI mulls direct payout of securities to client's account mandatory | https://legal.economictimes.indiatimes.com/news/regulators/sebi-mulls-direct-payout-of-securities-to-clients-account-mandatory/109985552?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-10&dt=2024-05-10&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>To enhance operational efficiency and reduce the risk to clients' securities, market regulator has proposed making the process of direct payout of such securities to the clients account mandatory. |
| 2 | SEBI proposes to cut trading lot size of privately placed InvITs to boost investors participation | https://legal.economictimes.indiatimes.com/news/regulators/sebi-proposes-to-cut-trading-lot-size-of-privately-placed-invits-to-boost-investors-participation/109988716?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-10&dt=2024-05-10&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Market regulator has proposed to reduce trading lot size of privately placed infrastructure investment trust to Rs.25 Lakhs in a bid to boost investors participation and increase liquidity of such investment vehicles. |
| 3 | SEBI proposes easing disclosure rules for non-convertible securities issuance | https://legal.economictimes.indiatimes.com/news/regulators/sebi-proposes-easing-disclosure-rules-for-non-convertible-securities-issuance/109988772?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-10&dt=2024-05-10&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>To promote ease of doing business for issuance of non-convertible securities, market regulator has proposed to remove the requirement to disclose the PAN and personal address of issuers promoters in the offer document along with other relaxations in disclosure guidelines. |
| 4 | Tighter regulations on personal loans and project finance may hurt banks in FY25 | https://cfo.economictimes.indiatimes.com/news/tighter-regulations-on-personal-loans-and-project-finance-may-hurt-banks-in-fy25/110102110?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_ca |

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| | | mpaign=etcfo_news_2024-05-14&dt=2024-05-14&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Indian banks had a strong fiscal 2024 but face challenges in the current year due to regulatory changes impacting credit growth and net interest margins. |
| 5 | India Inc hunts for new cyber warriors | https://cfo.economictimes.indiatimes.com/news/cfo-tech/india-inc-hunts-for-new-cyber-warriors/110102185?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-14&dt=2024-05-14&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Corporate India is actively seeking cybersecurity professionals amidst rising concerns over data breaches, evolving regulatory requirements and the emergence of advanced artificial intelligence platforms. |
| 6 | Will EU's stringent ESG regulations impact Indian companies? | https://cfo.economictimes.indiatimes.com/news/esg/will-eus-stringent-esg-regulations-impact-indian-companies/110101587?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-14&dt=2024-05-14&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>Indian firms that proactively embrace ESG principles and align with EU standards can gain a competitive edge in accessing EU markets and attracting investment that prioritizes sustainability. |
| 7 | RBI looks at asset reconstruction companies amid a flood of allegations | https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/rbi-looks-at-asset-reconstruction-companies-amid-a-flood-of-allegations/110026633?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-11&dt=2024-05-11&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>India's central bank leadership is scheduled to meet top management of asset reconstruction companies on May 17 to discuss corporate governance and stressed asset resolutions amid concerns of potential back door entry by defaulting promoters |
| 8 | FDI norms in certain sectors likely to be eased under new government: DPIIT Secretary | https://legal.economictimes.indiatimes.com/news/law-policy/fdi-norms-in-certain-sectors-likely-to-be-eased-under-new-government-dpiit-secretary/110238779?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-20&dt=2024-05-20&em=aGFzdGl2b3JhQG1tamMuaW4= |

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| | | India has recently relaxed foreign direct investment norms in the space sector and there is possibility of further FDI liberalisation in certain other areas when the new government will come to power. |
| 9 | Not just auditors, Promoters and KMPs too need to be held responsible for frauds | https://cfo.economictimes.indiatimes.com/news/tax-legal-accounting/not-just-auditors-promoters-and-kmps-too-need-to-be-held-responsible-for-frauds-amarjit-chopra/110260090?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-20&dt=2024-05-20&em=aGFzdGl2b3JhQG1tamMuaW4= <br><br> Former President of ICAI, emphasizes the critical need for accountability beyond auditors in corporate frauds. |
| 10 | How SEBI is tightening norms for independent directors | https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/how-sebi-is-tightening-norms-for-independent-directors/110288188?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-21&dt=2024-05-21&em=aGFzdGl2b3JhQG1tamMuaW4= <br><br> The Securities and Exchange Board of India (SEBI) has tightened norms for independent directors, emphasizing their accountability and responsibilities particularly in cases involving financial misconduct within companies. |
| 11 | CCI to boost strength for better oversight of digital, other sectors | https://cfo.economictimes.indiatimes.com/news/strategy-operations/cci-to-boost-strength-for-better-oversight-of-digital-other-sectors/110288658?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-21&dt=2024-05-21&em=aGFzdGl2b3JhQG1tamMuaW4= <br><br> The CCI is seeking to raise its manpower for better regulation of both traditional and new emerging areas of the economy. |
| 12 | CCI to soon bring new set of merger regulations | https://www.livemint.com/economy/competition-commission-of-india-to-soon-bring-new-set-of-merger-regulations-11716215222979.html <br><br> As per amendments to the competition law, CCI approval is needed for any transaction if the value of it is more than ₹2,000 crore. |

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| 13 | SEBI amends rule to facilitate ease of doing biz for cos planning IPO | https://legal.economictimes.indiatimes.com/news/regulators/sebi-amends-rule-to-facilitate-ease-of-doing-biz-for-cos-planning-ipos/110308529?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-22&dt=2024-05-22&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>To facilitate ease of doing business for companies planning IPOs, Sebi has said any change in size of the offer for sale (OFS) requiring fresh filing will be based on only one of the criteria either issue size in rupee or number of shares. |
| 14 | India Inc raises record debt capital in FY24 | https://cfo.economictimes.indiatimes.com/news/corporate-finance/india-inc-raises-record-debt-capital-in-fy24/110319517?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-22&dt=2024-05-22&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>According to the Reserve Bank of India's state of the economy report, bond issuances during 2023-24 grew by about 15% to Rs 8.6 lakh crore. Additionally corporations received higher funds through external commercial borrowings in FY 24. |
| 15 | IRDAI introduces new corporate governance regulations for insurers | https://cfo.economictimes.indiatimes.com/news/governance-risk-compliance/irdai-introduces-new-corporate-governance-regulations-for-insurers/110349825?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etcfo_news_2024-05-23&dt=2024-05-23&em=aGFzdGl2b3JhQG1tamMuaW4=<br><br>IRDAI has introduced new corporate governance rules to prevent conflicts of interest in key management roles. |
| 16 | SEBI proposes measures to ease ESG disclosures by listed companies | https://www.business-standard.com/markets/news/sebi-proposes-measures-to-ease-esg-disclosures-by-listed-companies-124052300082_1.html<br><br>SEBI has also proposed to make the disclosures for value chain partners voluntary for the first year instead of comply or explain basis |
| 17 | SEBI amends rule to facilitate ease of doing biz for cos planning IPO | https://legal.economictimes.indiatimes.com/news/regulators/sebi-amends-rule-to-facilitate-ease-of-doing-biz-for-cos-planning-ipos/110308529?action=profile_completion&utm_source=Mailer&utm_medium=newsletter&utm_campaign=etlegal_news_2024-05-22&dt=2024-05-22&em=aGFzdGl2b3JhQG1tamMuaW4= |

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| | | To facilitate ease of doing business for companies planning IPOs, Sebi has said any change in size of the offer for sale (OFS) requiring fresh filing will be based on only one of the criteria either issue size in rupee or number of shares. |
| **AMENDMENTS / CIRCULARS /CONSULTATION PAPERS** | | |
| 1 | BSE/NSE Circular | https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240510-48<br><br>https://nsearchives.nseindia.com/web/sites/default/files/inline-files/NSE_Circular_10052024_1.pdf<br><br>BRSR-FAQs & General Observations/Guidelines for filing of BRSR |
| 2 | SEBI Circular | https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-issue-of-capital-and-disclosure-requirements-amendment-regulations-2024_83469.html<br><br>Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) reg 2024 |
| 3 | SEBI Circular | https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-prohibition-of-insider-trading-amendment-regulations-2024_83471.html<br><br>Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2024 |
| 4 | SEBI Circular | https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-substantial-acquisition-of-shares-and-takeovers-amendment-regulations-2024_83472.html<br><br>Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2024 |
| 5 | SEBI Circular | https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-buy-back-of-securities-amendment-regulations-2024_83474.html<br><br>Securities and Exchange Board of India (Buy back of securities) Amendment Regulations, 2024 |
| 6 | SEBI Circular | https://www.sebi.gov.in/legal/regulations/may-2024/securities-and-exchange-board-of-india-listing-obligations-and-disclosure-requirements-amendment-regulations-2024_83476.html |

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| | | Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Amendment) Regulations, 2024 |
| 7 | SEBI Circular | https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240521-21<br><br>Master circular on InVITs |
| 8 | SEBI Circular | https://www.sebi.gov.in/legal/circulars/may-2024/framework-for-considering-unaffected-price-for-transactions-upon-confirmation-of-market-rumour_83483.html<br><br>SEBI Circular on framework for considering unaffected price for transactions upon confirmation of market rumour |
| 9 | SEBI Circular | https://www.sebi.gov.in/legal/circulars/may-2024/industry-standards-on-verification-of-market-rumours_83485.html<br><br>SEBI Circular on industry standards on verification of market rumours |
| 10 | BSE Circular | https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20240521-53<br><br>BSE Circular on industry standard note on verification of market rumours under reg.30(11) of LODR Reg. |