

# De Jure

*December 24, 2013*

## Striking features of the proposed Insider Trading Regulations

Report dated December 7, 2013 by the High Level Committee on the Insider Trading Regulations, 1992



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## *SEBI Insider Trading: Spreading its Wings*

Proposed changes to the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("SEBI Insider Trading Regulations") by the Sodhi Committee:

The recent scams high profile conviction of Mr. Raj Rajaratnam and Mr. Rajat Gupta in the US has again brought into lime light the need for stringent and effective Insider Trading laws all over the world. The Indian stock markets have in the past witnessed various instances of insider trading. Looking at the past cases of insider trading we can comfortably assume that what has come to light is just the tip of the ice-berg. Further, the rate of conviction in relation to insider trading is even lesser. The SEBI Insider Trading Regulations being the Indian statute on insider trading required major review in view of the inadequacy or lack thereof of the present regulations in achieving the regulatory objectives.

In the light of the above, the Indian regulator SEBI formed a Committee under

the chairmanship of Justice N. K. Sodhi, Former Chief Justice of the High Courts of Kerala and Karnataka and a Former Presiding Officer of the Securities Appellate Tribunal. The Committee has issued its report dated December 7, 2013 wherein far reaching reforms to the existing law have been proposed. The Report is presently before the public for comments and suggestions and is expected to be adopted by the SEBI Board in the near future with or without amendments.

We propose to discuss certain striking features or terms viz. "insider", "connected person" and "generally available information" of this Report which may have far reaching consequences if and when the proposed regulation comes into force.

The proposed regulations intend to include any person in possession of Unpublished Price Sensitive Information ("**UPS**I") as an 'insider' regardless of the manner or mode by which one came in possession of such

Justice Sodhi  
Committee Report on  
the SEBI Insider  
Trading Regulations

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**Ministers, judges and policy makers to come under SEBI scrutiny**

information. The term 'insider' has to be read along with the terms 'connected person' being a person who has a connection with the company that is expected to put him in possession of UPSI.

One of the most far reaching provisions of the proposed regulation is to bring within its ambit those people who would be expected to have any kind of access to UPSI about any company or class of companies by virtue of being government servants i.e. public servants and occupying official positions that would put them in possession of UPSI.

'Public Servant' will have the same meaning as in the Prevention of Corruption Act, 1988 which defines a public servant as 'any person in the service or pay of the government or remunerated by the government by fees or commission for the performance of any public duty'. In other words, a judge, a bureaucrat, a minister etc. too now come within the purview of the scrutiny and check of SEBI for any trading in scrips done by them or persons connected with them while they are considered to be in possession of UPSI.

Government officials involved in policy making on any matter that could result in material impact on the price discovery for securities of a listed company like decisions on the pricing policy for a natural resource or a limit on foreign investment in a specific sector may also come under the scanner of SEBI. Already government officials are facing a lot of public anguish due to delay in decision making and clearing of projects.

Public perception of public servants is at a all time low due to scams like Coalgate, CWG and Adarsh Housing Society wherein investigations have found a deep-rooted nexus between bureaucrats and politicians. Such measures bring them directly under the purview of SEBI investigations and may make decision making all the more difficult thereby restricting the smooth working of the government.

In one stroke three legislations shall now be specifically applicable on government official's i.e. Prevention of Corruption Act,

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Three legislations targeting public servants viz. Lokpal, Prevention of Corruption Act and SEBI Insider Trading

1988; Lokpal and SEBI Insider Trading (*if implemented in the present form*). These three legislations will make life more difficult for the already "terror stricken" Indian bureaucracy.

Another aspect which has been covered under the definition of connected person is where a person may or may not occupy any position in a company though may regularly be in touch with the company through its officials and also involved in how the company operates would also come within the ambit of the term 'connected persons' and thereby will be considered as 'insiders' who would be prohibited from trading in securities of the company when in possession of UPSI.

The proposed regulations has recommended broadening of the definition of the term 'insider' wherein even a person who is either financially dependent or consults the insider within its reach any person who is in receipt when trading in securities shall be presumed to be a 'connected person' and thereby an 'insider'. Immediate relatives of such persons

too are presumed to be connected persons and thereby 'insiders'. Well, the change has been proposed with an intention to bring of UPSI as well as those people (*connected persons*) who may use the knowledge in trading in scrips of such companies.

Various defences are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, the person who has traded when in possession of UPSI may demonstrate that he was not in such possession or that he has not traded or that his trading in the scrips when in possession of such information was squarely covered by the available defences.

Further, the Committee for the first time has made an attempt to define what can be termed as "Published Information".

The Report coins a new term "Generally Available Information" which would mean all the information about the company that is accessible to the public on a non-discriminatory basis say, information published on the website of a stock

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**Generally Available  
Information  
V/s.  
Unpublished Price  
Sensitive Information  
PSI**

exchange and company website, would normally be considered generally available information. Research, deductions and conclusions based on such generally available information will also constitute "Generally Available Information". Even organisations like a brokerage house that provide research reports may add value to the information because of their research and analysis but so long as the research is based on generally available information, the findings of such research would not become or be termed as UPSI. Such research reports may be available for a price (*to compensate for their enterprise of conducting research*) and so long as such research is available for purchase by clients without discrimination, the fact that it has to be paid for would not make the access discriminatory.

So long as it can be shown that the research is based on information in the public domain, the findings would also be "Generally Available Information". So also, it is intended that information that is capable of being accessed by anyone without breach of any law would be considered generally available.

For example, a person legitimately watching and counting the movement of goods from factories of a company and making his own analysis and assessment without involving a breach of the obligations under these regulations would be accessing information that is generally available. Such research would not render him to be in possession of UPSI. However, a person who procures such information by breaking into the company's systems or by reason of an insider passing on such information in breach of the obligation to keep information confidential, would be regarded as having availed of publicly inaccessible information.

The proposed change in relation to the inclusion of the bureaucracy within the purview of SEBI Insider Trading may put a lot of pressure on decision making government officials considering the fact that a specific anti-graft legislation i.e. Lokpal Bill has also been passed by the Indian Parliament. Although, the changes are welcome, the bureaucracy may try to scuttle the efforts of SEBI to include them within the realm of Insider Trading.

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