

# De Jure

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Consent Proceedings



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## *The objective - immediate sanctions resulting in effective deterrence and avoidance of long drawn litigation*

**"Repeat offenders not a part of consent mechanism"**

Consent Proceedings are akin to an 'out-of-court' settlement. It is a negotiated settlement of civil proceedings between the capital market regulator and an entity that has violated securities market laws, by payment of penalty or a voluntary ban from the capital markets.

The Securities and Exchange Board of India ("**SEBI**") had introduced a consent scheme in the year 2007, pursuant to a circular dated April 20, 2007 ("**2007 Scheme**"), which provided the framework for passing of consent orders (the "**Consent Mechanism**").

The main object and intent of the 2007 Scheme was to eliminate numerous small cases concerning violations of technical nature. Over a period of time SEBI realised that the Consent Mechanism was being misused by various entities to

dodge grave violations. The Consent Mechanism was criticized, alleging that the very intent of SEBI to protect the integrity of security market through the Consent Mechanism was defeated.

On May 25, 2012, SEBI issued a new circular amending the 2007 Circular. ("**2012 Scheme**")

The existing lacunae of settling grave cases under the Consent Mechanism has been addressed in the 2012 Scheme by excluding ten (10) categories of offences, such as insider trading, front running, failure to make open offers and defaults under Fraudulent and Unfair Trade Practices ("**FUTP Regulations**") from the purview of Consent Mechanism, i.e. these violations will not be eligible to be referred for consent orders.

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If you would like to know more about the subject covered in this publication or our services, please contact [sangeeta@rajaniassociates.net](mailto:sangeeta@rajaniassociates.net).

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A comparison of the old and new schemes is set out in the table below:

Particulars	2007 Scheme	2012 Scheme
<b>Eligibility</b>	All administrative, civil and criminal complaints	Negative list which are outside the purview of the Consent Mechanism*
<b>Repeat Offender</b>	Repeat Offenders not barred	Repeat Offenders not eligible
<b>Time limit for filing</b>	No limitation	Applications to be made within 60 days from show cause notice
<b>Mathematical Formula</b>	No parameter to arrive at settlement amount	Mathematical formula for the calculation of a settlement amount

\*cannot be settled unless rarest of rare cases

Thus, it is evident that the highlight of the 2012 Scheme is introduction of (a) the negative list, and (b) the mathematical formula to arrive at a settlement amount.

The 2012 Scheme provides that the basic settlement amount will not be less than Rs.2,00,000 going up to Rs.5,00,000.

**"Settlement amount based on a mathematical formula"**

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## Our View

The object of the 2007 Scheme was to weed out the small violations involving technical irregularities and focus on large violations. Somewhere with the deluge of cases, the Consent Mechanism lost its focus and some grave violations were being consented to when they should have been subject to severe punishments.

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To correct this error and in order to bring the Consent Mechanism back to focus, SEBI introduced the 2012 Scheme. The 2012 Scheme introduces a negative list and a formula to arrive at a settlement amount. Once outside the purview of Consent Mechanism, grave violations would be subject to litigation and penalty. Maybe, the object of the 2012 Scheme is to act as a deterrent, however, how effective this will be will have to be tested. The very objective should not become a cause of concern, resulting in numerous and prolonged litigations and substantial costs, both for SEBI and the entity violating securities market laws.

The introduction of mathematical formula is an interesting approach by SEBI. It may be recalled that under the 2007 Scheme, there was no framework to determine a penalty or settlement amount because of which SEBI came under severe criticism for exercising arbitrary powers. The mathematical formula aims to dispel such criticism.

While we support the 2012 Scheme, we believe that SEBI must draw a balance between violations, which must be consented to, and those, which must be litigated. SEBI must consider doing away with the eligibility criteria, accept cases and use its discretion whether to consent to a particular case or keep it outside the purview of the Consent Mechanism.

Surely, no one wants a repeat of the 2007 Scheme, i.e. for the 2012 Scheme to lose its focus and result in prolonged litigation for violations, which could have been consented to.

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## CONTACT US

**Address:** 204-207 Krishna Chambers  
59 New Marine Lines  
Churchgate Mumbai 400020  
Maharashtra, India

**Telephone:** (+91-22)-40961000

**Facsimile:** (+91-22)- 40961010

**Email:** [dejure@rajaniassociates.net](mailto:dejure@rajaniassociates.net)

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