Insider Trading - An Overview

What is insider trading?

"Insider trading means trading of securities today based on tomorrow's news obtained today." It implies the buying or selling of securities in breach of a fiduciary duty or other relationship of trust and confidence while in possession of material, non-public information about the security.

Insider trading is the buying , selling or dealing in securities of a company (mostly Listed Companies) by a director , member of management , employee of the company , or by any other person such as internal auditor , advisor , consultant , analyst etc, who has knowledge of material inside information which is not available to general public. Therefore, preventing such transactions is an important obligation for any capital market regulatory system, because insider trading undermines investor confidence in the fairness and integrity of the securities markets.

The first country to tackle insider trading effectively was the United States. In the USA, the Securities and Exchange Commission is empowered under the Insider Trading Sanctions Act, 1984 to impose civil penalties in addition to criminal proceedings. Most countries have in place suitable legislation to curb the menace of insider trading.

The smooth operation of the securities market and its healthy growth and development depends on a large extend on the quality and integrity of the market .Such a market can alone inspire confidence in investors Insider trading leads to loose of confidence of investors in securities market as they feel that market is rigged and only the few, who have inside information get benefit and make profits from their investments. Thus, process of insider trading corrupts the 'level playing field'.

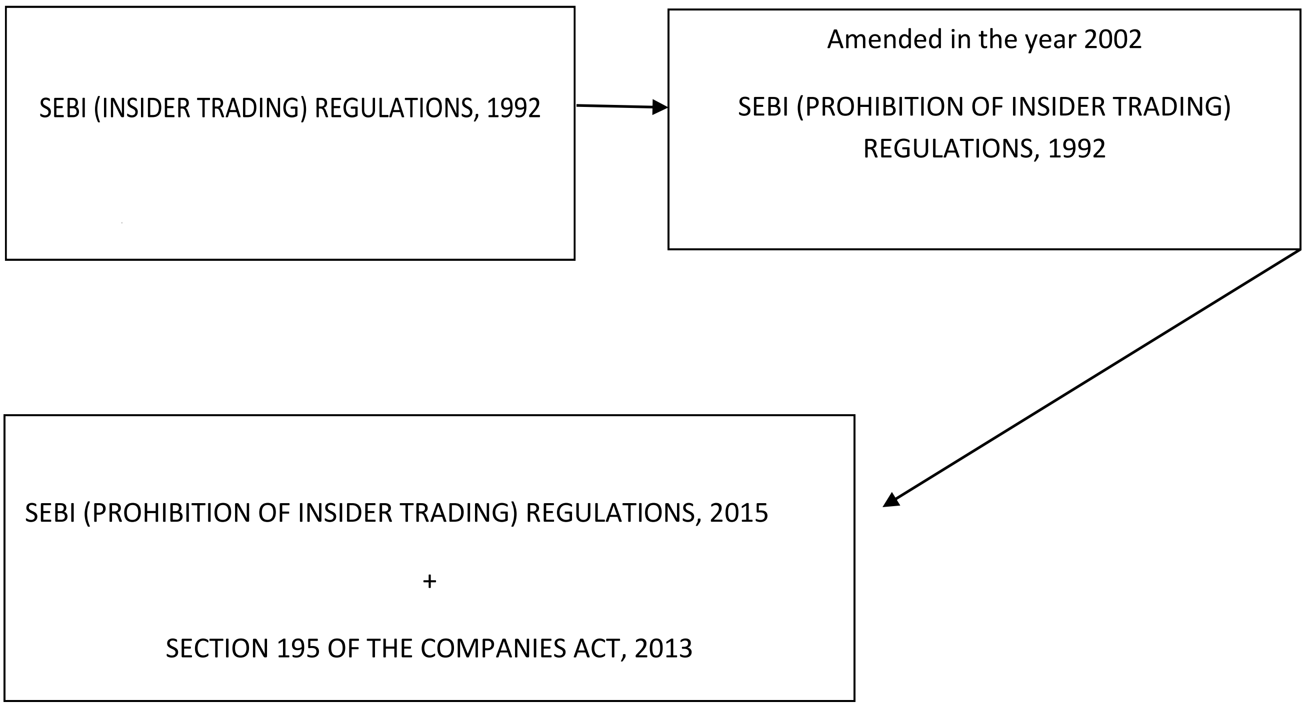
Legal framework for prohibiting insider trading in India

The concept of Insider Trading in India started fermenting in the 80's and 90's and came to be known and observed extensively in the Indian Securities market. Due to inadequate provisions in the Companies Act, 1956 and rapidly advancing Indian Securities market needed a more comprehensive legislation to regulate the practice of Insider Trading, thus resulting in the formulation of the SEBI (Insider Trading) Regulations in the year 1992, which were amended in the year 2002 after the discrepancies observed in the 1992 regulations in the cases like **Hindustan Levers Ltd. vs. SEBI, Rakesh Agarwal vs. SEBI**, etc. to remove the lacunae existing in the Regulations of 1992. The amendment in 2002 came to be known as the SEBI (Prohibition of Insider Trading) Regulations, 1992.

Further, the PIT Regulations, 1992 had their challenges in their drafting, interpretation and reach. Besides, the felt need to ensure a clear regulatory policy that is not only easily comprehendible but is also comprehensive led to this Committee being set up 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 High Level Committee reviewed the SEBI (Prohibition of Insider Trading) Regulations, 1992 submitted its report to SEBI on December 7, 2013.

The Committee made a range of recommendations to the legal framework for prohibition of insider trading in India and has focused on making this area of regulation more predictable, precise and clear by suggesting a combination of principles-based regulations and rules that are backed by principles. The Committee had also suggested that each regulatory provision might be backed by a note on legislative intent. SEBI issued and notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 (Regulations) on 15th January, 2015 based on recommendations of Sodhi committee. These Regulations became effective from **120th day of the date of notification i.e. on and from 15th May, 2015, by repealing SEBI (Prohibition of Insider Trading) Regulations 1992.**

The new regulations strengthen the legal and enforcement framework, align Indian regime with international practices, provide clarity with respect to the definitions and concepts, and facilitate legitimate business transactions. Now a big step has taken forward the prohibition of Insider trading in India by introduction of the insider trading provisions in the Companies Act, 2013.



<u>Section 195, Companies Act, 2013 - Prohibition on insider trading of securities</u>

Prohibition of insider trading is recognized first time in the Companies Act, 2013. Section 195 was notified with effect from 12-09-2013.Prohibition of insider trading is applicable not only for shares but for all securities. Section 2(81) of the Companies Act, 2013 defines securities as “Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulations) Act, 1956 (42 of 1956)”

Sub section 1 of section 195 says that no person including any director or <u>KMP</u> of a Company shall enter into insider trading. Proviso to the sub section says that nothing contained in this sub-section shall apply to any communication required in the ordinary course of business or profession or employment under any law.

KMP implies Key Managerial Personnel as defined under Section 2(51) of the Companies Act, 2013.

Key managerial personnel in relation to a Company means-

(a) The Chief Executive Officer or the Managing Director or the Manager
(b) The Company Secretary
(c) The whole-time Director
(d) The Chief Financial Officer and
(e) Such other officer as may be prescribed

<u>Meaning of *insider trading* and *price sensitive information* as given in the explanation under Section 195</u>-

(a) Insider trading means -

1. <u>Directly procuring</u>
   - ➢ An act of
   - Subscribing
   - Buying
   - Selling
   - Dealing or
   - Agreeing to subscribe, buy or sell or deal

   - ➢ in any of the securities
   - ➢ by any director or KMP or any other officer of the Company, either as principal or agent
   - ➢ if such director or KMP or any other officer of the Company is reasonably expected to have access to any non-public price sensitive information
   - ➢ in respect of securities of the Company

2. <u>Guiding to procure</u>
   - ➢ An act of
   - ➢ counselling about procuring or communicating
   - ➢ directly or indirectly
   - ➢ any non-public price-sensitive information
   - ➢ to any person

(b) Price-sensitive information

It means -

- ➢ Any information
- ➢ which relates, directly or indirectly to a Company
- ➢ and which if published
- ➢ is likely to materially affect the price of securities of Company

Penalty for contravention of Section 195 -

Sub-section (2) provides that If any person contravenes the provisions of this section, he shall be punishable with ***imprisonment*** for a term which may extend to ***five years*** or with ***fine*** which shall not be less than ***five lakh Rupees*** but which may extend to ***twenty-five crore rupees*** or ***three times the amount of profits*** made out of insider trading, whichever is higher, or with both.

Powers delegated to SEBI under the Companies Act, 2013

Section 458* (1) states that the Central Government may, by notification, and subject to such conditions, limitations and restrictions as may be specified therein, delegate any of its powers or functions under this Act other than the power to make rules to such authority or officer as may be specified in the notification. The powers to enforce the provisions contained in section 194 and section 195 relating to forward dealing and insider trading shall be delegated to the Securities and Exchange Board of India for listed companies or the companies which intend to get their securities listed and in such case, any officer authorized by the Securities and Exchange Board of India shall have the power to file a complaint in the court of competent jurisdiction.

Section 195, it implications and penal provisions is applicable for all Companies, whether it is a Listed Company or not. *(* Section 458 deals with 'Delegation by Central Government of its powers and functions')*

SEBI (Prohibition of Insider Trading) Regulations, 2015

The new regulations contain -

5 Chapters & ***2 Schedules***

Chapter I - Definitions
Chapter II - Restriction on communication and trading in securities by insiders
Chapter III - Disclosure of trading by insiders
Chapter IV - Code of fair disclosure and conduct
Chapter V - Miscellaneous matters
Schedule A - Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information.

Schedule B - Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders.

Chapter I -Definitions

1) ***Connected person [Regulation 2(d)(i)]***

- any person
- who is or has during the six months prior to the concerned act
- been associated with a company, directly or indirectly

✓ in any capacity including by reason of frequent communication with its officers
or
✓ by being in any contractual, fiduciary or employment relationship
or
✓ by being a director, officer or an employee of the company
or
✓ holds any position including a professional or business relationship between himself and the company whether temporary or permanent,

- that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

2) ***Person deemed to be connected person [Regulation 2(d)(ii)]***

Person is deemed to be a connected person", if such person –

(a) an immediate relative of connected persons; or

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act,2013; or

(h) an official or an employee of a self-regulatory organization recognised or authorized by SEBI; or

(i) a banker of the company; or

(j) a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten percent of the holding or interest;

3) ***<u>Generally available information [Regulation 2(e)]</u>***

It means information that is accessible to the public on a non-discriminatory basis.

<u>Note</u>: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

4) ***<u>Immediate relative [Regulation 2(f)</u>***

A spouse of a person and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities. The term relative is defined in section 2(77) of the Companies Act, 2013.

5) ***Insider [Regulation 2(g)]***

i) a connected person;
ii) or ii) in possession of or having access to unpublished price sensitive information.

6) ***Trading [Regulation 2(l)]***

Trading means and includes subscribing, buying, selling, dealing, or agreeing `to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.

7) ***Unpublished price sensitive information [Regulation 2(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–

1. Financial results;
2. Dividends;
3. Change in capital structure;
4. Mergers, de-mergers, acquisitions, delisting, disposals and expansion of business and such other transactions;
5. Changes in key managerial personnel; and
6. Material events in accordance with the listing agreement

8) ***Compliance officer [Regulation 2(c)]***

Compliance Officer means

– any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there,

– who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and

– who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information,

– monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

Chapter II -Restriction on communication and trading by insiders

REGULATION 3 -

Communication or procurement of unpublished price sensitive information

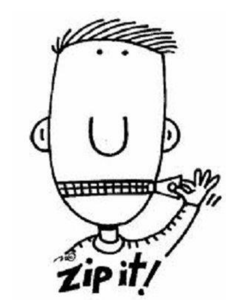
Regulation 3 provides that any person shall not:

– communicate, provide, or allow access to any unpublished price sensitive information or

– procure from or cause the communication by any insider of unpublished price sensitive information,

– relating to a company or securities listed or proposed to be listed or proposed to be listed

– Except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.



Notwithstanding anything contained in this regulation, an unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–

(i) entail an obligation to make an open offer under the takeover regulations where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company;

Note: It is intended to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

(ii) not attract the obligation to make an open offer under the takeover regulations but where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine.

– Where the board of directors of the company is of informed opinion that the proposed transaction is in the best interests of the company and

– the information that constitute unpublished price sensitive information is disseminated to be made generally available at least 2 trading days prior to the proposed transaction being effected in such form as the board of directors may determine.

The board of directors shall require the parties to execute agreements to contract confidentiality and non disclosure obligations and such parties shall keep information so received confidential, except for the purpose specified above and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

REGULATION 4 -

<u>Trading when in possession of unpublished price sensitive information</u>

No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI.

Exceptions
to no trade

However there are certain exemptions:-

• When there is an off-market transfer between promoters

– who are aware of price sensitive information without being in breach of regulation 3 and

– both parties had made a conscious and informed trade decision; or

In the case of non-individual insiders:

– the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and

– such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

– appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and

– there is no evidence of such arrangements having been breached;

• the trades were pursuant to a trading plan set up in accordance these regulations.

In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on SEBI. SEBI may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

REGULATION 5 - Trading plans

An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan. This means that a provision is extended to persons who may be perpetually in possession of UPSI and to enable him to trade securities in a compliant manner. The compliance officer is also empowered to take additional undertakings from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the stock Exchanges, where the securities of the company are listed.

The trading plan shall -

1) NOT entail commencement of trading on behalf of the insider <u>earlier than six months</u> from the public disclosure of the plan.
2) NOT entail trading for the period between the <u>twentieth day</u> prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results.
3) Entail trading for a period of not less than <u>twelve months</u>.
4) NOT entail <u>overlap of any period</u> for which another trading plan is already in existence.
5) Set out either the <u>value of trades</u> to be effected or the <u>number of securities to be traded</u> along with the nature of trade and the intervals at, or dates on which such trades shall be effected.
6) NOT entail trading in securities for <u>market abuse</u>.

The Compliance Officer shall review the trading plan to

Review of trading plan by the Compliance Officer

- ✓ Assess whether the plan would have any potential for violation of these regulations ; and
- ✓ Shall be entitled to seek such express undertakings as may be necessary to enable such assessment; and
- ✓ To prove and monitor the implementation of the plan.

Approval of trading plan

Once the trading plan is approved, it shall be irrevocable. The insider shall mandatorily have to implement the plan without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan. However the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of commencement of implementation.

Upon the approval of the trading plan, the Compliance Officer shall notify the plan to the stock exchanges on which the securities are listed.

Chapter III -Disclosures of trading by insiders

REGULATION 6 - General Provisions

1. Every public disclosure under chapter III shall be made in the specified form(s).
2. Disclosure shall be made by -
    - by person shall also include those relating to trading by such person's immediate relatives, and
    - by any other person for whom such person takes trading decisions.
3. The disclosures of trading in securities shall also include trading in derivatives of securities if permitted under law.
4. Such disclosure shall be preserved for 5 years.

REGULATION 7 - Disclosure by certain persons

Initial disclosures [Regulation 7(1)]	Continual disclosure [Regulation 7(2)]	Disclosure by other connected persons [Regulation 7(3)]

Initial disclosure: - Every Promoter, KMP and Director of every Company whose securities are listed on any recognized stock exchange shall disclose his holding of securities of the Company as on the date if these regulations taking effect, to the Company within 30 (thirty) days of these regulations taking effect. The disclosure is made in form A.

Every person on appointment as a KMP or a Director of the Company or upon becoming a promoter shall disclose his holdings of securities of the Company as on the date of appointment or becoming a promoter, to the Company within 7 (seven)days of such appointment or becoming a promoter. Disclosure is to be made in form B. The term Promoter is defined under section 2(69) of the Companies Act, 2013.

Illustration: - case 1 - Within 30 days of the regulations becoming effective.

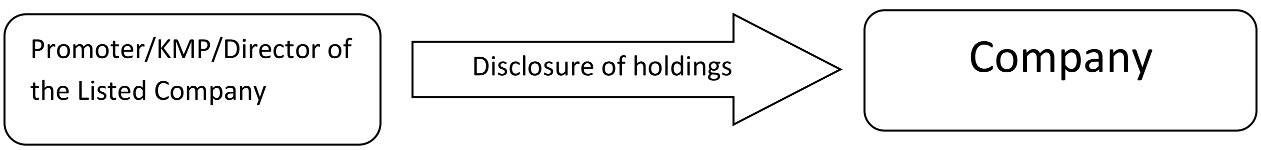
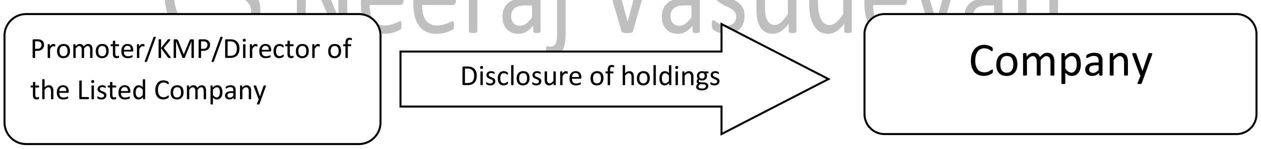


Illustration: - case 2 - Within 7 days of appointment.



FORM A

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

[Regulation 7 (1) (a) read with Regulation 6 (2)]

Name of the company: ______________________

ISIN of the company: ______________________

Details of Securities held by Promoter, Key Managerial Personnel (KMP), Director and other such persons as mentioned in Regulation 6(2)

Name, PAN No., CIN/DIN & address with contact nos.	Category of Person (Promoters/ KMP / Directors/immediate relatives/others etc)	Securities held as on the date of regulation coming into force		% of Shareholding	Open Interest of the Future contracts held as on the date of regulation coming into force		Open Interest of the Option Contracts held as on the date of regulation coming into force	
		Type of security (For eg. – Shares, Warrants, Convertible Debentures etc.)	No.		Number of units (contracts * lot size)	Notional value in Rupee terms	Number of units (contracts * lot size)	Notional value in Rupee terms
1	2	3	4	5	6		7	

Note: "Securities" shall have the meaning as defined under regulation 2(1)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

Signature:

Designation:

Date:

Place:

FORM B

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

[Regulation 7 (1) (b) read with Regulation 6(2)]

Name of the company: ______________________________

ISIN of the company: ______________________________

Details of Securities held on appointment of Key Managerial Personnel (KMP) or Director or upon becoming a Promoter of a listed company and other such persons as mentioned in Regulation 6(2).

Name, PAN No., CIN/DIN & Address with contact nos.	Category of Person (Promoters/ KMP / Directors/immediate relatives/others etc.)	Date of appointment of Director /KMP OR Date of becoming Promoter	Securities held at the time of becoming Promoter/appointment of Director/KMP		% of Shareholding	Open Interest of the Future contracts held at the time of becoming Promoter/appointment of Director/KMP		Open Interest of the Option Contracts held at the time of becoming Promoter/appointment of Director/KMP	
			Type of security (For eg. – Shares, Warrants, Convertible Debentures etc.)	No.		Number of units (contracts * lot size)	Notional value in Rupee terms	Number of units (contracts * lot size)	Notional value in Rupee terms
1	2	3	4	5	5	6		7	

Note: *"Securities" shall have the meaning as defined under regulation 2(1)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

Signature:

Designation:

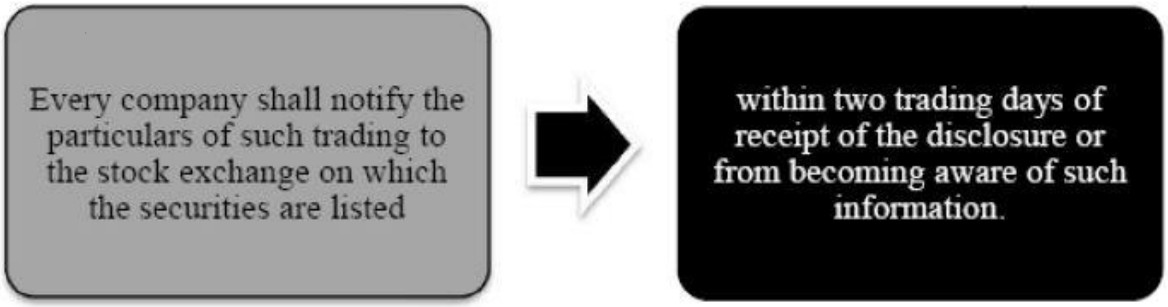
Date:

Place:

Continual disclosure: -

Case 1- Every promoter, employee and director of the Company shall disclose to the Company the number of such securities acquired or disposed of within 2 two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified. The disclosure shall be made in form C.

Case 2- Every Company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of the receipt of the disclosure or from becoming aware of such information.



FORM C

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

[Regulation 7 (2) read with Regulation 6(2)]

Name of the company: ______________________

ISIN of the company: ______________________

Details of change in holding of Securities of Promoter, Employee or Director of a listed company and other such persons as mentioned in Regulation 6(2).

Name, PAN No., CIN/DIN, & address of Promoter/ Employee / Director with contact nos.	Category of Person (Promoters/ KMP / Directors/ immediate relatives/ others etc.)	Securities held prior to acquisition/disposal		Securities acquired/Disposed		% of shareholding		Date of allotment advice/ acquisition of shares/ sale of shares specify		Date of intimation to company	Mode of acquisition (market purchase/public rights/ preferential offer / off market/ Inter-se transfer etc.	Trading in derivatives (Specify type of contract, Futures or Options etc)				Exchange on which the trade was executed
		Type of security (For eg. – Shares, Warrants, Convertible Debentures etc.)	No.	Type of security (For eg. – Shares, Warrants, Convertible Debentures etc.)	No.	Pre transaction	Post transaction	From	To			Buy		Sell		
												Value	Number of units (contracts * lot size)	Value	Number of units (contracts * lot size)	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

Note: *"Securities" shall have the meaning as defined under regulation 2(1)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

Signature:

Designation:

Date:

Place:

Disclosure by other connected persons

Any Company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosure of holdings and trading in securities of the Company in Form D and at such frequency as may be determined by the Company in order to monitor the compliance with these regulations.

Form D (Indicative format)

Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015

Regulation 7(3) – Transactions by Other connected persons as identified by the company

Name, PAN No., CIN/DIN & address of connected persons, as identified by the company with contact nos.	Connection with company)	Securities held prior to acquisition/disposal		Securities acquired/Disposed		% of shareholding		Date of allotment advice/ acquisition of shares/ sale of shares specify		Date of intimation to company	Mode of acquisition (market purchase/public/ rights/ preferential offer / off market/ Inter-se transfer etc.)	Trading in derivatives (Specify type of contract, Futures or Options etc)				Exchange on which the trade was executed
		Type of security (For eg. – Shares, Warrants, Convertible Debentures etc.)	No.	Type of security (For eg. – Shares, Warrants, Convertible Debentures etc.)	No.	Pre transaction	Post transaction	From	To			Buy		Sell		
												Value	Number of units (contracts * lot size)	Value	Number of units (contracts * lot size)	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17

Note: *"Securities" shall have the meaning as defined under regulation 2(1)(i) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

Name:

Signature:

Date:

Place:

Chapter IV -Codes of fair disclosure and conduct

REGULATION 8 - Code of fair disclosure

1. The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.
2. Every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

REGULATION 9 - Code of conduct

1. The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.
2. Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.
3. Every listed company, market intermediary and other persons formulating a code of conduct shall identify and designate a compliance

officer to administer the code of conduct and other requirements under these regulations.

Chapter V - Miscellaneous

REGULATION 10 - Sanction for violation
REGULATION 11 - Power to remove difficulties
REGULATION 12 - Repeal and Savings

1. Any contravention of the regulations shall be dealt by SEBI in accordance with SEBI Act, 1992. If any person violates provisions of these regulations, he shall be liable for appropriate action under Sections 11, 11 B, 11D, Chapter VIA and Section 24 of the SEBI Act. Regulation 11 & 14 of the Insider regulations empowers the SEBI to issue following directions to the violators without prejudice to its right to initiate criminal prosecution under section 24 or any action under Chapter VIA of the SEBI Act, to protect the interests of investor and in the interests of the securities market and for due compliance with the provisions of the Act, regulation made there under issue any or all of the following order, namely:

   (a)directing the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act not to deal in securities in any particular manner;

   (b) prohibiting the insider or such person as mentioned in clause (i) of sub-section (2) of section 11 of the Act from disposing of any of the securities acquired in violation of these regulations;

   (c) restraining the insider to communicate or counsel any person to deal in securities;

   (d) declaring the transaction(s) in securities as null and void;

   (e) directing the person who acquired the securities in violation of these regulations to deliver the securities back to the seller:

However, in case the buyer is not in a position to deliver such securities, the market price prevailing at the time of issuing of such directions or at the time of transactions whichever is higher, shall be paid to the seller.

(e) directing the person who has dealt in securities in violation of these regulations to transfer an amount or proceeds equivalent to the cost price or market price of securities, whichever is higher to the investor protection fund of a recognized stock exchange.

<u>Penal provisions</u>

(a) **Section 24 of the SEBI Act, 1992** :-

- ✓ If any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made there under;

or

- ✓ If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders.

Then he shall be punishable with-

- Imprisonment for a term which **shall not less than 1 month** but which may be extend to **10 years**

or

- Fine which may be extended up to **Rs. 25 crore**

or **both.**

(b) Section 15G of the SEBI Act, 1992 :-

If any Insider who,

either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or

- communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

- counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

He shall be liable to a penalty of **INR twenty five crores** or **three times the amount of profits made** out of insider trading, whichever is higher. However those aggrieved by an order of SEBI, may prefer an appeal to the Securities Appellate Tribunal within a period of **forty-five days** of the order.

2. In order to remove any difficulties in the interpretation or application of the provisions of these regulations, the Board shall have the power to issue directions through guidance notes or circulars. However where any direction is issued by SEBI in a specific case relating to interpretation or application of any provisions of the regulations, then it shall be done only after affording a reasonable opportunity of being heard to the concerned persons after recording the reasons for the direction.

Mr. X, General Manager (Finance and Accounts) of ABC Ltd, was found to be indulging in insider trading and as a consequence, the Company terminated his services. SEBI also took cognizance of the matter and initiated proceedings against him under SEBI (PIT) Regulations, 2015. Mr. X pleaded that since the Company had already penalized him by terminating his services, SEBI could not initiate any proceedings against him. As per the SEBI regulations, comment whether SEBI has a right to take any action against Mr. X in the case of insider trading?

Company Secretary and compliance w.r.t insider trading

The obligations cast upon the Company Secretary in relation to insider trading regulations can be summarized as under. The Company Secretary shall:

1. Ensure compliance with SEBI (Prohibition of insider Trading) Regulations, 2015 including maintenance of various documents.

2. Frame a code of fair disclosure and conduct in line with the model code specified in the Schedule A of the regulations and get the same approved by the board of directors of the company.

3. Place before SEBI the "minimum standards for Code of Conduct" to regulate, monitor and report trading by insiders as enumerated in the Schedule B of the regulations.

4. Receive initial disclosure from every Promoter, KMP and director or every person on appointment as KMP or director or becoming a Promoter shall disclose its shareholding in the prescribed form within:
– 30 days from these regulations taking effect or
– 7 days of such appointment or becoming a promoter

5. Receive from every Promoter, employee and director, continual disclosures of the number of securities acquired or disposed of and changes therein, even if the value of the securities traded, exceeds Rs. 10 lakh with single or series of transaction in any calendar quarter in prescribed form within two trading days of :
– receipt of the disclosure or
– from becoming aware of such information

6. Ensure that no trading shall between 20th day prior to closure of financial period and 2nd trading day after disclosure of financial results.

7. Approve the trading plan and after the approval of the trading plan, as compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

8. Maintain records, as a Compliance Officer, of all the declarations given by the directors/designated employees/partners in the appropriate form for a minimum period of three years.

9. Take additional undertakings, as a compliance officer, from the insiders for approval of the trading plan. Such trading plan on approval will also be disclosed to the Stock Exchanges, where the securities of the Company are listed

10. Maintain confidentially list of such securities as a "restricted list" which shall be used as the basis for approving or rejecting applications for pre-clearance of trades.

11. Monitor of trades and the implementation of the code of conduct under the overall supervision of the Board of Directors of the listed Company.

12. Frame and then to monitor adherence to the rules for the preservation of "Price sensitive information".

13. Suggest any improvements required in the policies, procedures, etc to ensure effective implementation of the code.

14. Assist in addressing any clarifications regarding the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 and the company's code of conduct.

15. Maintain a list of all information termed as 'price sensitive information'.

16. Maintain a record of names of files containing confidential information deemed to be price sensitive information and persons in charge of the same.

17. Ensure that files containing confidential information are kept secured.

18. Keep records of periods specified as 'close period' and the 'Trading window'.

19. Ensure that the trading restrictions are strictly observed and all directors/officers/designed employees conduct all their dealings in the securities of the company only in a valid trading window and do not deal in the company's securities during the period when the trading window is closed.

20. Receive and maintain records of periodic and annual statement of holdings from directors/officers/designed employees and their dependent family members.

21. Ensure that the "Trading Window" is closed at the time of :
a) Declaration of financial results (quarterly, half-yearly and annual)
b) Declaration of dividends ("interim and final)
c) Issue of securities by way of public/right/bonus etc.,
d) Any Major expansion plans or execution of new projects.
e) Amalgamation, mergers, takeovers and buy-back
f) Disposal of whole or substantially whole of the undertaking
g) Any change in policies, plans or operations of the company

22. Place before the Chief Executive Officer/Partner or a committee notified by the organization/firm, as a Compliance Officer, on a monthly basis all the details of the dealing in the securities by designated employees/directors/partners of the organization/firm.

Concept of Chinese wall

The term *Chinese wall* is said to have originated after the catastrophic stock market crash of 1929, when the largely unregulated United States market suffered a 40% drop between September and October. According to one theory, the crash resulted from inflated stock values created by price manipulation and insider trading.

A Chinese wall is a barrier that separates two or more groups, usually as a means of restricting the flow of information. Typically, the wall is purely conceptual, although groups may be divided by physical barriers (areas of a building, for example) as well as policies.

Price sensitive information is to be disseminated to the stock exchanges on a continuous basis. To prevent the misuse of confidential information, the organizations adopt the Chinese wall policy which separates those area of organization which routinely have access to confidential information, considered inside areas from those areas which deal with-

- ✓ Sales
- ✓ Marketing
- ✓ Policy formations
- ✓ Investment decisions
- ✓ Dividend decisions etc

The code of conduct to prevent insider trading regulations must contain norms for appropriate Chinese wall procedures and processes for permitting any designated person to cross the wall.

Case studies

1. Hindustan Lever Limited v SEBI

In this case, HLL purchased 8 lakhs shares of Brooke Bond India Limited from UTI when a scheme of amalgamation of HLL and BB was being considered by core teams of both the Companies and the parent Companies of both the Companies had agreed in principle to give grant permission for such amalgamation.

SEBI investigated the matter and concluded that HLL as an insider bought 8 lakh shares of BB based on UPSI and violated Regulation 4(1) of the SEBI (PIT) Regulations, 2015. SEBI alsi awarded compensation to be paid by HLL to the UTI.

HLL filed an appeal before the appellate authority which held that information to be called UPS, the information available with the insider trader must satisfy both requirements that information must be-

(i) not generally known or published by the Company and

(ii) if published or known is likely to materially affect the price of the securities of that Company in the market

Since the possibility of merger appeared to have been generally speculated about and was not likely to have impacted on price at which the transaction was concluded with UTI which was further corroborated by the fact that UTI continued to sell BB shares in the market after the merger at prices close to the price at which they had sold shares to HLL.

Thus it is not sufficient when scheme of merger is under consideration, it becomes a price sensitive information rather it must be price sensitive, if on contrary, it is shown that the information about the scheme of amalgamation between B Ltd and H Ltd is not generally speculated about or discounted by the market, the purchase of shares by H Ltd in the instant case would be insider trading because the fact of amalgamation is definitely price sensitive information.

2. Dilip Pendse v SEBI

This case relates to Tata Finance Ltd, a Listed Company which had a wholly owned subsidiary in the name of Nishkalpa. Nishkalpa incurred a huge loss and it was bound to affect the bottom line of Tata Finance Limited.

Its MD Sri Pendse passed this information to his wife who in turn sold off her holdings in TFL including the holdings in the shares of this company held by her and Pondse's father at a significant gain before this information became public.

There was a considerable fall in the market price of shares of TFL on this information becoming public. By this process, taking advantage of insider information, Pendse family not only avoided the loss but in fact has made considerable gain while the general investors suffered loss.

Situations

1. State whether the following information is price sensitive or not:-

The CEO of a Company met with an accident and has been hospitalized.	
The Managing Director of a Company died in air-crash.	
RBI has increased its statutory liquidity ratio (SLR) by 25 base points.	
The Company is going to open a new plant at Kanjikode, Palakkad.	
The Chairman of the Company submitted resignation to the Board	

under protest for selling a particular brand to another Company.	
The CEO of a company sells a stock after discovering that the company will be losing a big government contract next month	
The CEO's son sells the company stock after hearing from his dad that the company will be losing the big government contract.	

2. Mr. S, a Company Secretary and an Executive Director of a Company had bought 10,000 equity shares of that Company on behalf of his family members on the basis of UPSI, which was not known to the general public but to him as an employee of the Company.

   Family members later on tendered the said shares in an open offer announced by some acquiring Company at a higher price, thereby making huge gains. SEBI found Mr. S guilty of misconduct of insider trading and imposed penalty. Mr. S admitted that he had made a mistake but contested the penalty. He, however, was willing to pay back the profit earned by sale of shares.

   Considering the facts of the case, you are required to suggest whether as per the legal provisions relating to insider trading, SEBI should waive penalty considering the fact that S admits indulging in insider trading and is willing to pay back the whole profit earned.

<u>Assignment and RAQ</u>

1. Write a note on the following-
   (a) Unpublished price sensitive information
   (b) Insider trading

2. Comment on the following:-
   (a) Enumerate the penalties which can be imposed under the SEBI Act, 1992 for insider trading.

(b) Price sensitive information is any information which relates directly or indirectly to a Company.
(c) A Company shall specify a trading period for its own securities.
(d) Insider means any person who is or was connected with the Company or is deemed to have been connected with the Company.

3. Distinguish between 'Insider' and 'connected person' in the SEBI (PIT) Regulations, 2015.

4. What are the restrictions on communication or procurement of unpublished price sensitive information?

5. Explain the disclosure requirements by certain persons under the SEBI (PIT) Regulations, 2015?

6. Board of Directors of a Listed Company is required to make a code of conduct. Comment.

7. 'ABF-HJ Ltd' is a Company having its registered office in Delhi and whose securities are listed on BSE and NSE. You are the Company Secretary cum Compliance Officer of 'ABF-HJ Ltd'. The Board of Directors ask you to make a 'Code for Fair Disclosure'. How will you consider this matter?

8. Ultimate result of insider trading is gain to unscrupulous investors at the cost of development of securities market.

9. Explain the concept of trading plans? What are the requirements for trading plans?

xx…xx…xx…xx…xx…xx…xx…xx…xx…xx…xx…xx