



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

Manual

on

Structured Digital Database (SDD) Compliance Certification

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THE INSTITUTE OF COMPANY SECRETARIES OF INDIA

ICSI House, 22, Institutional Area, Lodi Road,

New Delhi-110003

Phones: 011-4534 1000, 4150 4444 Fax +91-11- 2462 6727

E-mail:info@icsi.edu Website: www.icsi.edu

Preface

Control on sharing of unpublished price sensitive information (UPSI) by those who are having access to it in a structured manner is one of the objective and sensitive areas dealt with by the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”). Once any UPSI is shared, the company loses control over further use of that information by those who come into its possession. If such information is misused for insider trading, it becomes difficult to establish a connection between the company and the recipient of information. In order to keep a trail of sharing of UPSI for legitimate purposes, the concept of maintenance of a Structured Digital Database (“SDD”) has been made mandatory under the PIT Regulations.

Regulations 3(5) and 3(6) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 are at the root of the entire concept of SDD. Company Secretaries professionals, by virtue of their position as the Compliance Officer under PIT Regulations, shoulder responsibility to ensure compliance with policies, codes of conduct, preservation of UPSI, maintenance of records including SDD etc. under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

In order to sensitize the professionals on the process of certifying compliance related to SDD, the ICSI has formulated this publication covering various aspects of SDD.

I place on record my sincere thanks to all members of the core group for their valuable contribution made during the formulation and finalisation of this Manual on SDD Compliance Certification under the leadership of CS Makarand Joshi and overall guidance of CS B. Narasimhan, Council Member, the ICSI.

My special thanks to all members of the PCS Committee of ICSI for bringing out this publication under their aegis with active support from the team involved at the secretariat.

I am sure that this Manual will be immensely useful for all readers interested in the subject and will be of practical value to those who are involved in the maintaining and certification of SDD. Improvement is a continuous process and equally applicable to this Manual. I would personally be grateful to the readers to offer their suggestions/ comments for further advancement of this Manual.

Place: Mumbai

Date: 06th January, 2023

CS Devendra V. Deshpande

President

The Institute of Company Secretaries of India



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Manual on SDD Compliance Certification

1. INTRODUCTION

Control on sharing of unpublished price sensitive information (UPSI) by those who are having access to it in a structured manner is one of the sensitive areas dealt with by the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”).

Once any UPSI is shared, the company loses control over further use of that information by those who come into its possession. If such information is misused for insider trading, it becomes difficult to establish a connection between the company and the recipient of information. It would thus be prudent to have a physical and/or digital trail of information flows of such legitimately shared information. It would also be prudent to intimate the persons receiving the UPSI of their obligation towards preventing misuse of such information for insider trading, by way of an advance notice.

In this backdrop, the concept of Structured Digital Database (SDD) was first introduced by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) based on the recommendations made by the Committee on Fair Market Conduct under the Chairmanship of Dr. T.K. Vishwanathan (Ex-Secretary General, Lok Sabha and Ex-Law Secretary) (“Vishwanathan Committee Report”). Later on, amendments to the provisions relating to SDD were introduced by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020 (w.e.f. July 17, 2020).

Regulations 3(5) and 3(6) of the PIT Regulations are at the root of the entire concept of SDD. Under SDD, it is important for companies to maintain a trail of sharing of UPSI so that if investigation into breaches or apprehended breaches of the PIT Regulations or for misuse of UPSI is initiated, then there should be trail of how the information was shared from one person to another within and outside the company.

In several investigations of Insider Trading initiated by the regulator, there is a question as to whom the price sensitive information was shared with. The investigations thus far have been into unexplained price movements or significant trading volumes. However, going forward, when such investigations are initiated, companies would be

asked to provide / share the details of the SDD with regard to such UPSI.

The emails dated 4th August, 2022 sent by the Stock Exchanges to listed companies requiring them to provide confirmation and that too for the quarter ended June 2022 point towards the seriousness of maintaining the SDD.

Company Secretaries professionals, by virtue of their position as the Compliance Officer under the PIT Regulations, shoulder responsibility to ensure compliance with policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of UPSI, monitoring of trades, implementation of the codes and maintaining SDD under the PIT 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.

In order to sensitize the professionals on the process of certifying compliance related to SDD, the ICSI has formulated this publication covering various aspects of SDD.

2. SCOPE

This publication covers the relevant provisions of the following:

- The SEBI (PIT) Regulations, 2015 with regard to SDD
- FAQs on the SEBI (PIT) Regulations, 2015 in the context of SDD
- Guidance Note on the SEBI (PIT) Regulations, 2015 issued by SEBI with regard to SDD
- Relevant orders of the SEBI in the context of the SDD

The objective of this publication is to provide limited guidance on procedural aspects of maintaining and certification of SDD by the professionals. For detailed guidance on various aspects covered by the SEBI (PIT) Regulations, 2015 readers are advised to refer the “ICSI Guidance Note on Prevention of Insider Trading”.

This publication is prepared on the basis of the above stated Regulations as amended from time to time. If due to subsequent changes, any part of the publication becomes inconsistent with any of the applicable laws, rules and regulations, the applicable laws, rules and regulations shall prevail.

3. DEFINITIONS

The following terms are used in this publication with the meanings specified:

“Act” means the Securities and Exchange Board of India Act, 1992;

“Board of Directors” or “Board”, in relation to a company, means the collective body of the Directors of the company;

“Intermediary” means stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and includes an asset management company in relation to the Securities and Exchange Board of India (Mutual Funds) Regulations, 1996, a clearing member of a clearing corporation or clearing house, foreign portfolio investors and a trading member of a derivative segment or currency derivatives segment of a stock exchange and such other intermediary who may be associated with securities market and registered with SEBI but does not include foreign venture capital investor, mutual fund, collective investment scheme and venture capital fund;

“Fiduciaries” referred to in Regulation 9(2) of the PIT Regulations as under:

Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of the PIT Regulations.

It may be noted that the term “Fiduciaries” as given above is illustrative one and can therefore also cover the registered valuers, practicing company secretary firms, cost audit firms, internal auditors, special auditors for specific projects, management auditors etc. associated with company from time to time.

“ICDR Regulations” means the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, including any amendment thereto.

“Listing Regulations” means the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, including any amendment thereto.

“Listed company” means an entity which has any of its securities listed on any recognized stock exchange;

“Nodal officer” means one or more persons identified by the board of directors or any person authorised by the Board or head(s) of the organisation of every person required to handle UPSI to ensure all or any of the following compliances:

- i) the UPSI is shared in accordance with the provisions of Regulation 3(1) of the PIT Regulations i.e. for legitimate purposes, on need to know basis only;
- ii) in accordance with the provisions of Regulation 3(2B) of the PIT Regulations, due notice is given to such person to maintain confidentiality of UPSI;

iii) maintenance and updation of SDD in compliance with Regulation 3(5) of the PIT Regulations.

“PIT Regulations” means the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, including any amendments thereto.

“Practicing Company Secretary” (PCS) means a Company Secretary who is deemed to be in practice under sub-section (2) of section (2) of the Company Secretaries Act, 1980.

“Structured Digital Database” (SDD) means a secured database maintained digitally by a person who is required to handle UPSI under the PIT Regulations, containing the nature of UPSI, the names of persons who have shared UPSI and with whom such UPSI was shared along with details of their permanent account numbers or such other identifier as may be recognized by the law.

Words and expressions used and not defined herein shall have the same meaning respectively assigned to them under the Act, the Listing Regulations or the PIT Regulations as may be applicable.

4. REGULATORY FRAMEWORK OF SDD

Regulation 3(5) of the PIT Regulations provides that the board of directors or head(s) of the organisation of every person required to handle UPSI shall ensure that a structured digital database is maintained containing the nature of UPSI and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

Further, Regulation 3(6) of the PIT Regulations provides that the board of directors or head(s) of the organisation of every person required to handle UPSI shall ensure that the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.

5. ANALYSIS OF REGULATION 3(5) AND 3(6) OF THE PIT REGULATIONS

Regulation 3(5) and 3(6) of the PIT Regulations deals with the concept of structured digital database and stipulates the responsibility, the

details to be captured in the said database, the manner of maintenance and retention period thereof.

A detailed deliberation on Regulation 3(5) and 3(6) of the PIT Regulations is given below:-

5.1 PERSONS REQUIRED TO MAINTAIN SDD

With regard to persons required to maintain SDD, Regulation 3(5) of the PIT Regulations says:

“the board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a structured digital database is maintained....”

5.1.1. Who are required to maintain SDD?

Extract of Stock exchanges' FAQs released on 28th October, 2022:

As per Regulation 3(5) of SEBI (PIT) Regulations, 2015, *“The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information”* (UPSI) is required to maintain SDD. Accordingly, every entity, which has issued securities which are listed/ proposed to be listed (as defined under Regulation 2(1)(hb) of the PIT Regulations, 2015) are required to maintain SDD, in case, such securities fulfil the definition of “Securities” under the Securities Contracts (Regulation) Act, 1956 as amended from time to time and subject to any such modification thereof.

5.1.2. Whether the requirement to maintain structured digital database under Regulation 3(5) of the PIT Regulations is applicable to intermediaries and fiduciaries?

Extract of SEBI FAQs released on 5th July 2019: The requirement to maintain structured digital database under Regulation 3(5), containing the names of such persons or entities with whom UPSI is shared, is applicable to listed companies, and to all intermediaries and fiduciaries who handle UPSI of a listed company in the course of its business operations.

Extract of Stock exchanges' FAQs released on 28th October, 2022:

An intermediary/ fiduciary /other entity referred to under the Explanation to Regulation 3(2A) of the PIT Regulations, 2015, shall maintain a separate SDD internally, for recording details of:

- The UPSI shared and persons with whom such UPSI is shared
- The UPSI shared and the persons who have shared such UPSI with the intermediary/ fiduciary / entity.

in accordance with Regulation 9A (2)(d) of the PIT Regulations, 2015 and as required under Schedule C of the said Regulations. SDD shall also be maintained by the intermediary/ fiduciary / entity for unlisted companies for which securities are proposed to be listed.

5.1.3. Whether the term ‘all other persons requiring to handle UPSI in ordinary course’ and ‘fiduciaries’ are the same, i.e., entities providing services to listed entities, other than professionals, are also required to maintain SDD?

ICSI View: The term “fiduciary” has been explained in the Explanation to Regulation 9(2) of the PIT Regulations as *“Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.”* Hence, a point of debate can be whether the term ‘fiduciaries’ extends even beyond professional firms and banks?

However, Regulation 3(5) of the PIT Regulations uses the term *“any person required to handle UPSI”* which will mean not only listed companies, and fiduciaries (i.e. intermediaries, professional firms and banks) but will also cover such other persons who handle UPSI in any capacity like suppliers, distributors and even any individual who may be dealing with listed company and is reasonably expected to have access to UPSI. Hence, all such persons shall be required to maintain SDD in their offices.

5.1.4. In case of intermediaries / fiduciaries who are dealing with various listed entities, whether one SDD shall suffice for all clients OR whether separate SDD is required for each listed company client?

ICSI View: The SDD is required to be maintained at intermediary / fiduciary level, for all UPSI received by any person in the organisation with regard to any listed company or company which is proposed to be listed. This SDD will contain all entries pertaining to the UPSI handled and hence, there is no requirement to maintain separate SDD for each client. Only one SDD shall suffice at the organisation level. In the field for ‘nature of UPSI’, the details with regard to the relevant entity (listed or proposed to be listed) should also be entered, so as to differentiate between the UPSI received from different listed entities.

5.1.5 Hence, who are all required to maintain SDD?

ICSI View: SDD is required to be maintained by the following entities:

1. **A Listed entity** in respect of securities which are listed or proposed to be listed on a recognized stock exchange such as-
 - equity shares,

- debt securities like Non-Convertible Debentures and Non-Convertible Redeemable Preference Shares (SEBI Informal Guidance given in the matter of Prabhudas Lilladher on April 06, 2017)
- Securitised Debt Instruments.
- Units of Real Estate Investment Trusts (REITs)
- Units of Infrastructure Investment Trusts (InvITs)
- Depository Receipts (GDRs and ADRs)
- Derivative instruments
- Units of Alternative Investment Fund
- Units of a Mutual Fund (as and when notified by SEBI following the recommendation by its Board)
- Any other instrument / security prescribed by the regulator from time to time.

2. All Intermediaries registered with SEBI

Such intermediaries have been defined under the SEBI (Intermediaries) Regulations, 2008 / Section 11(2) of the SEBI Act, 1992 and includes the following:

- Merchant Bankers
- Stock Brokers
- Registrars and Share Transfer Agents
- Recognised Stock Exchanges
- Clearing Corporations
- Custodians
- Depository and Depository Participants
- Debenture Trustees
- Trusts for AIFs / Mutual Funds
- Credit Rating Agencies
- Mutual Funds
- Alternative Investment Funds(AIFs) – (SEBI Informal Guidance given to YES Bank on March 16, 2022)
- Asset Management Companies of Mutual Funds / AIFs (SEBI Informal guidance to SBI Funds Management Private Limited dated October 09, 2018)
- Portfolio Managers
- Investment Advisers
- Research Analysts
- Foreign Institutional Investors
- Bankers to an Issue

3. Persons handling UPSI which shall include following:

- (i) Fiduciaries such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies;
- (ii) Any other person who is required to handle UPSI

5.1.6 Can the auditors use the same software which the company is maintaining while sharing the information back to the company?

ICSI View: The auditors and the company cannot use the same software on a common platform for maintaining the SDD but they can use the software from the same vendor on their own server.

5.1.7 Are Mutual Funds required to maintain SDD?

ICSI View: Yes. Mutual funds are required to maintain SDD.

5.1.8 a) Are the provisions of the PIT Regulations and maintenance of SDD applicable for a standalone entity without any identified promoter or promoter group?

ICSI View: Yes, the provisions of the PIT Regulations and maintenance of SDD are applicable to a listed entity with no identified promoters. The applicability of the PIT Regulations is not based on existence of the promoters or promoter group in a listed entity.

(b) Is entry in SDD required when the UPSI is shared with the Promoter or Promoter Group?

ICSI View: As per Regulation 3(5) of the PIT Regulations entry in the SDD needs to be made when the UPSI is shared with anyone including the promoter and promoter group.

5.1.9 A company that is only listed on the Metropolitan Stock Exchange, where there is no trading platform similar to the Calcutta Stock Exchange, is required to comply with SDD compliance because no shareholders can trade?

ICSI View: Since the securities of the company are listed, the requirements of SDD would apply.

5.1.10 Whether the PIT Regulations and maintenance of SDD applicable to companies not actively traded?

ICSI View: If the securities of the company are listed / proposed to be listed in terms of the PIT Regulations, provisions of SDD become applicable, irrespective of whether the securities are actively traded or not.

5.1.11 Do suspended companies have to maintain SDD?

ICSI View: Since the securities of such companies would still be listed, SDD will have to be maintained by such companies also.

5.1.12 Is SDD applicable to Limited Purpose Clearing Corporation?

ICSI View: The board of directors or head(s) of the organisation of every person required to handle UPSI shall ensure that a structured digital database is maintained. Accordingly, if the Limited Purpose Clearing Corporation handles UPSI of the listed entities, they are required to maintain SDD.

5.1.13 If a listed company is an intermediary registered with SEBI also, then whether separate SDD needs to be maintained for the purpose of listed company and for the purpose of intermediary function?

ICSI View: With regard to SDD, there is no mandate to keep separate SDD for listed company and intermediary function. However, in case the company is maintaining a common SDD it should have adequate internal controls to access the SDD.

5.1.14 In case of multiple group companies whether the SDD should be maintained separately?

Extract of Stock exchanges' FAQs released on 28th October, 2022:
As per Regulation 3(5) of the PIT Regulations, 2015, the company shall maintain the SDD internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database. It is understood that every company shall maintain an independent SDD to comply with these prerequisites as prescribed by the PIT Regulations.

5.1.15 Can SDD be maintained separately on the common server used by the group companies?

Yes. While it is not prohibited for the company to maintain the SDD of group companies on one common server, there should be adequate firewalls to distinguish the SDD of each company on the server.

5.2 MAKING ENTRIES IN SDD

With regard to making entries in SDD, Regulation 3(5) of the PIT Regulations says:

“...containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available...”

5.2.1 When is UPSI germinated?

When the information starts taking shape of a price-sensitive information i.e. where the probability of going ahead with the information/concerned event is higher than not going ahead and such information is likely to “materially” affect the prices of the securities of the company when published, sharing of such information shall be recorded in the SDD.

5.2.2 What shall be the trigger point for inserting a record in the SDD?

Extract of Stock exchanges’ FAQs released on 28th October, 2022:

Sharing of an unpublished price sensitive information internally or externally is the trigger for recording the same in the SDD.

5.2.3 Are companies required to maintain SDD even when UPSI is shared internally, i.e., within the organisation?

Extract of SEBI FAQs released on 29th April 2021: Yes, irrespective of the fact that information is shared within or outside the company, requisite records shall be updated in structured digital database as and when the information gets transmitted.

Extract of Stock exchanges’ FAQs released on 28th October, 2022:

Irrespective of whether an UPSI is shared internally or externally, necessary recording should be made in SDD.

The intent of maintaining SDD is that the flow of sharing of UPSI is recorded. SDD needs to contain the names of the person(s) with whom UPSI has been shared. This means that entry should be made upon sharing the information so as to ensure that the same is not missed subsequently and captures the event.

For e.g.: while finalising financial results for say quarter ended September 2022, one entry can be made for the persons in the accounts department at the start of the finalisation process. Additionally, if UPSI is shared with Auditors, then the details of the audit firm, the senior partner and other entities of audit firm with whom UPSI is shared, need to be recorded. The audit firm, in turn, must maintain SDD accordingly.

5.2.4 At what stage entry of the UPSI related to financial results is to be entered in SDD?

ICSI View: Companies may have different practices regarding preparation of financial results. While in some companies preparation of financials starts before the close of the financial quarter, in others the process may commence after close of the said financial quarter. As soon as the UPSI relating to financial results gets generated, it should be entered in the SDD.

5.2.5 During the closure of accounts for preparation of financial statements, particularly in case of large companies, information in the nature of UPSI is required to be shared with the statutory auditors in multiple phases to enable the auditors to continue their audit simultaneously. OR In larger listed companies generally statutory auditors or other auditors are given SAP access with login credentials created for limited period of audit to verify the financials or entries, in such cases updating SDD at the first instance of sharing SAP access would suffice OR should it be mandatory to record the required details in the SDD every time any such information is shared with the auditors?

Access to ERP systems which is in the nature of UPSI needs to be recorded in the SDD. One-time recording of such details in the SDD per recipient would be sufficient.

Extract of Stock exchanges' FAQs released on 28th October, 2022: While finalising financial results for say quarter ended September 2022, one entry can be made for the persons in the accounts department at the start of the finalisation process. Additionally, if UPSI is shared with Auditors, then the details of the audit firm, the senior partner and other entities of audit firm with whom UPSI is shared, need to be recorded. The audit firm, in turn, must maintain SDD accordingly.

5.2.6 Is it necessary to enter the details in SDD if it is shared internally, multiple times in a day?

ICSI View: The entries need to be made person-wise. So if same UPSI is shared with different persons in a day, then for each person, a new entry needs to be made. If different parts of a particular UPSI are shared multiple times in a day with a same person, then single entry may suffice, depending on the nature of each part of UPSI shared.

5.2.7 What information should a listed company maintain in its structured digital database under Regulation 3(5) of the PIT Regulations, in case the information is being shared with a fiduciary or intermediary [e.g.: If UPSI is shared with Auditors, can the company record the details of audit firm with its PAN number or should the company record the details of each individual partner with a PAN]?

Extract of SEBI FAQs released on 8th October 2020: The listed company should maintain structured digital database internally, which shall contain information including the following:

- (i). Details of the Unpublished Price Sensitive Information (UPSI);

- (ii). Details of persons with whom such UPSI is shared (along with their PANs/other unique identifier) and details of persons who have shared the information.

Similarly, another structured digital database should be maintained internally by fiduciary or intermediary, capturing information as mentioned above at point (i) and (ii), in accordance with Regulation 9A (2)(d) and as required under Schedule C.

For example: The listed company (X) has appointed a Law firm or Merchant Banker (Y) in respect of fund raising activity and (A) from listed company has shared the said UPSI with (B) of Law firm or Merchant Banker. The structured digital database of (X) should capture the nature of UPSI shared, details of (A), (Y) and (B), along with their PAN or other unique identifier (in case PAN is not available).

The Law firm or the Merchant Banker (Y) shall in turn maintain another structured digital database internally capturing the nature of UPSI received/shared, details of (X), (A) and (B) along with their PAN or other unique identifier (in case PAN is not available), in accordance with Regulation 9A(2)(d) and as required under Schedule C. It shall also further maintain the SDD with the names of its employees and PAN Number with whom the information is shared.

Similarly, in case of sharing of UPSI with the Audit firm, details of the firm as well as persons from the audit firm with whom UPSI is shared, should be entered in the SDD.

5.2.8 Whether draft financials shared with the auditors for audit purpose are UPSI?

ICSI View: Yes, this shall be UPSI as per the definition of 'UPSI' under the PIT Regulations and hence needs to be entered in the SDD.

Extract of Stock exchanges' FAQs released on 28th October, 2022:

If UPSI is shared with Auditors, then the details of the audit firm, the senior partner and other entities of audit firm with whom UPSI is shared, need to be recorded. The audit firm, in turn, must maintain SDD accordingly.

5.2.9 Do companies need to add the names and details of the persons from within the organisation, other than designated persons who have access to any price sensitive information in SDD?

ICSI View: Under the PIT Regulations the UPSI cannot be shared with a person within the organization if such person is not identified as a designated person.

5.2.10 Do we need to enter the UPSI in SDD in case of a company which is not carrying on any business activities?

Yes. Even if a company is not carrying on any business activities but if it generates any UPSI, it shall maintain and make necessary entries in SDD as long as it remains a listed entity.

5.2.11 Is the entry in the software to be made person wise separately or will it be a single entry for different person for same subject?

ICSI View: The entries should be made person wise, i.e., PAN wise, separately.

5.2.12 Whether the copy of the document containing UPSI which might have been shared over mail, be uploaded in the SDD?

ICSI View: Whilst Regulation 3(5) of the PIT Regulations mandates entering nature of UPSI, it does not prescribe uploading of documents in this regard.

5.2.13 If projections are shared with banks or other financial institutions, should the same be considered as UPSI and included in SDD?

ICSI View: Generally, 'projections' are not to be considered as UPSI. However, the projections may become UPSI if the period for which projection is given is in very near future and not pertaining to a distant future. For example, if projections are given in the month of March, 2022 for the year ended 31st March, 2022, the period for which projections are given is too close and as such can take the shape of UPSI.

5.2.14 Whether UPSI shared internally among concerned employees associated with the respective directors who are engaged in finalization of accounts need to be entered into the software?

ICSI View: Yes, this needs to be entered in the SDD.

5.2.15 What are the implications of non- availability of PAN?

Extract of Stock exchanges' FAQs released on 28th October, 2022:

The SDD shall be maintained with such details as sought under provisions of Regulation 3(5) of the PIT Regulations, 2015. Therefore, it is imperative to capture the PAN details wherever available, else any other identifier of such person shall be captured.

5.2.16 Will the sharing of Financial Results with Agenda of Audit Committee Meeting or Board Meeting amounts to sharing of UPSI with Board of Directors? Should the names of all directors be entered in SDD?

ICSI View: Yes, this shall amount to sharing of UPSI and names of all the directors with whom the financial results are shared shall be entered in the SDD.

5.2.17 Who shall have access to insert the details of UPSI in the SDD?

Extract of Stock exchanges' FAQs released on 28th October, 2022:

Regulation 3(5) and 3(6) of the PIT Regulations, 2015 mandates that the Board of Directors or the head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the Database is maintained as per the requirements of the PIT Regulations, 2015.

Therefore, putting a system in place to capture and record the SDD, in terms of the PIT Regulations, 2015 is to be implemented by the Board of Directors or the head(s) of the organisation of every such person. Further, the Board of Directors or the head(s) of the organisation of every such person is also required to determine who is to be given access to the same.

One important aspect of the SDD is that knowledge of UPSI should be available to a person only on 'need to know' basis. Further, the identity of the person accessing the database is required to be established for the purpose of audit trail.

5.2.18 If nominee directors share some UPSI with the relevant nominating authority for legitimate purpose, will it be covered as communication of UPSI and require entry in SDD?

Extract of SEBI FAQs released on 29th April 2021: If the directors fall under the list of designated persons or as an insider, then sharing of UPSI by them for legitimate purpose with the Bank/FIs, would be considered as communication of UPSI. Accordingly, the same would be recorded in the SDD of the company.

5.3 MANNER OF MAINTENANCE OF SDD AND VARIOUS INTERNAL CONTROLS:

With regard to manner of maintenance of SDD and various internal controls, Regulation 3(5) of the PIT Regulations says:

“Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database”

5.3.1 Can SDD be in excel form or any specific software is required?

ICSI View: As per Regulation 3(5) of the PIT Regulations, SDD must be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database. These features may not be possible in excel form. Hence SDD cannot be maintained in excel form and will have to be maintained on such software which shall meet all these prescribed requirements.

5.3.2 What are the requirements for maintaining the SDD?

Extract of Stock exchanges' FAQs released on 28th October, 2022:

The SDD shall not be outsourced and shall be maintained with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database. The same is prerequisite for compliance with Regulation 3(5) & 3(6) of the PIT Regulations, 2015.

Entries once made in SDD, cannot be altered or modified and should be non-tampered. Any modification/alteration of entries once made is not permitted. If any entry made needs to be altered, then a separate entry can be made citing reference to the earlier one with full corrected details and the reasons for correction.

5.3.3 Are companies under Corporate Insolvency Resolution Process (CIRP) required to maintain SDD?

Extract of Stock exchanges' FAQs released on 28th October, 2022:

Yes, for additional clarity please refer below paragraph:

“As per Regulation 3(5) of SEBI (PIT) Regulations, 2015, *“The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information”* (UPSI) is required to maintain SDD. Accordingly, every entity, which has issued securities which are listed/ proposed to be listed (as defined under Regulation 2(1)(hb) of the PIT Regulations, 2015) are required to maintain SDD, in case, such securities fulfil the definition of “Securities” under the Securities Contracts (Regulation) Act, 1956 as amended from time to time and subject to any such modification thereof.”

Further, Circular No. IP/002/2018 dated January 03, 2018 issued by IBBI makes it mandatory for the Resolution Professional to ensure compliance with all applicable laws

5.3.4 If the database is to be maintained internally and not outsourced, then how time stamping and audit trail requirements can be met?

ICSI View: Only such software which is maintained internally, which has the features of time stamping and audit trail and which is non tamperable can be considered as compliance with the maintenance of SDD under Regulation 3(5) of the PIT Regulations.

5.3.5 If the structured digital database is maintained on Amazon, Google or cloud server hosted outside India, will it be considered as outsourced or internal?

Extract of SEBI FAQs released on 29th April 2021: Databases/servers provided by third party vendors whether within India or outside India will be considered as outsourced.

5.3.6 Is SDD maintained by the company on private cloud allowed and considered as compliance of the PIT Regulations?

ICSI View: Yes, if it is hosted on the cloud server of the company and not service provider, i.e., the service provider is not in a position to access the server or the entries made in the SDD, then it can be permitted.

5.3.7 Whether a listed company can use software provided by third party vendors, wherein the server is of the vendor but requisite entries are made by the employees of the company only?

Extract of SEBI FAQs released on 29th April 2021: The third party vendors are providing the services/software on login basis, where the server is maintained by the vendor. Therefore, the vendor may have access to such records which would be contrary to the regulations with respect to maintenance of structured digital database.

5.3.8 Can external software be purchased for maintenance of SDD? OR If an indigenous software for the listed company is developed by an external software developer and it is hosted on the server of the listed company itself for usage, then can it be used as SDD?

Extract of Stock exchanges' FAQs released on 28th October, 2022:

Yes, a software can be used to maintain the SDD. However, the same has to be maintained internally.

ICSI View: The context in Regulation 3(5) of the PIT Regulations with reference to which this restriction has been introduced is with regard to sharing of UPSI which must happen on need-to-know basis only. Hence, the outsourcing restriction in Regulation 3(5) of the PIT Regulations is with regard to sharing of UPSI with someone else for the purpose of making entries in the database or viewing those entries later on through the server.

Every listed company may not be so equipped, financially and technically, to develop an in-house software for maintaining the SDD. Purchasing an application / software from a software vendor for making entries of UPSI will ideally not involve actual sharing of UPSI with service provider. Hence, purchasing a ready-made / indigenously developed software may be allowed for maintaining the database. However, it should be ensured that the server access of this software must be on the IT systems/cloud server of the company and not service provider, i.e., the service provider must not be in a position to access the server or the entries made in the database.

5.4 PRESERVATION OF SDD

With regard to preservation of SDD, Regulation 3(6) of the PIT Regulations says:

“..... the structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings”

This has been re-iterated in the FAQs released by SEBI on 29th April 2021. A specimen of Structured Digital Database is placed at **Annexure-I**.

6. ROLE OF COMPLIANCE OFFICER TOWARDS MAINTENANCE OF SDD

As per Regulation 9(3) of the PIT Regulations, *“Every listed company, 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.”*

Further, as per the definition of “compliance officer”, one of the duties of compliance officer is monitoring adherence to the rules for the preservation of UPSI,

Since it is the role of compliance officer to administer the requirements under the PIT Regulations, this shall include the responsibility to ensure the maintenance of SDD and its usage for fulfilling other requirements under the PIT Regulations.

Extracts from SEBI Adjudication Order bearing No. GR/KG/2020-21/8240 dated 10th July 2020 in respect of Mr. Anil Mittal in the matter of Indiabulls Real Estate Ltd.

In this case, a designated person gave an undertaking that he did not possess UPSI and took pre-clearance for the trade, when he was in possession of UPSI. Thereafter when the case was being adjudicated by SEBI, it was argued that the trade was done based on pre-clearance from Compliance Officer. SEBI Adjudication Officer held that to this extent, the contents of the undertaking were factually incorrect and was a misrepresentation on the part of the Noticee before the Compliance Officer. The said clearance received on the basis of misrepresentation of a vital fact, is not a valid clearance and the Noticee cannot seek to defend its action on the basis of the said clearance.

6.1. When acquisition talks are going on and the compliance officer comes to know about it at the Board Meeting, in such scenario how the SDD should be maintained?

ICSI View: Under Regulation 3(5) of the PIT Regulations, the Board of directors is required to ensure that the SDD for the UPSI is maintained. Accordingly the Board should ensure that in case the Compliance Officer is not privy to the USPI, other DPs are assigned the responsibility to make entries in the SDD. The requisite entries in the SDD should be made immediately upon sharing of the UPSI.

7. ROLE OF AUDIT COMMITTEE TOWARDS MAINTENANCE OF SDD

As per Regulation 9A(4) of the PIT Regulations, *“the Audit Committee of a listed company or other analogous body for intermediary or fiduciary shall review compliance with the provisions of these regulations at least once in a financial year and shall verify that the systems for internal control are adequate and are operating effectively.”*

Since it is the role of audit committee to review compliance with the provisions of the PIT Regulations at least once in a financial year, this shall include the review of maintenance of SDD also.

8. COMPLIANCE AND REPORTING

The Stock Exchanges (BSE & NSE) vide email dated August 4, 2022 to all listed entities including debt listed entities, high value debt listed entities, Real Estate Investment Trusts and Infrastructure Investment Trust have asked their compliance officers to certify compliance with the maintenance of structured digital database in terms of Regulation 3(5) and 3(6) of the PIT Regulations. The format of certification was also prescribed by the stock exchanges.

Extracts from SEBI Whole Time Member’s Order bearing No. WTM/SM/ISD/ 13381/2021-22 dated 15th September 2021 in respect of Mr. Pranshu Bhutra and others in the matter of Infosys Ltd.

In this case, SEBI had, based on extracts of structured digital database as provided by the listed company, assumed the date on which UPSI pertaining to financial results came into existence. Further the notice debated on the basis of structured digital database extracts provided by the company only, wherein his name did not appear amongst the persons who have either shared or received the above noted UPSI.

Extracts from SEBI Whole Time Member's Order bearing No. WTM/MB/ISD/13536/2021-22 dated 27th September 2021 in respect of Mr. Bijal Shah and others in the matter of Zee Entertainment Enterprises Ltd.

In this case also, SEBI had, based on extracts of structured digital database as provided by the listed company, assumed the date on which UPSI pertaining to financial results came into existence.

Considering the factual position given in the above two cases, it is seen that for the matters arising post 1st April 2019, i.e., the date when Regulation 3(5) of the PIT Regulations became effective, SEBI has been asking the listed entities to share the extract of SDD to arrive at the date when a particular UPSI came into existence. This shows the importance and reliance given by SEBI to SDD in the adjudication processes under the PIT Regulations. Hence as a cautionary step to ensure that all listed entities are maintaining the SDD and shall be in a position to make available the extracts of SDD as and when asked by SEBI, the stock exchanges have asked companies to submit the compliance certificate with regard to maintenance of SDD in the prescribed format.

As mentioned above, it is the role of compliance officer to administer the requirements under the PIT Regulations, and it shall include the responsibility to ensure the maintenance of SDD also.

It may be noted that although SDD is required to be maintained by every person required to handle UPSI, as of now, the requirement of this compliance certificate is being asked by the compliance officers of listed entities only. Hence, as a part of this compliance certification, compliance officers need to confirm about the compliance status of the listed company only and it need not confirm about the compliance status at any intermediary or fiduciary level.

*Specimen of format of certification as prescribed by the stock exchanges is placed at **Annexure-II**.*

8.1 Are companies, who have received approval for IPO from BSE required to file SDD certificate with BSE?

ICSI View: BSE & NSE had sent e-mails for submission of SDD certificate to only those entities which were already listed. Hence the companies which have received approval for IPO but not yet listed are not required to submit this certificate.

9. CERTIFICATION CHECKLIST BY COMPLIANCE OFFICER / PCS

Under the Companies Act 2013, Practising Company Secretaries (PCS) are authorised to give a secretarial audit report in the form MR-3

with regard to compliance of Companies Act, 2013, various SEBI Regulations (including the PIT Regulations), FEMA Regulations and other laws specifically applicable to companies.

With effect from 1st April 2019, i.e., post the insertion of Regulation 3(5) in the PIT Regulations, PCS are required to check compliance with SDD related provisions by the listed entities while giving secretarial audit report. With effect from financial year 2018-19, Regulation 24A was introduced in Listing Regulations, under which the PCS had to additionally submit a Secretarial Compliance Report (“SCR”) which also require PCS to check the compliance with SDD related provisions by listed entities.

Since PCS appointed by the listed companies may be engaged to issue SDD compliance certificate, it becomes more pertinent to have a detailed check list for SDD certification. Hence, following annexure are added at the end:

- (i) Checklist for maintenance of SDD (Annexure III)
- (ii) Checklist for Compliance Officer / PCS for SDD Certification (Annexure IV)
- (iii) Declaration from persons authorised to make entries in the SDD/ Compliance Officer (Annexure V)

9.1 Whether only those UPSI need to be disclosed in the certificate for the relevant quarter which became concrete and credible and hence got disclosed to stock exchanges during the quarter OR even those UPSI which continued to remain as UPSI only and remain undisclosed to stock exchanges even at the end of quarter?

ICSI View: Only those UPSI which were disseminated to the stock exchanges under Regulation 8 of the PIT Regulations and / or Regulation 30 of the Listing Regulations during the quarter will come within the purview of SDD certificate.

9.2 Does list of UPSI as prepared by the company in-house needs to be disseminated to public at large?

Extract of SEBI FAQs released on 29th April 2021: No, there is no requirement to disseminate the list of UPSI on the website of the company.

Annexure-I**Specimen of Structured Digital Database**

<i>Date of Entry:</i>	<i>UPSI Disclosure Number:</i>
<i>Shared by</i>	<i>Name of person sharing UPSI</i>
<i>Nature of UPSI</i>	<i>[Insert Details]</i>
<i>Shared with: (Drop down options)</i> <i>Collaborators/Auditors/ Lenders including Prospective Lenders/ Customers/ Suppliers/ Merchant Bankers/ Legal Advisors/Credit Rating Agencies/ Insolvency professionals/ Service providers/ Consultant etc.</i>	<i>Name of Entity:</i>
	<i>Name of Person:</i>
	<i>PAN:</i>
	<i>Other identifier:</i>
<i>*Type of Sharing: (Drop down options) One Time Ongoing</i>	
<i>Date of Sharing:</i>	<i>*Period of Sharing: (In case of ongoing sharing)</i>
<i>*Mode of Sharing:</i>	
<i>*Confidentiality Agreement: (Yes/ No)</i>	<i>*Date of Agreement:</i>
<i>*Description of Agreement:</i>	
<i>*Confidentiality Intimation date:</i>	
<i>*Purpose of Sharing:</i>	
<i>*Information description:</i>	
<i>Remarks</i>	

*Non-mandatory information

COMPLIANCE CERTIFICATE FOR THE QUARTER ENDED....

[Pursuant to Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015]

I, _____, Compliance Officer of _____ (name of listed entity), or I, _____, Practising Company Secretary appointed by _____(name of listed entity) am aware of the compliance requirement of Structured Digital Database (SDD) pursuant to provisions of Regulation 3(5) and 3(6) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (PIT Regulations) and I certify that -

1. the Company has a Structured Digital Database in place
2. control exists as to who can access the SDD
3. all the UPSI disseminated in the previous quarter have been captured in the Database
4. the system has captured nature of UPSI along with date and time
5. the database has been maintained internally and an audit trail is maintained
6. the database is non-tamperable and has the capability to maintain the records for 8 years.

(relevant points from 1 to 6 can be striked off in the case of non-compliance)

I also confirm that the Company was required to capture _____ number of events during the quarter ended and has captured _____ number of the said required events.

I would like to report that the following noncompliance(s) was observed in the previous quarter and the remedial action(s) taken along with timelines in this regard:

For _____

Compliance Officer or Practising Company Secretary

Date:

Place:

Annexure-III

Checklist for maintenance of SDD

Sl. No.	Particulars	Remarks (Yes/No)
1.	Whether SDD provides the feature of time stamping?	
2.	Whether SDD provides the feature of audit trails?	
3.	Whether each alteration to the entries made in SDD gets captured in audit trails?	
4.	If the database or server of the SDD is hosted on cloud, then whether that hosting facility is owned by the company?	
5.	Whether the SDD has below contents:- <ul style="list-style-type: none"> • Nature of UPSI • Name of person from the organization who is sharing UPSI • Name of person (may be from within or outside the organization) with whom UPSI is being shared • PAN or any other identifier authorized by law of such person with whom UPSI is being shared (irrespective of whether the person is within or outside the organization) • If person with whom UPSI is being shared is outside the organization, then name of such organization • PAN or any other identifier authorized by law of such organisation • End date of UPSI 	
6.	In case a Nodal Officer has been designated for each department whether he is made responsible to ensure that - <ul style="list-style-type: none"> • Sharing of UPSI with any person by his department is happening in accordance with Regulation 3(1) only, i.e., for legitimate purposes only • Ensuring compliance with Regulation 3(2B) and 9A, i.e., ensuring that due notice has been given to such person to maintain confidentiality of UPSI / Confidentiality Agreement being entered - simultaneously while sharing UPSI • All UPSI generated by their department / shared by their department / which they are allowed access to (which may not be pertaining to their department), is captured in the SDD • All further material developments pertaining to UPSI is captured under SDD. • If any UPSI gets abandoned, then end date is updated by them in the SDD 	

Sl. No.	Particulars	Remarks (Yes/No)
7.	If there are Nodal Officers, whether all Nodal Officers are giving confirmations on the above points on periodic basis?	
8.	Whenever any UPSI is made generally available/abandoned, then end date of UPSI is updated in the SDD?	
9.	Whether persons authorized to make entries in SDD has been sensitized about the responsibilities with regard to maintaining SDD and keep it updated at all times?	
10.	Whether entries in SDD is preserved for at least 8 years?	
11.	If any investigation or enforcement proceedings are on-going, then whether SDD is preserved even after 8 years?	

Annexure-IV

Checklist for Compliance officers / PCS for SDD Certification

Sr. No	Compliance Requirement as per certificate	How can this point be checked by Compliance officer / PCS?
1.	Whether the Company has a Structured Digital Database in place?	<p>On the basis of whether the SDD installed meets all the requirements prescribed in Regulation 3(5) or not.</p> <p>Whether the names of persons with whom UPSI is shared along with their PAN or any other identifier are entered in the SDD?</p>
2.	Whether control exists as to who can access the SDD?	<p>To take confirmation from vendor at the time of purchase / IT head AND</p> <p>To check the SDD on random test check basis that :</p> <ul style="list-style-type: none"> • there is a feature / enabler for only those persons who are authorised to make/update/view entries • whether the entries relating to the particular UPSI which is already shared with a particular DP are visible to that DP? <i>[this can be optional]</i>
3.	Whether all the UPSI disseminated in the previous quarter have been captured in the Database?	<p>Declaration from all Nodal Officers responsible for making entries</p> <p>Additionally, Reconciliation of SDD v/s. disclosures on stock exchanges under Regulation 30 of Listing Regulations and press releases by the listed company during the quarter for which the certificate is being issued.</p>
4.	Whether nature of UPSI have been captured alongwith date and time?	<p>Generating report from software</p> <p>In case a Project is code-named, then only the name of such Project can be mentioned.</p>

Sr. No	Compliance Requirement as per certificate	How can this point be checked by Compliance officer / PCS?
5.	Whether the database has been maintained internally?	Declaration from Vendor that the database is hosted on the company's server and the vendor does not have any access to the entries made by the listed company.
6.	Whether audit trail is maintained?	To take confirmation from vendor at the time of purchase / IT head AND By test check basis that whether it is in the form of a report generating printable form or not.
7.	Whether the database is non-tamperable?	To take confirmation from vendor at the time of purchase / IT head AND By test check basis ensuring that the SDD does not permit to delete any entry.
8.	Whether the company has adequate systems to ensure maintenance of the record for the stipulated period of time?	To take confirmation from the company with regard to sufficiency of IT infrastructure. Confirmation from company to keep track of any investigation from SEBI with regard to any entry made in SDD.
9.	Number of events during the quarter required to be captured and the number of events captured by the Company	Reconciliation of number of entries in the SDD captured during the quarter v/s disclosures on stock exchanges under Regulation 30 of Listing Regulations and press releases by the listed company during the quarter for which the certificate is being issued. Additionally, declaration from Nodal Officers responsible for making entries
10.	Reporting of non-compliance observed in previous quarter(s) and the remedial action taken along with timeline	Reconciliation of previous SDD certificate v/s corrective action taken by listed company.

Annexure-V**Declaration from Persons authorised to make entries in the SDD
/Compliance Officer**

Date:

To,

The Compliance Officer / Practising Company Secretary

**Subject: Declaration with regard to updation of Structured Digital
Database (“SDD”)**

For the quarter ended _____, _____(one or more) designated person (DP) have shared _____(one or more) unpublished price sensitive information (UPSI) as defined under the Company’s Code of Conduct. With regard to updation of such UPSI in the Structured Digital Database (“SDD”) maintained by the company, I have checked and ensured the following with regard to all designated persons (DPs) of this department:-

- With regard to each and every UPSI which has been generated in this department, the entries have been made in the SDD
- With regard to each and every UPSI which has been shared by any DPs from this department with any other person (inside the organization or outside the organization), it has been shared for legitimate purposes as per the policy for determination of legitimate purposes of the company and the SDD has been updated with the below details:
 - (a) Nature of UPSI
 - (b) Name of the person sharing UPSI and his PAN
 - (c) Name of individual with whom UPSI is shared and his PAN
 - (d) In case UPSI is shared with any individual outside the organization, then name of such individual/organization alongwith PAN of that individual/organisation
 - (e) Date and time of sharing UPSI
- UPSI shared with the following persons were not entered in the SDD due to below-mentioned reasons (strike off, if not applicable):-

Nature of UPSI	Name of person with whom UPSI is shared	Date and time of sharing UPSI	Reason why entry was not made in SDD

- At the time of sharing each and every UPSI, confidentiality notice has been given to individual/organisation highlighting that UPSI is being shared and that person needs to maintain confidentiality with regard to the UPSI shared and is not allowed to trade in securities of the company till the time such UPSI becomes generally available.
- With regard to the following UPSI shared, the following persons could not be intimated that the information shared was UPSI and that entry was made in SDD due to below-mentioned reasons (strike off, if not applicable):-

Nature of UPSI	Name of person with whom UPSI is shared	Date and time of sharing UPSI	Reason why intimation was not given

I assure you that no part of this declaration is false and no information has been concealed.

Thanking you,

Name of person

Designation: Nodal officer for making entries in SDD

Department:

* * *

Motto

सत्यं वद । धर्मं चर ।
इष्टाकरे तेष्ट त्पाते. ब्रवेष्टे तु तेष्ट त्वात्.

Vision

"To be a global leader in promoting
good corporate governance"

Mission

"To develop high calibre professionals
facilitating good corporate governance"



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament
(Under the jurisdiction of Ministry of Corporate Affairs)

Headquarters

ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110003
Tel 011-4534 1000 Fax +91-11-2462 6727 email info@icsi.edu