

Compliances



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Corporate Governance Principles



- Principles under Reg 4:
 - Derived primarily from OECD principles
 - Includes principles on the following:
 - ✦ Disclosures and obligations of the listed entity
 - ✦ Rights of shareholders
 - ✦ Equitable treatment of all shareholders
 - ✦ Rights and role of stakeholders
 - ✦ Disclosures and transparency
 - ✦ Responsibilities of the Board of Directors
 - In cases of ambiguity/ incongruity between the principles and relevant regulations, the principles to prevail

Reg 17- Board of Directors



▶ Composition of the Board

- ▶ Optimum combination of EDs & NEDs, $>1/2$ NEDs, $>1/3^{\text{rd}}$ or $1/2$ IDs depending on Chair, >1 woman director

▶ Conduct of the Board

- ▶ At least 4 meetings, max 120 days gap
- ▶ To periodically review compliance reports
- ▶ Succession planning
- ▶ Risk management
- ▶ Lay down Code of Conduct for directors and senior management
- ▶ Minimum information to be placed before the Board
- ▶ Board evaluation

▶ Remuneration of the Board

- ▶ Board to recommend NED remuneration & obtain shareholder approval (other than sitting fees within limits)
- ▶ No stock options to IDs

Reg 18-21- Board Committees



Board Committees required under SEBI LODR Regulations

Audit Committee

- Oversight of financial reporting process & disclosures
- Auditor & financial statements related obligations
- RPTs
- Overseeing internal audit
- Whistleblower mechanism

Nomination and Remuneration Committee

- Identifying qualified directors & senior management
- Recommending appointment & removal of directors & KMPs
- Remuneration policy
- Diversity policy
- Board evaluation criteria

Stakeholders Relationship Committee

- Consideration and resolution of the grievances of the security holders of the listed entity
- Complaints related to
 1. Transfer of shares
 2. Non-receipt of annual report
 3. Non-receipt of declared dividends

Risk Management Committee

- Role and responsibility as defined by the board
- Monitoring & reviewing of the risk management plan & other functions may be delegated
- Applicable only to top listed entities by market capitalization

Reg 18- Audit Committee



- ▶ **Mandatory to have qualified & independent Audit Committee**
- ▶ **Composition:**
 - ▶ To ensure sufficient size- Minimum 3 directors
 - ▶ To ensure independence-2/3rd IDs & Chair- ID
 - ▶ To ensure capability- All members to be financially literate, at least 1 member with accounting/financial management expertise
- ▶ **Conduct of the Audit Committee**
 - ▶ At least 4 meetings, max gap- 120 days
 - ▶ Quorum- At least 2 members or 1/3rd whichever is greater, at least 2 IDs
 - ▶ Powers provided to Audit Committee to seek information, investigate activity, seek professional advice, etc.
 - ▶ Chair of the Committee to be present at AGM to answer shareholder queries

Reg 19- Nomination and Remuneration Committee (NRC)



- Role of Nomination Committee and Remuneration Committee combined in India
- Mandatory for every listed entity to have an NRC
- Composition:
 - To ensure sufficient size- Minimum 3 directors
 - To ensure independence- all directors to be NEDs, >1/2 IDs, Chair- ID, Chairperson of Board cannot chair NRC
- Conduct of the NRC
 - Chair of the Committee to be present at AGM to answer shareholder queries
 - Detailed role specified in Schedule II

Reg 20 & 21- SRC and RMC



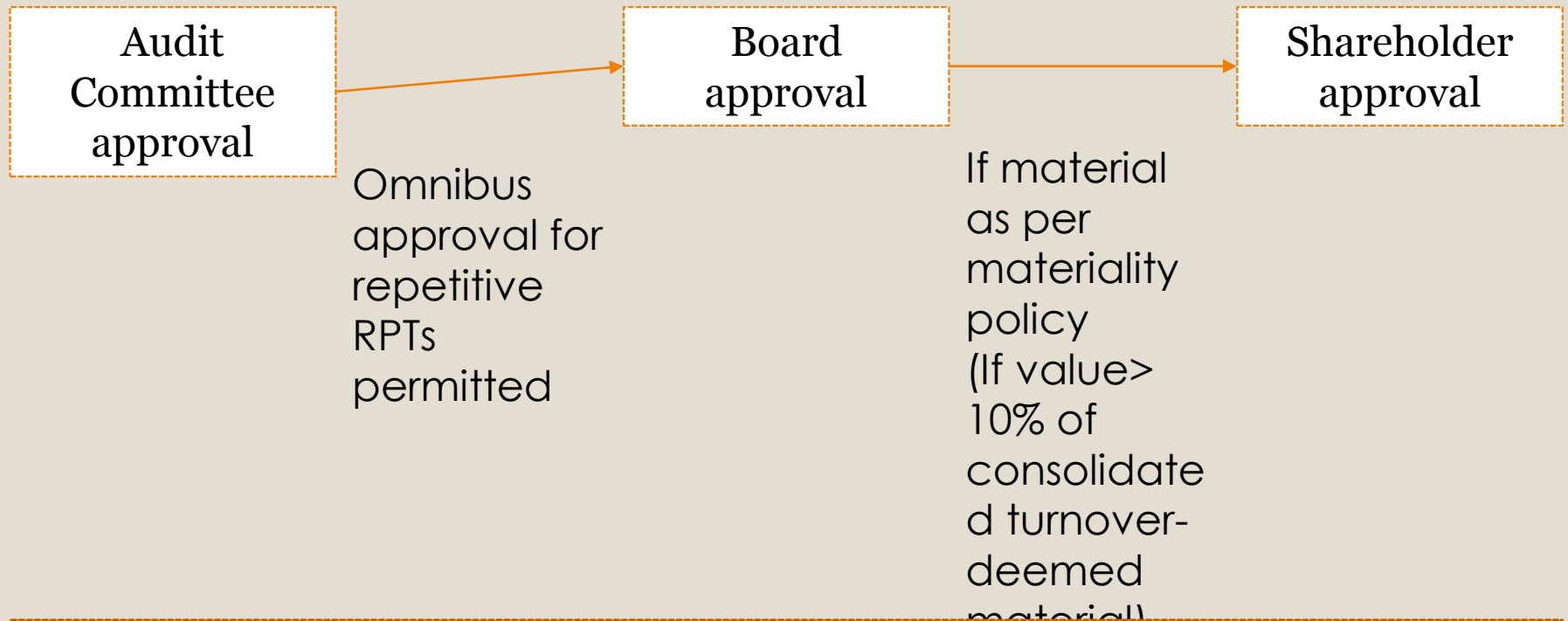
- **Stakeholder Relationship Committee**
 - Mandatory for every listed entity
 - To look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders
 - Chair has to be an NED
- **Risk Management Committee**
 - Applicable only to top 100 listed entities
 - Majority of the members to be Board members
 - Board to determine roles and responsibilities of the RMC

Reg 22- Vigil (Whistle-blower) Mechanism



- Mandatory for every listed entity to formulate a vigil mechanism for directors and employees to report genuine concerns.
- The vigil mechanism to provide for
 - Adequate safeguards against victimization of director(s) or employee(s) or any other person who avail the mechanism
 - Direct access to the chairperson of the audit committee in appropriate or exceptional cases.
- The policy to be disseminated on the website of the listed entity
- Audit Committee to review functioning of the whistle blower mechanism from time to time

Reg 23- Related Party Transactions



Major safeguard for minority shareholders- Related parties cannot vote on RPTs placed for shareholder approval (Majority of minority)

Reg 24- CG requirements wrt subsidiaries



- ▶ Important since in many companies, bulk of the business through subsidiaries
- ▶ Responsibility of Board of listed entity:
 - ▶ 1 ID to be on Board of every material unlisted Indian subsidiary
 - ▶ To go through minutes of Board meetings of the unlisted subsidiaries
 - ▶ To go through statement of all significant transactions and arrangements entered into by the unlisted subsidiary
- ▶ Responsibility of Audit Committee of listed entity:
 - ▶ To review financial statements, in particular investments made by unlisted subsidiary
- ▶ Rights of shareholders of the listed entity
 - ▶ Special resolution required to dispose off shares in material subsidiary resulting in less than 50% shareholding/ to cease control
 - ▶ Special resolution required to sell, dispose off, lease assets > 20% of assets of the material subsidiary

Reg 25- Obligations of Independent Directors



- ▶ IDs - crucial gatekeepers of governance, especially for minority shareholders
- ▶ Obligations of IDs:
 - ▶ To ensure IDs devote sufficient time- Can be IDs in max 7 listed entities, If WTD, can be ID in max 3 listed entities
 - ▶ To ensure continuing independence- Max tenure as per Cos Act
 - ▶ To ensure free discussions- At least one exclusive meeting of IDs
 - ▶ Board evaluation-to evaluate performance of non-IDs, whole Board, Chairperson (after taking views of non-IDs)
 - ▶ Protection to IDs - Only liable where acts occurred with his knowledge/ connivance/ consent/ hasn't acted diligently
 - ▶ To ensure no long vacant positions- New ID before next Board meeting/ 3 months, whichever is later
 - ▶ Induction & familiarisation- different programmes on nature of industry, business model of the entity, rights and responsibilities of IDs, etc.

Reg 26 & 27 - Obligations of directors, KMPs, etc. & other CG requirements



- ▶ To ensure directors devote sufficient time- Can be member in max 10 & Chair in max 5 Committees across all listed entities
- ▶ To ensure transparency- Disclosures by directors
 - ▶ Committee positions in other listed entities
 - ▶ Shareholding in the listed entity (for NEDs) prior to appointment
 - ▶ Material transactions where potential conflict of interest
 - ▶ Compliance with Code of Conduct
- ▶ Discretionary CG requirements- Separation of Chairperson & CEO, unmodified audit opinion, internal audit reporting to Audit Committee, etc.
- ▶ Disclosure on compliance with CG requirements- Quarterly reporting to stock exchanges signed by compliance officer or CEO

Flow of the presentation



Concept of corporate governance

Evolution of corporate governance

Legal framework for corporate governance in India

CG provisions in SEBI LODR Regulations

Kotak Committee report

Way forward

Constitution of Committee



- Chaired by Shri Uday Kotak and comprising 24 members
- Included representatives from:
 - Government/PSUs- MCA, MoF, DPE, SCOPE
 - Corporate- FICCI, CII, HDFC, Wipro, L&T
 - Professional bodies- ICAI, ICSI
 - Stock exchanges- BSE, NSE
 - Investors- Proxy Advisors like SES and IiAS
 - Lawyers- AZB and CAM
 - Consultants/CAs- KPMG, Deloitte, McKinsey
 - Academicians- Prof Krishnamurthy and Prof Vasanthi Srinivasan

Terms of Reference



With the aim of improving standards of Corporate Governance of listed companies in India, to make recommendations to SEBI on the following issues:

- ▶ Ensuring independence in spirit of Independent Directors and their active participation in functioning of the company;
- ▶ Improving safeguards and disclosures pertaining to Related Party Transactions;
- ▶ Issues in accounting and auditing practices by listed companies;
- ▶ Improving effectiveness of Board Evaluation practices;
- ▶ Addressing issues faced by investors on voting and participation in general meetings;
- ▶ Disclosure and transparency related issues, if any;
- ▶ Any other matter, as the Committee deems fit pertaining to corporate governance in India.

The Committee was requested to provide its recommendations in the context of equity listed companies.

Submission of report



- The Committee was tasked to submit the report within 4 months
- Accordingly, the Committee submitted its report on Oct 5, 2017
- The report placed on SEBI website for public comments till Nov 4, 2017
- Wide range of public comments received from various stakeholders
- Analysis of the comments under process and based on comments, suitable measures will be undertaken

Broad areas covered in the report



► Chapters

1. Composition and Role of the Board of Directors
2. The Institution of Independent Directors
3. Board Committees
4. Enhanced Monitoring of Group Entities
5. Promoters/Controlling Shareholders and Related Party Transactions
6. Disclosures and Transparency
7. Accounting and Audit related issues
8. Investor Participation in Meetings of Listed Entities
9. Governance Aspects of Public Sector Enterprises
10. Leniency Mechanism
11. Capacity building in SEBI for Enhancing Corporate Governance in Listed Entities

Key Committee recommendations



▶ A Wholesome Board

- ▶ Minimum six directors + Half to be IDs + One woman ID
- ▶ Separation of the role of chairperson and the CEO/MD
- ▶ Independence “in spirit”
- ▶ Lead ID
- ▶ Disclosure of Skills Matrix
- ▶ Knowledge updation and enhanced interaction of NEDs with senior management

▶ Commitment to Role

- ▶ Enhanced number of board and committee meetings
- ▶ Increased focus of board on strategy, succession planning, risk management, budget, board evaluation and ESG
- ▶ Enhanced role of board committees

Key Committee recommendations



- ▶ **Information sharing with controlling promoters / significant shareholders**
 - ▶ Business Realities vs. Legal Framework
 - ▶ Access to Inside Information – “Legitimate Purpose” Exception
 - ▶ From “Shadows” to “Sunlight”
 - ▶ Access to Information Agreement
 - ▶ Eligible Counter-parties + Minimum Principles + Mandatory Disclosures + Opt-in
- ▶ **Related Party Transactions**
 - ▶ Promoters and promoter group entities holding 20% or more: Related Parties
 - ▶ Shareholders’ approval - Brand usage/ royalty payments of more than 5% of the turnover

Key Committee recommendations



- **Audit and Auditor related aspects**
 - Enhanced audit and auditor related disclosures
 - Clarity in SEBI's powers to take action against auditors in case of gross negligence (in addition to fraud/connivance)
 - Strengthening the role of the ICAI + independent functioning of the QRB
- **Guiding principles for governance of PSEs**
 - Transparent mandate + Disclosure of objectives and obligations
 - Independence from administrative ministry
 - Consolidating government stake under holding entity structure
- **Capacity building in SEBI**

Flow of the presentation



Concept of corporate governance

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Kotak Committee report

Way forward

Way forward



- ▶ Suitable changes to the existing framework based on Kotak Committee recommendations and comments received thereof
- ▶ To continue to work on the regulatory challenges, especially on the following aspects:
 - ▶ Rules vs principles-based framework
 - ▶ Comply-or-explain or mandatory approach
 - ▶ Balance between minority shareholder rights and shareholder democracy
 - ▶ Balance between regulation and ease of doing business
 - ▶ Improving compliance in spirit as against tick-the-box exercise
- ▶ Increase shareholder participation and activism
- ▶ Role of other CG gatekeepers- Credit Rating Agencies, Proxy Advisory firms, Analysts, media, whistleblowers, etc.

Major recommendations

Subject	Existing provision	Recommendation
Minimum Number of Directors and IDs on a Board	<p><u>For directors</u>, CA, 2013- 3 directors for public cos; SEBI LODR- no provision</p> <p><u>For IDs</u>, CA, 2013- 1/3rd SEBI LODR- 1/2 if Chairperson is executive/related to promoter; 1/3rd for others</p>	<ul style="list-style-type: none"> • Minimum 6 directors in all listed entities • 1/2 of the Board to be IDs for all listed entities phase-wise: <ul style="list-style-type: none"> • For top 500- w.e.f. Apr 1, 2020
Gender diversity	<p>CA, 2013 and SEBI LODR- At least one woman director</p>	<p>At least one <u>independent</u> woman director</p>
Quorum for Board Meetings	<p>CA, 2013- 1/3rd or 2, whichever is higher SEBI LODR- no provision</p>	<p>1/3rd or 3, whichever is higher + At least one ID (<i>Video conference to be counted as per CA, 2013</i>)</p>

Major recommendations

Subject	Existing provision	Recommendation
Separation of CEO/MD and Chairpersons	CA, 2013-Separation required unless articles provide otherwise/ company doesn't carry multiple businesses SEBI LODR- Discretionary reqt	Top capitalized companies Chairperson and MD/CEO with effect from April 1, 2020.
Disclosure of Expertise/Skills of Directors	CA, 2013 and SEBI LODR- Brief profile of directors to be disclosed on appointment	Disclosure in Annual report: <ul style="list-style-type: none">• List of core skills/expertise/competencies identified by BOD as required for it to function effectively• Skills actually available with the board;• Disclosure with names w.e.f. year ended March 31, 2020.

Major recommendations

Subject	Existing provision	Recommendation
Eligibility Criteria for IDs	Both CA, 2013 and SEBI LODR- objective criteria for independence	<ul style="list-style-type: none">• To exclude Promoter group & Board inter-locks• Undertaking from ID that he/she is not aware of any circumstance/situation, which exists or may be reasonably anticipated, that could impair or impact his/her ability to discharge his/her duties with objective independent judgements and without any external influence• Board to record above undertaking after due assessment of its veracity• Board to certify every year that each of its IDs fulfills above conditions and is independent of management

Major recommendations

Subject	Existing provision	Recommendation
NRC composition and role	CA, 2013- at least 1/2 to be IDs SEBI LODR- at least 1/2 to be IDs (for Audit Committee- 2/3 rd) Detailed role of NRC specified in both	2/3 rd of NRC to be IDs NRC to recommend to the board all remuneration, in whatever form, payable to senior management. <i>(Senior management-members of core management team including all persons one level below CEO/MD+CS+CFO)</i>
Obligation on Board w.r.t subsidiaries	<ul style="list-style-type: none"> • At least one ID on Board of unlisted Indian material subsidiary • Material subsidiary - income/NW > 20% of consolidated income/NW 	<ul style="list-style-type: none"> • ID on Board- to be extended to foreign subsidiary as well • Material subsidiary- To be reduced to 10% (except for appointment of ID on Board)
Disclosure of RPT	Detailed requirements in CA, 2013 and SEBI LODR	<ul style="list-style-type: none"> • Half yearly disclosure of RPTs (consolidated) on website & to exchanges within 30 days of half yearly results; • If promoters/group > 20%- to be deemed to be related party; Disclosure of transactions with promoters/group holding > 10% annually & half yearly even if not related parties

Major recommendations

Subject	Existing provision	Recommendation
<p>Sharing of information with promoters/other shareholders</p>	<p>UPSI prohibited to be shared unless for legitimate purpose, performance of duties or discharge of legal obligations</p>	<ul style="list-style-type: none"> • Formal green channel legitimizing information flow to controlling promoters and shareholders with nominee directors • Optional framework • Access to Info Agreement (AIA) between listed co and counterparty where counterparty- <ul style="list-style-type: none"> • promoters holding >25% and persons directly/indirectly in control of such promoter • Persons with nominee directors (<i>to get only info as shared with director</i>) • AIA- duty on confidentiality, safeguards and procedure for communication, categorization of any individual as Designated Person (<i>DP- person categorized by BOD in consultation with compliance officer</i>) • Entity has right to withhold info in certain cases • Term of AIA- at least 1 year; both parties can terminate; if listed entity terminates, 3/4th directors to approve with related party

Major recommendations

Subject	Existing provision	Recommendation
Remuneration to Executive Promoter Directors	CA, 2013- ceiling on remuneration SEBI LODR- no maximum remuneration	Shareholder approval by special resolution if total remuneration paid to: <ul style="list-style-type: none"> • Single executive promoter-director > Rs. 5 crore or 2.5% of the net profit, whichever is higher; or • All executive promoter-directors > 5% of net profits. SEBI may review status in future based on experience gained.
Remuneration of Non-executive Directors	CA, 2013- shareholder approval if remuneration payable to such directors > 1% of NP in case there is a MD/WTD/Manager and 3% in other cases SEBI LODR	In case the remuneration of a single NED > 50% of the pool being distributed to the NEDs as a whole, shareholder approval to be required (promoter can vote).
Disclosures on DR holders	No provision	<ul style="list-style-type: none"> • Entity to obtain details of holders of DRs from overseas depositories at least on monthly basis • Based on info obtained, entity to disclose details of holders holding >1% to exchange along with shareholding pattern quarterly.

Subject	Existing provision	Recommendation
E-voting and webcast	CA rules- e-voting upto 5 p.m. 1 day before meeting;	<ul style="list-style-type: none"> • Live one-way webcasts of all shareholder meetings for top 100 entities on trial basis; may be extended in future • E-voting to be open till midnight on the day of the general meeting.
Group audit	ICAI Auditing standards - Holdco auditor can rely on subsidiary auditors	<ul style="list-style-type: none"> • ISA-600 doesn't permit division of responsibility; Concerns- concentration • Therefore, Hold Co auditor should be responsible for audit opinion of all material unlisted subsidiaries
Periodical financial disclosures	SEBI LODR- Detailed disclosure for quarterly/ half yearly disclosures	<ul style="list-style-type: none"> • Consolidated quarterly results to be mandatory • Cash flow statement to be mandatory on half yearly basis • 80% of each of consolidated revenue, assets & profits to be audited/ ltd review every quarter • Last quarter results- to disclose by way of a note, aggregate effect of material adjustments made in the results of the last quarter which pertain to

Major recommendations

Subject	Existing provision	Recommendation
AGM timelines	CA, 2013-AGMs to be held within 6 months of FY	<ul style="list-style-type: none">• Top 100 entities - to hold AGMs within 5 months i.e. by August 31, 2019;
Annual reports	SEBI LODR-soft copies to shareholders whose email registered for the purpose, Annual report to stock exchanges within 21 working days of approval	<ul style="list-style-type: none">• Wherever email available with co/ depositories, only soft copy should be sent• Mobile numbers & emails to be mandatory for demat• Annual report to stock exchanges & website along with dispatch of notice; If amended, revised copy within 48 hours of AGM

Governance aspects of PSEs



- ▶ All listed entities, government or private, to be at par on governance standards. So, all listed PSEs should be compliant with LODR.
- ▶ If inconsistency between legislation and LODR, harmonization of the legislation to bring it in line with LODR.
- ▶ Establish a transparent mandate for PSEs and disclose its objectives and obligations
- ▶ Ensure independence of the PSEs from the administrative ministry.
- ▶ Consolidate govt stake in listed PSEs under holding entity structure(s) by Apr 1, 2020; HoldCo to have Independent board with diversified skill set.
- ▶ Listed PSEs fully comply with the provisions of SEBI LODR Regulations and the same be suitably enforced.
- ▶ Govt should assess and examine broader issues as above concerning ownership structure, removal of conflicts, creating a more autonomous environment for PSEs to function in the best interest of all stakeholders. This will significantly enhance value of the national assets and should be done in a time-bound manner.

Significance of a CS



- Knows company operations in detail
- Has close relations with management
- Consultant in all important matters including future plans

Functions of CS



- Handling legal aspects for incorporation, formation, promotion, amalgamation, reorganization or winding up of companies
- Management of public issues – compliance officer
- Matters related to central/state sales tax, excise laws, labour laws & corporate laws – timely submission of filings

Scope of Secretarial function



- Important member of management - Wide range of functions and responsibilities
- A professional - advisor for legal matters
- A principal officer of the Company
- Pervasive function - Finance, Accounts, Legal, Administration and Personnel areas
- Secretarial duties and responsibilities

What is insider trading



- **A company's confidential information**
 - Qualifies as property to which the company has a right of exclusive use.
- **Divulging UPSI by an insider is violation of a fiduciary duty**
 - Constitutes fraud akin to embezzlement
 - Has criminal implications
- **Misappropriation of UPSI amounts to theft**
 - Use of UPSI for ones benefit amounts to dishonesty and cheating
 - Has criminal implications

US law – insider trading

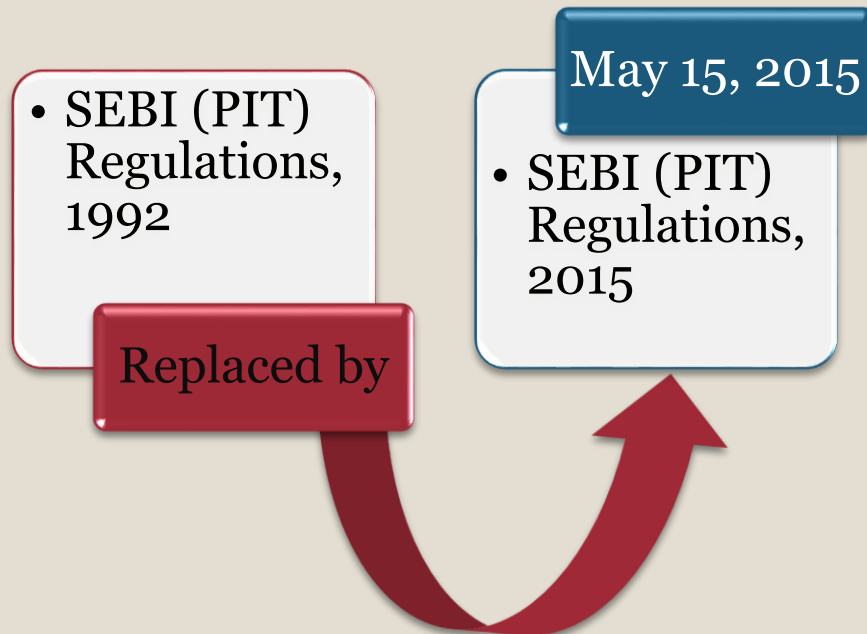


- U.S. insider trading prohibitions are based on English and American common law
 - Governed by prohibitions against fraud
- A director, who bought his company's stock when he knew it was about to jump up in price, committed fraud by buying while not disclosing his inside information
 - The US Supreme Court ruling in 1909
 - Well before the SEC Act, 1934

SEBI (PIT) Regulations, 2015



- January 15, 2015 - Published in Gazette of India
- May 15, 2015 - Came into effect



SEBI (PIT) Regulations, 2015



- Objectives
 - Protect Interest of the investors
 - To strengthen regulatory framework

- Based on Justice Sodhi Committee report dated December 07, 2013

Information defined



Unpublished Price Sensitive Information (UPSI)

- Relates to company or its securities
- Materially Impacts the price of securities
- Not generally available
- Must be disclosed as per listing agreement

Generally Available Information

- Accessible to public
- On a non discriminatory platform
- e.g.- Stock Exchange

Information defined



UPSI includes

1. Financial Results
2. Dividends
3. Change in Capital Structure
4. Mergers, de-mergers, acquisitions, delistings, disposals, and expansion of business and such other transactions
5. Changes in key managerial personnel,
6. Material events in accordance with listing agreement

• UPSI not limited to above 6 pts

Insider definition widened

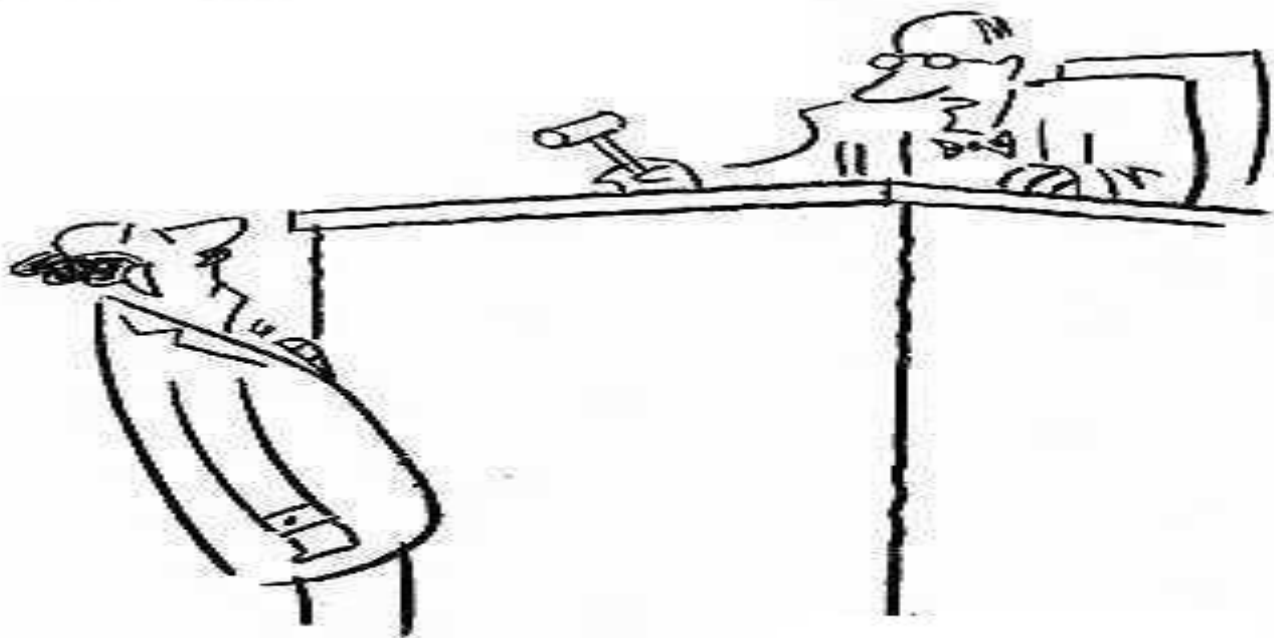


Insider

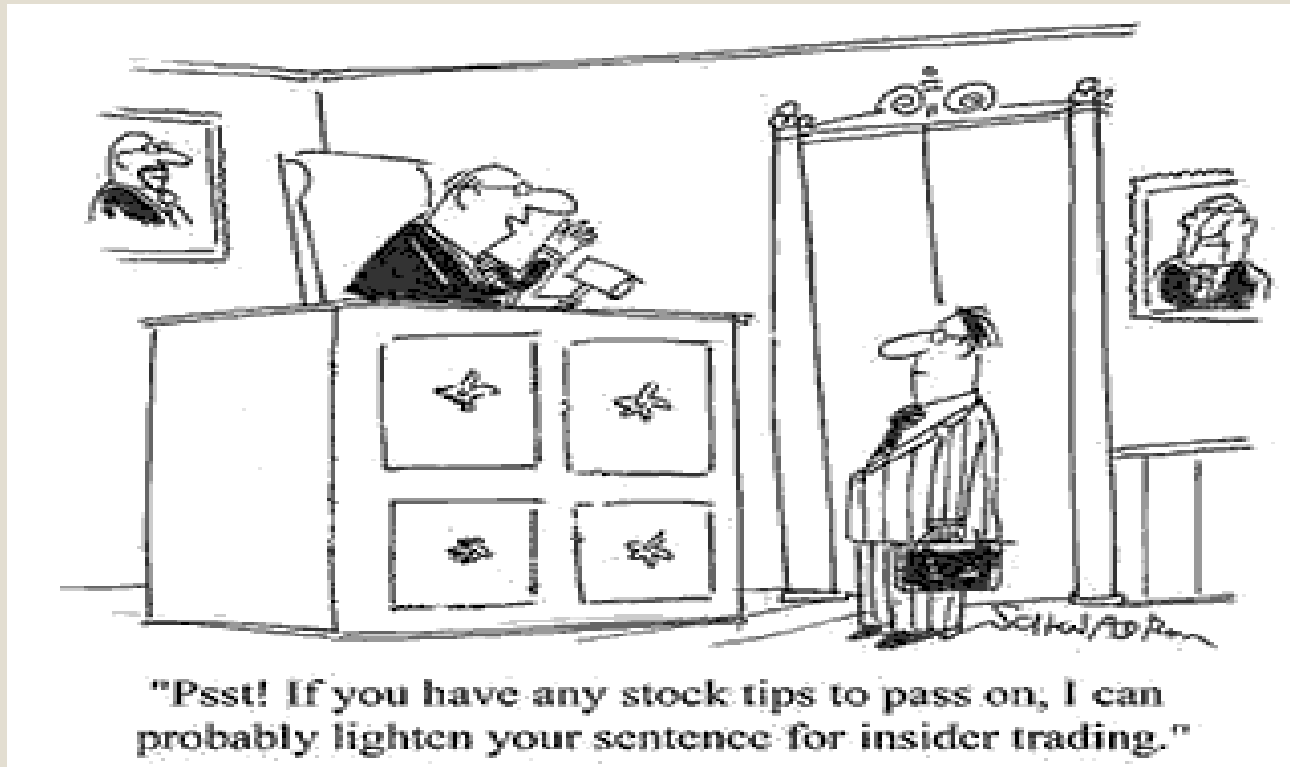
- In actual possession of Unpublished Price Sensitive Information (UPSI)
- Or a Connected Person

Connected
Person

- Has a connection with company to put him in possession of UPSI
- To bring in ambit – the persons seemingly not occupying a position in company but in regular touch with company



You have been tried and convicted of insider trading....
Do you have any last tips to offer before I pronounce
the sentence?



Code of Fair Disclosure and Conduct



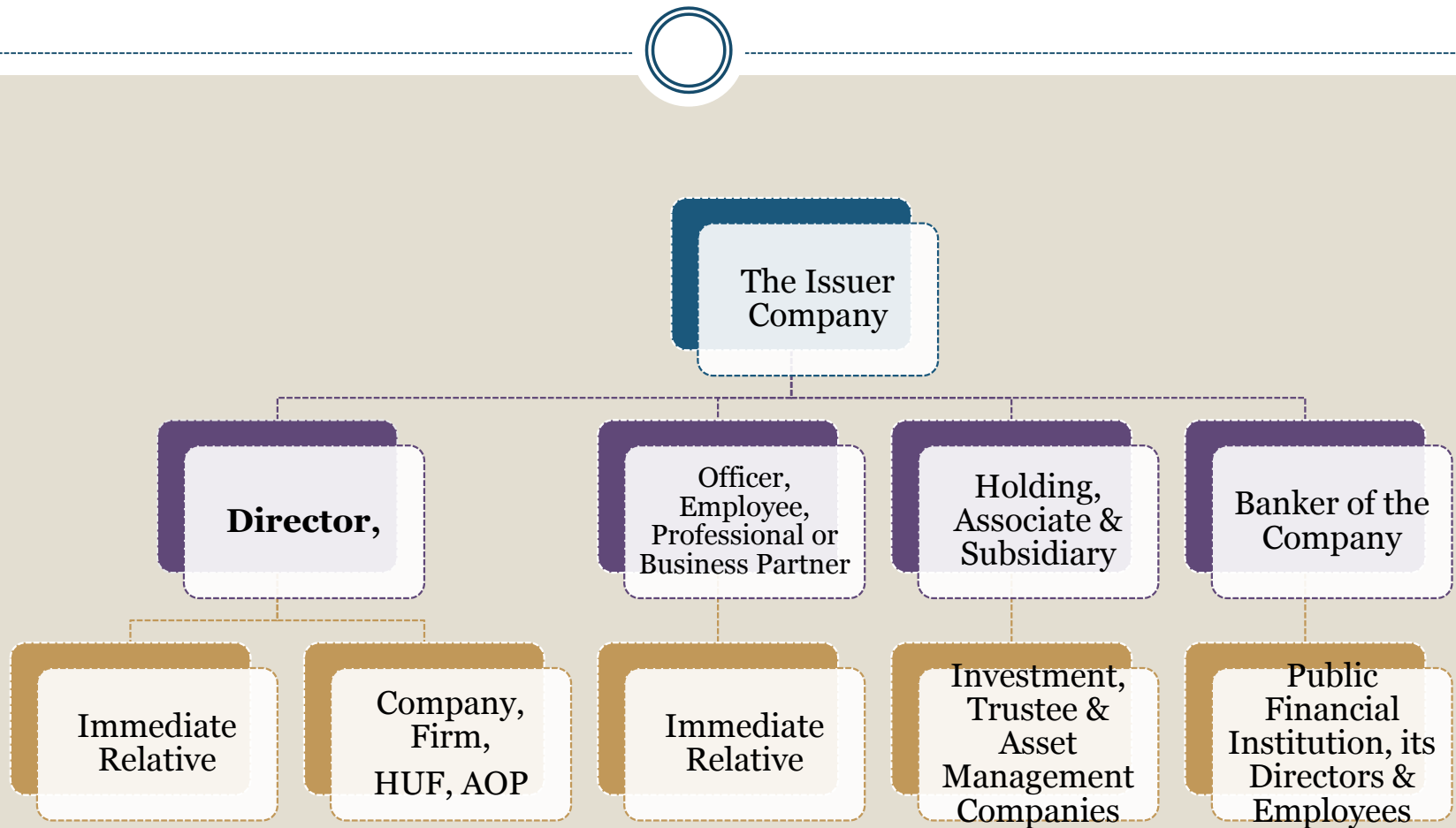
- Replaces earlier code of conduct for prohibition of insider trading
- Board to formulate and publish the code
 - For fair disclosure as per Schedule A
 - For trading as per Schedule B
- Other entities handling UPSI
 - To formulate code to regulate monitor and report trading by its employees (Sched B)
- Compliance officer to administer

How does an insider trading case come up?

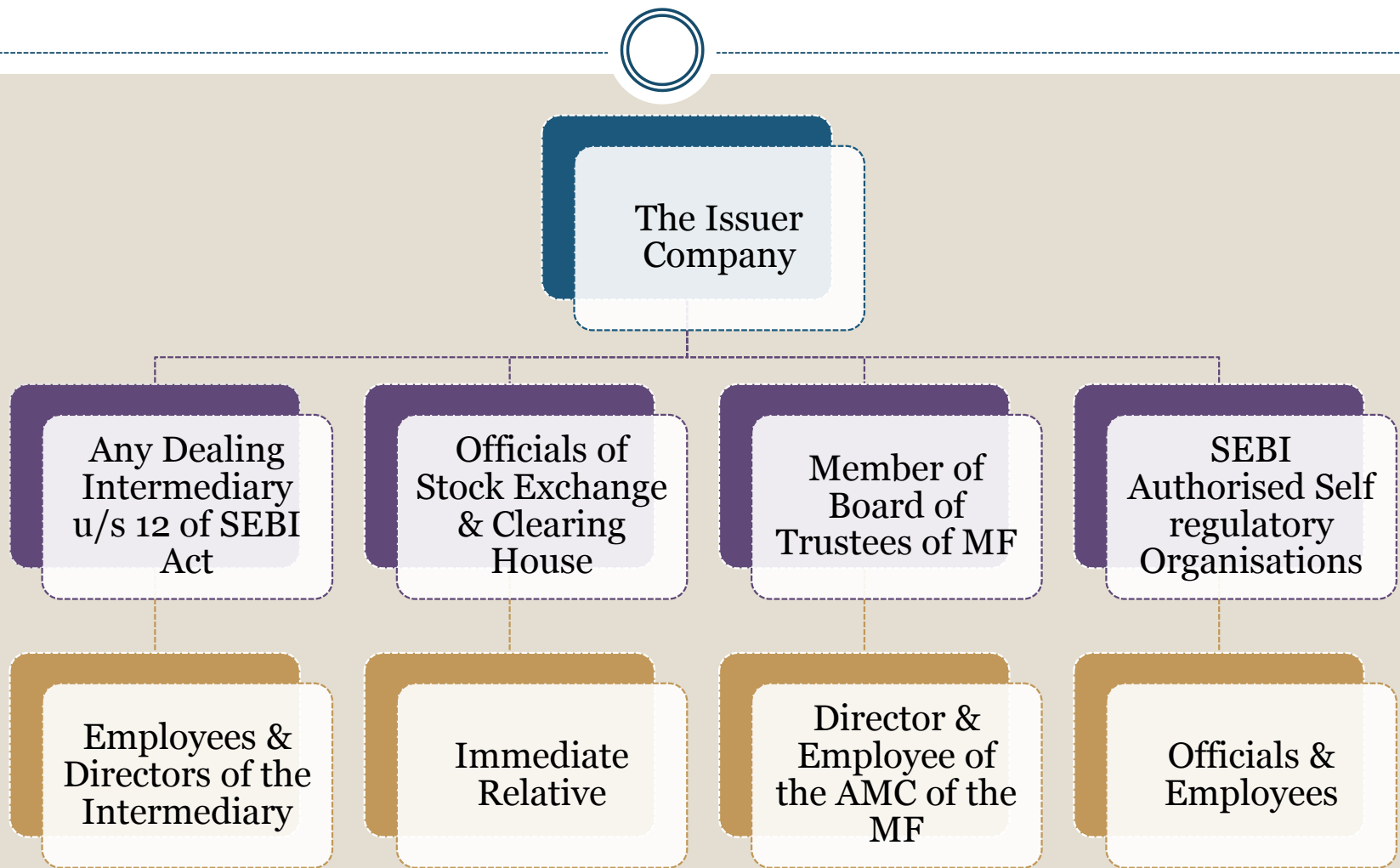


- **SEBI has installed an advanced surveillance software**
 - This monitors abnormal patterns of trading in all scrips
 - Detailed information sought from Exchanges on such trades
 - Exchange in turns to the Members for client information

Connected persons – non-intermediaries



Connected persons - intermediaries



What can be done?



- **Effective Employee Securities Dealing Policy**
 - To regulate, monitor & report trades
 - Automation suggested
 - Adherence to Schedule B
 - Applicable to Auditors, consultants, vendors etc. who may have access to UPSI
 - Everyone to appoint a Compliance Officer
- **Address Insider Trading as an Enterprise Risk**
 - Make this part of corporate culture
- **Conduct periodic awareness sessions to all employees**

What can be done?

- To maintain the dynamic list of connected persons
 - Acting in contractual or fiduciary relationship
 - Professionals
 - Business partners
- To ensure that UPSI is not shared with the aforesaid except under permitted circumstances
- To document and prove that UPSI was not shared with the aforesaid
- To enter into NDA with all the aforesaid
- To approve and operate Trading Plans

Compliance officer's role



- **Responsible for Trading Plans and Employee Security Dealing Policy**
 - Means he should ensure that nobody is front running
 - Trades by relatives is more onerous to monitor
- **Responsible for scrip related rumours floated by other employees**
- **Bound to report all cases of Insider trading to SEBI**
- **Responsible for all reporting to Exchanges**

Systems



- **Install**
 - Robust internal control systems for complying with regulatory requirements
 - Proper Chinese Wall mechanisms
- **Strengthen**
 - The ambit of internal audit
 - The standards in regulatory compliance
- **Automate**
 - Compliance processes
 - Internal controls
 - Back up mechanisms

Insider trading – implications



- Onus on the Connected Person to prove innocence
 - Guilty unless proved innocent
 - Contrary to established principles of law
- New powers acquired by SEBI
 - Search & Seizure powers
 - Power to procure Call records data
- Heavy penalties (Rs. 10 Lakh to 25 Crore) and disgorgement

Heights?





Evolution of CS function



- Not only secretarial duties
- Increasing involvement in corporate policies and decision making
- Strengthen SEBI's endeavour to ensure best compliance practices

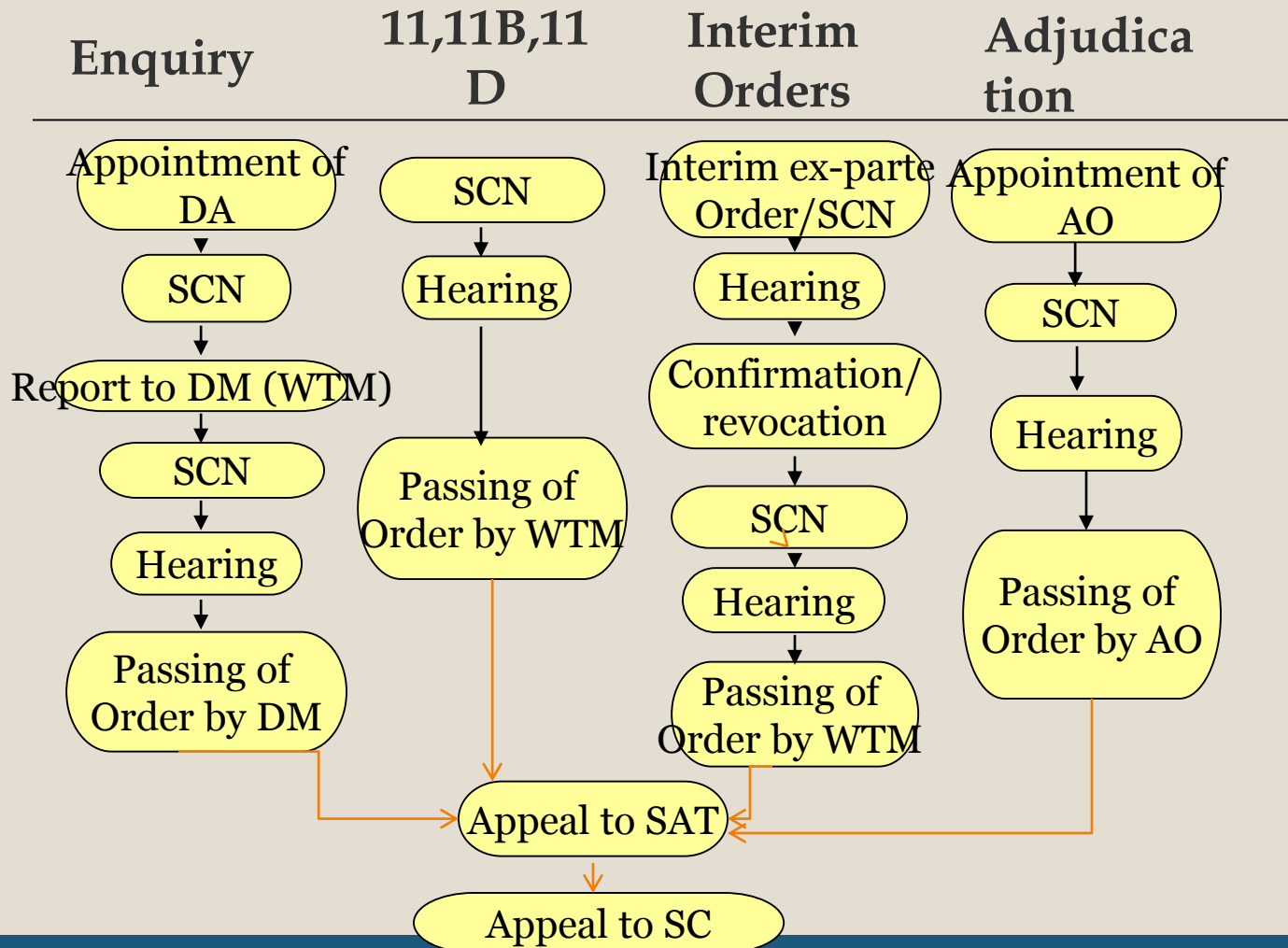
Enforcement actions of SEBI



56

- *Interim ex-parte* directions [Sec. 11(4) & 11B of SEBI Act]
- Final restraint orders/ Disgorgement [Sec. 11B of SEBI Act; Sec. 12A of SC(R) Act/ Sec. 19 of Depositories Act]/ Cease and Desist Orders [Sec. 11D]
- Adjudication Proceedings [Chapter VI A]
- Enquiry Proceedings [Sec. 12(3) of SEBI Act and SEBI (Intermediaries) Reg., 2008]
- Decisions on registration to an intermediary/ requests for exemption from the applicability of the Takeover Regulations [Regulation 10 and 11]
- Prosecution for offences [*initiated before the designated Court*]
- Recovery Proceedings [Sec. 28A of the SEBI Act]

SNAPSHOT OF PROCEDURES OF ENFORCEMENT





- Tool of effective discipline. Exemplary terms on time is effective enforcement.
- Saves crucial **time** and helps in quick disposal of proceedings.
- Prevents risk of delay and **uncertainty**.
- Saves lengthy litigation **cost**.
- Resources which can be used for other important work.

Scope of Settlement Proceedings

59



Regulation 5(1) of Settlement Regulations:

No application for settlement of any specified proceedings is considered:

- If default was committed **within a period of 24 months from date of last settlement order**
- If applicant has been party to **2 settlement orders during the period of 36 months**
- If audit/ investigation/ inspection, in respect of any default, is yet to complete.

Overview of Settlement proceedings



- **Regulation 5(2):** specified proceeding, shall not be settled, if it involves any of the following:
(Insider Trading/ Serious PFUTP matters (defined)/ Failure to make open offer/ Failure to redress investor grievances/ Raising monies by issuance of securities or pooling of funds/ Non-compliance of notices and summons or orders/ directions ...)
- **Regulation 5(3):** application can be considered if applicant makes out adequate grounds and settlement is in the interest of investors and development and regulation of securities market.

Effect of Non-compliance of Settlement Order



Settlement Order can be revoked and proceedings can be restored/ re-initiated if there is *inter alia*:

- *Non-compliance with settlement order*
- *Suppression of facts*
- *Violation of the undertakings or waivers*

Data on Settlement



Year	Application received	Application disposed	Application rejected/ returned
2014-2015	108	41	59
2015-2016	177	34	82
2016-2017	171	103	23
2017-2018	241	200	79

Eligibility and fee



- person, against whom any specified proceedings have been initiated or may be initiated may make application in Form specified in part A of Schedule I of the regulations
- any person who proposes to dispose of any proceedings with regard to defaults under securities laws, pending before the Tribunal or a court, wherein the Board is a party
- non-refundable application fee as specified in Part-B and the undertakings and waivers as specified in Part-C of the Schedule-I:

Conditions for making settlement application (Reg 3)



- full and true disclosures in respect of the alleged defaults
- the facts established against the applicant or admitted by him in any ongoing or concluded proceedings with respect to the same cause of action, under any law, shall be deemed to be admitted by the applicant in respect of the proceedings proposed to be settled
- The applicant shall make one application for settlement of all the proceedings that have been initiated or may be initiated in respect of the same cause of action

Rejection or withdrawal of application



- An application that is not complete in all respects or does not conform to the requirements of these regulations shall be returned.
- The applicant whose application has been returned may, within fifteen days from the date of communication of the rejection, submit the revised application
- An application may be withdrawn at any time prior to the communication of the decision of the panel of whole time members under regulation 14. An applicant who withdraws an application shall not be permitted to make another application in respect of the same default.

Rejection in certain eventualities (Reg 20)



- (1) The Board may at any time during the course of considering an application, reject an application on the following grounds:
 - (a) Where the applicant refuses to receive or respond to the communications sent by the Board;
 - (b) Where the applicant does not submit or delays the submission of information, document, etc., required by the Board;
 - (c) Where the applicant who is required to appear, but does not appear before the internal committee on more than one occasion;
 - (d) Where the applicant violates in any manner the undertaking and waivers as specified in Part-C of the Schedule-I;
 - (e) Where the applicant does not remit or delays the payment of settlement amount and/or does not abide by the undertaking and waivers.

Limitation (Reg 4(1), (2), and (3))



- (1) No application in respect of any specified proceedings pending with the Board shall be considered if it is made after sixty days from the date of service of the notice to show cause or supplementary notice(s) to show cause, whichever is served later.
- (2) the panel of whole time members may condone the delay, if it is satisfied that there was sufficient cause for not filing the application within the period specified in sub-regulation (1).
- (3) The provisions of this regulation shall not apply in the case of proceedings pending before the Tribunal or any court.



Thank you