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ARTICLE: SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015('PIT REGULATIONS')

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INTRODUCTION

Insider trading is the act of trading, directly or indirectly, in the securities of a publicly listed company by any person, who may or may not be managing the affairs of such company, based on certain information, not available to the public at large, that can influence the market price of the securities of such company. An insider, who has access to critical price sensitive information with respect to a given company, may tend to use such information to his economic advantage, severely impairing the interests of a public shareholder who is not privy to such information.

GLOBAL INSIDER TRADING

United States:

The United States has been the most successful in prohibiting insider trading and the first country to tackle insider trading effectively. The Securities and Exchange Act, 1934, enumerates the provisions relating to the protection of interest of investors against Insider Trading. Thereafter in the year 1961, US came up with an enforcement prohibiting the practice of Insider Trading, being the first country to do so. The Securities and Exchange Commission (SEC) has been further empowered to seek 'triple penalty remedy' (i.e financial compensation awarded by a court to a prevailing plaintiff that are up to three times the actual or compensatory damages) under the provisions of the Insider Trading Sanctions Act, 1984. The SEC has been empowered by the Act to bring enforcement actions against any violations of the provisions of the securities laws.

United Kingdom:

The United Kingdom first legislated against Insider Trading practice in the year 1980 and promulgated its first enforcement in the year 1981 which preceded the enactment of the Company Securities (Insider Trading) Act, 1985 which principally regulates the practice of Insider Trading today. The Act prohibits an individual from dealing on a recognized stock exchange in the securities of the companies which are listed, with which he is or has been, in the past six months, connected and by virtue of his connection, has acquired unpublished price sensitive information. The contravention of the provisions of the Act involves both civil and criminal liabilities.

Germany:

In Germany, a voluntary code of conduct is emphasized upon, which is to be strictly followed by the Companies, Stock Exchange dealers and banks so as to preclude the wrong use of confidential inside information by the persons concerned. This code has been very successful as there has been no major Insider Trading scandal notwithstanding the flourishing market and the ever-increasing take-over bids.

Evolution Of Insider Trading In India

Post independence first concrete attempt was made in the 1948 by Thomas Committee under the Chairmanship of Mr. P.J. Thomas the adviser to Finance Ministry. The Committee studied Prevention of Insider Trading laws of U.S.A., U.K and Japan and made recommendations for restricting Insider trading by legislation inter alia the Securities Exchange Act, 1934.

Different committees constituted by the Government, have recommended measures to prohibit the practice of insider trading and the need to regulate the same. To deal with market abuse related to “insider trading”, the Securities and Exchange Board of India (SEBI) had promulgated the Prohibition of Insider Trading Regulations, 1992. The Regulations were amended in 2002 to strengthen it further and usher in the concept of Code of Conduct for prevention of insider trading, as well as a code for corporate disclosure practices.

As part of a periodic review of Regulations and to address challenges in bringing to closure cases of Insider Trading, the entire regulations were reviewed by the Committee chaired by former Chief Justice Mr. N.K. Sodhi and consequently these were replaced by the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“PIT Regulations”).

In August 2017, SEBI constituted a Committee on Fair Market Conduct under the chairmanship of Dr. T K Viswanathan, Ex-Secretary General, Lok Sabha and Ex-Law Secretary (“the Viswanathan Committee”). The Committee was mandated to review the existing legal framework to deal with market abuse to ensure fair market conduct in the securities market. The Committee was also mandated to review the surveillance, investigation and enforcement mechanisms being undertaken by SEBI to make them more effective in protecting market integrity and the interest of investors from market abuse.

The Committee submitted its Report to SEBI on 8th August, 2018 wherein it, inter alia, recommended amendments to PIT Regulations. Subsequently the regulator has amended the PIT Regulations in 2018, 2019 and 2020. The SEBI PIT regulations were last amended on October 29, 2020.

Important Terms

Term	Regulation	Definition
“Insider”	Regulation 2(g)	"insider" means any person who is: i) a connected person; or ii) in possession of or having access to unpublished price sensitive information;

“Connected Person”	Regulation 2(d)	"connected person" means,- (i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. (ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, - (a). an immediate relative of connected persons specified in clause (i); or (b). a holding company or associate company or subsidiary company; or (c). an intermediary as specified in section 12 of the Act or an employee or director thereof; or (d). an investment company, trustee company, asset management company or an employee or director thereof; or (e). an official of a stock exchange or of clearing house or corporation; or (f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or (g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or (h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or (i). a banker of the company; or (j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

“unpublished price sensitive information” – UPSI”	Regulation 2(n)	"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: – (i) financial results; (ii) dividends; (iii) change in capital structure; (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions; (v) changes in key managerial personnel.
“Trading”	Regulation 2(l)	"trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly
“Code of Conduct”	Regulation 9(1)	The Board of Directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards as set out in PIT Regulations.
“Designated Person”	Regulation 9(4)	The Board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:- (i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body; (ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to

When can an Insider trade and not Trade?

As per Regulation 3(1) of PIT Regulations, insiders are prohibited to communicate, provide or allow access to any UPSI relating to the company or listed securities or securities proposed to be listed to,

- other insiders or
- any person.

As per regulation 3(2), any person,

- shall not obtain any UPSI from any Insider of such UPSI;
- shall not induce any person to communicate UPSI.

Exceptions:-

- Where the board of the Company is of the informed decision that sharing of UPSI is in the best interest of the Company, it will entail making of an open offer under the takeover regulations which would not only make available the same price to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

- Where a transaction would not entail an open offer under the takeover regulation but where the board of directors of the company is of informed opinion that sharing of UPSI is in the best interests of the company and UPSI is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected.

Further, the Board of Directors shall require the parties to execute agreements to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential. Further, the parties shall not trade in securities while in possession of such UPSI.

Further, as per Regulation 4, insiders are prohibited to trade in listed securities as well as securities proposed to be listed when they are in possession of UPSI.

As per Regulation 4, trading by an insider who is in possession of UPSI, shall always be presumed to have been motivated by the knowledge and awareness of UPSI.
Exceptions:-

- Off- market transactions between insiders having same UPSI in possession subject to the condition that such transaction shall be reported to the company within 2 working days which in turn shall report to the stock exchange within 2 working days of receipt;
- Transactions carried out through block deal window mechanism between persons who are in possession of UPSI;
- Transactions pursuant to statutory and regulatory obligation;
- Exercise of stock options where exercise price is pre- determined;
- Trades pursuant to trading plan;
- In case of non- individual insider.

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

Pursuant to Regulation 3(5) of SEBI PIT Regulations, the Company is required to maintain Structured Digital Database 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. 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.

The Company 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.

TRADING PLAN – REGULATION 5

What is trading Plan?

An insider is entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

Trading Plan gives an option to persons who may be perpetually in possession of unpublished price sensitive information and enable them to trade in securities in a compliant manner. This would enable the formulation of a trading plan by an insider to enable him to plan for trades to be executed in future. By doing so, the possession of unpublished price sensitive information when a trade under a trading plan is actually executed would not prohibit the execution of such trades that he had pre-decided even before the unpublished price sensitive information came into being.

KEY FEATURES

- Plan to be for a minimum period of 12 months
- NoTrading between the 20th trading day prior to the last day of any financial period for which results are required to be announced by the Company and the 2nd trading day after the disclosure of such financial results.
- Specify-

(i) Value of Trades to be effected or the number of Securities to be Traded;
(ii) Nature of the Trade; and
(iii) Intervals at, or dates on which such Trades shall be effected.

- Only one Trading Plan can be applicable during a given period
- Trading plan shall not entail trading in securities for market abuse.
- Required to be approved by the Compliance Officer and disclosed to the stock exchange.
- Trading to commence 6 months after public disclosure of the plan
- The Trading Plan once approved cannot be revoked.

As per the amended provisions of the Regulations, following are the relaxations provided:

- pre-clearance of trades is not required for a trade executed as per an approved trading plan;
- trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.

TRADING WINDOW CLOSURE – SCHEDULE B OF SEBI PIT REGULATIONS 2015

Periodic Trading Window Closure

In case of declaration of financial results of a Company, which must be done on a quarterly basis by every listed entity as per the provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("SEBI LODR Regulations"), the trading window must be closed on a quarterly basis,

Duration of Trading Window closure

Trading window shall be closed from the end of every quarter till 48 hours after declaration of financial results. However clause 4(2) of Schedule B of PIT Regulations states that the gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.

Event based Trading Window Closure

The following are other event-bases situations during which the trading window must be closed. In addition to financial results PIT Regulations envisage the following situations, which are UPSI (as per the definition of UPSI given in PIT Regulations), during which the Trading Window must be closed:

- dividends;
- change in capital structure;
- mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- changes in key managerial personnel

In the above cases, the trading window shall remain closed from the time this information being UPSI had originated till the time this event is disclosed by the Company publicly and / or to the stock exchanges or this event is abandoned by the Company. Other than the abovementioned events, there can be many other events which can be UPSI and trading window must be closed from the time UPSI had originated till such events are publicly disclosed by the Company.

The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available.

Need for Identification of UPSI

Under Regulation 9A(2)(b), as a part of Internal Controls to be put in place by the Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary, all the UPSI shall be identified. This identification of UPSI can be done by providing certain guidelines on materiality / thresholds in the Code of Conduct framed under Regulation 9. These materiality thresholds for identification of UPSI may be different than the thresholds prescribed under Regulation 30 of Listing Regulations for the purpose of disclosure to stock exchanges.

Hence, in case of the above mentioned events (as defined in the definition of UPSI) and any other events which may be considered as UPSI as per the Code of Conduct of the Company, there can be situations when only a particular set of employees may have the said information which is UPSI. In such situations, it shall be sufficient if the trading window is closed for such specific set of people only who are privy to such UPSI.

Meaning of Pre-Clearance

As per Clause 6 of Schedule B – Code of Conduct, when the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the Board of Directors may stipulate.

Prior to approving any trades, the compliance officer shall be entitled to seek declarations to the effect that the applicant for pre-clearance is not in possession of any UPSI. He shall also have regard to whether any such declaration is reasonably capable of being rendered inaccurate.

Validity of Pre-Clearance

As per Clause 9 of Schedule B – the code of conduct shall specify any reasonable timeframe, which in any event shall not be more than seven trading days, within which trades that have been pre-cleared have to be executed by the designated person, failing which fresh pre-clearance would be needed for the trades to be executed.

DISCLOSURES UNDER PIT REGULATIONS

Regulation 6(2) of the PIT Regulations provides that the disclosures to be made by any person shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

As per Regulation 2(f) of the PIT Regulations "Immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

Regulations 6(3) of the PIT Regulations provides that the disclosures of trading in securities shall also include trading in derivatives of securities and the traded value of the derivatives shall be taken into account. However the derivatives of securities should be permitted by any law for the time being in force.

Regulation 6(4) of the PIT Regulations provides that the disclosures made shall be maintained by the company, for a minimum period of five years.

INITIAL AND CONTINUAL DISCLOSURES - REGULATION 7

Type of Disclosure	What	By Whom	To Whom	When
Initial Disclosure **Regulation 7 (1)**	Holding on the date of appointment	Promoter, Director & KMP	Company	within 7 days of appointment of director or KMP or becoming promoter,
Continual Disclosure **Regulation 7 (2) (a)**	Value of securities traded, in aggregate, in a calendar quarter,exceeds traded value of Rs. 10 Lac or any other value as may be prescribed	Promoter or Director or Designated Person.	Company	Within two trading days of such transaction

Continual Disclosure **Regulation 7 (2) (b)**	notify the particulars of such trading under **Regulation 7 (2) (a)**	Company	Stock exchange	within two trading days of receipt of the disclosure or from becoming aware of such information. *It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).*
Disclosure by other Connected Person **Regulation 7 (3)**	As required by the company	Connected Person	Company	At such frequency as may be determined by the company in order to monitor the compliance with these regulations.

CODES UNDER PIT REGULATIONS FOR PREVENTION OF INSIDER TRADING

I. CODE OF FAIR DISCLOSURE

Regulation 8(1) therein provides that the board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to PIT regulations, without diluting the provisions of these regulations in any manner.

Regulation 8(2) of PIT Regulations provides that every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

II. CODE OF CONDUCT

Regulation 9(1) of PIT Regulations deals with Code of Conduct and provides that the board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule-B (in case of a listed company) and Schedule C (in case of an intermediary) to PIT regulations, without diluting the provisions of these regulations in any manner. The compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any, or to the Chairman of the board of directors at such frequency as may be stipulated by the board of directors, but not less than once in a year.

Regulation 9(2) of PIT Regulations provides that the Board of Directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

INSTITUTIONAL MECHANISM FOR PREVENTION OF INSIDER TRADING.

Regulation 9A(1)provides that the Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

Regulation 9A(2)provides that the internal controls shall include the following:

(a) all employees who have access to unpublished price sensitive information are identified as designated person;

(b) all the unpublished price sensitive information shall be identified and its confidentiality shall be main tained as per the requirements of these regulations;

(c) adequate restrictions shall be placed on communication or procurement of unpublished price sensitive information as required by these regulations;

(d) lists of all employees and other persons with whom unpublished price sensitive information is shared shall be maintained and confidentiality agreements shall be signed or notice shall be served to all such employees and persons;

(e) all other relevant requirements specified under these regulations shall be complied with;

(f) periodic process review to evaluate effectiveness of such internal controls.

Regulation 9A(4) the following matters may be reviewed by the Audit Committee:(Note: The list given below is indicative and not exhaustive)

1. Details of trading window closure such as period of closure, mode of communication of window closure to all concerned and the date of communication;
2. Details of Trading plans submitted by Insiders;
3. Details of pre-clearances given by the compliance officer and trades made as against them;
4. Details of non-compliances, violation of the Regulations, contravention with the Code and Regulations such as trades without pre-clearances, contra trades, leakage of UPSI etc.; to impose penalties or take such penal action as the audit committee may feel suitable;
5. Synopsis of amendments to the Regulations, if any;
6. Proper maintenance of details of designated persons, their immediate relatives and persons with whom designated persons share material financial relationship, one time and annual data collated from them, and also the details of trade executed by designated persons, their immediate relatives;
7. Internal Committee to investigate the leakage of UPSI as a part of Internal control process;
8. Creation/Revocation/Release of pledge of Securities;
9. Proper maintenance of Digital Database in respect of information shared for legitimate purpose;
10. Annual Review of compliances under PIT Regulations;
11. To monitor whistle blower mechanism to report instances of leak of UPSI;
12. To monitor whether the process of bringing people on sensitive transactions is being followed properly

Regulation 9A(6) of PIT Regulations provides that the listed company shall have a whistle-blower policy and make employees aware of such policy to enable employees to report instances of leak of unpublished price sensitive information.

INFORMANT

SEBI PIT regulations provide for informants who are individuals to voluntarily submit to the Board a Voluntary Information Disclosure Form relating to an alleged violation of insider trading laws that has occurred, is occurring or has a reasonable belief that it is about to occur, in a manner provided under the regulations.

The regulations provide for manner of submission of information by the informant, reward to informant, confidentiality in respect of identity and existence of informant and protection against retaliation and victimization of informant.

PENALITIES

By Whom	Reference	Penalty
By Company	Clause 12 of the Code of Conduct	Disciplinary action, consequences of which may include wage freeze ,suspension or termination of employment

By SEBI For Insider trading, either by the insider for himself or on behalf of another person	Clause 15G of Securities and Exchange Board of India Act, 1992	Penalty between INR10 Lakhs to Rs. 25 Crores or 3times the amount of profits made out of the insider trading, whichever is higher.
For contravention or attempt to contravene or abetment to contravene the provisions of the SEBI Act	Clause 24 of Securities and Exchange Board of India Act, 1992	Imprisonment, which may extend to a period of ten (10) years or fine up to Rs. 25 Crores or Both.

POWERS OF SEBI

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

DO'S AND DON'TS: A RECAPITULATION

Do's	Don'ts
Remember it is a crime to trade in securities based on UPSI	Discuss UPSI in public places.
Keep all UPSI confidential	Act on someone else's " tips" that may be based on UPSI
Ascertain whether you are a "Designated Person" or "Connected Person"	Recommend to anyone a trade when in possession of UPSI
Read the Code formulated by the Company	Trade in Securities if the Compliance Officer disapproves the trade
Before Trading, check if trading window if open	Undertake Contra-Trade for a period of 6 months from the previous trade
Disclose any trades which are of a value greater than Rs. 10 Lakhs	

WHEN IN DOUBT COMPLY

Disclaimer

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The views expressed are that of the author and not that of the company which the author represents.

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ARTICLE: A LOOK INTO THE FOREIGN CONTRIBUTION (REGULATION) AMENDMENT ACT, 2020

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INTRODUCTION

IThe introduction of the Foreign Contribution (Regulation) Amendment Act,2020 has its own share of controversy. The evolution of law on this subject is one that has been subjected to much criticism, though there are specific reasons behind the legislation.

Background:

Soon after independence, there began an unaccounted inflow of foreign contributions into the country. This unregulated and unrestricted flow of funding needed to be curbed and provided the impetus necessary to enact the Foreign Contribution (Regulation) Act, 1976. The High Court of Delhi in Association for Democratic Reforms vs Union of India, (2014) 209 DLT 609stated the background in which the 1976 Act was enacted as follows: "It can be safely gathered that amidst a spate of subversive activities sponsored by the Foreign Powers to destabilise our nation, the Foreign Contribution (Regulation) Act, 1976 was enacted by the Parliament to serve as a shield in our legislative armoury, in conjunction with other laws like the Foreign Exchange Regulation Act, 1973, and insulate the sensitive areas of national life like – journalism, judiciary and politics from extraneous influences stemming from beyond our borders."

Thereafter, the Foreign Contribution (Regulation) Act, 1976was enacted to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain persons or associations with a view to ensure that parliamentary institutions, political associations, academic and other voluntary organisations as well as other individuals working in important areas of national life may function in a manner consistent with the values of a sovereign democratic republic and the matters connected therewith and incidental thereto.

Foreign funding into India increased considerably from only 24 crores in 1968 to over 10000 crores in 2010. Further, a number of news reports indicate that certain foreign countries were funding political parties, candidates for elections, religious organisations, journalists, editors, private business individuals and columnists among others, to further their own agenda along with extending hospitality.

FCRA 2010:-

The 1976 Act failed to successfully regulate the receipt of foreign contributions which led to the passing of the Foreign Contribution (Regulation) Act, 2010.It was passed to "consolidate the law to regulate the acceptance and utilisation of foreign contribution or foreign hospitality by certain individuals or associations or companies and to prohibit acceptance and utilisation of foreign contribution or foreign hospitality for any activities detrimental to the national interest and for matters connected therewith or incidental thereto". Some other primary objectives put forth included prohibiting organisations of political nature, not being political parties from receiving contributions; prohibiting use of foreign contributions for any speculative businesses; cap administrative expenses at fifty per cent of the receipt of foreign contribution; and providing for suspension and cancellation of receipts.

FCRA 2020:-

The 2010 Act compensated for the lacunae in the previous law to an extent. As there was apprehension that there was misuse of these funds for purposes not sanctioned by the Act, the Foreign Contribution (Regulation) Amendment Act of 2020 was introduced. . The stated object of the new Amendment Act is to *"strengthen the compliance mechanism, enhance transparency and accountability in the receipt and utilisation of foreign contribution, and facilitating genuine non-governmental organisations or associations who are working for the welfare of the society".*

Public Servant:-

Section 3 has been amended to enlarge the scope of persons prohibited from receiving foreign contributions by including the word 'public servant' in sub-section (i) clause (c). The newly amended provision reads as under:-

> *Section 3(1) No foreign contribution shall be accepted by any –*
>
> *(c) public servant, Judge, Government servant or employee of any corporation or any other body controlled or owned by the Government;"*
>
> *'Explanation 1.- For the purpose of clause (c), "public servant" means a public servant as defined in Section 21 of the Indian Penal Code.*
>
> *Explanation 2.- In clause (c) and section 6, the expression "corporation" means a corporation owned or controlled by the Government and includes a Government Company as defined in clause (45) of Section 2 of the Companies Act, 2013'*

According to Section 21 of the Indian Penal Code, 'public servant' includes Officer in the Military, Naval or Air Forces, Judge, Officer of Court of Justice, juryman, assessor, member of panchayat, arbitrator., etc. among others. It also includes every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government, and every person in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company. The main objective for the inclusion of the term 'public servant' is to prevent such persons from being manipulated or influenced by foreign funding and acting against the principles of the Act.

Downstream movement of Contribution:-

Section 7 of the Act has been amended to prevent and prohibit the transfer of foreign contributions by persons authorised to receive them to any person. The amendment bridges the gap in the existing law which permitted the transfer of foreign contributions to others registered under the Act or to those who had obtained prior permission for receiving such contributions.

The amended Section 7 reads as under-

> *"No person who-*
>
> *(a) Is registered and granted a certificate or has obtained prior permission under this Act; and*
>
> *(b) Receives any foreign contribution,*
>
> *Shall transfer such contribution to any other person."*

The substitution of this Section results in a blanket ban on the transfer of funds to any person. Especially in a country like India, with the numerous number of NGO's and organisations at every level, it turns out to be a problematic one. Smaller level or small scale organisations would previously obtain their funding through contributions received and then transferred by larger organisations. In the wake of the corona virus pandemic, this provision poses a huge threat to these smaller, grass root level organisations.

Limit on Administrative Expenses through Foreign Contributions:-

Section 8 has been amended to bring down the cap on administrative expenses from foreign contributions from 50% to 20% provided that such expenses exceeding 20% of such contribution may be defrayed with prior approval of the Central Government. Until this amendment, organisations were permitted to use upto 50% of the foreign contributions received to defray administrative expenses and field expenses. Although the intention behind drafting such a provision is to ensure that there is no misuse of funding and enhancing the objective of the grant, the provision can cause operational challenges. Large scale NGO's by nature of their objective or activity would consequently have sizeable amounts of administrative expenditure to continue their day to day functions. Additionally, social workers who are commonly underpaid and overworked, to comply with these new limits imposed by this Amendment, would face further pay cuts. Further, the imposition of a frugal limit of twenty percent compared to the previous cap of fifty percent is one that needs to be revisited. The assumption that a uniform and standardised limit of twenty percent works as an invariant for all persons registered under the FCRA is erroneous.

Power to conduct inquiry:-

Under the previous regime, the Central Government had powers to take action under Section 11 but the proviso required that action could be initiated only against a person who is found guilty of contravention of the Act. The scope has been enlarged through the substitution of the proviso to Section 11 whereby the Central Government on the basis of any information or report, and after holding a summary inquiry, has reason to believe that a person who has been granted prior permission has contravened any of the provisions of this Act, it may, pending any further inquiry, direct that such person shall not utilise the unutilised foreign contribution or receive the remaining portion of foreign contribution which has not been received or, as the case may be, any additional foreign contribution, without prior approval of the Central Government.

The amended proviso seems to confer significant powers and one cannot rule out the potential for misuse in the absence of any checks and balances.

FCRA Account:-

Section 12(1A) has been inserted directing that every person who makes an application for grant of certificate of registration, or prior permission under the Act must mandatorily open an "FCRA Account" in the manner specified under Section 17 of the Amendment Act and mention the details of such account in his application. Section 17 deals with foreign contributions through scheduled banks and provides the following:-

1. Foreign Contributions shall be received only in an account designated as "FCRA Account" by the bank, which shall be opened by him for the purpose of remittances of foreign contribution in such branch of the State Bank of India at New Delhi, as the Central Government may, by notification, specify in this behalf

2. More than one account may be opened in one or more scheduled banks of his choice for the pur pose of keeping or utilising the foreign contribution which has been received from his ''FCRA Account'' in the specified branch of State Bank of India at New Delhi:

3. Such person may also open one or more accounts in one or more scheduled banks of his choice to which he may transfer for utilising any foreign contribution received by him in his ''FCRA Account'' in the specified branch of the State Bank of India at New Delhi or kept by him in another ''FCRA Account'' in a scheduled bank of his choice:

4. No funds other than foreign contribution shall be received or deposited in any such account.

5. The specified branch of the State Bank of India at New Delhi or the branch of the scheduled bank where the person referred to in sub-section (1) has opened his foreign contribution account or the authorised person in foreign exchange, shall report to such authority as may be specified,—
   (a) the prescribed amount of foreign remittance;
   (b) the source and manner in which the foreign remittance was received; and
   (c) other particulars,

in such form and manner as may be prescribed.

This provision appears to have been enacted with the objective of streamlining the process of tracking the foreign contributions received through the FCRA Accounts and to ensure monitoring of all remittances.

Aadhar Compliance:- The insertion of Section 12A in the Amendment Act bestowing upon the Central Government the power to require identification documents has proven to be a controversial one. The provision is as follows-

"Not withstanding anything contained in this Act, the Central Government may require that any person who seeks prior permission or prior approval under Section 11, or makes an application for grant of certificate under Section 12, or, as the case may be, for renewal of certificate under Section 16, shall provide as identification document, the Aadhaar number of all its office bearers or Directors or other key functionaries, by whatever name called, issued under the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, or a copy of the Passport or Overseas Citizen of India Card, in case of a foreigner."

Suspension, Surrender and Renewal of Certificate:-

Section 13 of the 2010 Act had already provided for a suspension of registration certificate for a period up to 180 days. This has been amended to empower the Government to suspend the registration certificate of a person upto a period of 360 days pending an inquiry for cancellation of registration.

Section 14A has been inserted to provide for Surrender of Certificate. The provision reads as follows-

"On a request being made in this behalf, the Central Government may permit any person to surrender the certificate granted under this Act, if, after making such inquiry as it deems fit, it is satisfied that such person has not contravened any of the provisions of this Act, and the management of foreign contribution and asset, if any, created out of such contribution has been vested in the authority as provided in sub-section (1) of Section 15."

Section 16 further amplifies the investigative power of the Central Government by insertion of a proviso which provides for the conducting of an inquiry before renewal of certificate to satisfy itself that such person has complied with all requirements of Section 12(4).

Conclusion:-

Transparency in its functioning is a key element and part of any transaction entailing the receipt of foreign funds. However, in this hunt to ensure complete compliance and accountability, the Government has gone a step too far in attempting to regulate the non-profit sector in India. The term 'public interest' has been elongated and given a very wide meaning over a period of time. Coupled with discretion, there is potential for misuse of powers. Further, genuine and bona fide players may suffer on account of technical breaches which do not involve any violation of the law. The FCRA Amendment in its pursuit to bring transparency could end up choking the journey of some NGOs since the practical aspects of downstream contributions and running projects has not been fully appreciated.

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IMPORTANT CIRCULARS/NOTIFICATIONS/RULES/ORDERS ISSUED BY MINISTRY OF CORPORATE AFFAIRS AND BY SECURITIES EXCHANGE BOARD OF INDIA DURING THE MONTH JANUARY 2021.

MCA VIDE CIRCULAR NO 1 OF 2021 (E FILE NO CSR 10/9/2020-CSR MCA) DATED 13.01.2021 HAS CLARIFIED THE FOLLOWING:

Spending of CSR funds for COVID 19 is an eligible CSR activity (General circular No 10/2020 dated 23.03.2020). It is now clarified that spending of CSR funds for carrying out awareness campaigns / programmes or public outreach campaigns on COVID-19 Vaccination programme is an eligible CSR activity under item no (i)(ii) and (xii) of Schedule VII of the Companies Act 2013 relating to promotion of health care, including preventive health care and sensitization, promoting education, and, disaster management respectively.

MCA VIDE CIRCULAR NO 2 OF 2021 (E FILE NO 2/6/2020-CL -V) DATED 13.01.2021 has decided to allow companies whose AGMs were to be held in the year 2020 or become due in the year 2021 to conduct their AGMs on or before 31.12.2021 in accordance with the requirements provided in paragraphs 3 and 4 of the General Circular No. 20.2020'

The circular further clarifies that the above circular shall not be construed as conferring any extension of time for holding AGMs by the companies under the Companies Act 2013 and the companies which have not adhered relevant time lines shall remain subject to legal action under the Companies Act 2013.

MCA VIDE CIRCULAR NO 3 OF 2021 (E FILE NO 2/01/2020-CL -V) DATED 15.01.2021 HAS INTRODUCED A SCHEME TITLED AS "SCHEME FOR CONDONATION OF DELAY FOR COMPANIES RESTORED ON THE REGISTER OF COMPANIES BETWEEN 01.12.2020 AND 31.12.2020, UNDER SECTION 252 OF THE COMPANIES ACT 2013."

a. The Scheme shall come in to effect from 01.02.2021

b. The Scheme shall be applicable in respect of companies in respct of whom the appeal filed under Section 252 of the Act with the respective NCLT Bench for the restoration of the name of the company was disposed of between 01.12.2020 to 31.12.2020, with an order for restoration of the company.

c. The last date for filing of any overdue e-forms by such companies under the scheme shall be 31.03.2021.

d. The Scheme shall be applicable in respect of filing of all e-forms except where any increase in authorised capital is involved (e form SH 7) and charge related documents (e-forms CGH-1, CGH-4, CGH-8 AND CGH-9) which are required to be filed with the registrar.

e. Every company shall be required to pay normal filing fees under the Companies (Registration offices and Fees) Rules 2014 on the date of filing and no additional fees shall be payable for the forms for which the scheme is applicable.

REPORT OF THE COMPANY LAW COMMITTEE ON DECRIMINALIZATION OF THE LIMITED LIABILITY PARTNERSHIP ACT, 2008 dated 04.01.2021. Public comments/ suggestions are hereby invited on the recommendations of the Committee to this Ministry latest by 02nd February, 2021.

MCA vide G.S.R. 40(E).— dated 22.01.2021 issued Companies (Corporate social Responsibility) Amendment Rules 2021. (Detailed note on the same already circulated to all the members)

MCA vide notification No. 324E dated 22.01.2021 appoints the 22.01.2021 as the date on which the provisions of Section 21 of the said Act shall come in to force. (This Section deals with the amendment made to Section 135 of the Companies Act 2013 by the Companies Amendment Act 2019,)

MCA vide notification No 325 E dated 22.01.2021 appoints the 22.01.2021 as the date on which Sections 2,11,18(c), 22(ii), 25, 27, 53, 55, 58 to 60 (both inclusive), 62 and 64 and 65 of the Companies amendment Act 2020. (Detailed note on the same already circulated to all the members)

MCA vide notification No dated 25.01.2021 has issued Companies (Incorporation) Amendment Rules 2021. (Details of the same is available in the MCA website)

MCA vide General Circular No 4/2021 dated 28.01.2021 has relaxed on levy of additional fees in filing of e-forms AOC-4, AOC-4 (CFS), AOC-4-XBRL AND AOC 4 NON – XBRL FOR THE FINANCIAL YEAR ENDED ON 31.03.2020 UNDER THE COMPANIES ACT 2013.

It has been decided that no additional fees shall be levied upto 15.02.2021 for the filing of e-forms **AOC-4, AOC-4 (CFS), AOC-4-XBRL AND AOC 4 NON – XBRL FOR THE FINANCIAL YEAR ENDED ON 31.03.2020. during the said period, only normal fees shall be payable for the filing of the aforementioned e-forms.**

SEBI/HO/IMD/DF6/CIR/P/2021/004 JANUARY 08, 2021 - AMENDMENT TO REGULATION 20(6) OF SEBI (AIF) REGULATIONS, 2012

In terms of the amendment to SEBI (Alternative Investment Funds) Regulations, 2012 ("AIF Regulations"), notified on January 08, 2021, exemption is granted from applicability of clause (i) and (ii) of the first proviso to Regulation 20(6), subject to certain conditions including each investor furnishing a waiver to the AIF in respect of compliance with these clauses, in the manner specified by SEBI. The format for waiver to be furnished by the investors in this regard, is given through this circular. (Please read the circular for the format).

SEBI/HO/IMD/DF1/CIR/P/2021/02 JANUARY 08, 2021. The provisions of this circular shall be applicable for monthly reports submitted for January 2021 onwards. Securities and Exchange Board of India (SEBI) had mandated certain changes to the regulatory framework for Portfolio Managers vide circular no. SEBI/HO/IMD/DF1/CIR/P/2020/26 dated February 13, 2020. In terms of para no. D(11) of the said circular, Portfolio Managers are required to submit a monthly report regarding their portfolio management activity, on SEBI Intermediaries Portal within 7 working days of the end of each month, as per a prescribed format. 2. In order to broaden the information obtained under monthly reports, certain modifications are specified in the format enclosed in Annexure A. (Please the read the circular for the format).

SEBI/HO/MRD2/DCAP/CIR/P/2021/03 JANUARY 08, 2021. Transfer of excess contribution made by Stock Exchanges from Core SGF of one Clearing Corporation to the Core SGF of another Clearing Corporation.

No. SEBI/LAD-NRO/GN/2021/02.– dated 08.01.2021 - SECURITIES AND EXCHANGE BOARD OF INDIA (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2021.

In Schedule III, in Part A, - a. under point A, in clause 16, the existing sub-clause (l) shall be substituted with the following, namely, -

"l) Specific features and details of the resolution plan as approved by the Adjudicating Authority under the Insolvency Code, not involving commercial secrets, including details such as:
Pre and Post net-worth of the company; (ii) Details of assets of the company post CIRP; (iii) Details of securities continuing to be imposed on the companies' assets; (iv) Other material liabilities imposed on the company; (v) Detailed pre and post shareholding pattern assuming 100% conversion of convertible securities; (vi) Details of funds infused in the company, creditors paid-off; (vii) Additional liability on the incoming investors due to the transaction, source of such funding etc.; (viii) Impact on the investor – revised P/E, RONW ratios etc.; (ix) Names of the new promoters, key managerial persons(s), if any and their past experience in the business or employment. In case where promoters are companies, history of such company and names of natural persons in control; (x) Brief description of business strategy.

Under point A, in clause 16, after the existing sub-clause (m), the following new sub-clauses shall be inserted, namely, -

"n) Proposed steps to be taken by the incoming investor/acquirer for achieving the MPS;
o) Quarterly disclosure of the status of achieving the MPS; p) The details as to the delisting plans, if any approved in the resolution plan."

No. SEBI/LAD-NRO/GN/2021/03 dated 08.01.2021 - SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) (AMENDMENT) REGULATIONS, 2021

In regulation 112, the existing clause (b) along with the proviso shall be substituted with the following, namely, -

(b) where the equity shares of the issuer are frequently traded on a stock exchange for a period of at least three years immediately preceding the reference date, and:

(i) the issuer has redressed at least ninety five per cent of the complaints received from the investors till the end of the quarter immediately preceding the month of the reference date, and;

(ii) the issuer has been in compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for a minimum period of three years immediately preceding the reference date:

Provided that if the issuer has not complied with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, relating to composition of board of directors, for any quarter during the last three years immediately preceding the date of filing of draft offer document/offer document, but is compliant with such provisions at the time of filing of draft offer document/offer document, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the date of filing the draft offer document/offer document, it shall be deemed as compliance with the condition:

Provided further that where the promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (a) of sub-regulation (1) of regulation 113, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 164 or the issue price, whichever is higher.

In regulation 115, the existing proviso after clause (c), shall be omitted.

In regulation 167, after the existing sub-regulation (4), the following new proviso shall be inserted, namely,

Provided that the lock-in provision shall not be applicable to the specified securities to the extent to achieve 10% public shareholding

SEBI/HO/CFD/CMD2/CIR/P/2021/11 January 15, 2021 has provided Relaxation from compliance with certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 due to the CoVID -19 pandemic.

SEBI vide Circular no. **SEBI/HO/CFD/CMD1/CIR/P/2020/79 dated May 12, 2020** had inter-alia relaxed certain provisions of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR") related to general meetings, pursuant to relaxations by the Ministry of Corporate Affairs (MCA).

Subsequently, **MCA vide Circular dated December 31, 2020** has further extended relaxations to com panies to conduct their Extraordinary General Meeting (EGM) through Video Conferencing (VC) or through other audio-visual means (OAVM) (hereinafter referred to in this circular as 'electronic mode') upto June 30, 2021.

Further, **vide Circular dated January 13, 2021, MCA has also extended these relaxations to Annual General Meeting (AGMs) of companies due in the year 2021 (i.e. till December 31, 2021).**

Accordingly, the relaxations in **Paras 3 to 6 of the aforementioned SEBI Circular dated May 12, 2020** in respect of sending physical copies of annual report to shareholders and requirement of proxy for general meetings held through electronic mode, **are extended for listed entities, till December 31, 2021.**

SEBI/HO/CFD/DIL1/CIR/P/2021/13 DATED 19.01.2021 HAS ANNOUNCED FURTHER RELAXATIONS RELATING TO PROCEDURAL MATTERS –ISSUES AND LISTING.

SEBI vide Circular no. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020 granted one time relaxations from strict enforcement of certain Regulations of SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, pertaining to Rights Issue opening up to July 31, 2020.

Based on the representations received from the market participants, the validity of these relaxations, as provided by Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020, was further extended for Rights Issues opening upto December 31, 2020.

The relaxation mentioned in point (iv) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 6, 2020 is further extended and shall be applicable for Rights Issues opening upto March 31, 2021 provided the issuer along with the Lead Manager(s) shall continue to comply with point (v) of the SEBI Circular No. SEBI/HO/CFD/DIL2/CIR/P/2020/78 dated May 06, 2020.

SEBI on 27.01.2021 HAS ISSUED A Consultation Paper on introduction of provisions relating to appointment / reappointment of persons who fail to get elected as Whole-time directors / Managing Directors at the general meeting of a listed entity and comments are invited on or before 12.02.2021. (Copy of this paper has already been sent to all the members for their comments).

SEBI/HO/IMD/DF3/CIR/P/2021/014 January 29, 2021 – addressed to All Mutual Funds (MFs)/ Asset Management Companies (AMCs)/ Trustee Companies/ Board of Trustees of Mutual Funds/ Association of Mutual Funds in India (AMFI) on the revision of Monthly Cumulative Report (MCR). SEBI Circular No. SEBI/HO/IMD/DF3/CIR/P/2019/020 dated January 22, 2019 has prescribed the format for reporting of Monthly Cumulative Report (MCR). 2. Pursuant to introduction of a new scheme category and to bring transparency in reporting of segregated portfolios, it has been decided to modify MCR format from January 2021 onwards. The revised format of MCR is enclosed as Annexure A. 3. All other conditions specified in the above mentioned circular shall remain unchanged. (Please see the circular for the format)

FORTHCOMING PROGRAMMES:

1. **DISCUSSION ON CORPORATE SOCIELA RESPONSIBILITY RULES JOINTLY WITH CSR COMMITTEE: 09.02.2021 – 4 PM. MEMBERS ARE REQUESTED TO SEND THEIR QUERIES IN ADVANCE.**

2. **INDEPENDENT DIRECTOR – LAW AND THE REALITY: 18.02.2021 – 4 PM.**