



Coromandel Law

Striding Forward Together

Who watches the watchers? SEBI's proposal to treat regulators as insiders.

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Executive Summary

1. Combating insider trading can be like chasing shadows. Major jurisdictions globally are moving towards broader, access-based definitions of who an 'insider' is. Among the latest inclusions are regulators, sectoral and otherwise, based on their exclusive access to unpublished price sensitive information.
2. The Securities Exchange Board of India (SEBI) High Level Committee's recent proposal to classify the SEBI Chairperson and Whole-Time Members ("WTMs") as insiders reflects this global trend.² It acknowledges that regulators often hold sensitive information from listed entities, obtained in the course of their supervisory and enforcement functions. The committee's proposal stems from a recognition that this information is as lucrative and capable of influencing markets, as information available to corporate insiders.
3. The United Kingdom ("UK") and the European Union ("EU") frameworks remain the most influential, defining insiders widely and expressly covering government departments and regulators. The Dubai International Financial Centre ("DIFC")/Dubai Financial Services Authority ("DFSA") adopts this model and goes further by expressly identifying "public authority insiders".
4. The United States of America ("US") and Japan have also begun reforms of their insider trading laws in this direction. While the US seems currently focused on reforms that bring lawmakers like members of the US Congress into the ambit of insider trading regulations, there have been judicial decisions that have treated regulators in a similar fashion. Japan meanwhile has proposed to bring cryptocurrency regulators into the ambit of its insider trading regulations, recognizing the inherent volatility of the market and the effect this has on the value of unpublished price sensitive information.

Introduction

5. Regulations for insider trading are built on one core idea: that markets can function fairly only when all participants enjoy a level of informational symmetry. Central to this framework is the definition of an "insider", someone whose position, role, or relationship grants access to unpublished price-sensitive information ("UPSI").

¹ We acknowledge and thank Ms. Pralipsa Panda, National Law University, Orissa for her contribution to this insight.

² Business Standard, 'Sebi Panel Seeks Overhaul of Conflict-of-Interest, Disclosure Norms' (12 November 2025) <https://www.business-standard.com/markets/news/markets-sebi-panel-conflict-of-interest-disclosure-reforms-125111201574_1.html> accessed 25 November 2025.

6. A key mechanism that underscores the importance of transparency in this regime is the use of trading plans. These plans, first introduced in the SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”), enable insiders to trade within a structured, pre-disclosed framework, without compromising the prohibitions imposed in the PIT Regulations, thereby reducing suspicions of opportunistic behavior and reinforcing the principle that transparency safeguards market integrity.
7. India’s recent move to bring regulatory officials within the insider-trading net, and Japan’s expansion of insider-trading rules to cover emerging assets like cryptocurrencies, reflect a global recognition that maintaining transparency in evolving markets requires constant reform and expanding regulatory coverage to match information access and availability.

India’s Insider Trading Regulations

8. In India, Insider trading is primarily regulated by the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and the PIT Regulations. Section 12A of the SEBI Act bans anyone from using manipulative or deceptive practices in the securities market, including fraud, insider trading, trading or sharing material non-public information, and acquiring substantial control of a listed company in violation of SEBI regulations.³
9. The SEBI Act exposes the insider to a pecuniary penalty for trading, communicating, or procuring trades based on UPSI, ranging from ₹10 lakh to ₹25 crore or three times the illicit gain, whichever is higher.⁴
10. The definitions under the PIT are significant in regulating insider trading. The PIT Regulations define an insider in two independent ways:⁵
 - (a) a person who falls within the category of a “connected person,”; and
 - (b) Any person who is merely in possession of UPSI, regardless of how they obtained it.
11. This dual structure ensures that individuals with formal ties to a company, as well as those who acquire confidential information through informal or accidental channels, are both captured within the regulatory net.
12. The PIT Regulations define a “connected person”⁶ to include anyone who has, or has recently had, a direct or indirect association with the company that creates a reasonable expectation of access to UPSI. This covers directors, officers, employees, immediate relatives, as well as fiduciaries. It also extends to individuals with looser but still meaningful relationships, those with frequent communication with company officials or persons engaged on contractual or professional terms.

³Securities and Exchange Board of India Act 1992, s 12A.

⁴ Securities and Exchange Board of India Act 1992, s 15G.

⁵ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015, reg 2(1)(g).

⁶ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015, reg 2(1)(d).

13. Alongside this relationship-based limb, the possession-based standard makes the mere fact of holding UPSI sufficient to trigger the prohibition on trading. If an individual trades while in possession of UPSI, liability is presumed unless they demonstrate an acceptable justification, such as for carrying out a legitimate purpose.⁷

Rationale for the recommendation

14. The rationale for treating regulators as “insiders” lies in the information ecosystem within securities markets. Companies bear a fiduciary-like relationship with regulators such as SEBI, which routinely gets access to UPSI in the course of its regulatory or investigative duties.
15. This exposure poses a significant risk of exploiting confidential knowledge for personal gain. Bringing regulators within the definition of “insider” therefore ensures that individuals prone to market-sensitive information remain bound by the standards of market integrity, thereby preserving the fairness and symmetry that insider trading regulations are designed to maintain.
16. SEBI’s PIT Regulations provide for a shifting burden of proof in cases of insider trading. The SEBI assumes the burden of proving that the accused is a ‘connected person’ and / or had access to UPSI. The defense must then establish that despite access or despite being a ‘connected person’, there was no publication or sharing of UPSI.
17. A significant recent development in this regime came from SEBI’s High-Level Committee’s (“**Committee**”) proposal to classify the SEBI Chairperson and Whole Time Members (WTM) as ‘insiders’.⁸ This move reflects an approach where individuals holding key regulatory positions, which are recognized as inherently capable of possessing UPSI.
18. Pertinently, the SEBI Employee Service Regulations, 2001, through regulation 65, mandates that all SEBI employees are regarded as ‘insiders’ for the purposes of the PIT Regulations. It is only the Chairman of the SEBI and its WTMs who are excluded by virtue of not nominally being ‘employees’ of the SEBI in terms of the SEBI Employee Service Regulations, 2001.
19. The SEBI High Level Committee also recommends a tiered disclosure system that mandates the SEBI Chairman, WTMs, and SEBI employees at the level of chief general manager and above to publicly disclose their asset and liability statements. Additional recommendations by the committee include imposing investment restrictions, establishing

⁷ Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations 2015, reg 3.

⁸ Business Standard, ‘Sebi Panel Seeks Overhaul of Conflict-of-Interest, Disclosure Norms’ (12 November 2025) <https://www.business-standard.com/markets/news/markets-sebi-panel-conflict-of-interest-disclosure-reforms-125111201574_1.html> accessed 25 November 2025.

structured recusal processes, and creating a robust whistleblower system to protect investor interests and ensure the orderly functioning of the securities market.

Existing Precedent

20. Indian Courts have examined the issue of expanding the ambit of the term 'insider' for the purposes of the PIT Regulations. A series of decisions of the Supreme Court of India, set out below, highlight the evolving jurisprudence on the issue.
21. The Supreme Court of India laid down a practical test to determine who can be held liable as an insider.⁹ The same is assessed by the following questions:
 - (a) is the person an insider; did they possess or access information;
 - (b) was the information unpublished; was it price sensitive; and
 - (c) did they deal in securities?

Each question must be answered affirmatively before insider-trading liability can be imposed.

22. A key component of the definition of an 'insider' is the reasonable expectation that such a person will have access to UPSI. The Supreme Court of India has clarified that this expectation cannot rest on assumptions or mere assertions by SEBI.¹⁰ There must be foundational facts that reasonably support the inference of access.
23. The SEBI High Level Committee, through its recommendation that WTMs and the SEBI Chairperson be regarded as 'insiders' would absolve the Courts from needing to adopt the above tests laid down by the Supreme Court of India in cases where the highest officers of the SEBI are being investigated.

Global Perspective

United Kingdom

24. The UK's insider trading regulations have traditionally been the base for newer jurisdictions like the DIFC which substantially borrows from the UK's regulatory landscape and experience, which brings regulators under the ambit of its insider trading regulations.

⁹ *SEBI v Abhijit Rajan* [2024] 11 SCC 645.

¹⁰ *Balram Garg v. SEBI* [2022] 9 SCC 425 & *Chintalapati Srinivasa Raju* [2018] 7 SCC 443.

25. The EU Market Abuse Regulation (“**EU MAR**”) took effect in 2016 and, after Brexit, was implemented into UK law in 2020, with adjustments made to ensure this new version, UK Market Abuse Regulation (“**UK MAR**”), works properly within the UK’s legal system.¹¹
26. The core legal framework stems from three sources: The Criminal Justice Act 1993, which creates the criminal offence of insider dealing; UK MAR (the retained version of EU MAR post-Brexit), which provides the civil and administrative rules on inside information, insider dealing, unlawful disclosure, and market manipulation; and the Financial Services and Markets Act 2000, which empowers the Financial Conduct Authority (“**FCA**”) to investigate and penalize market abuse.¹²
27. The UK MAR expressly includes public authority officials¹³ within the insider category, covering major government departments and regulatory bodies that routinely access market-moving data. Their obligations mirror those imposed on corporate insiders and extend to criminal liability for misuse of information.
28. The CJA also criminalizes encouraging others to trade on such information and disclosing it improperly outside the scope of one’s employment or professional duties. A person qualifies as an “insider” only if they know the information is inside information and they obtained it from an inside source, such as by being a director, employee, shareholder, or through professional access.¹⁴
29. Overall, the UK model demonstrates a mature, functional approach and has played a key role in shaping the reforms seen in the DIFC/DFSA regime.

Dubai

30. The DIFC operates a distinct and highly sophisticated insider-trading regime under its Markets Law under the DFSA Rulebook, and is driven by an “access-based” model rather than one based solely on relational factors.
31. Following amendments introduced after 2012,¹⁵ the DFSA adopted a clearer approach in bringing regulators into the ambit of ‘insiders.’

¹¹‘Market Abuse Regulation’ (FCA, 4 May 2016) <<https://www.fca.org.uk/markets/market-abuse/regulation>> accessed 25 November 2025.

¹² Financial Services and Markets Act 2000.

¹³Rhona Smith, ‘Regulation (EU) No 492/2011 of the European Parliament and of the Council of 5 April 2011’ in Rhona Smith, Core EU Legislation (Macmillan Education UK 2015) <http://link.springer.com/10.1007/978-1-137-54482-7_20> accessed 2 December 2025.

¹⁴ Criminal Justice Act, 1993, s 57.

¹⁵Herbert Smith Freehills Kramer LLP-Zubair Mir and others, ‘Middle East Regulatory E-Bulletin: DFSA Enacts New Markets Law 2012 (13 July 2012)’ (Lexology, 13 July 2012)available at <<https://www.lexology.com/library/detail.aspx?g=e4a80d53-204a-4380-ac7b-c3b9431a3a5d>> accessed 25 November 2025.

32. Regulation 58 of the DFSA's Market Laws became distinctive in its language, as it acknowledges that an insider can be located in the DIFC and expands the scope to investments, crypto tokens, or any related investment based on inside information.¹⁶
33. This framework prohibits insiders from disclosing inside information except in the proper performance of their duties,¹⁷ and they may not procure, induce, or encourage others to trade in securities, investments, or crypto-assets based on such information.¹⁸ The prohibition extends to any act, whether direct or indirect, that facilitates trading based on insider knowledge, and includes misleading statements, concealment of material facts, or the creation or dissemination of false or deceptive information to influence market behavior. This model reflects the UK model, which prohibits dealing “*on the basis of*” inside information, making mens rea/mental element an essential in the contravention of insider dealing.¹⁹
34. These regulations, therefore, expand the ambit to staff members involved in supervision, licensing, investigations, enforcement, and policymaking, who are required to treat market-sensitive information as confidential and are prohibited from exploiting it for personal benefit.
35. This internal recognition is grounded in the DFSA’s policy rationale, articulated in its consultation paper,²⁰ that the risk to market integrity arises from possession of inside information, rather than the identity or organizational affiliation of the person holding it. Accordingly, even persons who are not connected to any listed company, such as government officials or regulatory employees, may constitute insiders if they handle information capable of influencing market prices.

The United States of America

36. The US’ insider-trading framework stems from the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities and Exchange Commission (“**SEC**”) promulgated under its rule making powers and codified in Title 17 of the United States Code of Federal Regulations.

¹⁶ ‘58. Insider Dealing | Rulebook’ <<https://dfsae.thomsonreuters.com/rulebook/58-insider-dealing>> accessed 25 November 2025.

¹⁷ ‘59. Insider Dealing | Rulebook’ <<https://dfsae.thomsonreuters.com/rulebook/58-insider-dealing>> accessed 25 November 2025.

¹⁸ ‘60. Insider Dealing | Rulebook’ <<https://dfsae.thomsonreuters.com/rulebook/58-insider-dealing>> accessed 25 November 2025.

¹⁹ ‘Consultation Paper No. 63 Changes to the DIFC Insider Dealing Regime | Rulebook’ <<https://dfsae.thomsonreuters.com/rulebook/consultation-paper-no-63-changes-difc-insider-dealing-regime>> accessed 25 November 2025.

²⁰ *ibid.*

37. Under the Securities Exchange Act, 1934, insider trading becomes unlawful when a person trades while possessing material non-public information in breach of a duty to abstain from trading or to keep the information confidential.²¹
38. Notably, the aforesaid legislation, read with the Stop Trading on Congressional Knowledge Act of 2012, a US law enacted to combat insider trading by members of Congress and senior government officials,²² recognizes that Members and employees of Congress owe a duty of trust and confidence to Congress, the US Government, and the public, prohibiting them from misusing material non-public information obtained through their official positions.
39. The US' insider trading regime is largely jurisprudence-driven and shaped by the United States Supreme Court's decision in *United States v. O'Hagan*,²³ which cemented two core doctrines. Under the Classical Theory, trading on UPSI amounts to fraud when an insider breaches a fiduciary duty owed to shareholders, while the Misappropriation Theory imposes liability when a person misuses confidential information entrusted to them, even if they are not corporate insiders in the traditional sense.
40. Both doctrines readily cover government officials, regulatory personnel, consultants, or anyone whose official role provides access to material non-public information.

Japan

41. Japan stands out as one of the jurisdictions that has always brought its regulators under the ambit of 'insider' for the purposes of its insider trading regulations.
42. The Japanese Financial Instruments and Exchange Act, 1948,²⁴ adopts an access-based definition of insiders, extending a broad net of liability. The law covers officers, employees, agents, key shareholders, equity investors, regulators with statutory authority, and even contractors or negotiating parties who learn material facts during the course of their duties or dealings. It also extends the prohibition for one year after a person ceases to be an insider.
43. Japan leads the global reforms to insider trading regulations with its recent move to extend its insider-trading rules to crypto-assets.²⁵ Under the Financial Services Agency's 2023-24 guidance and amendments implemented through the Japan Virtual and Crypto Assets

²¹ Securities Exchange Act of 1934.

²² Joseph I [ID-CT Sen. Lieberman, 'S.2038 - 112th Congress (2011-2012): STOCK Act' (4 April 2012) <<https://www.congress.gov/bill/112th-congress/senate-bill/2038>> accessed 1 December 2025.

²³ *United States v O'Hagan* [1997] 521 US 642.

²⁴ Financial Instruments and Exchange Act, 1948.

²⁵ Timmy Shen, 'Japan Sets out to Ban Insider Trading in Crypto: Nikkei' (The Block) <<https://www.theblock.co/post/374690/japan-sets-out-to-ban-insider-trading-in-crypto-nikkei>> accessed 2 December 2025.

Exchange Association, information relating to token listings, protocol upgrades, security incidents, governance votes, or any significant event affecting the value of a crypto-asset is now categorized as “inside information.”

44. The Payment Services Act of 2009²⁶ and the Financial Instruments and Exchange Act of 1948²⁷ primarily regulate cryptocurrencies in Japan. The Financial Services Agency, along with the Japan Virtual Currency Exchange Association, is concerned with regulating cryptocurrencies. By expanding the scope to cryptocurrencies, the regulators mentioned above may come under the ambit of insiders.
45. Persons involved in crypto-exchange operations, project teams, advisory bodies, and even external service providers may be held liable if they trade on such information before it becomes public. This makes Japan a major jurisdiction to formally codify crypto-asset insider trading into its national securities law framework, signaling a regulatory motto that insider-trading rules must evolve in tandem with innovations in digital markets.

Conclusion

46. A comparative analysis of insider trading regulations reveals a decisive global shift toward broad, access-based definitions of insiders and an emerging consensus that regulators, public authorities, and even non-traditional market actors, such as participants in the crypto ecosystem, routinely hold information capable of distorting markets if misused. India’s move to expressly classify the SEBI Chairperson and WTMs as “insiders” under the PIT Regulations reflects this evolution.
47. In essence, modern insider-trading law is no longer defined by who a person is, but by what information they possess. By adopting an access-driven framework, India not only joins leading regulatory jurisdictions but also equips itself for the next generation of market-abuse challenges in an increasingly digital financial landscape.

²⁶ Payment Services Act (Act No 59 of 2009) (Japan).

²⁷ Financial Instruments and Exchange Act (Act No 25 of 1948) (Japan).