

Amendments in SEBI (PIT) Regulations, 2015: From April, 2019 to July, 2020



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About Us



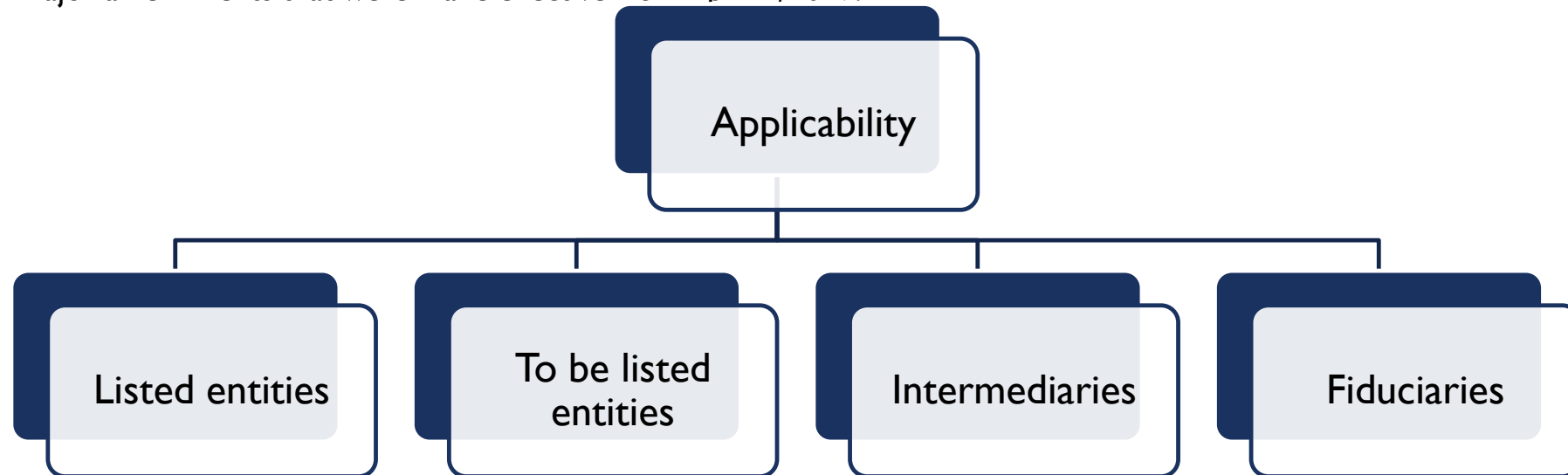
- Vinod Kothari and Company, company secretaries, is a firm with over 30 years of vintage
 - Based out of Kolkata, New Delhi & Mumbai
- We are a team of qualified company secretaries, chartered accountants, lawyers and managers.

Our Organization's Credo:

Focus on capabilities; opportunities follow

Prohibition of insider trading

- Listing Regulations provide as a principle;
 - The listed entity shall devise a framework to avoid insider trading and abusive self-dealing.
- SEBI (PIT) Regulations 1992 reviewed by a committee led by Mr. N.K.Sodhi, Former Chief Justice.
- SEBI (PIT) Regulations, 2015 was enforced on January 15, 2015, effective from May 15, 2015.
- SEBI had set up Committee on Fair Market Conduct in August, 2017 under the Chairmanship of Shri T.K. Viswanathan, Ex-Secretary General, Lok Sabha and Ex- Law Secretary;
 - Suggested major amendments that were made effective from April 1, 2019.



SERIES OF AMENDMENTS IN PIT REGULATIONS, 2015

**SEBI (PIT)
(Amendment)
Regulation, 2018**
31st December,
2018
Effective from 1st
April, 2019

**SEBI (PIT) (Second
Amendment)
Regulations, 2019**
25th July, 2019
Effective from 25th
July, 2019

**SEBI (PIT)
(Amendment)
Regulations, 2020**
17th July, 2020
Effective from 17th
July, 2020

**SEBI (PIT)
(Amendment)
Regulations, 2019**
21st January, 2019
Effective from 21st
January, 2019

**SEBI (PIT) (Third
Amendment)
Regulations, 2019**
17th September, 2019
Effective from the
100th day of
publication i.e. 26th
December, 2019



SYNOPSIS OF AMENDMENTS

BRIEF ANALYSIS OF SEBI (PIT) (AMENDMENT) REGULATIONS 2018 & 2019



SEBI (PIT) (Amendment) Regulations, 2018 (1/2)

■ **Definitional changes**

- UPSI
 - Materiality of events as per Listing Agreement omitted
- Compliance Officer
 - Should have the ability to read and understand financial statements
- Proposed to be listed
 - Shall include securities of unlisted co. applied for listing

■ **Identification of Designated Persons**

- BoD and Compliance officer to determine persons who have access to UPSI
- Determination shall be based on function and seniority

■ **Concept of sharing UPSI for legitimate purpose**

- Sharing of UPSI by insider on ordinary course of business
- Without circumventing prohibitions of PIT Reg
- Policy for determination of legitimate purpose to be part of Code of Conduct

■ **Maintenance of structured digital database**

- For the purpose of recording sharing of information for legitimate purpose
- Details of third party with whom UPSI is shared to be recorded
 - Includes Name, PAN and other identification details
- System should have adequate checks and controls with time stamping facility

■ **Institutional mechanism for prevention of Insider Trading**

- CEO, MD and other persons shall be responsible for ensuring effective system of internal control
- Companies to develop internal control check points

■ **Sensitization in whistle blower mechanism**

- Mechanism should sensitize employees to report instances of leak of UPSI

■ **Policy on how and when people are brought “inside”**

- Forms part of the Code
- Sensitize people as to when any person can be said to be in possession of UPSI

SEBI (PIT) (Amendment) Regulations, 2018 (2/2)

■ **Trading Window**

- In case of financial results-from the end of quarter till 48 hrs after declaration of results
- In case of other UPSI- from the point the information is available to insider

■ **Policy for leak of UPSI**

- Mechanism for handling leak of UPSI

■ **Annual declaration by DPs**

- DPs, immediate relatives who are financially dependent and persons who have material financial relationship
- Material financial relationship refers to loan or gift during preceding 12 months of atleast 25% of payer's annual income
- Disclose name, PAN, phone no. of aforementioned persons
- DP shall provide name of educational institution from which DP has graduated along with name of past employer

■ **Code of conduct for intermediaries and fiduciaries**

- UPSI flows from companies to fiduciaries and intermediaries. Accordingly, needs to be protected
- To regulate, monitor and report trading by its DPs and immediate relatives of DP
- Identification of DPs as per function and seniority
- Similar code of conduct norms as in Schedule B
- If intermediary is listed co.- has to follow both Schedule B and Schedule C

■ **Trading while in possession of UPSI shall be deemed to be motivated by UPSI always**

- Exception to deeming fiction are:
 - Inter se transfer between insiders or through trading plan
 - Transaction through block deal mechanism between persons in possession of UPSI
 - Transaction carried out in pursuance to statutory or regulatory obligation to carry bonafide transaction
 - Transaction pursuant to exercise of stock options in respect of which exercise price was pre-determined

Introduction of concept of Designated Persons

Persons regulated under erstwhile provisions	Persons regulated under current provisions
Regulates following: <ul style="list-style-type: none">- Promoters- Directors- Employees	Regulates following <ul style="list-style-type: none">- Promoters- Directors- Designated Persons (includes employees)

Who is a Designated Person?

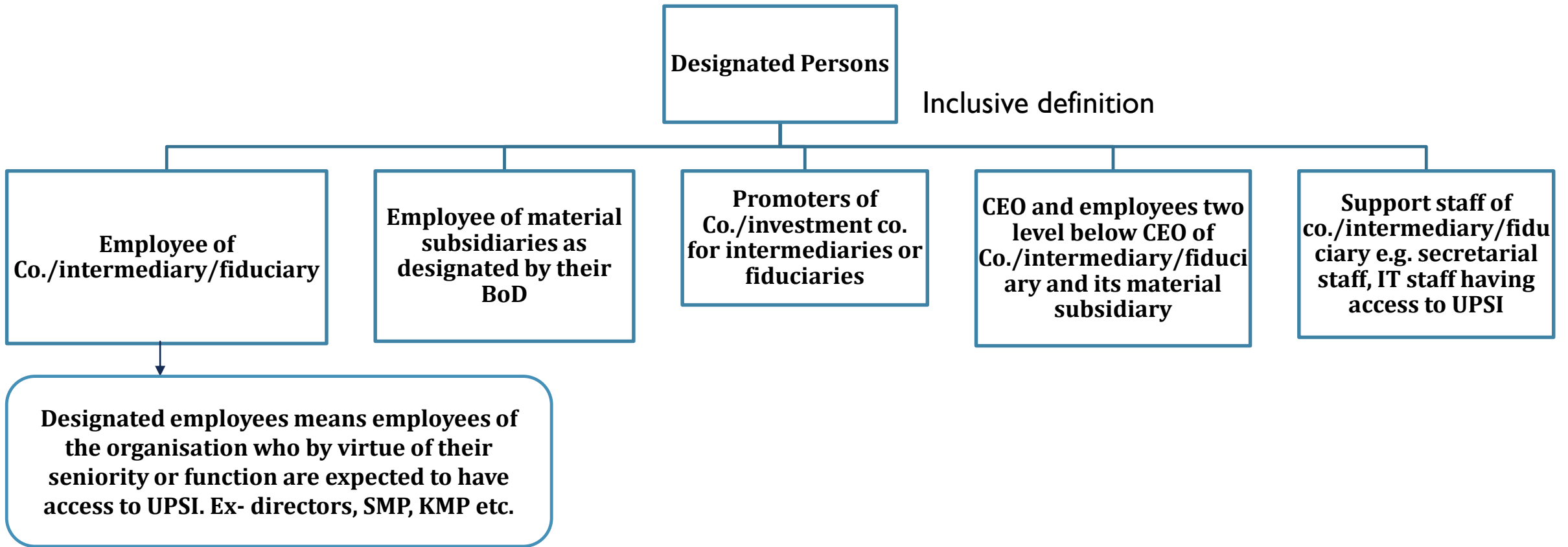
- Persons who have been designated by the Company as to have access to UPSI in the Company; and
- Designated persons are determined on the basis of:

FUNCTION

Ex- Accounts department by virtue of their function shall have access to financial statements even before approval
Secretarial department by virtue of their function shall have access to Board Minutes/AGM Minutes even before finalisation

SENIORITY

Ex- first two layers of organisational ladder are presumed to have access to UPSI at all times.



Definition of 'Designated Person' is wide to include Designated Employees and other connected persons who are expected to have access to unpublished price sensitive information by virtue of their role or seniority in the organisation.

Institutional mechanism for Prohibition of Insider Trading

CEO, MD and such other person of listed entity/intermediary/fiduciary are responsible for ensuring effective system of internal control

Internal Check Points

All employees who have access to UPSI are identified as DP

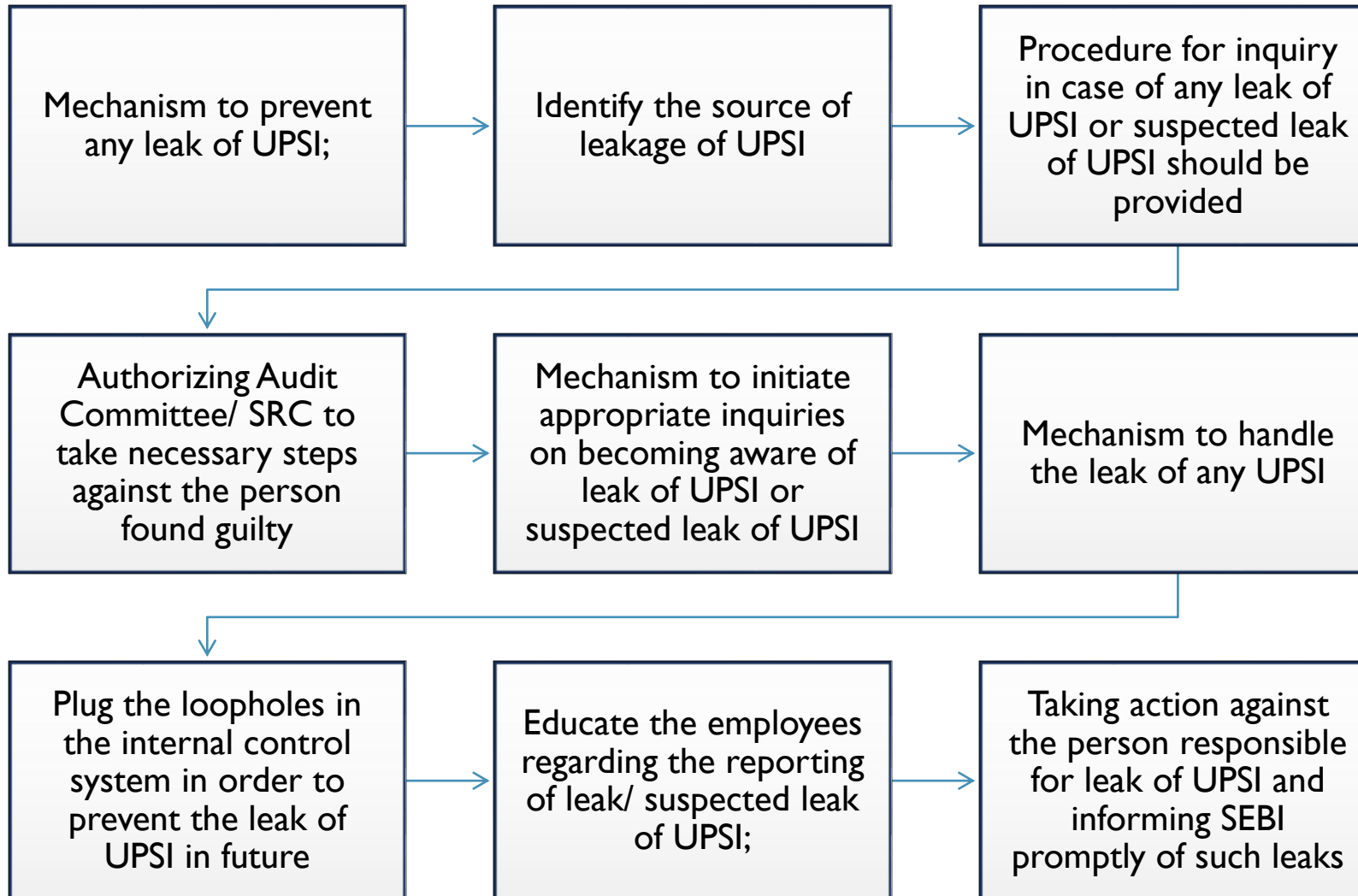
UPSI is identified and kept confidential by the Company

Adequate restrictions on communication or procurement of UPSI

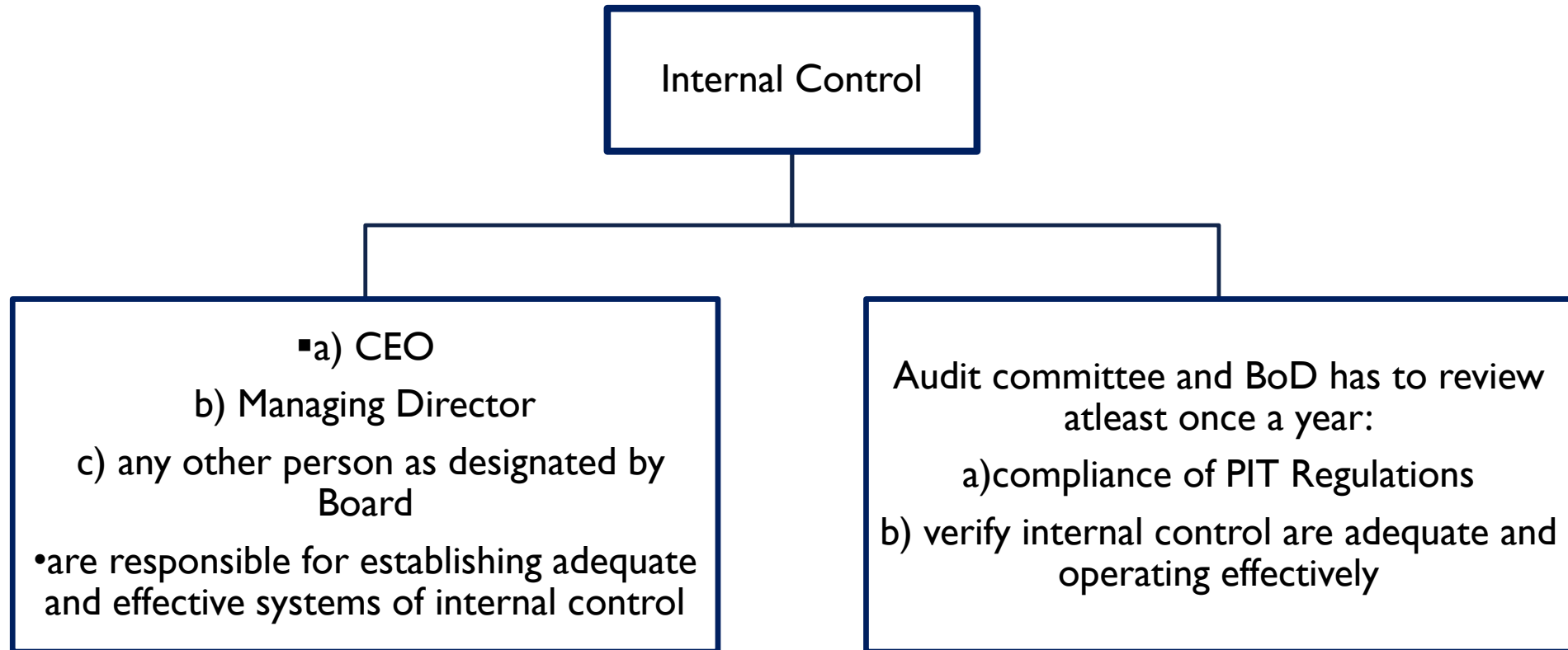
List of all employees or other person with whom UPSI is shared shall be maintained and confidentiality agreements shall be signed

Periodic process of review of effectiveness of internal control

Policy for leak of UPSI-Internal Control

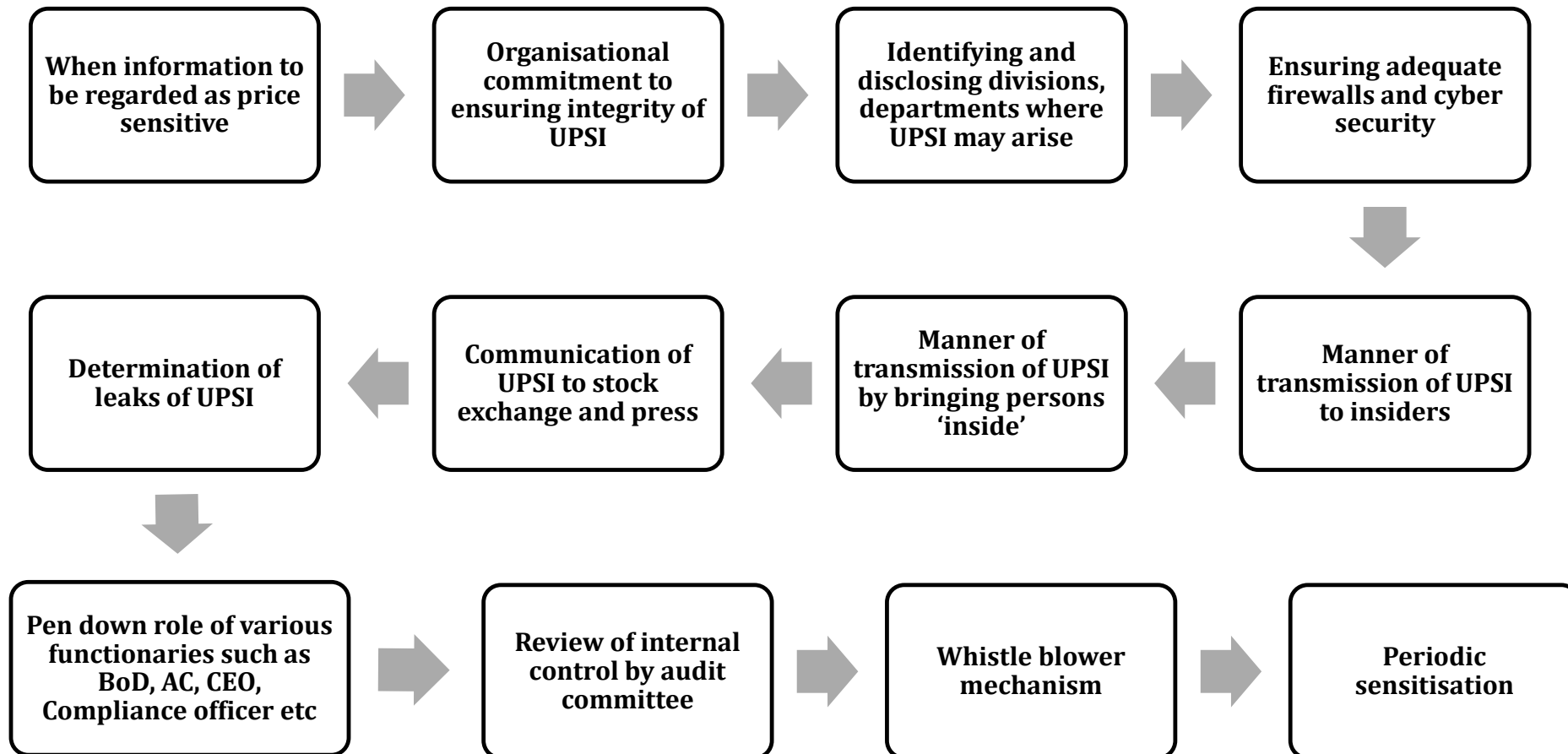


Who are responsible for internal control as per the Regulations?



Internal Control Manual

- It is a non-public document for BoD, Audit Committee, CEO/MD and compliance officer to ensure internal control under PIT Regulations.
- The manual should provide following:



Compliance Manual

This manual is for check of compliances of compliance officer, also a tool of internal control:

Check points	Status
Check to ensure that determination and transmission of UPSI was done in accordance with Internal Control Manual	√
Maintaining digital database for sharing of UPSI with insider and outsiders. Ensuring that platform is secured, tamper-proof, searchable and date stamped	√
Coordinating with determination committee on applying tests of materiality whether an information is UPSI or not	√
Disclosure of UPSI to stock exchange	√
Defining, identifying and obtaining data about DPs as a continuous practice	√
Continuous monitoring of trading pattern of DPs to detect any trades that may have breach the provisions of PIT Regulations	√
Periodic reporting to chairman of Audit committee	√
Granting pre-clearances -whether declarations were received -reviewing transactions approved through pre-clearance	√

Check points in case of:

a) **Employee sensitization program**

Check points	Status
Sensitize senior management about: silence period, roles and responsibilities in disclosure of information during investor meets, analyst meets etc	√
Sensitize employees about Regulations and Codes	√

b) **Leak of UPSI**

Check points	Status
Detection of leak	√
Identifying manner of leak	√
Escalation of information and producing before Audit Committee	√
Action against guilty	√
Inform SE about breach	√

SEBI (PIT) (Amendment) Regulations, 2019

■ SEBI (PIT) (Amendment) Regulations, 2019

- Members of promoter group as defined under ICDR Regulations have to make initial and continual disclosure under Reg 7 of PIT Regs

■ SEBI (PIT) (Second Amendment) Regulations, 2019

- Mandatory closure of trading window from end of quarter till 48 hrs after declaration of financial results
- Permitted transactions by DPs while trading window is closed shall also include:
 - Pledge of shares for bonafide purpose like raising of funds subject to pre-clearance by compliance officer
 - Acquisition by conversion of warrants or debentures, subscribing to rights issue, preferential allotment or tendering of shares in buyback offer, open offer, delisting offer.

■ SEBI (PIT) (Third Amendment) Regulations, 2019

- Introduction of concept of 'Informants'
- Refers to voluntary disclosure of information about an alleged violation
- Submission of information to Office of Information Protection (OIP)
- OIP communicates information with evidence to Board



SEBI (PIT) (AMENDMENT) REGULATIONS, 2020

17TH JULY, 2020- BRIEF ANALYSIS OF THE AMENDMENTS



Brief of amendments

Structured Digital Database

- Is required to be maintained by BoD and head of organisation **required to handle UPSI**
- Two way recording of name and PAN of person sharing UPSI and recipient of UPSI
- Database maintenance **cannot be outsourced**
- Information to be preserved for 8 years

Trading Window Restrictions

- SEBI permitted trading through acquisitions by conversion of warrants or debentures, subscription to rights issue, public issue, etc. during trading window restriction
- Only few corporate actions were listed in the amendment
- Enabling clause for including any other corporate actions

System Driven Disclosure

- SEBI circular dated 28th May, 2018 provided that format for disclosure under PIT and SAST shall be standardised (PAN details submitted)
- SEBI intends to propose automated process of filling disclosure under Regulation 7(2)
 - To capture delay in filing more effectively
- Enabling provision inserted as Reg 7(2)(c) for permitting such automated submission
 - Format to be prescribed by SEBI

Violation of Regulation

a) Violation of code of conduct

- Listed entity/intermediaries can impose disciplinary actions, including wage freeze, suspension, recovery.
- Amount collected shall be remitted to the Board for credit to IPEF

b) Violation of insider trading norms

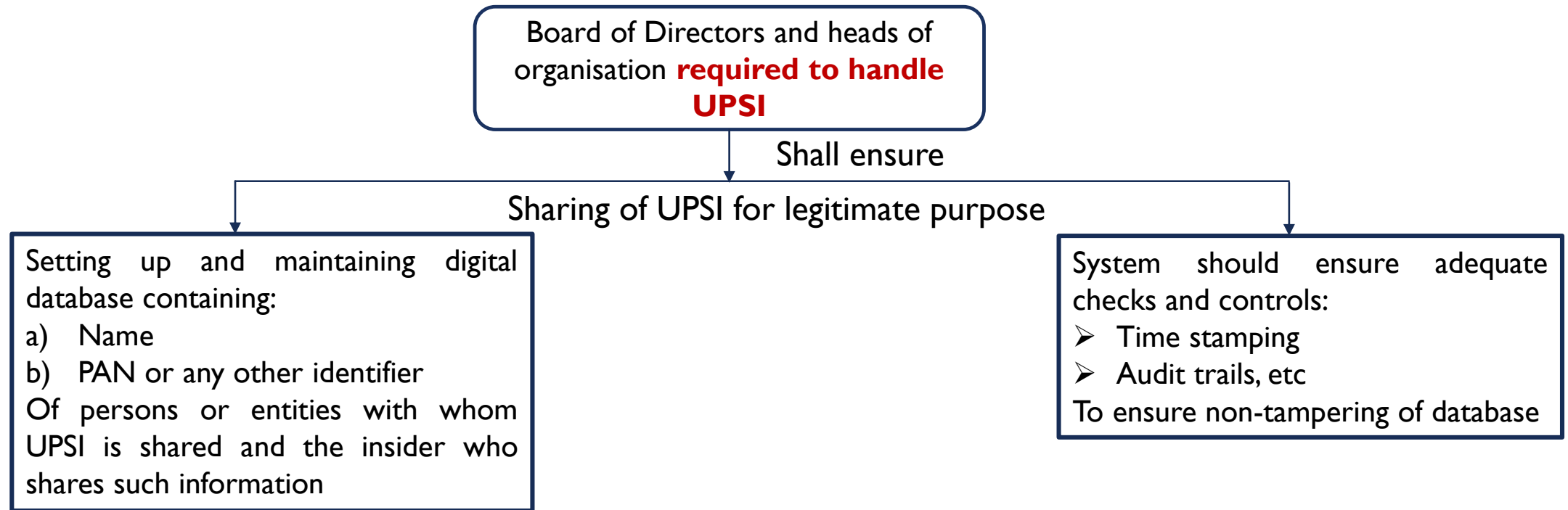
- An enabling provision for reporting violation has been inserted in Schedule B and C of PIT Reg.
- Format for reporting violations under PIT has been introduced by SEBI

Standardised reporting format for CoC violations

- SEBI had issued circular on 19th July, 2019
- Revised format issued by SEBI on 23rd July, 2020
- Previously the format provided for reporting violations under PIT Regulations.
- Amended format specifically requires reporting of CoC violation

Information about the entity	Information about the DP/ immediate relative	Transaction details
<ul style="list-style-type: none"> • Name and capacity of the entity. • Action taken by the entity. • Reasons for the action taken. 	<ul style="list-style-type: none"> • Name and PAN. • Designation and functional role of DP. • Whether a part of the promoter and promoter group. 	<ul style="list-style-type: none"> • Name of the scrip • No. and value of shares traded (including pledge) • In case trading value exceeds Rs. 10 lakhs date of disclosure made under regulation 7 of the PIT Regulations by both the entity as well as the concerned person. • Details of violations of Code of Conduct. • Instances of any violation in the previous financial year. • If amount collected for CoC violation- details of transfer to IPEF

Maintenance of Structured Digital Database – Post amendment



- Information should be preserved for 8 years after completion of relevant transaction
- Should be maintained internally and not outsourced
- Pursuant to SEBI circular dated 19th July, 2019, lapses or violations under PIT Regulations by the Company has to be reported in the database.

Contents of digital database

The contents include:

Supplier of Information			Recipient of information		
Name	PAN	Any other information	Name	PAN	Any other information
Details of UPSI and reason of sharing UPSI					
Source of Information					
NDA or confidentiality agreement executed in this regard					
Date and Time of sharing					
Date of entry					
Date when UPSI became publicly available					
Remarks, if any:					

Note 1:

The categories of recipients shall include:

Employees of the Company who are not Designated Persons (DPs);

Persons who are neither employees nor DPs but may come into contact with the DPs and other insiders of the Company;

Note 2:

The database shall be maintained under the supervision of the Compliance Officer of the Company;

The database shall be reviewed by the Compliance Officer on a periodic basis.

Closure of Trading Window – Post amendment

■ Trading Window

■ In case of Financial Results

- Trading window shall be closed:

48 hours after declaration of Results

31st March, 2020 (quarter end)

Declaration of financial Results

■ In case of other UPSI

- Trading window shall be closed from the point of time the information is available to insider

EXCEPTIONS

Inter se transfer between insiders

Transaction executed through block deal mechanism by insiders

Carried out pursuant to statutory or regulatory obligation

Pursuant to ESOP where exercise price was pre-determined

Pledge of shares for raising of funds, subject to pre-clearance by compliance officer

Transactions such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment, buyback, or delisting

Transactions which are undertaken through any other mechanism as may be specified by Board

In case of non-individual insider: Individuals possessing the information and those taking decisions were different



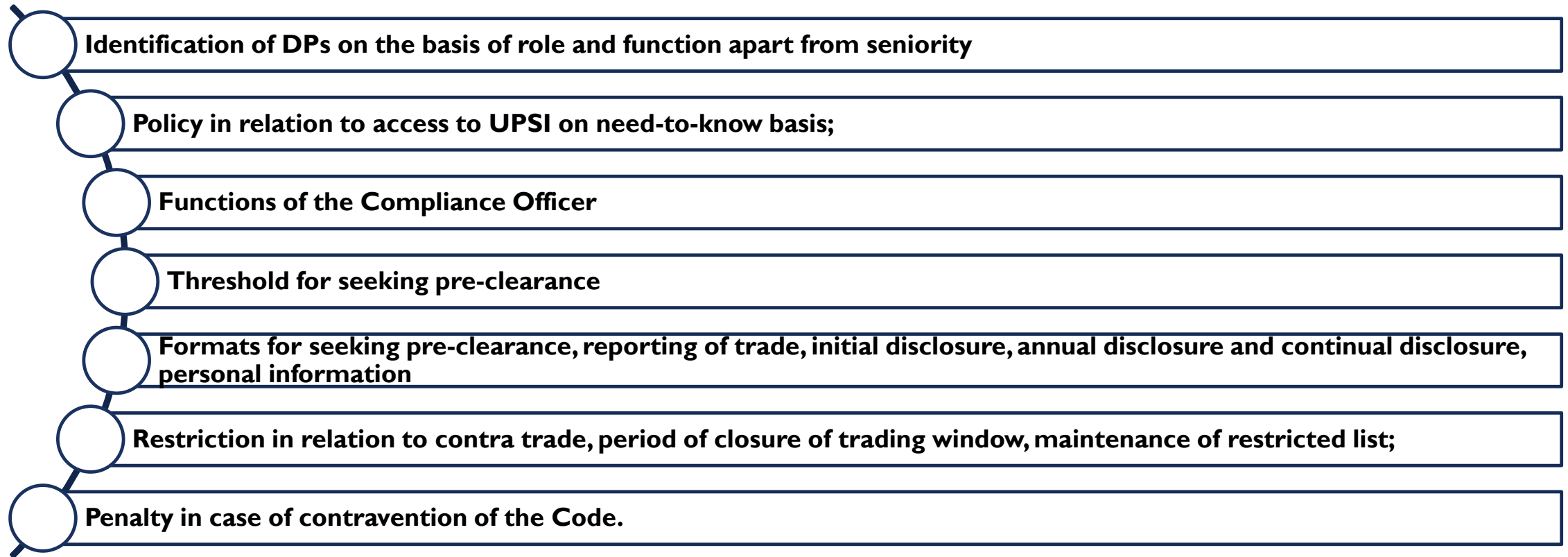
POST AMENDMENT ANALYSIS OF REGULATIONS

DISCUSSION ON CONTENTS OF CODE OF CONDUCT & DISCLOSURE REQUIREMENTS



Code of Conduct for listed company

- Applicable to DPs and immediate relatives
- Onus of formulation of code on CEO and MD
- Code to formulate how to regulate, monitor and report trading by DP and their immediate relatives
- Compliance officer to administer the code



Code of conduct for intermediaries and fiduciaries

- Why is this code required?
 - UPSI flows from companies to fiduciaries and intermediaries
 - Need to protect such information
- The head of organisation shall be responsible for formulating the code
- To regulate, monitor and report trading by its DPs and immediate relatives of DPs
- Similar norms of code of conduct for listed companies applicable on intermediaries and fiduciaries
- Compliance officer has to maintain 'restricted list' with widespread control for restricting use of UPSI
- Identification of DPs
 - Functional- Staff which get access to information. Ex- in case of consultant, point of contact of the listed co.
 - Seniority- Based on designation such as senior partners, associates etc.

Difference in code of conduct of listed company and that of intermediaries and fiduciaries

Code of conduct of listed entity	Code of conduct of intermediaries and fiduciaries
CEO & MD formulates with the approval of Board of Directors	Head of organisation
Minimum standards as per Schedule B	Minimum standards as per Schedule C
No express requirement of maintaining restricted list	Requires maintenance of restricted list for approving or rejecting applications for pre-clearance of trades
Trading window is required to be closed by listed entity.	Trading window is closed by client listed entity.

Process and policy on how and when people are brought “inside”

To be included in the Code of Conduct of listed entities and intermediaries and fiduciaries

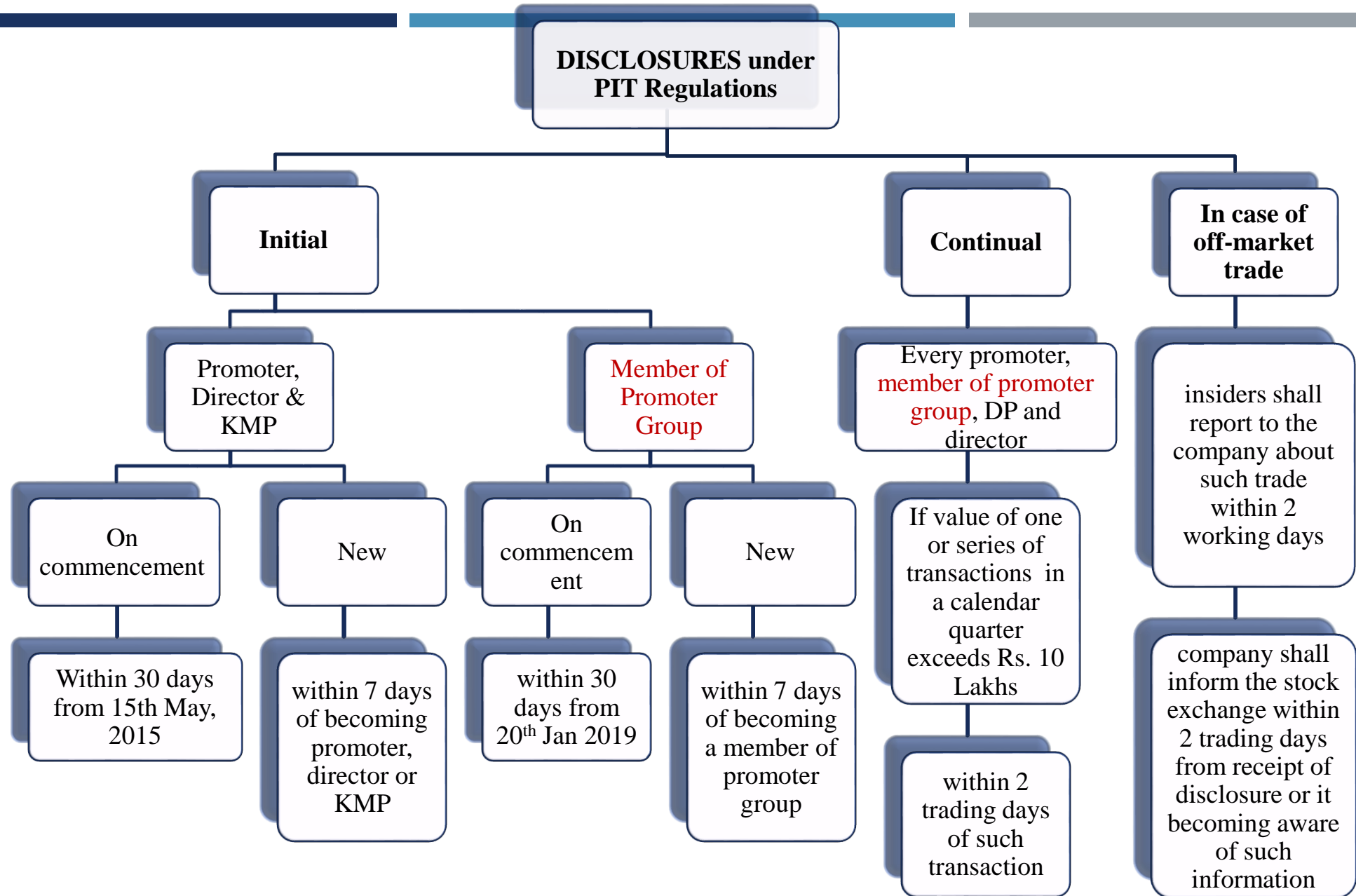
- There should be a system to track where the information emerges upto the time information is disclosed to the public
- Who is authorized to share the information;
- With whom the information is shared along with executing confidentiality agreements
- Analyzing the reason of sharing such information;
- The protocol of sharing the information;
- Sensitizing the person with whom the information is to be shared;
- Assuring that the person understands that the information is confidential;



DISCLOSURES UNDER PIT REGULATIONS

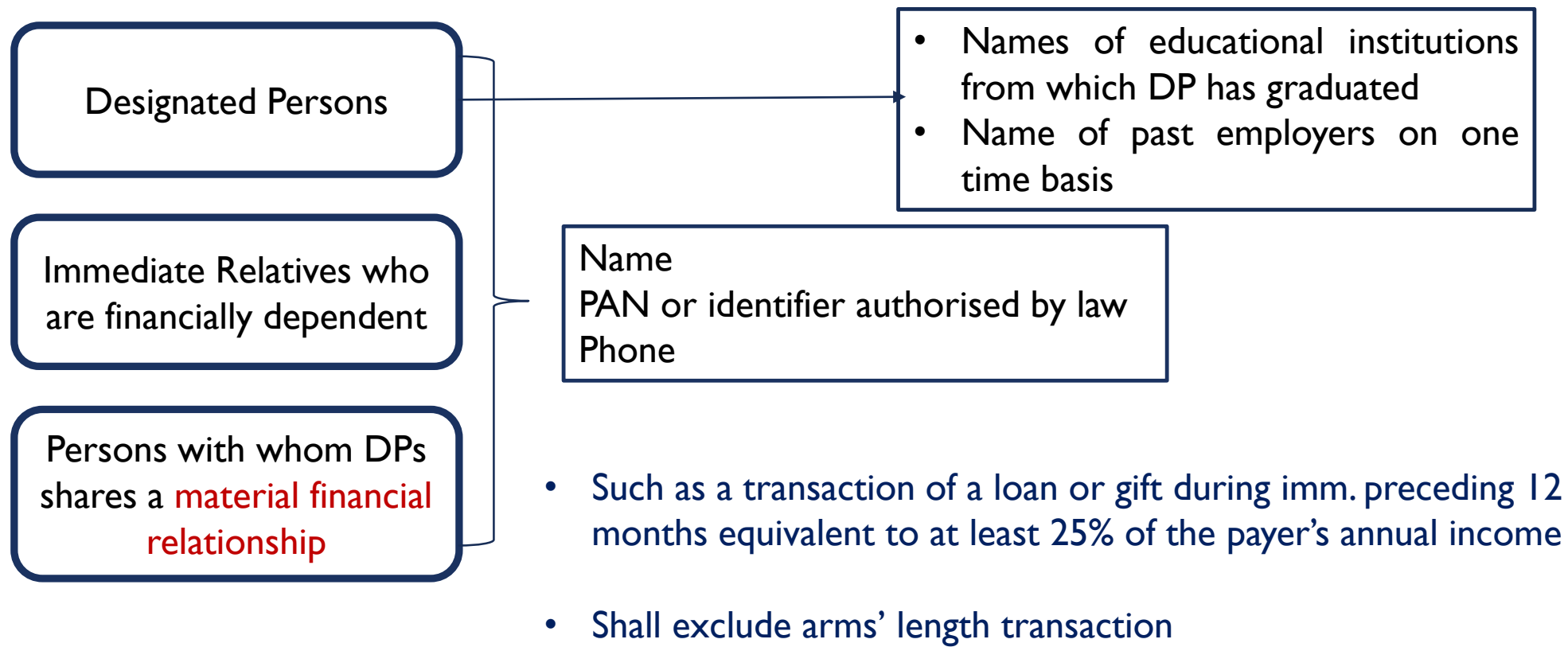
AMENDED PROVISIONS





Annual Disclosure by DPs

- On annual basis and as and when the information changes:



Our Resources on the subject

- Amendments made in July, 2020: <http://vinodkothari.com/2020/07/sebi-prescribes-norms-for-structured-digital-database-system-driven-disclosures-coc-violations/>
- Highlights of second amendment to PIT Regulations- <http://vinodkothari.com/2019/07/highlights-of-2nd-amendment-to-pit-regulations/>
- Actionables to implement amendments brought under SEBI Insider Trading Regulations- <http://vinodkothari.com/2019/01/actionables-under-sebipit-amendment-regulations-2018/>
- System driven disclosures in securities market- now extended to non-promoters- <http://vinodkothari.com/2018/06/system-driven-disclosures-in-securities-market-now-extended-to-non-promoters/>
- Guide to PIT documentation- <http://vinodkothari.com/2019/02/guide-to-pit-documentation/>
- SEBI proposed amendments in PIT Regulation to incentivize informants- <http://vinodkothari.com/2019/06/sebi-proposed-amendments-in-pit-regulation-to-incentivize-informants/>
- FAQs on PIT Regulations- http://vinodkothari.com/wp-content/uploads/2019/11/FAQs-on-SEBI-Prohibition-of-Insider-Trading-Regulations_2015.pdf
- Presentation on PIT Regulations - <http://vinodkothari.com/2019/02/presentation-on-pit-regulations/>

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