



THE GUIDE TO INTERNATIONAL ENFORCEMENT OF THE SECURITIES LAWS

SECOND EDITION

Editors

John D Buretta, David M Stuart and Lindsay J Timlin

The Guide to International Enforcement of the Securities Laws

Second Edition

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Publisher's Note

Global Investigations Review (GIR) is delighted to publish the second edition of *The Guide to International Enforcement of the Securities Laws*. For newcomers, GIR is the online home for everyone who specialises in investigating and resolving suspected corporate wrongdoing. We tell them all they need to know about everything that matters in their chosen professional niche.

GIR is famous for its daily news, but we also create various types of in-depth content. This allows us to go deeper into important matters than the exigencies of journalism allow. On the GIR website you will also find a technical library (the guides); reports from our lively worldwide conference series, GIR Live (motto: 'less talk, more conversation'); regional reviews; and unique data sets and related workflow tools to make daily life easier.

Being at the heart of the corporate investigations world, we often become aware of gaps in the literature first – topics that are ripe for an in-depth, practical treatment. Recently, the enforcement of securities laws emerged as one such area. Capital these days knows no borders; on the other hand, securities law enforcement regimes very much do. And in that juxtaposition can lie various questions. The book you are holding aims to provide them with answers. It is a practical, know-how text for investigations whose consequences may ring in breach of national securities law. Part I addresses overarching themes and Part II tackles specifics.

If you find it helpful, you may also enjoy some of the other titles in our series. *The Practitioner's Guide to Global Investigations* is the best known. It walks the reader through what to do, and consider, at every stage in the life cycle of a corporate investigation, from discovery of a possible problem to its resolution. Its success has inspired a series of companion volumes that address monitorships, sanctions, cyber-related investigations, compliance and, now, securities laws.

Please visit the Insight section at www.globalinvestigationsreview.com to read them all in e-form. GIR subscribers receive a hard copy of all our guides, gratis, as part of their subscription.

I would like to thank the editors of *The Guide to International Enforcement of the Securities Laws* for helping us to shape the idea. It's always a privilege to work with Cravath, Swaine & Moore. I'd also like to thank our authors and my colleagues for the élan with which they've brought the vision to life.

We hope you find it an enjoyable and useful book. If you have comments or suggestions please write to us at insight@globalinvestigationsreview.com. We are always keen to hear how we could make the guides series better.

David Samuels

Publisher, GIR

November 2022

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Introduction

John D Buretta, David M Stuart and Lindsay J Timlin¹

Even as we emerge, slowly, from the restrictions of the worldwide pandemic, securities markets continue to expand beyond international borders, making international enforcement of securities laws, and cooperation among regulatory authorities, an increasingly important issue among securities market participants and the practitioners who advise them. Financial institutions and other regulated entities have operations on multiple continents; corporations commonly engage in cross-border transactions and operations; securities issuers are offering investments internationally; and distributed ledger and blockchain technology has brought together investors from around the world.

By necessity, therefore, we have seen increased reliance among international law enforcement authorities on mutual cooperation, whether for the purpose of obtaining evidence or information outside their jurisdictions or jointly investigating potential securities law violations that touch multiple countries. Collaboration with the International Organization of Securities Commissions (IOSCO) is one of the most apparent ways in which securities regulators around the world coordinate their regulatory agenda and enforcement efforts. Its members regulate more than 95 per cent of the world's securities markets and have resolved to cooperate in developing, implementing and promoting compliance with the securities laws and enforcement of those laws to protect investors, maintain fair, efficient and transparent markets, and address systemic risks.²

1 John D Buretta and David M Stuart are partners, and Lindsay J Timlin is a practice area attorney, at Cravath, Swaine & Moore LLP.

2 SEC Office of International Affairs, https://www.sec.gov/about/offices/oia/oia_intlorg.shtml.

As one of the leading securities regulators in the world, the US Securities and Exchange Commission (SEC) reports that its international reach and cooperation significantly increased after the global financial crisis of 2007–2008. The SEC’s Office of International Affairs states that:

*The crisis demonstrated how closely capital markets around the globe are interconnected as well as their fundamental importance to the world’s economies. The crisis also demonstrated that facilitating international cooperation and coordination is critical in helping to ensure the effectiveness of financial regulatory reform efforts, to develop high regulatory standards across jurisdictions, and to minimize regulatory gaps.*³

Accordingly, international securities regulators rely on the IOSCO Multilateral Memorandum of Understanding (MMOU) for global multilateral information sharing among securities regulators. The SEC was among the first signatories to the MMOU in 2002, and today more than 100 securities and derivatives regulators are signatories, including the recent addition of regulators in Costa Rica, Georgia, Ghana, India and Monaco. Pursuant to the MMOU, signatories agree to provide one another with certain critical information, to permit use of that information in civil or administrative proceedings and for onward sharing with self-regulatory organisations and criminal authorities, and to keep that information confidential.⁴

This book has brought together leading practitioners from the world’s major securities markets to present, in one cohesive volume, an overview of international securities regulatory regimes and enforcement programmes. Part I addresses the basic anatomy of securities enforcement investigations in the United States, while also covering issues that commonly arise in cross-border securities enforcement matters, including the differences between representing individuals and entities, issues of privilege and data privacy, how to conduct international forensic procedures and the resolution of multinational investigations. Part II drills down into the specific regulatory regimes and enforcement programmes in major securities markets around the world and provides the perspectives of the foremost experts in their markets.

This second edition reflects recent key updates in each jurisdiction, including new regulatory updates (including a new Spanish circular regarding advertising of cryptoassets and new regulations in India governing related-party transactions);

3 *ibid.*

4 *ibid.*

recent statements by the US Department of Justice to maximise reliance on domestic and international cooperation in cross-border investigations; recent action taken by regulators in the United States and Europe to strengthen whistle-blowing protections; and new case law.

We hope this international collaboration provides an insightful and useful survey for international securities issuers, underwriters, auditors and accountants, broker-dealers and other regulated entities, and those who advise and represent these and other market participants around the world.

Part II

Expert International Perspectives

CHAPTER 10

India

Niti Dixit, Shahezzad Kazi, Zahra Aziz and Gladwin Issac¹

What are the relevant statutes and which government authorities are responsible for investigating and enforcing them?

Relevant statutes

Listed securities in India are primarily governed by three statutes: the Securities and Exchange Board of India Act 1992 (the SEBI Act); the Securities Contract (Regulation) Act 1956 (SCRA); and the Depositories Act 1996 (the Depositories Act), each as amended (collectively, the Primary Statutes).

The Securities and Exchange Board of India (SEBI) is the principal regulator responsible for securities law in India. SEBI was established to protect the interests of investors and to promote the development of, and to regulate, the securities market.² The SEBI Act provides for, among other things: the powers and functions of SEBI;³ the registration of intermediaries (such as stockbrokers, sub-brokers and share transfer agents);⁴ the imposition of penalties by, and powers of adjudication of, SEBI;⁵ the establishment, jurisdiction, authority and procedure of an appellate tribunal (i.e., the Securities Appellate Tribunal (SAT)) to hear and decide appeals against SEBI's orders;⁶ and making rules and regulations to achieve the objectives of the SEBI Act.⁷

1 Niti Dixit and Shahezzad Kazi are partners and Zahra Aziz and Gladwin Issac are associates at S&R Associates.

2 Preamble, Securities and Exchange Board of India Act 1992 (the SEBI Act).

3 Chapter IV, SEBI Act.

4 *id.*, Chapter V.

5 *id.*, Chapter VIA.

6 *id.*, Chapter VIB.

7 *id.*, Sections 29 and 30.

The SEBI Act is a special law, and the powers of SEBI under the Act are not fettered by other laws on matters governed under the Act.⁸

The SCRA was enacted to prevent undesirable transactions in securities by regulating the business of dealing in securities.⁹ The SCRA provides for, among other things: the recognition, corporatisation and demutualisation of stock exchanges;¹⁰ the powers of SEBI and the government of India to regulate recognised stock exchanges;¹¹ the provisions governing contracts and options in securities and listing of securities;¹² and the penalties for contravention of the SCRA and the process of adjudication of those proceedings.¹³

The Depositories Act was enacted for the regulation of depositories and provides for, among other things, the rights and obligations of depositories, participants, issuers and beneficial owners of securities.¹⁴

Pursuant to the powers granted to it under the Primary Statutes, SEBI has issued several regulations (collectively, the SEBI Regulations), including the following:

- the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003 (the FUTP Regulations), which, among other things, prohibit fraudulent and unfair trade practices relating to the securities market, such as manipulation of books of accounts, the false or misleading appearance of trading and dealing in securities to inflate, depress or cause fluctuations in the price of such security;
- the SEBI (Prohibition of Insider Trading) Regulations 2015 (the Insider Trading Regulations), which, among other things, restrict communication of, and trading by insiders on the basis of, unpublished price-sensitive information, require disclosure of trading by insiders, mandate codes of fair disclosure and conduct to be followed by listed entities, and provide the legal regime applicable to violations of these regulations;

8 *Sahara India Real Estate Corporation Limited and Others v. Securities and Exchange Board of India and Another* (2013) 1 SCC 1, paragraphs 66 and 309.

9 Preamble, Securities Contract (Regulation) Act 1956 (SCRA).

10 *id.*, Sections 3–5.

11 *id.*, Sections 6–12A.

12 *id.*, Sections 13–19 and 21–22F.

13 *id.*, Sections 23–26E.

14 Chapter III, Depositories Act 1996.

- the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (the Takeover Code), which, among other things, provide thresholds for the substantial acquisition of shares,¹⁵ voting rights or control in listed entities by an acquirer along with persons acting in concert, the process for these acquisitions and the requirements for disclosure of these acquisitions of shares, voting rights or control;
- the SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (the Listing Regulations), which, among other things, specify the obligations of listed entities, including concerning corporate governance matters to protect the interests of shareholders and investors;
- the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018, which, among other things, provide for the conditions (including disclosure requirements in the offer document) and process for the listing of securities by an Indian company and further issuance of securities by a listed entity (including by way of qualified placement to institutions, follow-on public offer and issuance of shares through a preferential allotment basis or a rights issue in India, or both);
- the SEBI (Merchant Bankers) Regulations 1992, which, among other things, specify the process of, and qualification for, registration with SEBI allowing entities to act as merchant bankers and their general obligations and responsibilities; and
- the SEBI (Intermediaries) Regulations 2008, which, among other things, provide for the registration and obligations of intermediaries, inspection and disciplinary proceedings against intermediaries by SEBI, action in the case of default and the manner of suspension or cancellation of certificate of registration of these intermediaries.

SEBI has also issued regulations governing specific categories of investors, including foreign investors, such as:

- the SEBI (Foreign Portfolio Investors) Regulations 2019;
- the SEBI (Foreign Venture Capital Investors) Regulations 2000; and
- the SEBI (Alternative Investment Funds) Regulations 2012.

15 Regulation 3, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (the Takeover Code). The threshold prescribed under the Takeover Code is: 25 per cent for new or existing shareholders along with persons acting in concert; and 5 per cent for existing shareholders who already hold more than 25 per cent and less than 75 per cent in the company (otherwise known as creeping acquisitions) in one financial year.

The above regulations govern:

- the process for registration of these classes of foreign investors;
- applicable investment conditions and restrictions;
- foreign investors' general obligations and responsibilities; and
- the procedure for action in the case of default by these investors.

Additionally, there are certain other statutes and regulations that may be violated in the event of a breach of securities law, including:

- the Companies Act 2013 and the rules framed thereunder (collectively, the Companies Act) for regulation of companies;
- the Reserve Bank of India Act 1934, pursuant to which the Indian central bank (the Reserve Bank of India (RBI)) is established and provides for, among other things, the regulation of transactions in derivatives, money market instruments and securities;
- the Foreign Exchange Management Act 1999 for regulation of foreign exchange markets by the RBI and the regulation of current account and capital account transactions (including in relation to the transfer and issue of securities of Indian listed entities);¹⁶ and
- the Prevention of Money Laundering Act 2002, which aims to prevent money laundering and provides for confiscation of property in relation to certain specified offences.¹⁷

Regulators

SEBI acts as the principal, but not the exclusive, regulator for securities laws in India. It has extensive statutory powers, including the power to: issue appropriate directions to a person who is associated with the securities market, in the interest of investors in securities and the securities market;¹⁸ regulate stock exchanges; prohibit insider trading; regulate substantial acquisitions of shares and takeovers of companies; and conduct inquiries and audits of entities associated with the

¹⁶ Sections 5–6, Foreign Exchange Management Act 1999.

¹⁷ Section 3, Prevention of Money Laundering Act 2002.

¹⁸ *Sahara India Real Estate Corporation Limited and Others v. Securities and Exchange Board of India and Another* (2013) 1 SCC 1, paragraphs 57 and 303.4.

securities market.¹⁹ Certain provisions of the Companies Act concerning the issue and transfer of securities, share capital and debenture, and non-payment of dividends by listed companies, are also enforced by SEBI.²⁰

SEBI is empowered to take civil and criminal enforcement action. Civil actions generally involve issuing directions, such as:

- remedial orders;²¹
- cease-and-desist orders²² and imposition of monetary penalties;²³
- suspension or cancellation of an intermediary's certificate of registration;²⁴
- suspension of trading of any security in a recognised stock exchange;²⁵
- restraining persons from accessing the securities market and prohibiting persons from buying, selling or dealing in securities;²⁶
- issuance of directions;²⁷ and
- other prohibitive orders.²⁸

Criminal action involves SEBI initiating prosecution against alleged violators by filing criminal complaints before the competent courts.²⁹

SEBI has the power of a civil court for the discovery and production of books of accounts and other documents, summoning and enforcing the attendance of persons and examining them on oath, and inspection of books, registers or other documents, in relation to listed companies or public companies that intend to list their securities on a recognised stock exchange.³⁰ SEBI itself determines the legal measures it will adopt to fulfil the functions assigned to it by the SEBI Act.³¹

Recently, SEBI has made certain administrative changes in the qualifications for its most senior officers. Traditionally, senior positions at SEBI were held by career bureaucrats from the Indian Administrative Service. However, in

19 Section 11, SEBI Act.

20 Section 24, Companies Act; Section 55A, Companies Act 1956, as amended (Companies Act 1956).

21 Section 11B, SEBI Act.

22 *id.*, Section 11D.

23 *id.*, Chapter VI-A.

24 *id.*, Section 12(3).

25 *id.*, Section 11(4)(a).

26 *id.*, Section 11(4)(b).

27 *id.*, Section 11B.

28 *id.*, Section 11D.

29 *id.*, Section 24.

30 *Sahara India Real Estate Corporation Limited and Others v. Securities and Exchange Board of India and Another* (2013) 1 SCC 1, paragraphs 303.3 and 304.4.

31 *id.*, paragraph 303.1.

March 2022, a new chairperson with significant experience in the private sector and an investment banking background was appointed.³² SEBI has also appointed an individual with experience in the banking and legal fields to head its department of debt and hybrid securities and its enquiry and adjudication department.³³

In addition to SEBI, the Indian securities market is regulated and monitored by the Ministry of Finance (MOF) through the Capital Markets Division and the Financial Markets Division, and by the RBI. The MOF is responsible for, among other things, formulating the policies related to the orderly growth and development of the Indian securities market.³⁴

Recognised stock exchanges in India have issued by-laws and monitor compliance by listed entities with these by-laws and the Listing Regulations. The by-laws are concerned with, among other things, regulation and control of securities contracts, dealings in securities, rights and liabilities of trading members.³⁵ The stock exchanges investigate complaints in relation to their trading members or stockbrokers and can suspend trading of, or withdraw admission to dealings in, a listed security for breach or non-compliance of any conditions or breach of a company's obligations under the Listing Regulations.³⁶

The other key regulators for listed and unlisted securities in India are: the Regional Director and the Registrar of Companies under the Ministry of Corporate Affairs, which ensures compliance with the requirements of the Companies Act; the Serious Fraud Investigations Office (established under the Companies Act), which investigates cases of serious fraud and complex financial offences;³⁷ the Enforcement Directorate, which investigates and prosecutes offences of money laundering; and the Economic Offence Wing of each state's police department, which investigate economic offences such as fraud and market manipulation.

32 SEBI Press Release (2 March 2022), www.sebi.gov.in/media/press-releases/mar-2022/ms-madhabi-puri-buch-takes-charge-as-chairperson-sebi_56532.html#:~:text=Madhabi%20Puri%20Buch%20takes%20charge%20as%20Chairperson%2C%20SEBI, accessed on 30 August 2022.

33 SEBI Press Release (19 July 2022), www.sebi.gov.in/media/press-releases/jul-2022/shri-pramod-rao-takes-charge-as-executive-director-sebi_61008.html, accessed on 30 August 2022.

34 National Stock Exchange of India (NSE), Regulations in India, www1.nseindia.com/int_invest/content/regulatory_framework.htm, accessed on 30 August 2022.

35 See Chapters V, X, XI and XII BSE By-Laws; Section 9, SCRA.

36 Section 9, SCRA; Regulation 98, SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (Listing Regulations); Circular issued by SEBI dated 22 January 2020.

37 Serious Fraud Investigation Office, https://sfio.nic.in/about_history_sfio, accessed on 30 August 2022.

What conduct is most commonly the subject of securities enforcement?

The most common subjects of securities enforcement proceedings are:

- market and issue-related manipulation and price-fixing under the FUTP Regulations;
- insider trading under the Insider Trading Regulations;
- takeovers under the Takeover Code; and
- violations of the Listing Regulations.³⁸

A review of investigations undertaken by SEBI during 2020–21 indicates that 41 cases (43.6 per cent) related to market manipulation and price-fixing and 30 cases (31.9 per cent) related to insider trading. Three cases (3.2 per cent) related to takeovers and 20 cases (21.3 per cent) related to other violations of securities laws, including violations of the Listing Regulations.³⁹

Market and issue-related manipulation and price-fixing

The FUTP Regulations prohibit manipulative, fraudulent and unfair trade practices,⁴⁰ which include: manipulation of books of accounts or financial statements;⁴¹ false or misleading appearance of trading in the securities market;⁴² artificially inflating, depressing, maintaining or causing fluctuation in the price of securities through any means;⁴³ influencing or manipulating the reference price or benchmark price of any securities;⁴⁴ and publishing or causing to publish false information while dealing in securities.⁴⁵

SEBI has initiated proceedings in respect of direct or indirect: use or employment of a manipulative or deceptive device or contrivance contrary to the provisions of the SEBI Act or the SEBI Regulations;⁴⁶ employment of a device,

38 SEBI, Annual Report 2020–21, pp. 211–212, www.sebi.gov.in/reports-and-statistics/publications/aug-2021/annual-report-2020-21_51610.html, accessed on 30 August 2022.

39 *ibid.*

40 Regulation 4(1), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003 (FUTP Regulations).

41 Explanation to Regulation 4(1), FUTP Regulations.

42 *id.*, Regulation 4(2)(a).

43 *id.*, Regulation 4(2)(d).

44 *id.*, Regulation 4(2)(e).

45 *id.*, Regulations 4(2)(f) and (k).

46 Section 12A(a), SEBI Act; Regulation 3(b), FUTP Regulations.

scheme or artifice to defraud investors;⁴⁷ engagement in an act, practice or course of business that operates or would operate as fraud or deceit upon a person;⁴⁸ and buying or selling or otherwise dealing in securities in a fraudulent manner.⁴⁹

Insider trading

An ‘insider’ includes any person in possession of, or having access to, unpublished price-sensitive information (UPSI) or a connected person.⁵⁰ A ‘connected person’⁵¹ is identified either based on their association with a company or because they are deemed to be a connected person. A connected person includes any person directly or indirectly associated with the company during the six months prior to the relevant act of insider trading in any capacity that allows that person access to UPSI or for whom access is reasonably expected. This access could be by reason of frequent communication with the company’s officers or by being a director, officer or employee of, or holding a professional or business relationship with, the company, which may be either temporary or permanent. A deemed connected person includes immediate relatives of a person associated with the company, a holding company, subsidiary or associate companies, intermediaries (or employees or directors thereof) or bankers.⁵²

UPSI means information relating to a company or its securities that is not accessible to the public on a non-discriminatory basis, and when it becomes accessible, is likely to materially affect the price of its securities. This information includes (but is not limited to) information relating to financial results, dividends, changes in capital structure, mergers, demergers, acquisitions, disposal and expansion of business, delisting and changes in key managerial personnel.⁵³

47 Section 12A(b), SEBI Act; Regulation 3(c), FUTP Regulations.

48 Section 12A(c), SEBI Act; Regulation 3(d), FUTP Regulations.

49 Regulation 3(a), FUTP Regulations.

50 Regulation 2(g), SEBI (Prohibition of Insider Trading) Regulations 2015 (Insider Trading Regulations).

51 *id.*, Regulation 2(d).

52 *id.*, Regulation 2(d)(ii).

53 *id.*, Regulation 2(g).

‘Trading’ includes subscribing, buying, selling or dealing, or agreeing to subscribe, buy, sell or deal, in any securities.⁵⁴ SEBI has initiated investigations under the Insider Trading Regulations for, among other things:

- directly or indirectly engaging in insider trading;⁵⁵
- directly or indirectly dealing in securities while in possession of UPSI or communication of that UPSI to any other person, in a manner that is in contravention of the provisions of the SEBI Act or the SEBI Regulations;⁵⁶
- communicating or providing or allowing access to any UPSI relating to a company or securities to any person;⁵⁷ and
- failing to make adequate disclosures about acquiring or disposing of securities above a certain threshold.⁵⁸

Takeovers

SEBI investigates, among other things: substantial acquisition of shares or voting rights above the prescribed threshold⁵⁹ or acquiring direct or indirect control over a company⁶⁰ without making a public announcement of an open offer for acquiring shares of the company in accordance with the Takeover Code; and non-compliance with obligations to disclose shareholding and control under the Takeover Code.⁶¹

Other miscellaneous investigations

SEBI has sought to enforce the provisions of the Listing Regulations applicable to listed entities for failure to, among other things:

- prepare and provide information in accordance with the applicable standards of accounting and financial disclosure;⁶²
- provide adequate and timely information to recognised stock exchanges and investors;⁶³

54 *id.*, Regulation 2(l).

55 Section 12A(d), SEBI Act.

56 Section 12A(e), SEBI Act; Regulation 4(1), Insider Trading Regulations.

57 Regulation 3, Insider Trading Regulations.

58 *id.*, Regulation 7.

59 Regulation 3, Takeover Code. The threshold prescribed under the Takeover Code is: 25 per cent for new or existing shareholders; and 5 per cent for existing shareholders who already hold 25 per cent in the company.

60 *id.*, Regulation 4.

61 *id.*, Chapter V.

62 Regulation 4(1)(a), Listing Regulations.

63 *id.*, Regulation 4(1)(d).

- disseminate information in simple, adequate, accurate and explicit terms and in a timely manner;⁶⁴
- consider the interests of stakeholders;⁶⁵
- comply with the corporate governance requirements identified in the Listing Regulations,⁶⁶ such as providing critical information to the board of directors of a company⁶⁷ or requirements relating to the composition of the board of directors;⁶⁸ and
- disclose to the stock exchanges material events or information within the prescribed time period.⁶⁹

SEBI has also brought proceedings under the Listing Regulations for misrepresentation or providing misleading information to stock exchanges and investors.⁷⁰

SEBI also brings proceedings against, among others, stockbrokers, sub-brokers, share transfer agents and other intermediaries acting without requisite registrations⁷¹ or against intermediaries and investment advisers for failure to comply with their obligations and responsibilities under the SEBI Regulations.⁷²

SEBI is also responsible for regulating the issue and transfer of securities under the Companies Act⁷³ and it commonly institutes proceedings against companies and their directors or principal shareholders for enforcement of these provisions relating to, among other things:

- matters to be stated (such as general information, capital structure of the company and terms of issue) and reports to be set out (such as financial information, auditors' reports, statutory information and material contracts) in the company's prospectus;⁷⁴
- registration of the prospectus;⁷⁵

64 *id.*, Regulation 4(1)(e).

65 *id.*, Regulation 4(1)(h).

66 *id.*, Regulation 4(2) and Chapter IV.

67 *id.*, Regulation 4(2)(f)(iii)(13).

68 *id.*, Regulations 16 and 17.

69 *id.*, Regulation 30.

70 *id.*, Regulation 4(1)(c).

71 Section 12(1), SEBI Act; Regulation 3(1), Securities and Exchange Board of India (Investment Advisers) Regulations 2013.

72 Regulation 15, Securities and Exchange Board of India (Investment Advisers) Regulations 2013.

73 Section 24, Companies Act.

74 Section 56, Companies Act 1956; Section 26, Companies Act.

75 Section 60, Companies Act 1956.

- misstatements in the prospectus;⁷⁶
- construction of references to offering shares or debentures to the public;⁷⁷ and
- allotment of securities to be dealt in on stock exchanges.⁷⁸

What legal issues commonly arise in enforcement investigations?

Overview

Investigations conducted by SEBI are quasi-judicial in nature,⁷⁹ where principles of natural justice apply, including, but not limited to, providing the opportunity for a fair hearing and issuing a reasoned decision.⁸⁰

SEBI is empowered to conduct search and seizure operations, including dawn raids, but these require prior permission from a competent court.⁸¹

Investigation proceedings are conducted under the rules framed for holding inquiries and imposing penalties under the Primary Statutes and the SEBI Regulations.⁸² SEBI may, either on its own or upon receipt of information or a complaint from a person, conduct initial inquiries prior to initiating a formal investigation.⁸³ Upon completion of its initial inquiries, SEBI may issue any directions it deems necessary in the interest of investors or the securities market,⁸⁴ or order a formal investigation to be conducted into the affairs of the relevant entity or person.⁸⁵

76 Section 62, Companies Act 1956; Section 35, Companies Act.

77 Section 67, Companies Act 1956.

78 Section 73, Companies Act 1956; Section 39, Companies Act.

79 *National Securities Depositories Ltd. v. SEBI* (2017) 5 SCC 517.

80 Order dated 12 March 2019 issued by the Securities Appellate Tribunal (SAT) in *North End Foods Marketing Pvt. Ltd. v. SEBI*, Appeal No. 80 of 2019, paragraph 13; Order dated 23 July 2013 issued by the SAT in *Zenith Infotech Limited and Ors. v. SEBI*, Appeal No. 59 of 2013, paragraph 27.

81 Section 11C(9), SEBI Act. For instance, SEBI conducted search and seizure operations against certain entities involved in the circulation of unpublished price-sensitive information over the popular social messaging platform WhatsApp, and approximately 190 devices were seized in that search (Order dated 22 March 2021 issued by the SAT in *Shruti Vora v. SEBI*, Misc. Application No. 347 of 2020 and Appeal No. 309 of 2020, paragraph 3).

82 SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules 1995 (SEBI Inquiry Rules); the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules 2005 (Securities Contracts Regulations Inquiry Rules); the Depositories (Procedure for Holding Inquiry and Imposing Penalties) Rules 2005 (Depositories Inquiry Rules); and SEBI (Intermediaries) Regulations 2008.

83 Section 19, read with Section 15-I(1), SEBI Act; Rule 3, SEBI Inquiry Rules.

84 Section 11B, SEBI Act.

85 *id.*, Section 11C.

SEBI also has powers to issue interim, *ex parte*, *ad interim* and final orders.⁸⁶ Interim orders may be issued pending an investigation or inquiry to prevent potential further mischief in the securities market, and final orders are issued after completion of investigation or inquiry. Further, in a situation where the action cannot be delayed, an *ex parte ad interim* order can be issued by SEBI.⁸⁷

Where the matter requires adjudication in respect of an offence,⁸⁸ SEBI appoints one of its officers not below the rank of a division chief to be an adjudicating officer for holding an inquiry under the Primary Statutes and the SEBI Regulations.⁸⁹ The adjudicating officer is authorised to issue summons and order discovery and production of documents, and examine witnesses.⁹⁰ Formal regulatory proceedings commence with the issuance of a notice to show cause to the persons against whom proceedings are brought.⁹¹ This notice sets out the facts, circumstances and supporting documents, and identifies the specific regulations that SEBI believes have been contravened. A SEBI show-cause notice will specify the time within which SEBI expects a written response to the allegations along with supporting documents (at least 14 days).⁹² SEBI may issue a supplemental notice to show cause for additional violations.⁹³

Adjudication proceedings are quasi-judicial and the respondent is entitled to a hearing, representation through counsel and, where the notice requests it, examination and cross-examination of witnesses.⁹⁴ If the respondent has received notice of the proceedings and does not attend a hearing, the adjudicating officer can decide the matter in the absence of the respondent.⁹⁵

86 *id.*, Sections 11, 11B and 15J.

87 *Anand Rathi v. SEBI*, 2001 SCC OnLineBom 381, paragraph 32.

88 Chapter VIA, SEBI Act; Sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, SCRA; Sections 19A, 19B, 19C, 19D, 19E, 19F and 19G, Depositories Act.

89 Rule 3, SEBI Inquiry Rules; Rule 3, Securities Contracts Regulations Inquiry Rules; Rule 3, Depositories Inquiry Rules.

90 Rule 4(6), SEBI Inquiry Rules; Rule 4(6), Securities Contracts Regulations Inquiry Rules; Rule 4(6), Depositories Inquiry Rules.

91 Rule 4(1), SEBI Inquiry Rules; Rule 4(1), Securities Contracts Regulations Inquiry Rules; Rule 4(1), Depositories Inquiry Rules.

92 *ibid.*

93 Rule 4(2), SEBI Inquiry Rules; Rule 4(2), Securities Contracts Regulations Inquiry Rules; Rule 4(2), Depositories Inquiry Rules.

94 Rule 4(3), SEBI Inquiry Rules; Rule 4(3), Securities Contracts Regulations Inquiry Rules; Rule 4(3), Depositories Inquiry Rules. Order dated 15 September 2010 issued by the SAT in *Bharat Jayantilal Patel v. SEBI*, Appeal No. 126 of 2010, paragraphs 4, 5 and 7.

95 Rule 4(7), SEBI Inquiry Rules; Rule 4(7), Securities Contracts Regulations Inquiry Rules; Rule 4(7), Depositories Inquiry Rules.

For civil proceedings under the SEBI Act, *mens rea*⁹⁶ is not an essential ingredient to establish contravention of a provision under the Primary Statutes or the SEBI Regulations.⁹⁷ In other words, a penalty is attracted if there is contravention of a provision, regardless of an intention to commit the offence. Violations of insider trading law would qualify as a strict liability offence and an insider, while in possession of UPSI, will be presumed to be motivated by the knowledge and awareness of the information that they are in possession of, unless they can provide evidence to the contrary.⁹⁸

SEBI issues its decision or order in the matter, pursuant to which it may close the proceedings or impose a monetary penalty.⁹⁹ SEBI may also issue other declaratory orders or injunctions and cease-and-desist orders (see below).

Orders issued by SEBI can be challenged before the SAT.¹⁰⁰ Orders of the SAT can be challenged before the Supreme Court of India on questions of law.¹⁰¹

Criminal proceedings

Certain offences under the Primary Statutes and the SEBI Regulations are punishable by imprisonment, but SEBI is not competent to conduct a criminal trial. Therefore, upon completion of initial inquiries, SEBI may file a complaint before a court competent to try offences under Indian law, against an individual or company for these offences, which include market manipulation under the FUTP Regulations and insider trading under the Insider Trading Regulations.¹⁰²

Civil proceedings and criminal proceedings can be initiated simultaneously by SEBI. As a practical matter, SEBI may await the outcome of the civil proceedings (although it is not obliged to do so) before initiating action under criminal law.

96 *Mens rea* refers to the state of mind statutorily required to convict a particular defendant of a particular crime.

97 *SEBI v. Shriram Mutual Fund* (2006) 5 SCC 361.

98 Regulation 4(1), Insider Trading Regulations.

99 Rule 5, SEBI Inquiry Rules; Rule 5, Securities Contracts Regulations Inquiry Rules; Rule 5, Depositories Inquiry Rules.

100 Section 15T, SEBI Act; Section 23L, SCRA; Section 23A, Depositories Act.

101 Section 15Z, SEBI Act.

102 *id.*, Section 24(1).

Legal issues

Privilege

Under Indian law, privilege extends to: legal advice rendered by a professional legal adviser to their client; communications exchanged between professional legal advisers and clients; and documents that are created in anticipation of litigation.¹⁰³ The statutory exceptions to the rule of privilege are: any communication made in furtherance of an illegal purpose; and any fact observed by the professional legal adviser indicating that a crime or fraud has been committed in the course of their engagement.

However, privilege is not applicable if the client offers itself as a witness, in which case the client may be compelled to disclose any communication that the court thinks necessary to explain the evidence that the client has given, but no other communication.¹⁰⁴

Any information or documents requested by and provided to SEBI during the course of an inquiry, investigation or proceedings under the SEBI Act are received by SEBI in a fiduciary capacity. SEBI is exempt from disclosing this information or documents to third parties.¹⁰⁵

Cooperation with investigating authorities

Failure to comply with SEBI's directions to produce documents or information by a person being investigated can result in the imposition of a penalty amounting to approximately 100,000 rupees for each day during which the failure continues, or 10 million rupees, whichever is less.¹⁰⁶

Cross-border cooperation and information sharing

SEBI's Office of International Affairs is responsible for liaising with foreign entities and other national securities regulators, such as the Securities Exchange Commission (SEC) in the United States, the United Kingdom's Financial Conduct Authority and the Monetary Authority of Singapore. SEBI is a member of the International Organization of Securities Commissions, a worldwide association of national securities regulatory commissions, and it collaborates with foreign securities regulators to strengthen cross-border cooperation in the area

103 Section 126, Indian Evidence Act 1872.

104 Section 129, Indian Evidence Act 1872; *Municipal Corporation of Greater Bombay and Anr. v. Vijay Metal Works*, AIR 1982 Bom 6.

105 Order dated 11 December 2018 issued by the SAT in *Sandip Sabharwal v. CPIO, SEBI* Mumbai, Appeal No. 3258 of 2018, paragraph 10(i).

106 Section 15A(a), SEBI Act.

of securities regulation and enforcement.¹⁰⁷ For instance, following the global covid-19 pandemic, SEBI and other national securities regulators have regularly shared information on the securities policy measures that each regulator has implemented.¹⁰⁸ SEBI also has bilateral arrangements with various other securities regulators (such as the SEC) to facilitate mutual assistance, provide technical assistance and enable effective enforcement of the laws and regulations governing the securities markets.¹⁰⁹ One of the significant advantages of bilateral cooperation is regular information sharing on various issues, which includes securities-backed loans, guidelines on investor compensation funds, the functioning of investor grievance redressal mechanisms and whistleblower policies.¹¹⁰ As at 31 March 2021, SEBI was a signatory to 29 bilateral arrangements aimed at facilitating mutual assistance, contributing towards efficient performance of the supervisory functions, aiding in imparting technical domain knowledge and enabling effective enforcement of the laws and regulations governing the securities market.¹¹¹

Whistleblower protection

Every listed company in India is required to establish and display on its website a whistleblower policy for its directors and employees to report genuine concerns regarding, among other things, financial impropriety and regulatory non-compliance.¹¹² SEBI relies on this whistleblower policy to curb violations of insider trading by enabling reporting of leaks of UPSI.¹¹³ In 2019, SEBI introduced an informant mechanism to incentivise informants to report violations of insider trading laws to SEBI in return for a monetary reward.¹¹⁴

107 International Organization of Securities Commissions Multilateral Memorandum of Understanding, Appendix A (Current Signatories), www.iosco.org/about/?subSection=mmou&subSection1=signatories, accessed on 30 August 2022.

108 SEBI Annual Report 2019–20, pp. 216–217, www.sebi.gov.in/reports-and-statistics/publications/feb-2021/annual-report-2019-20_49071.html, accessed on 30 August 2022.

109 List of Bilateral Memoranda of Understanding signed by SEBI, www.sebi.gov.in/departments/office-of-international-affairs-36/oia-bilateral.html, accessed on 30 August 2022.

110 SEBI Annual Report 2019–20, pp. 218–219, footnote 108.

111 *id.*, pp. 244–245. The data for March 2022 has not yet been released by SEBI.

112 Section 177(9), Companies Act; Regulations 4(2)(d)(iv), 22 and 46, Listing Regulations.

113 Regulation 9A(6), Insider Trading Regulations.

114 *id.*, Regulation 7D.

Multiple investigations and parallel proceedings

The SEBI Act does not prevent SEBI from initiating parallel proceedings alongside other regulators on the basis of the same set of facts. Likewise, other law enforcement agencies, such as the Enforcement Directorate, the Central Bureau of Investigation (CBI), the Registrar of Companies and the Income Tax Department, may also initiate investigations and prosecution simultaneously with SEBI proceedings arising from the same set of facts. For instance, SEBI is currently investigating a bank and its former managing director and chief executive officer for alleged non-compliance with certain provisions of the Listing Regulations.¹¹⁵ The CBI and the Enforcement Directorate are conducting parallel investigations for offences of criminal conspiracy, cheating and money laundering that arise out of the aforesaid allegations.

In another instance, the National Stock Exchange of India Limited (NSE), a leading recognised stock exchange, is being investigated by the CBI and SEBI in connection with allegations of market manipulation between December 2012 and May 2014,¹¹⁶ and for failing to manage its trading systems in accordance with applicable regulations.¹¹⁷ The NSE leased co-location facilities within the NSE building to certain brokers. In 2015, based on complaints from a whistleblower, SEBI initiated an investigation into allegations of irregularities in the management of the co-location facilities by the NSE, including differential treatment favouring certain stockbrokers and allowing preferential access to 'point to point' connectivity to selected brokers. Pursuant to an order dated 28 June 2022, SEBI held that certain NSE officials had given preferential treatment to the stockbrokers by facilitating the laying of cables for internet connectivity at its co-location facility and had engaged a non-eligible internet service provider to provide this connectivity.¹¹⁸ As a result, some stockbrokers had faster access to market data disseminated by the NSE (compared to other stockbrokers at the co-location facility), allowing them to front-run the market. SEBI observed that the NSE was in breach of its fiduciary duty to provide equal, fair and transparent access to the

115 Show-cause notice issued by SEBI to Ms Chanda Kochhar on 24 May 2018.

116 'Timeline: Here's how the co-location scam unfolded', *Economic Times* (1 May 2019), <https://economictimes.indiatimes.com/markets/stocks/news/timeline-heres-how-the-co-location-scam-unfolded/-dec-2012-may-2014/slideshow/69128911.cms>.

117 Shrimi Choudhary, 'NSE colo case: CBI books Sebi, NSE officials for defrauding exchange', *Business Standard* (18 July 2022), www.business-standard.com/article/current-affairs/nse-colo-case-cbi-books-sebi-nse-officials-for-defrauding-exchange-122071801377_1.html, accessed on 30 August 2022.

118 Order dated 28 June 2022 issued by SEBI, *In the matter of Dark Fibre/Leased Line connectivity allowed to certain Stock Brokers by NSE*.

co-location facility to all market participants and that the stockbrokers, in collusion with the NSE officials and the internet service provider, had made significant profit.¹¹⁹ Accordingly, SEBI held that the conduct violated provisions of the SEBI Act, the SCRA and certain rules and regulations made thereunder, and imposed a cumulative penalty of approximately 42 million rupees on 18 entities, including the NSE and its former chief executive officer and chief operating officer.¹²⁰

SEBI's regulatory powers and its overlap with other sectoral regulators' powers (in particular, India's insolvency regulator, the Insolvency and Bankruptcy Board of India), is also a legal issue of contemporary relevance. In a few cases, SEBI has initiated regulatory action and imposed penalties on companies that were undergoing insolvency resolution procedures under India's insolvency and bankruptcy law, the Insolvency and Bankruptcy Code 2016, for violations allegedly committed by the companies' former management. While the SAT set aside SEBI's orders imposing penalties in these cases,¹²¹ SEBI has filed appeals to the Supreme Court of India, and the question of whether SEBI can initiate regulatory actions against companies undergoing insolvency resolution procedures, is pending adjudication before the Supreme Court of India.¹²²

Settlement and leniency mechanism before SEBI and other regulators

Under the SEBI Act, a person against whom civil proceedings have been initiated may file an application proposing a settlement of the proceedings initiated, or which may be initiated, without admitting or denying the violation or liability.¹²³ This application is required to be filed within 60 days of the receipt of the show-cause notice by the applicant,¹²⁴ and cannot be filed if an inquiry, investigation, audit or inspection is pending.¹²⁵ SEBI may agree to the proposal for settlement depending on the nature, gravity and impact of the default,¹²⁶ and may impose

119 *id.*, paragraph 207.

120 *id.*, paragraph 208.

121 Order dated 29 October 2020 issued by the SAT in *Monnet Ispat & Energy Limited v. SEBI* (Appeal No. 238 of 2020); Order dated 1 December 2020 issued by the SAT in *Alok Industries Limited v. SEBI* (Appeal No. 300 of 2020); Order dated 15 February 2021 issued by the SAT in *Raj Oil Mills Limited v. SEBI* (Appeal No. 54 of 2019).

122 *SEBI v. Monnet Ispat & Energy Limited* (CA No. 004207 of 2020); *SEBI v. Alok Industries Limited* (CA No. 000307 of 2021); *SEBI v. Raj Oil Mills Limited* (CA No. 002249 of 2021).

123 Section 15JB, SEBI Act.

124 Regulation 4(1), SEBI (Settlement Proceedings) Regulations 2018.

125 *id.*, Regulation 5(1)(b).

126 Section 15JB(2), SEBI Act.

conditions precedent for accepting a settlement proposal.¹²⁷ The terms of settlement may include monetary or non-monetary terms, or both.¹²⁸ Monetary terms consist of a payment amount that is calculated by a formula prescribed by SEBI, which currently comprises an indicative amount (minimum of 300,000 rupees for first-time applicants and 700,000 rupees for other applicants)¹²⁹ that is then considered against various other aggravating and mitigating factors, including the conduct of the applicant during the proceedings, any other pending or concluded proceedings against the applicant for non-compliance of securities laws, and the extent of harm or loss to the investors or gains made by the applicant.¹³⁰

Non-monetary terms may include suspension or cessation of business activities for a specified period, disgorgement on account of the action or inaction of the applicant, exit from the management of the company and similar terms.¹³¹ SEBI may also agree to settle-in-confidence proceedings against applicants who agree to provide substantial assistance in the investigation, inspection, inquiry or audit, to be initiated or ongoing, against another person in respect of violations under the Primary Statutes or the SEBI Regulations.¹³²

Stringent norms for related-party transactions

SEBI has recently introduced key changes to the provisions concerning related-party transactions (RPTs) in the Listing Regulations.¹³³ A key change is that the definition of a 'related party' has been expanded to include a 'promoter'¹³⁴ or 'promoter group'¹³⁵ and any person or entity holding equity shares (either directly

127 Regulation 6(1)(f), SEBI (Settlement Proceedings) Regulations 2018.

128 *id.*, Regulation 9(1).

129 *id.*, Paragraph 2, Chapter I, Schedule II.

130 *id.*, Paragraph 2, Chapter I, Schedule II read with *id.*, Regulation 10.

131 *id.*, Regulation 9(2).

132 *id.*, Chapter IX.

133 Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) (Sixth Amendment) Regulations 2021.

134 A 'promoter' is any person who is in control of a company or on whose advice, directions or instructions the board of directors of the company is accustomed to act (except if this person is acting merely in a professional capacity). Regulatory filings and previous offering documents for fundraising issued by the company are also relevant for promoter identification.

135 A 'promoter group' is a group of persons or entities identified due to their association with the promoter. It includes the promoter, immediate relatives of the promoter (if the promoter is an individual), holding companies and subsidiaries of the promoter (if the promoter is a company) and all persons whose shareholding is aggregated under the heading 'shareholding of the promoter group' in the company's shareholding structure.

or on a beneficial interest basis) amounting to 20 per cent or more.¹³⁶ Another key change is that transactions entered into by a listed entity's subsidiary with a related party of the listed entity or its subsidiary is also now covered within the ambit of an RPT under the Listing Regulations.¹³⁷ The materiality threshold for obtaining shareholder approval for RPTs (either on a stand-alone basis or taken together with previous transactions during a financial year) has been revised from a threshold of 10 per cent of the annual consolidated turnover of the entity to a threshold of approximately 10 billion rupees or 10 per cent of the annual consolidated turnover of the entity, whichever is lower.¹³⁸ Further, an RPT entered into by a subsidiary of a listed entity (wherein the listed entity is not a party) that exceeds 10 per cent of the consolidated turnover of the listed entity (either on a stand-alone basis or taken together with previous transactions during a financial year) will require approval of the audit committee of the listed entity.¹³⁹

Additionally, SEBI has introduced certain changes to the Listing Regulations in relation to RPTs, which will be applicable from April 2023. For instance, the definition of a 'related-party' will include any person or entity holding 10 per cent or more equity shares (either directly or on a beneficial interest basis) instead of 20 per cent or more equity shares, as presently applicable.¹⁴⁰ Transactions entered into between a listed entity or its subsidiary and any other person or entity with the purpose and effect of benefiting a related party of the listed entity or its subsidiary will also qualify as an RPT under the Listing Regulations.¹⁴¹ Another key change that will be applicable from April 2023 is that an RPT entered into by a subsidiary of a listed entity (wherein the listed entity is not a party) that exceeds 10 per cent of the stand-alone turnover of the subsidiary (instead of 10 per cent of the consolidated turnover of the listed entity), either on a stand-alone basis or taken together with previous transactions during a financial year, will also require approval of the audit committee of the listed entity.¹⁴²

It also includes companies, firms and other entities in which the promoter, its relatives or other related companies hold interest based on certain thresholds and criteria set out under Regulation 2(1)(pp) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2018.

136 Regulation 2(zb), Listing Regulations.

137 *id.*, Regulation 2(zc).

138 *id.*, Regulation 23(1).

139 *id.*, Regulation 23(2)(b).

140 *id.*, Regulation 2(zb).

141 *id.*, Regulation 2(zc).

142 *id.*, Regulation 23(2)(c).

What remedies and sanctions are available to government authorities?

SEBI has the power to issue both interim and final orders under the SEBI Act.¹⁴³ Interim orders can be issued pending an investigation or inquiry and even *ex parte* to prevent further potential mischief or tampering with the securities market. Final orders are issued after completion of an investigation or inquiry. SEBI is required to adhere to the principles of natural justice, including providing parties with an opportunity to be heard.¹⁴⁴ However, in a situation where the act to be prevented is imminent or where action to be taken cannot be delayed, a pre-decisional hearing may be dispensed with and an *ex parte ad interim* order can be issued.¹⁴⁵ Under these circumstances, a post-decisional hearing will be provided to the affected party.¹⁴⁶ *Ex parte* orders typically record the reasons, necessity and urgency for issuance of these orders.

Sanctions imposed by SEBI could be monetary or non-monetary in nature. Monetary actions commonly include levying a penalty, which broadly ranges between approximately 100,000 rupees and 250 million rupees. The quantum of the penalty is based on factors such as the amount of disproportionate gain or unfair advantage obtained, the amount of loss caused to the investor as a result of the default, and the repetitive nature (if any) of the default.¹⁴⁷ SEBI may also pass orders for refund of monies and disgorgement of unlawful gains.¹⁴⁸ Non-monetary actions include:

- a suspension of trading of any security;¹⁴⁹
- a restraint against persons from accessing, and a prohibition against buying, selling or dealing in, securities;¹⁵⁰
- a suspension of office bearers of any stock exchange;¹⁵¹

143 Sections 11, 11B and 15J, SEBI Act.

144 Order dated 12 March 2019 issued by the SAT in *North End Foods Marketing Pvt. Ltd. v. SEBI*, Appeal No. 80 of 2019, paragraph 13; Order dated 23 July 2013 issued by the SAT in *Zenith Infotech Limited and Ors. v. SEBI*, Appeal No. 59 of 2013, paragraph 27.

145 *Anand Rathi v. SEBI*, 2001 SCC OnLineBom 381, paragraph 32.

146 *id.*, paragraph 32.

147 Section 15J, SEBI Act; Section 23J, SCRA; Section 19I, Depositories Act.

148 Section 11B, SEBI Act.

149 *id.*, Section 11(4)(a).

150 *id.*, Section 11(4)(b).

151 *id.*, Section 11(4)(c).

- a suspension or cancellation of the certificate of registration of an intermediary;¹⁵² and
- a direction against an acquirer to make an open offer for acquiring the shares of the target company and, if there is a failure or delay in making such an offer, payment of interest along with the offer price.¹⁵³

Other actions that could be taken to recover the amount of penalty include attachment of bank accounts or movable and immovable property¹⁵⁴ and the appointment of a receiver to manage the property of the person. SEBI may also seek court orders for arrest and detention in prison of a defaulting person.¹⁵⁵

If there is a contravention of a provision under the Primary Statutes or the SEBI Regulations for which no punishment is provided under the Primary Statutes, the Primary Statutes also prescribe a punishment by way of imprisonment for a term of not less than one month (which may extend to 10 years) or a fine of up to approximately 250 million rupees, or both.¹⁵⁶ For punishment by way of imprisonment, the persons in charge of the company or responsible for the conduct of business of the company at the time of commission of the contravention may be ordered to serve the term of imprisonment as they are deemed guilty of the offence committed by the company under the Primary Statutes, unless that person can establish that they had no knowledge of the contravention or that they had exercised all due diligence to prevent the commission of the contravention.¹⁵⁷

152 *id.*, Section 12(3).

153 Regulation 32, Takeover Code.

154 Section 11(4)(e), SEBI Act.

155 *id.*, Section 28A(1)(d).

156 Section 24, SEBI Act; Section 23, SCRA; Section 20, Depositories Act.

157 Section 27, SEBI Act; Section 24, SCRA; Section 21, Depositories Act.

APPENDIX 1

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Niti Dixit is a partner at S&R Associates. Her practice focuses on advising multinational and Indian clients on international and domestic arbitration, regulatory proceedings, corporate and commercial litigation and non-contentious matters, including internal corporate investigations. Niti has practised as counsel before various courts and tribunals in India, including the Supreme Court of India, the High Court of Delhi and other state high courts and specialised tribunals focusing on constitutional law, corporate and commercial law and securities law. Niti has been recognised as one of the ‘Top 100 Women in Litigation’ from 2020 to 2022 by *Benchmark Litigation Asia-Pacific* and one of the ‘Top 15 Disputes Lawyers in India’ in 2019 by *Asian Legal Business*. She has also been identified as a leading lawyer in dispute resolution by *Chambers Asia-Pacific* and *Asialaw*, and by *RSG India Report* for disputes, arbitration and commercial law. She regularly contributes to top industry publications and conferences.

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Capital these days seems to know no borders, but securities laws very much do. In that juxtaposition lie all sorts of challenges for those charged with investigating whether any law has been broken.

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