

India – prevention of insider trading norms no more applicable to private companies

The [Companies \(Amendment\) Act, 2017](#) ("**CAA 2017**"), notified on 3 January 2018, omitted section 194 of the Companies Act, 2013 ("**Act**"), a penal provision prohibiting forward dealings in securities of a company (as well as holding, subsidiary or associate company) by its director or key managerial personnel ("**KMP**").

The aim of this prohibition was to prevent directors and KMP from acquiring either call or put option in the company in which they hold a position as they were likely to have insider information that could give them undue advantage as compared to outsiders trading.

Prohibition of internal trading for listed companies has been in place since the Securities and Exchange Board of India Act, 1992 ("**SEBI Act**") and is essential to sustain the investor's confidence in the integrity of the security market.

However, such prohibition, relevant in listed public companies, was also made applicable to private companies (often closely held) by Section 194, adversely affecting fund raising and capital formation for private companies.

In view of the practical difficulties expressed by stakeholders, the Company Law Committee suggested that section 194 be omitted from the Act.

The CCA 2017 addressed the stakeholders' concerns by omitting Section 194. As a result of this omission, the prevention of insider trading norms has ceased to apply to private companies and public companies with unlisted securities and remains applicable only to 'securities that are listed or proposed to be listed' in accordance with Section 12A of the SEBI Act.

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