

SEBI Act, 1992 Scheme and Scope of Powers of SEBI

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Outline

- **Overview**
- **Scope of SEBI's Role**
- **Regulation of intermediaries and others**
- **SEBI's power to issue directions**
- **Monetary Penalties under SEBI Act**
- **Adjudication**
- **Enquiry Proceedings**
- **Criminal Offence**
- **Checks and Balances of SEBI's power**



Overview

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- Preamble of SEBI Act, 1992 provides that SEBI was established with twin objectives
 - Protect the interests of investors in securities
 - Promote the development and regulation of securities market
- All actions of SEBI need to be linked to achieve the above objectives
- SEBI is a mini-State: roles include legislature, executive and judiciary



Scope of SEBI's Role

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- Section 11 of SEBI Act casts duty on SEBI to
 - Protect the interest of investors in securities
 - Promote development and regulation of securities market
- By such measures as SEBI thinks fit
- Specific measures include:
 - Regulating the stock exchanges and other securities market
 - Registering and regulating market intermediaries
 - Prohibiting fraudulent and unfair trade practices relating to securities markets
 - Promoting investors' education and training of intermediaries of securities markets

Scope of SEBI's Role

- Prohibiting insider trading in securities
- Regulating substantial acquisition of shares and takeover of companies
- Calling for information and records, conducting inquiries and audits of stock exchanges, mutual funds, other persons
- Performing functions and exercising powers under Securities Contracts (Regulation) Act, 1956
- Undertaking inspection of books or other records or documents of a listed company or public company which proposes to list its securities if SEBI believes that the company is indulging in insider trading of securities or fraudulent or unfair trade practices relating to securities market



Regulation of intermediaries and others

Regulation of intermediaries and others

- Market intermediaries such as the stock brokers, merchant bankers, underwriters, portfolio managers, investment advisers depositories, foreign institutional investors, credit rating agencies, venture capital funds and collective investment schemes need to register with SEBI (Section 12)
- Members of society who are not market intermediaries too get covered by regulations such as those on insider trading; takeovers; and fraudulent practices in securities dealings etc.



SEBI's power to issue directions

SEBI's power to issue directions

- Most controversial provision - remedial, preventive and punitive in character
- SEBI has wide ranging power to issue directions (Sections 11 and 11B of SEBI Act)
- “In the interest of investors, orderly development of securities market”
- Range of creative measures adopted
- Link between the restraint on a noticee and the need for it not often established
- Courts have been favourable in upholding the constitutional validity of the power
- No timeline for review of a preventive order
- Most future litigation involving SEBI would be in this space



Monetary Penalties under SEBI Act

Monetary Penalties under SEBI Act

- Suspension and cancellation of registration of market intermediaries
- Failure to furnish information and returns to SEBI - Rs. 1 lakh to Rs. 1 crore
- Failure to enter into agreement with clients - Rs. 1 lakh to Rs. 1 crore
- Failure to redress investors' grievances - Rs. 1 lakh to Rs. 1 crore
- Indulging in insider trading - Rs. 10 lakhs to Rs. 25 crores or three times the amount of profits made out of insider trading, whichever is higher
- Non-disclosure of acquisition of shares and takeover - Rs. 10 lakhs to Rs. 25 crores or three times the amount of profits made out of insider trading, whichever is higher
- Fraudulent and unfair trade practices - Rs. 5 lakhs to Rs. 25 crores or three times the amount of profits made out of insider trading, whichever is higher
- Penalty where no specific penalty is provided - Rs. 1 lakh to Rs. 1 crore



Adjudication

Adjudication

- Officers not below the rank of Division Chief act as adjudicating officer for holding inquiry to impose monetary penalties
- Penalties are civil in nature - standard of proof is lower than the criminal standard
 - Preponderance of probability; NOT beyond reasonable doubt
- Factors taken into account by adjudicating officer for adjudging quantum of penalty
 - The amount of disproportionate gain or unfair advantage, wherever quantifiable
 - Amount of loss caused to an investor or group of investor
 - Repetitive nature of the default



Enquiry Proceedings

Enquiry Proceedings


- Market Intermediaries registered with SEBI can face disciplinary proceedings
- SEBI (Intermediaries) Regulations enable punishments
 - Ranging from warning and censure to cancellation of registration
- Designated Authority to hold enquiry and make recommendation of penalty
- Whole time Member hears arguments on the recommendation
- Recommendation is increasingly being modified upwards without specific notice



Criminal Offence

Criminal Offence

- Section 24 renders every single violation a criminal offence
- Imprisonment for a term up to 10 years or with fine up to Rs. 25 crores or both
- All offences under SEBI Act are compoundable other than offences punishable with imprisonment only, or with imprisonment and also with fine
- Immunity possible - but on paper - no one has sought or been granted immunity



Checks and Balances of SEBI's power

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- **Appeal before SAT**
 - Every order of SEBI is appealable to the SAT
 - Appeal to be made within 45 days of the date of receiving the order
 - SAT can confirm, modify or set aside the order appealed against
 - Endeavour to be made to dispose of the appeal within six months

- **Appeal before the Supreme Court**
 - Appeal against the SAT's order can be filed with the Supreme Court
 - Appeal to be made within 60 days
 - Appeal only on any question of law

Thank You

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