

# Update



## Securities Laws (Amendment) Ordinance, 2013 gives more teeth to SEBI

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## Securities Laws (Amendment) Ordinance, 2013 gives more teeth to SEBI

### Update

The Ministry of Law and Justice (Legislative Department) promulgated The Securities Laws (Amendment) Ordinance, 2013 (“**Ordinance, 2013**”) to bring amendments to:

1. Securities and Exchange Board of India, 1992 (“**SEBI**”)
2. Securities Contracts (Regulation) Act, 1956 (“**SCRA**”)
3. Depositories Act, 1996 (“**Act, 1996**”)

What sets the Ordinance, 2013 apart is that it has given SEBI a lot of powers when it comes to bringing to book violators. Further, by proposing to set up Special Courts, speedy trails of offences have also been attempted.

We list below the major amendments to all the three acts.

#### 1. Scope of calling for information

Section 11(2) (ia) of SEBI Act has been inserted to empower SEBI to call for any information or records from any *person* including bank or any other authority or board or corporation, which shall be required in respect of any investigation or inquiry by SEBI.

#### 2. Power to SEBI with retrospective effect

The Ordinance, 2013 has empowered SEBI to call for information in matters relating to violations in respect of securities laws, from authorities whether within India or outside. This shall be with *retrospective effect* from March 6, 1998<sup>1</sup>. To further this power, SEBI in order to furnish information to any outside authority, can also enter into an arrangement or agreement, with the *prior* approval of Central Government.

#### 3. Transfer to IEPF

Any amount disgorged prior to directions issued by SEBI u/s 11B and 12A shall be credited to IEPF, for utilization as set out in SEBI Act.

#### 4. Scope of classifying as Collective Investment Scheme broadened

Section 11AA of SEBI Act laid down qualifying criteria to be a CIS for schemes or arrangements, which pooled funds from public.

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<sup>1</sup> On March 6, 1998, SEBI had entered into a Bilateral MoU with Securities and Exchange Commission, USA. All other bilateral MoU signed by SEBI with other regulators of other countries were after this date.



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In addition to this, a deeming provision has been added whereby any pooling of funds under any scheme of arrangement involving a corpus of Rs. 100 crore or more and not registered with SEBI, shall also be taken to be a CIS. This will bring chit funds having corpus of more than Rs. 100 crores under the purview of SEBI also, which according to section 11AA are exempt from SEBI exercising its jurisdiction. Presently, such schemes of pooling of money with corpus of more than Rs. 20 crores have to be registered as an Alternate Investment Fund.

Further, such schemes or arrangements could qualify as an CIS only if they were offered by any company. With Ordinance, 2013, even schemes or arrangement offered by *persons* can qualify as a CIS. This is to say, any company or even an LLP which offers such schemes can qualify as a CIS and be regulated by SEBI.

#### **5. Explanation inserted to provisions pertaining to SEBI's powers to issue directions**

Section 11B of SEBI Act, Section 12A of SCRA and Section 19 of Act, 1996 pertain to powers of SEBI to issue directions. By Ordinance, 2013, an explanation to all these sections has been inserted to mean that powers so vested with SEBI is to include and shall be deemed to have included power to direct any person to payback the amount equivalent to the profit made or loss averted to any wrongful gain or loss averted by any contravention.

#### **6. Search and seizure powers to SEBI**

With the advancement of technology, SEBI required additional powers to bring perpetrators to book. In keeping with this, SEBI has been given power to search any building, vessel, aircraft or break open the lock of any door, safe. Additionally, SEBI can also seize any books or accounts, place marks of identification and record on oath the statement of any person. Such powers have been granted after amending Section 11(c) (8) of SEBI Act which pertains to the fact that during the course of investigation it is found that any person or enterprise has omitted to provide information, would not provide information or would destroy, mutilate information or documents.

#### **7. Powers to make regulations**

Section 11(c)(9) has been substituted to empower SEBI to make regulations, to lay down the procedure to be followed by any authorized officer to:

- (i) For obtaining ingress into any building, place, vessel, aircraft to be searched where free ingress is not available
- (ii) For ensuring safe custody of any books of accounts or documents seized.



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Further, section 11(c)(10) of SEBI Act has also been amended to allow the investigating authority to return the documents or records seized without intimation to Magistrate of such return.

### **8. Settlement of administrative and civil proceedings**

Section 15JB of SEBI Act, Section 23JA of SCRA and 19-IA of Act, 1996 have been inserted allowing any person against whom any proceeding has been initiated or may be initiated to file an application to SEBI proposing to settle the proceedings initiated or to be initiated for alleged defaults. These sections have been inserted with retrospective effect from April 20, 2007<sup>2</sup>.

### **9. Omission of provisions relating to appeal of consent orders to Securities Appellate Tribunal**

Section 15T(2) of SEBI Act has been omitted which prohibited any appeal from being made to SAT of any consent order.

### **10. Amendment to provisions pertaining to “cognizance of offence by courts”**

Section 26(2) of SEBI Act and SCRA and Section 22(2) of Act, 1996 has been omitted by the Ordinance, 2013. These sections prohibited any court inferior to that of a Court of Session to try offence punishable under these acts.

### **11. Establishment of Special Courts**

Section 26A in SEBI Act and SCRA and Section 19-IA of Act, 1996 has been inserted to allow constitution of Special Courts for speedy trial of offences. A Special Court shall consist of a single judge who shall be appointed by Central Government with the concurrence of Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. Further, any offence, shall be tried by Court of Session, until Special Court is established.

It has also been inserted that the provisions of Code of Civil Procedure, 1973 shall be applicable to the proceedings before a Special Court.

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<sup>2</sup> On April 20, 2007 SEBI issued Circular No. EFD/ED/Cir-1/2007 dated April 20, 2007 on consent orders and compounding of offences



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#### **Our analysis**

In what has been a long wait for the officials of SEBI, sweeping powers have been given to SEBI being perpetrators to book by allowing it to also search and seize documents. Such powers were with limited number of authorities presently. Further, by giving retrospective effect to ask for information on old cases from foreign regulators, SEBI has been given more teeth to ask for information pertaining to cases pending for more than 15 years. It is to be seen that how will SEBI utilize the additional rights vested on it going forward.