

Amendments give more teeth to securities regulator



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The policy paralysis plaguing India's regulatory system seems to have abated with the notification of the Securities Laws (Amendment) Act, 2014, on 22 August. The act had already enjoyed two terms in force as ordinances promulgated by the president of India.

Though the act differs from the earlier two ordinances in substance, in spirit its focus remains to give the Securities and Exchange Board of India (SEBI) further strength to combat the menace of fraudulent activities which were harming the interests of investors as well as threatening the security, stability and integrity of the securities markets in India.

New and wider powers

The act amends the SEBI Act, the Depositories Act and the Securities Contracts (Regulation) Act to provide new and wide-ranging powers to SEBI as well as expanding the ambit of some of SEBI's existing powers. Under the provisions of the act, the power to call for information from entities has been expanded. The power to requisition and share information with other regulators and enforcement agencies to combat securities law violations has been introduced with retrospective effect from 6 March 1998. SEBI has also been granted the authority to attach the assets of securities laws violators in a host of circumstances, along with the power of arrest and detention and the right to appoint a receiver to manage the attached assets.

The act also significantly enhances the amount of penalty which SEBI can levy for various offences under the SEBI Act. SEBI's practices of passing disgorgement orders and settling cases with securities law violators through the process of consent and compounding applications had been heavily criticized by market participants as the SEBI Act did not provide for disgorgement orders

or settling of offences. These widely prevalent practices have now been formally ratified by the act, which goes to the extent of granting retrospective recognition to disgorgement proceedings.

'Ponzi schemes'

The "Ponzi scheme" scams which have ravaged India's eastern seaboard states have also come under the regulatory scanner, with SEBI being granted more teeth to successfully counter the proliferation of such "get rich quick" schemes, which have seriously impaired the financial stability of hundreds of thousands of low-income families in the country. The act clarifies that any pooling of funds exceeding a corpus of ₹1 billion (US\$16.4 million) under any scheme or arrangement made or offered by any person that does not fall within the exceptions provided in the SEBI Act would be considered a "collective investment scheme".

Previously, only a scheme or arrangement offered by a company (as opposed to any person) that fulfilled the limited criteria as prescribed under the SEBI Act was considered as a collective investment scheme. As the SEBI Act requires collective investment schemes to obtain a certificate of registration from SEBI to operate, and also prescribes penalties where such schemes operate without SEBI registration, the expanded definition of a collective investment scheme now enables SEBI to curb, control and prevent "get rich quick" schemes from fleecing unsuspecting public investors.

Special designated courts

The inability of SEBI to successfully prosecute securities laws violators has been like a thorn in the side of SEBI since its inception, though attributable to a large extent to the criminal justice

dispensation mechanism in India. The act provides for the establishment of special designated courts to deal with securities laws violations.

SEBI would have preferred to retain some of the special powers granted to it by the earlier ordinances, i.e. the power to search and seize at the direction of the chairman of SEBI. However, the legislature found it prudent to empower the proposed special designated courts to permit such actions on an application by SEBI.

The effective operation of these special designated courts could be instrumental in obtaining a healthy conviction rate for criminal breaches of securities laws in India. It is hoped that these courts will be presided over by judges who are well versed in the commercial, regulatory and practical aspects of securities laws in India and will hand out faster convictions. Only time will tell whether these courts will fulfil the legislative intent or will meet the fate of the special courts set up after the Harshad Mehta scam in the early 1990s.

Conclusions

The passage of the act is a shot in the arm of SEBI and has sent a clear signal to the business community that the government is reform oriented. Arguably, the act's passage is a saving grace for the government after its failure to ensure passage of the Insurance Laws (Amendment) Bill.

While SEBI has a well-deserved reputation as a proactive regulator, the question that remains to be answered is whether the powers granted by the 2014 act only flatter to deceive.

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