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Study Notes

Securities and Exchange Board of India (SEBI) Act 1992

Introduction

- As per Section 1 of the Act, this Act may be called the Securities and Exchange Board of India Act, 1992. It extends to the whole of India. It shall be deemed to have come into force on the 30th day of January, 1992.
- **SEBI was established in 1988** but received statutory powers on April 12, 1992 in accordance with the provisions of the Securities and Exchange Board of India Act, 1992.

Objective of SEBI are

- To protect the interests of investors in securities; and
 - To promote the development of; and
 - To regulate, the securities market and for matters connected therewith or incidental thereto
- **SEBI is the market regulator for Capital Markets and Commodity markets.** The Forward Market Commission (former regulator for commodity markets) was merged with SEBI on Sep 28, 2015.
 - SEBI discharges its role as regulator of securities market under the following Acts:
 - ✓ SEBI Act, 1992
 - ✓ Securities Contracts (Regulation) Act, 1956
 - ✓ Depositories Act, 1996
 - ✓ Companies Act, 2013

The Board

Composition of SEBI's Board

- The chairman - nominated by Union Government of India
- Two members, i.e., Officers from Ministry dealing with Finance and administration of Companies Act
- One member from the Reserve Bank of India (RBI)
- The remaining five members are nominated by Union Government of India, out of them at least three shall be whole-time members.

SEBI's current Board (as of June 2022)

Name of Member	Designation at SEBI	Background
Ms. Madhabi Puri Buch	Chairperson, SEBI	Ms. Buch has served as Whole Time Member, SEBI till October 04,2021 and took charge as Chairman on March 2, 2022
Sh .S.K. Mohanty	Whole-Time Member, SEBI	Appointed on June 25, 2018 for 3 years IRS 1991; Previously with Forward Markets

		Commission.
Sh. Ananta Barua	Whole-Time Member, SEBI	Appointed on Aug 01, 2018 for 3 years. Earlier served as Executive Director in SEBI
Sh. Ashwani Bhatia	Whole-Time Member, SEBI	Appointed on June 01, 2022. Earlier, Shri Bhatia held the position of Managing Director, State Bank of India.
Shri Ajay Seth	Part-Time Member, SEBI	Secretary, Department of Economic Affairs, Ministry of Finance, Government of India
Sh. Rajesh Verma	Part-Time Member, SEBI	Secretary, Ministry of Corporate Affairs, Government of India
Sh. M. Rajeshwar Rao	Part-Time Member, SEBI	Deputy Governor, Reserve Bank of India
Dr. V. Ravi Anshuman	Part-Time Member, SEBI	Professor, Indian Institute of Management, Bangalore

Box 1: Learning through Quiz – Previous Chairman of SEBI

1. Who was the first Chairman of SEBI?
2. The current Chairman, Ms. Madhabi Puri Buch is theChairman of SEBI.
3. Who was the Chairman of SEBI before Ms. Madhabi Puri Buch?
4. Which Chairman has served the longest term as Chairman of SEBI?
5. Which former SEBI Chairman said that he had stated to discontinue the practice of providing guidance for profit and revenue by companies almost a decade before the same was said by the veteran investor Warren Buffet recently?
6. Who was the first Chairman of SEBI after it was formerly established in 1992?
7. Who chaired SEBI in the aftermath of global financial crisis of 2008?

Answers

1. Dr. S. A. Dave was the first Chairman of SEBI and served from April 12, 1988 to August 23, 1990
2. Ms. Madhabi Puri Buch is the **tenth** Chairman of SEBI
3. Mr. Ajay Tyagi was the 9th Chairman and served from March 1, 2017 to Feb 28, 2022
4. Mr. D.R. Mehta served the longest term as Chairman from Feb 21, 1995 to Feb 20, 2002 (a period of 7 years). He was the 4th Chairman of SEBI. In terms of duration, after him, Mr. U K Sinha served as Chairman for 6 years from Feb 18, 2011 to Mar 1, 2017.
5. Mr. M Damodaran, the 6th Chairman of SEBI (from Feb 18, 2005 to Feb 18, 2008) had advocated against the practice of corporate giving guidance for profits and revenues. He said that if the guidance is discontinued at the earliest, its better, "because we have a very odd situation when the law says you cannot make forward looking statements and yet in the name of guidance you can say anything you like."
6. Mr. G.V. Ramakrishna served as the Chairman between Aug 24, 1990 to Jan 17, 1994.
7. Mr. C.B. Bhave served as Chairman from Feb 19, 2008 to Feb 17, 2011 and weathered the impact of the global financial crisis. During his tenure as Chairman, the Indian markets also witnessed the accounting fraud at Satyam Computer Services Ltd that was uncovered in January 2009. He is also famous for his initiative to **abolish entry loads in mutual funds and changing norms for IPO by introducing the ASBA (Applications Supported by Blocked Amount) mechanism.**

Central Government Powers over SEBI

- The Chairman of SEBI is appointed **by Central Government** (through Appointments Committee of the Cabinet headed by Prime Minister)
- As per the rules, the SEBI Chairman is appointed for a **term not exceeding five years** or up to the **age of 65 years**. he may be reappointed though.
- The Central Government can also **remove a member of SEBI** under **Section 6 of SEBI Act, 1992**, in the following scenarios:

1. He is or at any time has been, adjudicated as **insolvent**



what are other words for
of unsound mind?



insane, non compos mentis, mad,
deranged, crazy, lunatic,
crazed, demented, psychotic,
unbalanced



2. is of **unsound mind** and stands so declared by a competent court;

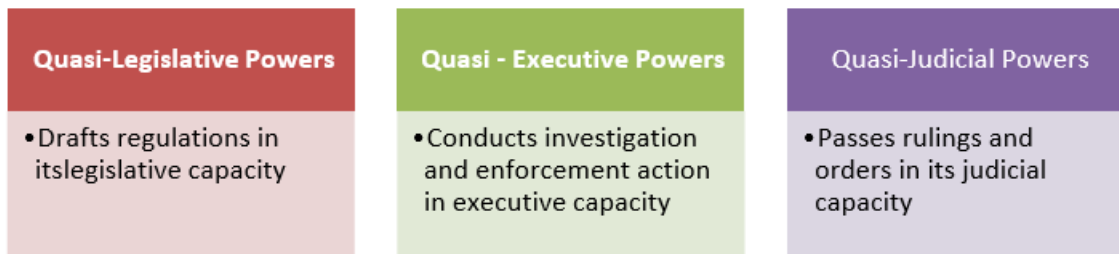
3. has been **convicted of an offence** which, in the opinion of the Central Government, involves a **moral turpitude**



4. has, in the opinion of the Central Government, so **abused his position** as to render his continuation in office **detrimental to the public interest**

Functions and Powers of SEBI (Chapter IV)

Section 11- Functions of SEBI can be classified into three kinds of powers



The major functions of SEBI include:

- regulating the business in **stock exchanges** and any other securities and commodity markets
- registering and **regulating the working of intermediaries** who may be associated with securities markets in any manner like stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers, etc.
- registering and **regulating the working of the depositories**, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf
- registering and **regulating the working of venture capital funds** and collective investment schemes, including mutual funds
- promoting and **regulating self-regulatory organisations**
- **prohibiting fraudulent and unfair trade practices** relating to securities markets
- **promoting investors' education and training** of intermediaries of securities markets
- **prohibiting insider trading** in securities
- **regulating substantial acquisition of shares** and take-over of companies
- calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries in the securities market;
- Levying fee or any other type of charges to carry out the purpose of the Act.
- Performing functions that may be assigned to it by the Central Government of India.

The powers of SEBI are termed as quasi-powers as there is an appeal process to create accountability for SEBI also. There is a Securities Appellate Tribunal (SAT) which is a three-member tribunal. A second appeal lies directly to the Supreme Court.

SEBI's role as Market Regulator

- As a market regulator, SEBI plays the role of:
 - **Protecting** investors
 - Ensuring that markets are **fair, efficient and transparent**
 - Reducing **systemic risk**
 - Promote **investor confidence** in the integrity of securities markets, through strengthened information exchange and cooperation
- SEBI's regulatory **jurisdiction** extends over corporate in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market.
- It can conduct **enquiries, audits and inspection** of all concerned and adjudicate offences under the SEBI Act.
- It has powers to register and **regulate all market intermediaries** and also to penalize them in case of violations of the provisions of the Act, Rules and Regulations made there under.
- SEBI has **full autonomy and authority** to regulate and develop an orderly securities market.

If SEBI has reasonable grounds to believe that any company has been indulging in **insider trading or fraudulent and unfair trade** practices relating to securities market, it **can take any of the following measures**, either pending investigation or inquiry or on completion of such investigation or inquiry:

1. **suspend the trading** of such security in a recognised stock exchange
2. **restrain accessing the securities market** by such persons
3. **prohibit buying, selling or dealing** in securities by such person
4. **suspend any office-bearer** of any stock exchange or self-regulatory organisation from holding such position
5. **impound and retain the proceeds** or securities in respect of any transaction which is under investigation
6. **attach, for a period not exceeding ninety days, bank accounts** or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act
7. direct any intermediary or any person associated with the securities market in any manner, not to dispose off or alienate an asset forming part of any transaction which is under investigation.

Penalties by SEBI

Section	For	Penalty
Section 15A	failure to furnish information, return, etc	not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
Section 15B	failure by a registered intermediary to enter into agreement with clients	
Section 15C	failure by listed company or concerned intermediary to redress investors' grievances	
Section 15D	Certain defaults in case of Collective Investment Scheme including mutual funds	
Section 15E	failure to observe rules and regulations by an asset management company	
Section 15EB	Default in case of investment adviser and research analyst.	
Section 15EA	Default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts.	not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.
Section 15F	Default in case of stock brokers.	not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees or five times the brokerage charged in excess of specified brokerage.
Section 15G	Insider Trading	not less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher
Section 15H	non-disclosure of acquisition of shares and takeovers	
Section 15HA	Fraudulent and unfair trade practice	not less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher

Section 15HAA	Penalty for alteration, destruction, etc., of records and failure to protect the electronic database of SEBI.	not be less than one lakh rupees but which may extend to a maximum of ten crore rupees or three times the amount of gains, whichever is higher
Section 15HB	Contravention where no separate penalty has been provided.	not be less than one lakh rupees but which may extend to one crore rupees
Section 15I	Adjudications.	Board to appoint adjudicating officer not below the rank of Division chief for holding an inquiry.
Section 15J	Factors to be taken into account by the adjudicating officer.	While adjudging the amount of penalty, following factors to be considered - amount of disproportionate gain, amount of loss to investor and repetitive nature of default.
Section 15JA	Crediting sums realised by way of penalties to Consolidated Fund of India	All sums realised by way of penalty to be credited to Consolidated Fund of India.
Section 15JB	Settlement of administrative and civil proceedings.	<p>Any person may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.</p> <p>The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement</p>

If a person **fails to pay the penalty imposed** by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order or fails to pay any fees due to the Board, the Recovery Officer may proceed to recover from such person the amount by one or more of the following modes:

- attachment and sale of the person's movable property
- attachment of the person's bank accounts
- attachment and sale of the person's immovable property
- arrest of the person and his detention in prison appointing a receiver for the management of the person's movable and immovable properties,

Securities Appellate Tribunal

- In order to afford proper appellate remedies, Chapter VIB of the SEBI Act provides for the establishment of the Securities Appellate Tribunals (SAT) to consider appeals against the SEBI's orders, or penalties.

Section	For	Remarks
Section 15K	Establishment of SAT	Central Govt to establish SAT by notification.
Section 15L	Composition of Securities Appellate Tribunal	<p>Consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine.</p> <p>Jurisdiction by benches – to be constituted by the Presiding Officer with 2 or more JM or TM (each bench shall include 1 JM and 1 TM)</p>
Section 15M, 15MA, 15MB, 15MC	Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal	<p>PO – Judge of SC or Chief Justice of HC or Judge of HC for at least 7 years JM – Judge of HC for atleast 5 years TM – Secretary or Additional Secretary in Ministry or Dept of CG/SG or is a person of proven ability, integrity and standing having special knowledge and professional experience of min 15 years in financial sector</p> <p>Section 15MA- PO and JM may be appointed by Central Govt. in consultation with Chief Justice of India.</p> <p>Section 15MB- TM may be appointed by Central Govt. on recommendation of search committee consisting of PO, Secretaries of Dept. Of Economic Affairs, Dept. Of Financial Services and; Legislative Dept. Or Dept. Of Legal Affairs.</p> <p>Section 15 MC-No appointment shall be invalid due to vacancy or any defect in constitution of search committee.</p>
Section 15N	Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal	Tenure shall be for 5 years and shall be eligible for reappointment for max of 5 years provided not hold office after attaining age of 70 years.
Section 15O	Salary and allowances and other terms and conditions of service of Presiding Officers	Salary, allowance, pf, gratuity, retirement benefits and terms & conditions of services of SAT members shall not be varied to their disadvantage after appointment.

Section 15P, 15PA	Filling up of vacancies	<p>Section 15P- Vacancies other than temporary absence may be filled by CentralGovt. in accordance with the provision of this act.</p> <p>Section 15PA- In the event of vacancy of Presiding Officer (PO), senior most Judicial Officer may act as PO until the date new PO is appointed.</p>
Section 15Q, 15QA	Resignation and removal	<p>Resignation- Any member of SAT can resign by notice in writing to Central Govt. until the expiry of 3 month or until a person duly appointed as successor or until expiry of term, whichever is earliest.</p> <p>Removal- Central Govt. after an inquiry made by Judge of Supreme Court may remove any member of SAT if found, insolvent; physically or mentally incapable; moral turpitude; continuation in office detrimental to public interest; acquired financial or other interest</p> <p>Section 15QA - The qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the PO and members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act.</p>
Section 15R	Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings	No order of appointing any person of SAT shall be called in question in any manner, and no act or proceeding of SAT shall be called in question in any manner on grounds of merely of any defect in constitution of SAT.
Section 15S	Staff of the Securities Appellate Tribunal	Central Govt. shall provide the SAT with such officers and employees as that Govt. may think fit.
Section 15T	Appeal to the Securities Appellate Tribunal	Within a period of forty-five days from the date on which a copy of the order made by the SEBI or the Adjudicating Officer or the IRDA or the PFRDA as the case may be accompanied by fee.
Section 15U	Procedure and Power of Securities Appellate Tribunal	<p>The SAT shall not be bound by the procedure laid down by the Code of Civil Procedure, but shall be guided by the principles of natural justice.</p> <p>SAT shall have the same powers as are vested in the civil court under CPC for the purpose of discharging their functions in respect of matters mentioned.</p>

Section 15V	Right to legal representation	The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.
Section 15W	Limitation	The provisions of the Limitation Act, 1963 (36 of 1963), shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.
Section 15X	Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants	SAT officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860)
Section 15Y	Civil Court not to have jurisdiction	No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an AO appointed under this Act or a SAT constituted under this Act is empowered. Also, no court shall grant injunction.
Section 15Z	Appeal to Supreme Court	Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision.

Special Courts

Section	For	Remarks
Section 26A	Establishment of Special Courts.	CG for purpose of speedy trials may establish or designate as many special courts as necessary. A Special Court shall consist of a single judge, appointed by CG with concurrence of Chief Justice of High Court. Qualification – Session Judge or Additional Session Judge
Section 26B	Offences triable by Special Court	All offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by the Special Court.
Section 26C	Appeals and Revision	The High court may exercise all the powers conferred by Code of Criminal Procedure as a Special Court within the local limits of jurisdiction.

Section 26D	Application of code to proceedings before Special Court.	The provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session
Section 26E	Transitional Provisions.	Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area.

Important Regulations by SEBI

- The SEBI Act, 1992, recognises SEBI as the supreme regulator of the securities market of India and confers on it statutory powers to make laws and regulations, especially **under its Section 30**, and many other relevant sections.
- The laws and regulations of SEBI are to be strictly and rigorously followed by all concerned people and entities who are engaged in the trading of securities on registered stock exchanges of India. The importance of these SEBI laws and regulations is maximal to all listed companies, the board of directors of these companies, key managerial personnel of such companies, investors, and all those firms or companies active in the sector of securities market, including the intermediary institutions.

Among diverse laws, rules, regulations, and provisions promulgated by the SEBI, the most significant are the following:

SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009

- These regulations dictate provisions for dealing with issues and matters related with capital issues and disclosures to be made by the listed companies in India, in order to make the trading in securities flawless and beneficial both to the listed companies and the investors.

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

- These regulations of SEBI are formulated to solve problems related with lawful and fair acquisitions of shares and takeovers.

SEBI (Prohibition of
Insider Trading)
Regulations, 2015

- These regulations and provisions are for prohibiting of the trading of securities by insiders, and seeks to strengthen the legal framework for perfect and fair securities trading in India.
- The term "**Insider**" encompasses any associated person of the listed company, or any **other person of the company who possesses or has access to the unpublished price sensitive information**.
- Provisions for disclosures (about the trading in securities and the derivatives of securities) by insiders, for both types of disclosures, namely, initial and continual disclosures, are provided in this law.

SEBI (Listing
Obligations and
Disclosure
Requirements)
Regulations, 2015

- These regulations deal mainly with the mandatory compliances to be made by the listed companies with the registered stock exchanges of India.