

SEBI- Empowered Regulator

The President passed the Securities Laws (Amendment) Ordinance, 2013 (“**Ordinance**”) to amend miscellaneous securities laws on July 18, 2013. The object of this legislation is to provide more powers to the Securities Exchange Board of India (“**SEBI**”) to enable it to perform its functions more effectively and curb irregularities and frauds in the securities market.

Pursuant to the Ordinance, SEBI has now been vested with power to call for information and records relevant to any investigation from any legal person and to exchange information with its overseas counterparts (with prior approval of the central government). This amendment is proposed to be made in retrospective manner, such that SEBI would be deemed to have been empowered to seek information from March 6, 1998. This paves the way for collection of details pertaining to cases pending for over 15 years, retrospectively.

Additionally, it grants SEBI the power to regulate any pooling of funds under a scheme or arrangement, not registered with SEBI involving a corpus of 100 crore rupees or more.

In connection with its investigation, SEBI has been given extensive powers of search, seizure and inspection (including recording statements on oath) over persons and premises, as the case may be, to discover relevant information which is being wrongly withheld. The Ordinance also provides for settlement of proceedings, subject to the discretion of SEBI having regard to the nature, gravity and impact of defaults and there can be no appeal to the Securities Appellate Tribunal against orders passed in this regard.

SEBI has also been given direct powers to attach properties and bank accounts of persons and companies failing to comply with directions, involving payment of penalties, refunds to the investors and other dues. The regulator can also order arrest and detention of defaulters in prison or appointment of a receiver for the management of the person's properties and pass disgorgement directions to recover the wrongful gains made in contravention of laws.

The Ordinance also provides for establishment of Special Courts, as many in number as the Central Government may deem necessary, to expedite the trials of offences in contravention of securities laws. Special Courts so established will be treated as Sessions Courts with regard to court procedures.

IndusLaw Quick View:

The continued development of securities laws in India, to be on par with more developed securities markets abroad, is very evident with the changes sought to be made by this Ordinance. Recent events in India (insider trading and scams) as well as abroad (use of phone tap evidence in the Galleon and Rajat Gupta cases), seem to have been some of the catalysts that were considered while promulgating this ordinance.

The establishment of Special Courts is a welcome move, but hopefully will not be mired in litigation, as was the case under the Competition Act. The retrospective amendment enabling SEBI to exercise powers to call for information does not seem to be an overreach of legislative power. However, it is possible that litigants may seek to challenge any retrospective amendment in order to delay proceedings. While the details and fine print of these changes are much more numerous and nuanced than it is the remit of this alert to cover, the changes per se seem welcome. By arming SEBI with the ability to efficiently obtain more information and police more effectively, the enforcement of Indian securities laws now seem set to enter a new and more stringent era.



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