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AN OVERVIEW OF THE LAWS GOVERNING INDIAN CAPITAL MARKET WITH SPECIAL REFERENCE TO SEBI

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ABSTRACT

Financial Markets play a significant role in the development of an economy. Various regulations have been modeled and enacted for the orderly functioning of the securities market. SEBI regulates the securities market in India and is thus responsible for protecting investor's interests as well as promoting the development of the securities market. Since its establishment, SEBI has accelerated the growth of capital market growth by providing a framework for its smooth working. In this paper, the authortried to list a series of major SEBI regulations for the systematic working of the capital market and have highlighted its role as a market regulator. I have also analyzed and put forth through this paper the structure of Indian capital market and the various statutes & bodies that affects its functioning.

INTRODUCTION TO CAPITAL MARKET

A strong and healthy financial system of a country plays an important role in developing the economy of a country. It helps by providing the resources required to produce the goods and services, which also plays a significant role in improving people's standard of living. The Indian government has persuaded the functioning as well as governance of the capital market through a wave of economic reforms. Since liberalization of the Indian capital market, it is experiencing structural transformation. These reforms are focused to improve market efficiency, control unfair trade practices, bringing our financial markets equal to international standards and to attain more transparency in stock market transactions.

Capital market involves government securities markets, industrial security markets, and long term loan markets. It deals with shares, debentures, stocks and bonds. It specifies a market structure for those who need funds for productive investments and to those who have savings. The Indian capital markets meaningful structural transformation has helped in such a significant way that now it is compared well with those in developed markets. The

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supervisory and regulatory body that has been vested with most of the power for regulating the capital market lies in the hands of the securities and exchange board of India (SEBI).

According to Arun K. Datta:
"The capital market is a complex of institutions investment and practices with established links between the demand for and supply of different types of capital gains"

According to F. Livingston:
"In a developing economy, it is the business of the capital market to facilitate the main stream of command over capital to the point of the highest yield. By doing so it enables control over resources to pass into hands of those who can employ them most effectively thereby increasing productive capacity and spelling the national dividend"

CONCEPT OF CAPITAL MARKET

The financial market used for the trade of equity backed securities or the long term debts is the Capital market. Modern day capital markets are held on electronic trading systems which can be easily gained access by the entities within the financial sector.:-

Primary Market: It deals with issue of new securities. Companies, government, and public sector institutions can obtain funds through sale of new stock or bonds issue.

Secondary Market:

It is also called liquid market. In this market the securities are sold by or transferred from one investor to another. Thus, this market gives liquidity to the long term securities.

ROLE OF INDIAN CAPITAL MARKET

The Indian Capital Market plays pivotal role in between those who save and those who aspire to invest their savings

1) Financing long term investments by mobilizing long-term savings.
2) Wide-ranging ownership of productive assets.
3) Enhanced efficiency of capital allocation through a competitive pricing mechanism.
4) Providing more liquidity to the investor.
5) Help in lowering the costs of transactions and information.
6) Gap the bridge between investors and companies.
7) Quick valuation of both financial instruments (equity and debt).
8) Providing security against market or price risk through derivative trading and default risk through investment protection fund.
9) Providing operational efficiency.
10) Direct the flow of funds into efficient channels through investment, disinvestment, and reinvestment.
11) Make integration between financial sectors and non-financial sectors as well as long term and short term funds.
12) Providing best opportunities to risk takers in term of equity and return taker in term of debt.

CAPITAL MARKET REGULATORY BODIES

With the view to ensure smooth functioning of the capital market, various legislations have been passed from time to time. Before the initiation of reforms in 1992-93, the Indian Financial Market was highly segmented with variety of regulations and administrative prices. The establishment of Securities and Exchange Board of India (SEBI) initiated the process of reforms in Indian Capital Market.

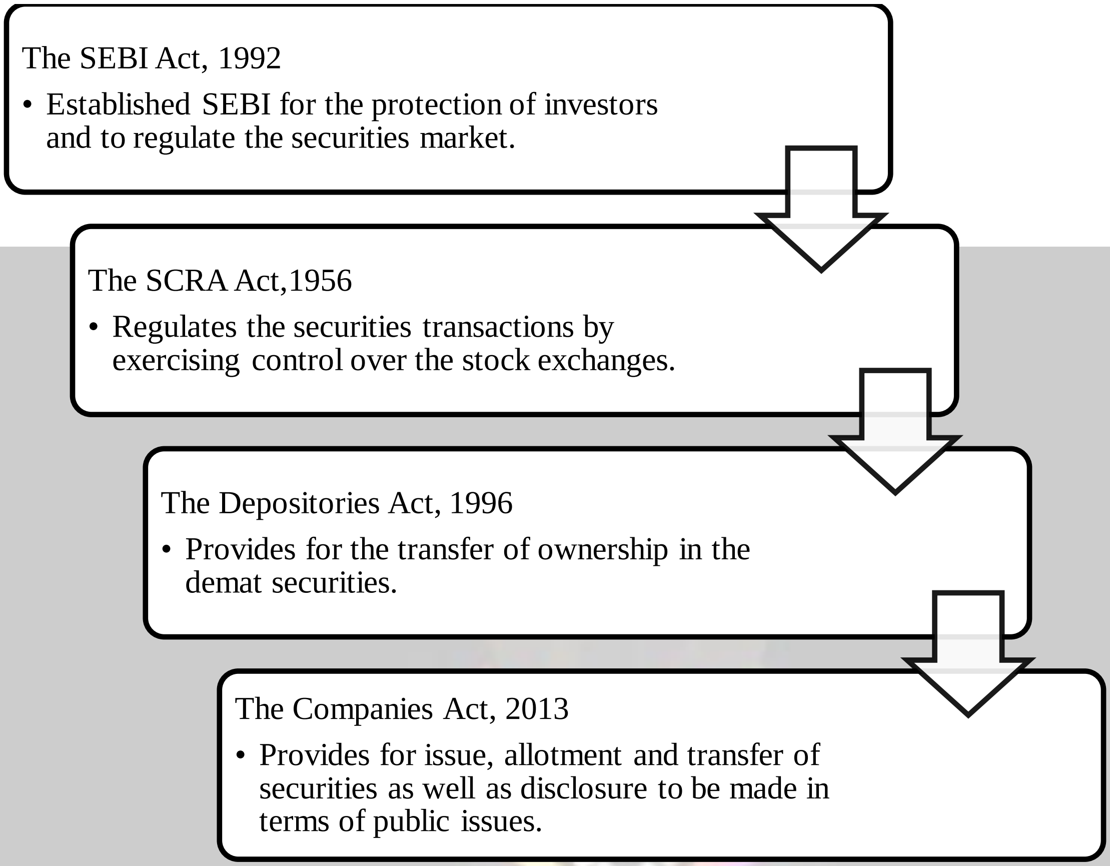

Chart 1: Legislations regulating the capital market

The relationship between the above legislations can be understood clearly with the help of the following graphic representation below:

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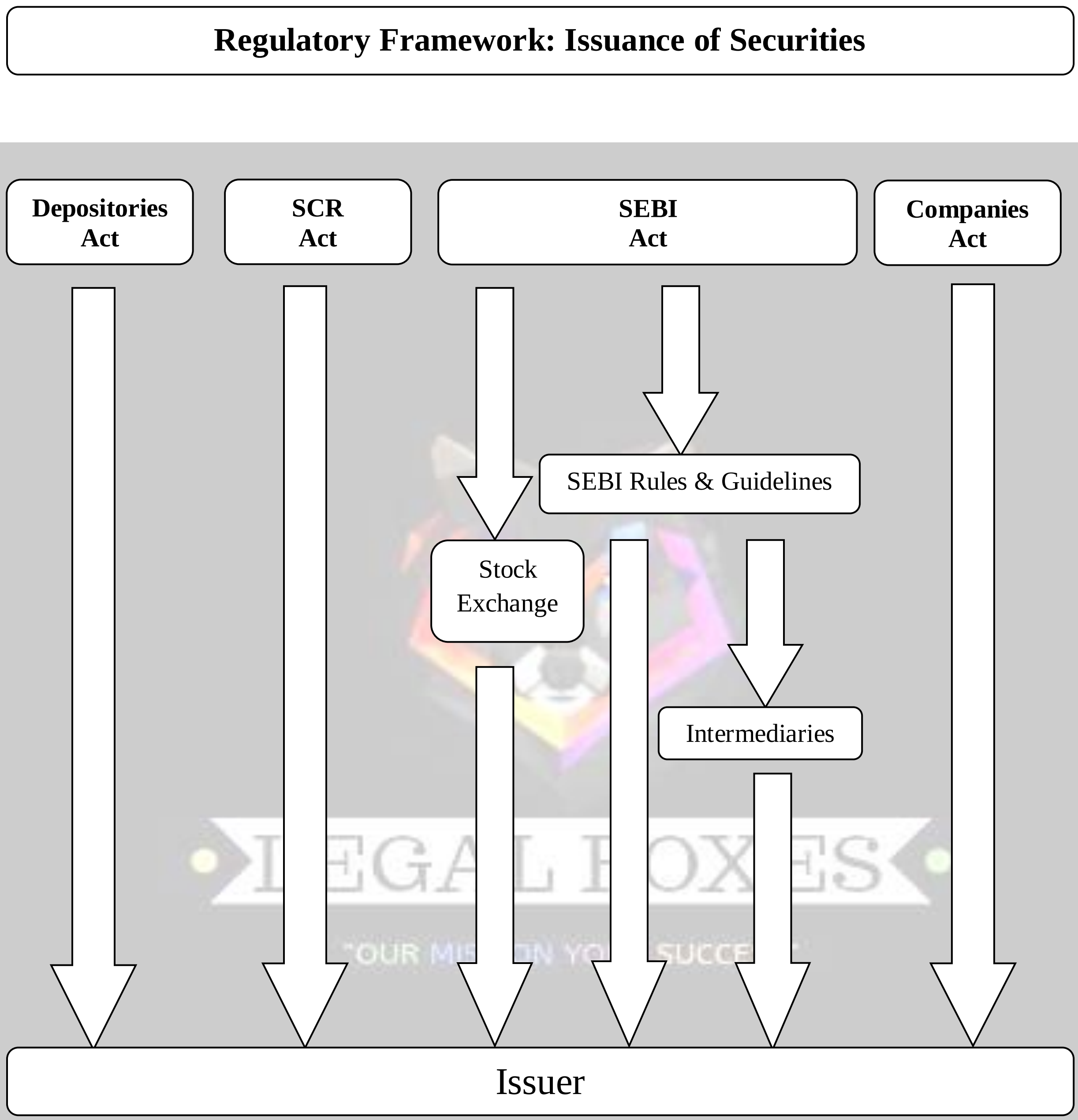

Chart 2: Relationship of various statutes

REGULATING ORGANISATIONS IN INDIAN SECURITIES MARKETS

Currently, the following five agencies have a direct or an indirect regulatory influence on the securities market in India.[1]They are:

- The Company Law Board is a quasi-judicial body exercising both quasi-judicial as well as judicial powers under the Act which were previously exercised by the CG and the HC.[2]
- SEBI is responsible for the protection of investors and for regulating the capital markets in India;
- Department of Economic Affairs (DEA) is responsible for the management of economic status of the country and is also responsible for the orderly functioning of the whole financial markets.
- Ministry of Corporate Affairs (MCA) is responsible for the registration and sightedness over the incorporated entities that fall within the purview of Companies Act regulations.
- The Reserve Bank of India's (RBI) key responsibilities includes supervising of the banks and money markets.

From amongst the above mentioned agencies, SEBI is charged with supervising the capital markets in India, directly and this paper primarily focuses on the working of SEBI.

SEBI (Securities and Exchange Board of India)

Securities and Exchange Board of India (SEBI) came into existence by the Securities and Exchange Board of India Act, which came into effect on January 30, 1992. The preamble to the SEBI Act explains the intent of the Act in broad terms as "*an act to provide for the establishment of a Board 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*".[3]

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[1]In addition to the SCRA Act, 1956 and the SEBI Act, 1992, the legal community has enacted various other statutes for the smooth functioning of the capital market. Such as (i) The Foreign Exchange Regulations Act,1973 (ii) Companies Act, 1956 (iii) Banking Regulation Act (iv) Indian Evidence Act, 1872 (v) Indian Penal Code (vi) Arbitration and Conciliation Act,1996 (vii) Bank and Financial Institutions Recovery of Dues Act,1993 (viii) Indian Telegraph Act, 1885 (ix) Benami Prohibition Act (x) The Depositories Act, 1996

[2] Constituted under Section 10E of the Companies Act, 1956

[3] S 11(2) of SEBI Act

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The SEBI Act authorizes SEBI to make rules and regulations administrating various aspects of the operations of the securities market.[4] A wide-ranging power by the CG has also been allotted to SEBI under the SCR Act.[5]

OBJECTIVES OF SEBI

SEBI main objective is to:-

- Defending the interests of investors in securities
- Boosting the development of the securities market
- Regulating the securities market.

SEBI's regulatory jurisdiction outspreads over corporate in the issuance of capital and allocation of securities, in addition to all intermediaries and persons associated with market.

SEBI's ORGANISATIONAL STRUCTURE

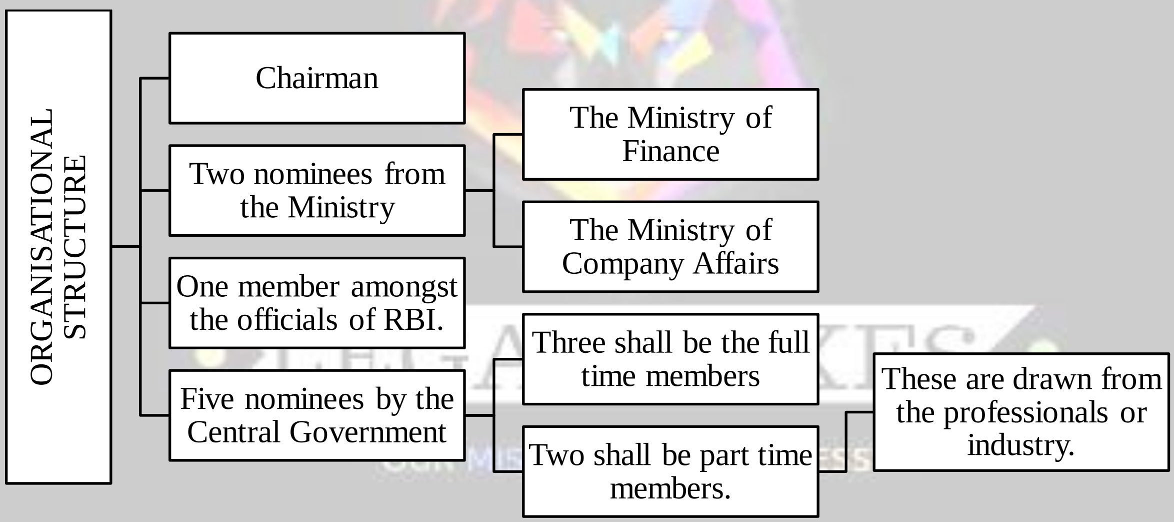

Chart 3: Composition of SEBI

Since SEBI's inception the provisions concerning the Board have been revised to increase the full time members and to permit recommendation of persons who are allied with other companies as directors. A few concerns remain about the independent functioning of SEBI as the GOI has control over the SEBI. The tenure of the Chairman and of non-officials of the GOI and RBI can be terminated by the GOI with a three month notice. The control of the GOI surpass the SEBI Board under particular circumstances is also a very serious concern.

[4] S 11, S 11A and S 30 of the SEBI Act.
[5] S 29A of SCR Act

POWERS AND FUNCTIONS OF SEBI[6]

Since, 1947 India's independence to govern the capital market there were various other acts. Capital Issues (Control) Act, 1947 performed a very crucial role in the functioning of the Indian Capital Market. But after SEBI's inception in 1992, the Control Act was repealed by the Capital Issues (Control) Act, 1992.

Now SEBI administers most of the powers under this Act. Chapter IV of the SEBI Act prescribes the powers and functions of the Securities and Exchange Board of India. Few of these include:

- The SEBI is duty bound to protect and promote the interest of its investors and also to take measures so as to regulate the securities market.[7]

- It has the power to inspect the records or books or register or other document of any public listed company or any other public company (which is not referred to as intermediaries under S 12) and where SEBI has reasonable cause to believe that such company was indulged in any fraudulent and unfair trade practices or insider trading with regard to the securities market.[8]
- The SEBI Act also empowers SEBI with the same powers vested to the Civil Courts under the Civil Procedural Code, 1908 to carry out the duties assigned under the Act.[9]

The Finance Bill 2019 gave more power to the Securities & Exchange Board of India as explained in chart 4 below.

[6] Chapter IV of the SEBI Act
[7] S 11 of SEBI Act
[8] S 11(2A) of SEBI Act
[9] S 11(3) of SEBI Act

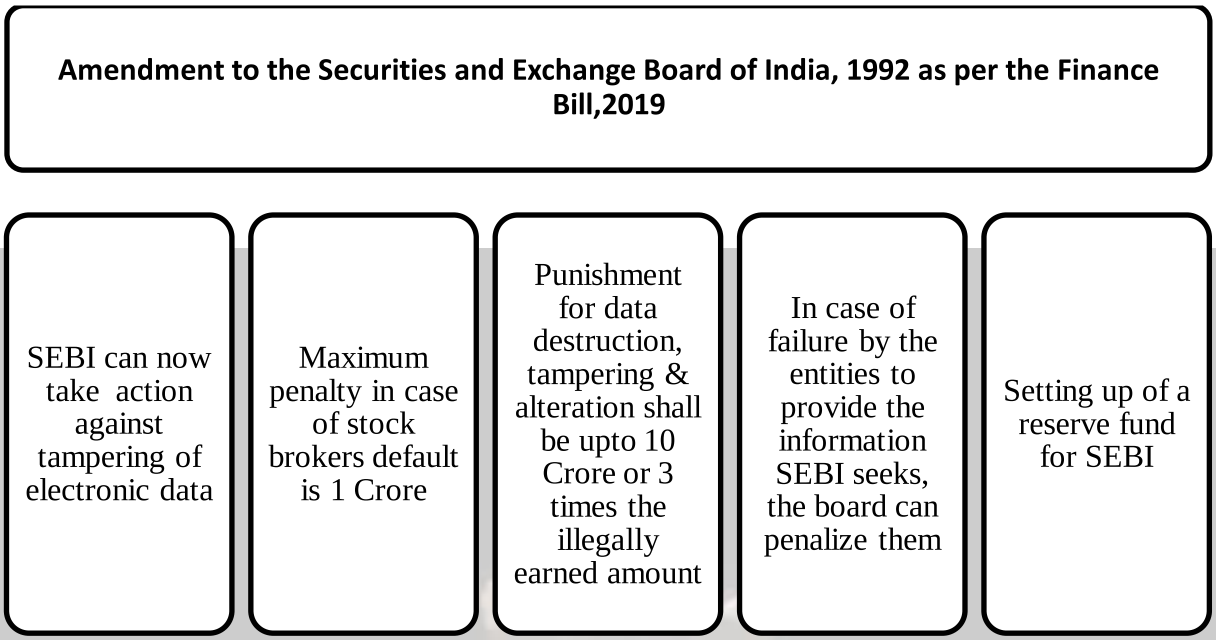

Chart 4: Enhanced powers of SEBI under the Finance Bill, 2019

SEBI’S ROLE IN INDIAN CAPITAL MARKET

While assessing the SEBI’s role in the Indian capital market, some crucial aspects have been considered. These are stated in chart 5 below.

On the basis of these aspects SEBI’s role has been examined as a regulator in the capital market of India.

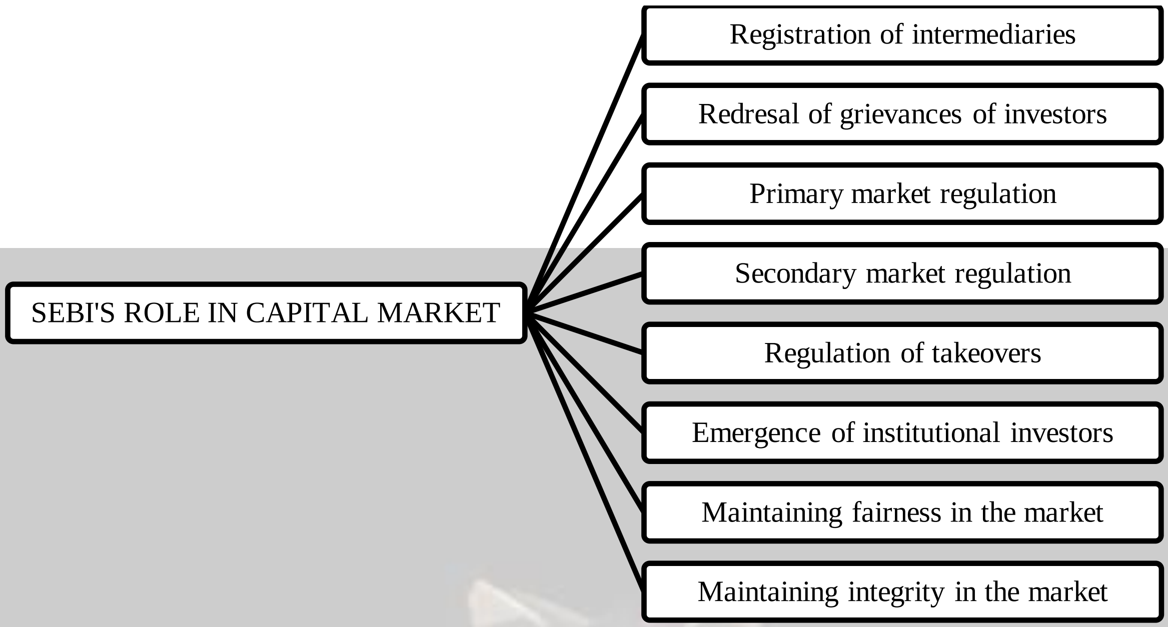

Chart 5: Role of SEBI in Indian Capital Market

STATUTORY SOURCES OF SEBI'S AUTHORITY

SEBI as a regulating authority plays a vital role in the smooth functioning of the capital market in India. It derives its power from the Securities Contract Regulation Act, 1956 (SCR Act, hereafter) and the Securities Contract Regulations Rules, 1956 (SCR Rules, hereafter). The objective is to regulate the stock exchanges by preventing undesirable speculation in the securities transactions.

The legal framework under the Depositories Act, 1996 seeks to facilitate the holding of shares (or securities) in electronic form (or deemat form)[10] and also affects the transfer of securities through book entries in the accounts maintained by the depositories. Registration and procurement of a certificate from it is a requisite after fulfilling all the conditions prescribed under the act for the commencement of business.[11]

The Companies Act also empowers SEBI by delegating it with the authority to administer various provisions under the Companies Act, 2013.[12] These provisions seek to achieve the issuer's relationship with the investors by mobilizing the capital (i.e. issuance of capital), creation of liquidity (i.e. transfer) and the realization of its returns (i.e. dividend).

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[10] Regulation 9 of the Depositories Act, 1996
[11] S 12 (1A) of SEBI Act
[12] S 24 of the Companies Act, 2013

SIGNIFICANT SEBI REGULATIONS

The role of SEBI is to attain and enhance the interest and confidence of its investors. As a regulator, SEBI has over the years issued numerous rules and regulations for regulating the capital market as well as for safeguarding the interest of its investors. It keeps on updating these regulations by way of amendments as and when it is required. Some of such regulations/guidelines have been discussed below:

- SEBI (SETTLEMENT PROCEEDING) REGULATIONS, 2018

This regulation was introduced with an objective of replacing the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. The regulation lays down the terms and procedures for the settlement of initiated and pending proceedings before SEBI or any other forum (in case of any contravention of specified securities laws).

SEBI may not allow any settlement to take place at all if according to its opinion, the loss has been suffered by a large number of investors or there been a widespread adverse market impact or has affected the market integrity.[13] Also in case of willful default or an economic offender or default in payment of fees which is due or the penalty that was imposed under the securities laws, the board may not permit settlement.[14] For the purpose of administering certain provisions provided under various legislations such as The Companies Act, 2013, the scope of the term 'securities law' has been broadened to include "*any other law to the extent it is administered by the Board and the relevant rules and regulations made thereunder*"[15]. SEBI is therefore, empowered to ensure settlement of proceedings which are initiated for the contravention of such "securities law" subject to certain exception.

- SEBI (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

SEBI after taking into consideration, the recommendations proposed by the Primary Market Advisory Committee amended this regulation (also referred to as ICDR Regulations) in 2018.

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[13] Regulation 5 (2) of the SEBI (Settlement proceedings) Regulations, 2018
[14] Regulation 5 (4) of the SEBI (Settlement proceedings) Regulations, 2018
[15] As defined under Regulation 2 (1) (e) of the SEBI (Settlement proceedings) Regulations, 2018

These regulations were applicable for issuance of certain primary market securities. These regulations apply to the following:

a. *an initial public offer by an unlisted issuer;*
b. *a rights issue by a listed issuer; where the aggregate value of the issue is ten crore rupees or more;*
c. *a further public offer by a listed issuer;*
d. *a preferential issue by a listed issuer;*
e. *a qualified institutions placement by a listed issuer;*
f. *an initial public offer of Indian depository receipts;*
g. *a rights issue of Indian depository receipts;*
h. *an initial public offer by a small and medium enterprise;*
i. *a listing on the* [16]*[innovators growth platform]through an issue or without an issue; and*
j. *a bonus issue by a listed issuer."*[17]

Any issuer issuing certain securities by way of public issue or right issue is required to satisfy all the conditions prescribed by the ICDR Regulations when filing the draft offer document with SEBI and also at the time of filing the final offer document with the Registrar of Companies or at the stock exchange which is designated, as the case maybe. Also, these regulations have laid down the eligibility requirements for the issue of convertible debt instrument, preferential allotment, initial public offer (IPO), promoter's contribution, share pricing, lock-in conditions and offer for sale.

- SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

The SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (also referred to as SEBI (LODR) Regulations) came into force on December 1, 2015 with the intention of aligning of the clauses under the listing agreement with the Companies Act, 2013

[16] Substituted by SEBI (ICDR) (2nd amendment) Regulations, 2019, w-e-f 05.04.2019. Prior to this substitution, it read as "institutional trading platform"
[17] Regulation 3 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations,2018

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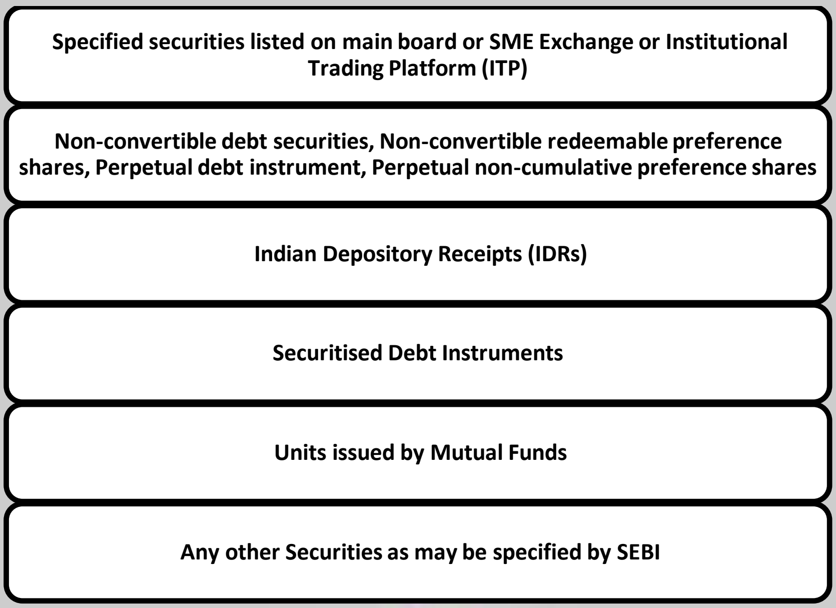
as well as to consolidate the various conditions mentions under different security listing agreements into a single regulation.

These regulations are applicable to the listed entities that have been listed any of the below mentioned securities on the recognized stock exchange:[18]



Principles governing the disclosure and obligation of listing entity[19] and the common obligations of listed entities[20] are being highlighted in the following chapters of LODR Regulations, 2015. Provisions of clause 49 of the Listing Agreement relate to corporate goverance are similar to the principles of listed entities to which the LODR Regulations are applicable. These principles broadly cover the rights of the shareholders, dissemination of information in a time bound manner, transparency and responsibilities of the board of directors, following the norms of disclosure and equitable treatment.

- <u>SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015</u>

This regulation was introduced to prohibit an insider from trading away the securities of a company as such person is in possession of some unpublished price sensitive information

[18] Regulation 3 of the (Listing Obligations and Disclosure Requirements) Regulations, 2015
[19] Chapter II of the LODR Regulations,2015
[20] Chapter III of the LODR Regulations,2015

about the company. It seeks to ensure that any insider of the company shall not be able to incur wrongful gain by virtue of possessing an essential piece of information which can affect the trading, particularly in those securities. Insider trading violates the principles of integrity and fairness in the capital markets.

An insider has been defined under the regulation as a person who is either a connected person or a person who accesses or possesses unpublished price sensitive information[21] (hereinafter referred to as UPSI). The term UPSI has also been defined under the regulation as any direct or indirect information relating to a company or its securities, which is not available generally and which if becomes generally available is likely to affect the price of the securities.[22] It is mandatory for every insider to disclose their trading securities as provided under the regulation.[23] The penalty for insider trading shall not be less than ten lakh rupees but it may go upto twenty-five crore rupees or shall be thrice the profit made from such insider trading, whichever is higher.[24]

- SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

These regulations (hereinafter referred to as SAST Regulations) provide a systematic framework for the acquisition of stakes in listed companies and ensuring that the rights of the stakeholders are protected. It prescribes that in case of a company acquiring a substantial number of shares or voting rights which are more than the threshold limit in the targeted company than the acquirer is required to make an open offer to the existing stakeholders of that targeted company in order to tender their shares at a particular price. The procedure and the offer price thereof have been laid down in the SAST Regulation. In addition, these regulations also govern the various other aspects relating to the substantial acquisitions or takeovers of the shares including exemption from open offer requirements, public announcements, obligation of the targeted company as well as the acquirer's company, delisting offer and the consequences of violating the regulations.

[21] Regulation 2 (1)(g) of the SEBI (Prohibition Of Insider Trading) Regulations, 2015
[22] Regulation 2 (1)(n) of the SEBI (Prohibition Of Insider Trading) Regulations, 2015
[23] Prescribed under Chapter III of the of the SEBI (Prohibition Of Insider Trading) Regulations, 2015
[24] S 15G of the SEBI Act,1992

- SEBI (PROHIBITION OF FRADULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003

These regulations provide assistance to SEBI in examining the cases that involve market manipulation and fraudulence and unfair trade practices in the securities market. It is empowered to order an investigation by an investigating officer either suo-moto or upon receiving any information relating to the conduct going against the rules under the SEBI Act or any of its other regulations pertaining to the securities market.

SEBI has the power to issue an order for investigation if it has reason to believe that:

a. *"the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market in violation of these regulations;*
b. *any intermediary or any person associated with the securities market has violated any of the provisions of the Act or the rules or the regulation."*[25]

After reviewing the investigation report, SEBI has the power to take proper action against the erring party. The Regulations further prohibit certain types of securities dealings[26] and also prohibits manipulative, fraudulent and unfair trade practices[27]. The registration of the intermediary can be suspended or cancelled if they are found guilty, notwithstanding with the punishments or penalties prescribed under the SEBI Act for fraudulent and unfair trade practices.[28]

- SEBI (INTERMEDIARIES) REGULATIONS, 2008

These Regulations are specifically made to regulate the intermediaries in the capital market. The term "intermediaries" has clearly been defined under the regulation[29] and provide for their registrations and obligations[30]. It has given power to the SEBI to suspend or

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[25] Regulation 5 of the SEBI (Prohibition Of Fradulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003
[26] Regulation 3 of the SEBI (Prohibition Of Fradulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003
[27] Regulation 4 of the SEBI (Prohibition Of Fradulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003
[28] Regulation 12 of the SEBI (Prohibition Of Fradulent And Unfair Trade Practices Relating To Securities Market) Regulations, 2003
[29] Regulation 2(1) of the SEBI (Intermediaries) Regulations, 2008
[30] Prescribed under Chapter II and III of the SEBI (Intermediaries) Regulations, 2008

cancel the registration of the intermediaries whenever they commit a default in fulfilling their obligations.

Various other regulations issued by SEBI also govern the market intermediaries (including brokers, merchant brokers, sub-brokers, etc.), research analyst, depositories and self-regulatory organizations.[31]

PENALTIES

Under the SEBI Act, following penalties are levied upon in case of various contraventions:

- If there is any person who is so required to furnish information or to file any return to the board as prescribed or specified; to redress grievances of investors; or to enter into an agreement with the clients, fails to do so, he shall be held liable for a penalty which shall not be less than one lakh rupees but may extend to one lakh rupees per day during which such violation continues but shall not exceed one crore rupees.[32]Furthermore, such penalty shall also be applied onto the mutual funds, stock brokers or asset management companies, when they fail to comply with the relevant provisions provided to them.[33]
- In case of non-disclosure of acquisition of shares and takeovers and insider trading, the minimum amount of penalty levied shall be ten lakh rupees, which may extend to twenty-five crore rupees or thrice the amount of profits that he has made out of such activity, whichever is higher.[34]
- Any person who is involved in any fraudulent and unfair trade practices shall be penalized with a minimum of five lakh rupees and it may extend to twenty five crore or thrice the amount of profit induced out of such practice, whichever is higher.[35]
- In case where no such separate penalty has been provided for violation, the person shall be deemed to a penalty which shall not be less than one lakh rupees which nay extend to a maximum of one crore rupees.[36]

[31] These can be found on its official website.
[32] Prescribed under S 15A, 15B and 15C of the SEBI Act,1992
[33] Prescribed under S 15D, 15E and 15F of the SEBI Act,1992
[34] Prescribed under S 15G and 15H of the SEBI Act,1992
[35] Prescribed under S 15HA of the SEBI Act, 1992
[36] Prescribed under S15HB of the SEBI Act,1992

Additionally, the Board has the power to appoint an adjudicating officer for the purpose of adjudicating the above mentioned provisions.[37]

SECURITIES APPELLATE TRIBUNAL

The CG by notification under Section 15K of the SEBI Act established the Securities Appellate Tribunal (also referred to as SAT) that consists of a Presiding Officer and Judicial and Technical members, the number of which is notified by the CG[38]. These members have five years of office holding period but are eligible for reappointment for a maximum term of another five years.[39] Any aggrieved person who is not satisfied with the Board's decision may file an appeal before SAT only if it falls under its jurisdiction.[40] The appeal can only befiled within the time bracket of forty five days from the date of receiving the order passed by the Board or Adjudicating Officer.[41]

The SAT proceeding are guided by the natural justice principles and it is empowered to regulate its own procedure.[42] Civil courts are not allowed to exercise its jurisdiction where SAT or adjudicating officer are authorized to determine under the SEBI Act.[43]

An appeal can be filled before the SC if the person is unhappy with the decision of SAT. But such an appeal must be filed within sixty days from the date of the decision delivered by the SAT and there shall be a question of law arising out of the decision or order passed by SAT. In case of any delay in filing the appeal (beyond stipulated time), SC can grant an additional sixty days period maximum only after it is satisfied that the delay is caused due to a sufficient cause.[44]

SUGGESTIONS AND CONCLUSION

Capital market in any country plays a pivotal role in the growth of the economy. The financial system is a dynamic segment of the country's future growth trajectory. It is a well-recognized fact that efficient, developed and liberalized financial markets can lead to better economic growth by improving the efficiency of allocation and employment of savings in the economy.

[37] Given under S 15-I of the SEBI Act, 1992
[38] Prescribed under S 15L of the SEBI Act, 1992
[39] Prescribed under 15N of the SEBI Act, 1992
[40] Prescribed under S 15T (1) of the SEBI Act, 1992
[41] Prescribed under S 15T (3) of the SEBI Act, 1992
[42] Prescribed under S 15U of the SEBI Act, 1992
[43] Prescribed under S 15Y of the SEBI Act, 1992
[44] Prescribed under S 15Z of the SEBI Act, 1992

The capital market in India is a well-integrated structure and its components include stock exchanges, developed banks, investment trusts, insurance corporations and provident fund organization.

This research paper intends to deepen the understanding of the various types of stock exchanges in India along with the structure of Indian capital market as well as the various capital market regulations or legislations which are enacted to protect and safeguard the interest of its investors. SEBI has put in place a comprehensive web of regulations that ensures a range of market participants and intermediaries. SEBI is doing a lot of work for the development of capital market. It has brought greater transparency in the affairs of organizations and stock exchanges, though not to the optimum mark. Still the investor doesn't have hundred percent confidences in capital market. It seems that SEBI worked slowly in transforming Indian stock market into a globally competitive and contemporary market.

SEBI Act and RBI Act are frequently amended by route of a 'miscellaneous item' in Finance Bills wherein important provisions are tucked in and are brought in without any debate in Parliament at all. Every year some powers are being provided, in the backdrop of one crisis or the other, and perhaps without even an analysis if the regulators are using the wide available powers. I hope when the Ministry of Finance brings a notification to put into effect the above amendments to RBI Act and SEBI Act, it also makes subordinate rules for disclosure of exercise of each power provided to them. Be that as it may, these amendments are an indication of mounting enforcement of financial regulatory laws.

To summarize, Capital market is controlled by financial supervisors and their own governance organization. Major grounds of regulation are to keep investors away from scam and deception. Financial regulatory organizations are also charged with decreasing the losing rate of financial, providing licenses to financial service providers, and executing applicable regulation.