

Addendum to PRS Legislative Brief on the Securities Laws (Amendment) Bill, 2013

The Securities Laws (Amendment) Bill, 2014 (2014 Bill) was introduced in Lok Sabha on August 4, 2014.¹ It proposes to amend the Securities and Exchange Board of India Act, 1992 (the SEBI Act) and makes consequential amendments to the Securities Contracts (Regulation) Act, 1956 (SCRA, 1956) and the Depositories Act, 1996.

The Securities Laws (Amendment) Ordinance, 2013 (First Ordinance) was promulgated on July 18, 2013 to bring certain amendments to the SEBI Act, 1992, SCRA, 1956 and the Depositories Act, 1996.² The Securities Laws (Amendment) Bill, 2013 (2013 Bill), introduced to replace the First Ordinance, lapsed with dissolution of 15th Lok Sabha. For PRS Legislative Brief on the 2013 Bill, please see [here](#).

In the light of the Securities Laws (Amendment) Bill, 2014, PRS Legislative Brief on the Securities Laws (Amendment) Bill, 2013 should be read with following changes:

Search and seizure

The SEBI Act allows the Securities and Exchange Board of India (SEBI) to conduct search and seizure operations on a suspected violator's premises after obtaining permission from a First Class Judicial Magistrate. The 2013 Bill sought to remove the need for a Magistrate's permission, and instead empowered the SEBI Chairman to authorise such operations. The 2014 Bill reinstates the judicial oversight of the process by requiring SEBI to obtain permission from the Magistrate or Judge of a court in Mumbai (as designated by the government).

Therefore the issue raised the PRS Legislative Brief regarding limited safeguards to powers of search and seizure is no longer applicable. However, the issue regarding limited safeguards on SEBI's power to attach a person's property or arrest and detain him in certain cases is still valid.

Penalties for certain offences

The SEBI Act, 1992, SCRA, 1956 and the Depositories Act, 1996 prescribe the maximum level of penalties for certain offences*, either in absolute terms or in some cases, in terms of the penalty amount per day as well. The 2014 Bill prescribes minimum levels of penalties for such offences, while retaining the maximum level of penalty and/or the penalty per day as specified in the Act.

The SEBI Act, 1992, SCRA, 1956 and the Depositories Act, 1996 empower SEBI to appoint an officer as the Adjudicating Officer to conduct an inquiry and impose a penalty in respect of such offences. The 2014 Bill permits SEBI to re-examine the decision of the Adjudicating Officer and raise the quantum of penalty in the interests of the securities market. Such a revision should take place within three months of the Adjudicating Officer's decision or disposal of an appeal against his decision by the Securities Appellate Tribunal.

This provision was not part of the 2013 Bill and is not mentioned in the PRS Legislative Brief.

¹ Statement of Objects and Reasons, The Securities Laws (Amendment) Bill, 2014, Lok Sabha, August 4, 2014, http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/88_2014_LS_Eng.pdf.

² Statement of Objects and Reasons, Securities Laws (Amendment) Bill, 2013, Lok Sabha, August 12, 2013, http://164.100.24.219/BillsTexts/LSBillTexts/asintroduced/111_2013_eng_LS.pdf.

* These offences are: (i) failure to furnish information or return, (ii) an intermediary's failure to enter into agreement with clients, (iii) failure by a listed company, depository, an issuer or intermediary to redress investors' grievances, (iv) certain defaults by a Collective Investment Scheme or Mutual Fund, (v) failure of asset managers to observe rules and regulations, (vi) certain failure by a stock broker, (vii) insider trading, (viii) non-disclosure of acquisition of shares and takeovers, (ix) fraudulent and unfair trade practices, (x) contraventions where no separate penalty has been provided, (xi) a stock broker's failure to segregate securities or money of clients, (xii) a Collective Investment Scheme or Mutual Fund's non-compliance with listing/delisting conditions, (xiii) excess dematerialisation or delivery of unlisted securities by an issuer, (xiv) a stock exchange's failure to furnish periodical returns, (xv) delay by an issuer in dematerialisation or issue of certificate of securities, (xvi) a depository or an issuer's failure to reconcile records, and (xvii) non-compliance with SEBI's directions.



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