

Bill Summary

The Securities Laws (Amendment) Bill, 2013

- The Securities Laws (Amendment) Bill, 2013 was introduced in the Lok Sabha on August 12, 2013, replacing the Securities Laws (Amendment) Ordinance 2013. The Bill amends the Securities and Exchange Board of India Act, 1992 (the SEBI Act, 1992), the Securities Contract (Regulation) Act, 1956 (SCRA, 1956) and the Depositories Act, 1996.
- **Definition of Collective Investment Scheme (CIS):** The SEBI Act, 1992 defines a CIS as a scheme which meets four conditions: funds of investors are pooled, yields profits or income, is managed on behalf of investors and investors do not have operational or managerial control. Additionally, the Act exempts certain types of investments which are regulated by other authorities.
- The Bill widens the definition of a CIS by introducing a proviso which deems any scheme or arrangement to be a CIS if it meets three conditions: (a) funds are pooled, (b) it is not registered with SEBI, or it is not exempted by SEBI Act, 1992 and (c) it has a corpus of Rs 100 crore or more.
- In addition, the Bill delegates power to SEBI to specify the conditions under which any scheme or arrangement can be defined as a CIS.
- The Bill permits the central government to add any scheme or arrangement to the list of excluded schemes, in consultation with SEBI.
- **Disgorgement (repayment) of unfair gains/averted losses:** SEBI has, in the past, issued orders directing market participants to refund the profits or compensate other participants for losses resulting from their unfair actions. The SEBI Act, 1992 does not contain a specific provision regarding power to order disgorgement. The Bill deems SEBI to have always had this power. A similar explanation has been added to the SCRA, 1956 and the Depositories Act, 1996.
- The Bill specifies that the disgorged amount shall be credited to the Investor Education and Protection Fund (IEPF), and shall be used in accordance with SEBI regulations.
- **Investigation and prosecution:** The SEBI Act, 1992 allowed SEBI to conduct search and seizure operations on a suspect's premises after obtaining permission from a First Class Judicial Magistrate.
- The Bill amends the SEBI Act, 1992 by empowering the SEBI Chairman to authorise such a search and seizure operation without having to secure permission from a Judicial Magistrate.
- The Bill delegates to SEBI the power to formulate regulations regarding search and seizure, in absence of which, the provisions of Code of Criminal Procedure, 1973 shall apply.
- The SEBI Act, 1992 allowed SEBI to attach the bank account(s) of a person who has failed to pay the penalty imposed or has disobeyed the disgorgement order up to one month with the approval of Judicial Magistrate of the First Class.
- The Bill amends the SEBI Act, 1992 by empowering a Recovery Officer (an officer authorised by SEBI) to attach the property and bank accounts of such a violator. The Bill also empowers the Recovery Officer to arrest and detain the said violator in prison. A similar provision has been added to the SCRA, 1956 and the Depositories Act, 1996.
- **Settlement of cases through consent orders:** The Bill allows SEBI to enter into a consent settlement with a person against whom proceedings have been initiated. This clause will be effective retrospectively from April 20, 2007, when SEBI had issued guidelines for settlement of a non-criminal investigation against market participants through a consent order, under section 15T of the SEBI Act, 1992. Similar provisions have been added to the SCRA, 1956 and the Depositories Act, 1996.
- **Cooperation with foreign regulators:** SEBI has signed several agreements with foreign regulators for exchange of information. The SEBI Act, 1992 does not have an explicit provision for this. The Bill provides SEBI powers to sign such agreements with retrospective effect from March 6, 1998, when the first such agreement was signed.

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