CHAPTER - V
MACHINERY FOR THE ENFORCEMENT OF LAW ON CORPORATE CRIMINAL LIABILITY

In the previous chapters a study was conducted with regard to the concept of corporate bodies and the law that exists on the subject of corporate crimes. The study in those chapters covered some of the important cases as they had arisen in the foreign countries and in our own country. From a study of the subjects covered it was clear as to what the concept of corporate crimes is and what actually have been the problems of the countries in regard to these crimes. Now the study aims at knowing the institutions which are at work in dealing with the problem of corporate crimes. The idea is to know what is the law enforcement machinery functioning at various levels and what is the scope of its responsibilities and functions in relation to various aspects of the problem of corporate crimes.

The rationale for the study of this subject is as in the case of other kinds of crimes in regard to corporate crimes also the institutions concerned with the inquiry and investigation of corporate crimes and the matter of prosecuting the corporate criminals needs to be examined in greater detail focusing on the institutional set up and their functioning in the society.

Like the regulatory agencies which exist in other countries there are regulatory bodies in India also in regard to the organization and functioning of which it is necessary to have a clear idea of what their theoretical basis is and what is their practical role in our country. Keeping these two aspects of the subject in view the material is presented in two sections. Section I of this chapter begins with the theoretical aspects of the institutions involved in the matter of corporate sector. In regard to this matter reference is made to the concept of Stock Exchanges and proceeds to analyse the status of institutions like the Institute of Chartered Accountants and the Institute of Company Secretaries and ends up with Financial Regulation; then the presentation in Section II covers the practical aspects of the institutions involved in overseeing the work of the corporate bodies. In this context reference is made to Regulatory bodies in our country, such as, the Enforcement Directorate, the Company Law Board, the Securities Commission, the Forwards Commission etc.

Section I. The Role of a Stock Exchange in The Corporate Sector

A stock exchange is a form of exchange which provides services for stock brokers and traders to trade stocks, bonds, and other securities. Stock exchanges also provide facilities for
issue and redemption of securities and other financial instruments, and capital events including
the payment of income and dividends. Securities traded on a stock exchange include shares
issued by companies, unit trusts, derivatives, pooled investment products and bonds.

To be able to trade a security on a certain stock exchange, it must be listed there. Usually,
there is a central location at least for record keeping, but trade is increasingly less linked to such
a physical place, as modern markets are electronic networks, which gives those advantages of
increased speed and reduced cost of transactions. Trade on an exchange is by members only.

The initial offering of stocks and bonds to investors is by definition done in the primary
market and subsequent trading is done in the secondary market. A stock exchange is often the
most important component of a stock market. Supply and demand in stock markets are driven by
various factors that, as in all free markets, affect the price of stocks (see stock valuation).

There is usually no compulsion to issue stock via the stock exchange itself, nor must
stock be subsequently traded on the exchange. Such trading is said to be off exchange or over-
the-counter. This is the usual way that derivatives and bonds are traded. Increasingly, stock
exchanges are part of a global market for securities.

Securities markets took centuries to develop. The idea of debt dates back to the ancient
world, as evidenced for example by ancient Mesopotamian clay tablets recording interest-bearing
loans. There is little consensus among scholars as to when corporate stock was first traded. Some
see the key event as the Dutch East India Company's founding in 1602, while others point to
erlier developments. Economist Ulrike Malmendier of the University of California at Berkeley
argues that a share market existed as far back as ancient Rome.¹

In the Roman Republic, which existed for centuries before the Empire was founded; there
were societates publicanorum, organizations of contractors or leaseholders who performed
temple-building and other services for the government. One such service was the feeding of
geese on the Capitoline Hill as a reward to the birds after their honking warned of a Gallic
invasion in 390 B.C. Participants in such organizations had partes or shares, a concept
mentioned various times by the statesman and orator Cicero. In one speech, Cicero mentions

"shares that had a very high price at the time." Such evidence, in Malmendier's view, suggests the instruments were tradable, with fluctuating values based on an organization's success. The societas declined into obscurity in the time of the emperors, as most of their services were taken over by direct agents of the state. Tradable bonds as a commonly used type of security were a more recent innovation, spearheaded by the Italian city-states of the late medieval and early Renaissance periods.

In 1171, the authorities of the Republic of Venice, concerned about their war-depleted treasury, drew a forced loan from the citizenry. Such debt, known as asprestiti, paid 5 percent interest per year and had an indefinite maturity date. Initially regarded with suspicion, it came to be seen as a valuable investment that could be bought and sold. The bond market had begun. Stock exchanges today have multiple roles in the economy. This may include the following:

1. Raising Capital for Businesses The Stock Exchanges provide companies with the facility to raise capital for expansion through selling shares to the investing public.

2. Common Forms of Capital Raising Besides the borrowing capacity provided to an individual or firm by the banking system, in the form of credit or a loan, there are four common forms of capital raising used by companies and entrepreneurs. Most of these available options might be achieved, directly or indirectly, involving a stock exchange.

3. Going Public Capital intensive companies, particularly high tech companies, always need to raise high volumes of capital in their early stages. For this reason, the public market provided by the stock exchanges has been one of the most important funding sources for many capital intensive startups. After the 1990s and early-2000s hi-tech listed companies' boom and bust in the world's major stock exchanges, it has been much more demanding for the high-tech entrepreneur to take his/her company public, unless either the company already has products in the market and is generating sales and earnings, or the company has completed advanced promising clinical trials, earned potentially profitable patents or conducted market research which demonstrated very positive outcomes. This is quite

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different from the situation of the 1990s to early-2000s period, when a number of companies (particularly Internet boom and biotechnology companies) went public in the most prominent stock exchanges around the world, in the total absence of sales, earnings and any well-documented promising outcome. Anyway, every year a number of companies, including unknown highly speculative and financially unpredictable hi-tech startups, are listed for the first time in all the major stock exchanges – there are even specialized entry markets for this kind of companies or stock indexes tracking their performance.3

4. **Limited Partnerships** A number of companies have also raised significant amounts of capital through R&D limited partnerships. Tax law changes that were enacted in 1987 in the United States changed the tax deductibility of investments in R&D limited partnerships. In order for a partnership to be of interest to investors today, the cash on cash return must be high enough to entice investors. As a result, R&D limited partnerships are not a viable means of raising money for most companies, specially hi-tech startups.

5. **Venture Capital** A third usual source of capital for startup companies has been venture capital. This source remains largely available today, but the maximum statistical amount that the venture company firms in aggregate will invest in any one company is not limitless (it was approximately $15 million in 2001 for a biotechnology company). At those level, venture capital firms typically become tapped-out because the financial risk to any one partnership becomes too great.

6. **Corporate Partners** A fourth alternative source of cash for a private company is a corporate partner, usually an established multinational company, which provides capital for the smaller company in return for marketing rights, patent rights, or equity. Corporate partnerships have been used successfully in a large number of cases.

7. **Mobilizing Savings for Investment** When people draw their savings and invest in shares


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3 (Examples include the Alternext, CAC Small, SDAX, TecDAX, or most of the third market companies).
(through an IPO or the issuance of new company shares of an already listed company), it usually leads to rational allocation of resources because funds, which could have been consumed, or kept in idle deposits with banks, are mobilized and redirected to help companies' management boards finance their organizations. This may promote business activity with benefits for several economic sectors such as agriculture, commerce and industry, resulting in stronger economic growth and higher productivity levels of firms. Sometimes it is very difficult for the stock investor to determine whether or not the allocation of those funds is in good faith and will be able to generate long-term company growth, without examination of a company's internal auditing.

8. **Facilitating Company Growth** Companies view acquisitions as an opportunity to expand product lines, increase distribution channels, hedge against volatility, increase its market share, or acquire other necessary business assets. A takeover bid or a merger agreement through the stock market is one of the simplest and most common ways for a company to grow by acquisition or fusion.

9. **Profit Sharing** Both casual and professional stock investors, as large as institutional investors or as small as an ordinary middle-class family, through dividends and stock price increases that may result in capital gains, share in the wealth of profitable businesses. Unprofitable and troubled businesses may result in capital losses for shareholders.⁴

**Ownership** Stock exchanges originated as mutual organizations, owned by its member stock brokers. There has been a recent trend for stock exchanges to demutualize, where the members sell their shares in an initial public offering. In this way the mutual organization becomes a corporation, with shares that are listed on a stock exchange. Examples are Australian Securities Exchange (1998), Euronext (merged with New York Stock Exchange), NASDAQ (2002), the New York Stock Exchange (2005), Bolsas y Mercados Españoles, and the São Paulo Stock Exchange (2007). The Shenzhen and Shanghai stock exchanges can been characterized as quasi-state institutions insofar as they were created by government bodies in China and their

leading personnel are directly appointed by the China Securities Regulatory Commission. Another example is Tashkent republican stock exchange (Uzbekistan) established in 1994, three years after collapse of Soviet Union, mainly owned by state but has a form of a public corporation (joint stock Company). According to an Uzbek government decision (March 2012) 25 percent minus one share of Tashkent stock exchange is expected to be sold to Korea Exchange (KRX) in 2014. <www.uzse.uz>

**Other Types of Exchanges** In the 19th century, exchanges were opened to trade forward contracts on commodities. Exchange traded forward contracts are called futures contracts. These commodity exchanges later started offering future contracts on other products, such as interest rates and shares, as well as options contracts. They are now generally known as futures exchanges.

(1) **National Stock Exchange of India**

The National Stock Exchange of India (NSE) is a stock exchange located in Mumbai, India. The NSE was established in the mid 1990s as a demutualised electronic exchange. NSE provides a modern, fully automated screen-based trading system, with over two lakh trading terminals, through which investors in every nook and corner of India can trade. NSE has played a critical role in reforming the Indian securities market and in bringing unparalleled transparency, efficiency and market integrity.

NSE has a market capitalisation of more than US$0.989 trillion and 1,635 companies listed as of July 2013. Though a number of other exchanges exist, NSE and the Bombay Stock Exchange are the two most significant stock exchanges in India, and between them are responsible for the vast majority of share transactions. NSE's flagship index, the CNX NIFTY 50, is used extensively by investors in India and around the world to take exposure to the Indian equities market.

NSE was started by a clutch of leading Indian financial institutions. It offers trading, clearing and settlement services in equity, debt and equity derivatives. It is India's largest exchange, globally in cash market trades, in currency trading and index options. NSE has diversified shareholding. There are many domestic and global institutions and companies that
hold stake in the exchange. Some of the domestic investors include LIC, GIC, State Bank of India and IDFC Ltd. Foreign investors include MS Strategic (Mauritius) Limited, Citigroup Strategic Holdings Mauritius Limited, Tiger Global Five Holdings and Norwest Venture Partners X FII-Mauritius, who have a stake in NSE. As of June 2013, NSE has 1673 VSAT terminals and 2720 leaselines, spread over more than 2000 cities across India.

The National Stock Exchange of India was set up in 1993, at a time when PV Narasimha Rao was the Prime Minister of India and Dr. Manmohan Singh was the finance minister. It was set up to bring in transparency in the markets. Promoted by leading Financial institutions essentially led by IDBI at the behest of the Government of India, it was incorporated in November 1992 as a tax-paying company. In April 1993, it was recognised as a stock exchange under the Securities Contracts (Regulation) Act, 1956. NSE commenced operations in the Wholesale Debt Market (WDM) segment in June 1994. The Capital market (Equities) segment of the NSE commenced operations in November 1994, while operations in the Derivatives segment commenced in June 2000.

The National Stock Exchange (NSE) changed the way the Indian markets functioned, in the early nineties, by replacing floor based trading with nationwide screen based electronic trading, which took trading to the doorstep of the investor. The exchange was mainly set up to bring in transparency in the markets. Instead of trading membership being confined to a group of brokers, NSE ensured that anyone who was qualified, experienced and met minimum financial requirements was allowed to trade. In this context, NSE was far ahead of its times, when it separated ownership and management in the exchange under SEBI's supervision. The price information which could earlier be accessed only by a handful of people could now be seen by a client in a remote location with the same ease. The paper based settlement was replaced by electronic depository based accounts and settlement of trades was always done on time. One of the most critical changes was that a robust risk management system was set in place, so that settlement guarantees could protect investors against broker defaults.

(2) Institute of Chartered Accountants of India

The Institute of Chartered Accountants of India (ICAI) is a national professional accounting body of India. It was established on 1 July 1949 as a body corporate under the Chartered Accountants Act, 1949 enacted by the Constituent Assembly of India (acting as the provisional Parliament of India) to regulate the profession of Chartered Accountancy in India.
ICAI is the second largest professional accounting body in the world in terms of membership second only to American Institute of Certified Public Accountants. ICAI is the only licensing cum regulating body of the financial audit and accountancy profession in India. It recommends the accounting standards to be followed by companies in India to the National Advisory Committee on Accounting Standards (NACAS) and sets the accounting standards to be followed by other types of organisations. ICAI is solely responsible for setting the auditing and assurance standards to be followed in the audit of financial statements in India. It also issues other technical standards like Standards on Internal Audit (SIA), Corporate Affairs Standards (CAS) etc. to be followed by practising Chartered Accountants. It works closely with the Government of India, Reserve Bank of India and the Securities and Exchange Board of India in formulating and enforcing such standards.

Members of the Institute are known as Chartered Accountants. However the word chartered does not refer to or flow from any Royal Charter. Chartered Accountants are subject to a published Code of Ethics and professional standards, violation of which is subject to disciplinary action. Only a member of ICAI can be appointed as auditor of an Indian company under the Companies Act, 1956. The management of the Institute is vested with its Council with the president acting as its Chief Executive Authority. A person can become a member of ICAI by taking prescribed examinations and undergoing three years of practical training. The membership course is well known for its rigorous standards. ICAI has entered into mutual recognition agreements with other professional accounting bodies world-wide for reciprocal membership recognition.\(^5\)

ICAI is one of the founder members of the International Federation of Accountants (IFAC), South Asian Federation of Accountants (SAFA), and Confederation of Asian and Pacific Accountants (CAPA). ICAI was formerly the provisional jurisdiction for XBRL International in India.

The Institute of Chartered Accountants of India was established under the Chartered Accountants Act, 1949 passed by the Parliament of India with the objective of regulating accountancy profession in India. ICAI is the second largest professional accounting body in the world in terms of membership second only to AICPA. It prescribes the qualifications for a Chartered Accountant, conducts the requisite examinations and grants license in the form of Certificate of Practice. Apart from this primary function, it also helps various government

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\(^5\) Chartered Accountants Act No. XXXVIII of 1949,
agencies like RBI, SEBI, MCA, CAG, IRDA, etc. in policy formulation. ICAI actively engages itself in aiding and advising economic policy formulation. For example ICAI has submitted its suggestions on the proposed Direct Taxes Code Bill, 2010. It also has submitted its suggestions on the Companies Bill, 2009. The government also takes the suggestions of ICAI as expert advice and considers it favorably. ICAI presented an approach paper on issues in implementing Goods and Service Tax in India to the Ministry of Finance. In response to this, Ministry of Finance has suggested that ICAI take a lead and help the government in implementing Goods and Services Tax (GST). It is because of this active participation in formulation economic legislation, it has designated itself as a "Partner in Nation Building".

**International Affiliations** ICAI is a founder member of the International Federation of Accountants (IFAC), South Asian Federation of Accountants (SAFA), and Confederation of Asian and Pacific Accountants (CAPA). ICAI was formerly the provisional jurisdiction for XBRL International in India. It promoted eXtensible Business Reporting Language (XBRL) India as a section 25 company to take over this responsibility from it.

**Motto and Mission** The motto of the ICAI is *Ya Aeshu Suptaeshu Jagruti*. The motto literally means "a person who is awake in those that sleep". It is a quotation from the *Upanishads* (Kathopanishad). It was given to the ICAI at the time of its formation in 1949 by Sri Aurobindo as a part of its emblem. CA. C. S. Shastri, a Chartered Accountant from Chennai went to Sri Aurobindo and requested him through a letter to give an emblem to the newly formed Institute of which he was an elected member from the Southern India. In reply to this request, Sri Aurobindo gave him the emblem with a Garuda, the mythical eagle in the centre and a quotation from the Upanishad:Ya Aeshu Suptaeshu Jagruti. The emblem along with the motto was placed at the first meeting of the Council of the Institute and was accepted amongst many other emblems placed by other members of the Council.

Apart from its emblem, ICAI also has a separate logo for its members. As a part of a brand building exercise, ICAI introduced this separate new CA logo for the use of its members in 2007. The logo is free for use by all members of ICAI subject to certain conditions. The Mission of the ICAI as stated by it is: “The Indian Chartered Accountancy profession will be the Valued Trustees of World Class Financial Competencies, Good Governance and Competitiveness.”

Unlike most other commonwealth countries, the word chartered does not refer to a royal charter, since India is a republic. At the time of passing the Chartered Accountants Act, various titles used for similar professionals in other countries were considered, such as Certified Public
Accountant. However, many accountants had already acquired membership of the Institute of Chartered Accountants in England and Wales and other Chartered Societies of Great Britain and were practising as Chartered Accountants. This had created some sort of brand value. This designation inherited a public impression that Chartered Accountants had better qualifications than Registered Accountants. Hence the accountants were very stern in their stand that, the Indian accountancy professionals should be designated only as Chartered Accountants. After much debate in the Indian Constituent Assembly, the controversial term, chartered was accepted.

When the Chartered Accountants Act, 1949 came into force on 1 July 1949, the term Chartered Accountant superseded the title of Registered Accountant. This day is celebrated as Chartered Accountants day every year.

Membership Members of the Institute are known as Chartered Accountants. Becoming a member requires passing the prescribed examinations, three years of practical training (known as articleship) and meeting other requirements under the Act and Regulations. A member of ICAI can use the title CA before his name. A member of ICAI may either be an Associate Chartered Accountant (A.C.A.) or a Fellow Chartered Accountant (F.C.A.) based on his experience. Further based on holding Certificate of Practice, they may also be classified as practising and non-practicing Chartered Accountants. As of 29 June 2013, the Institute has 220,738 members out of which 146,365 are Associates and 74,373 are Fellows.

Associates and Fellows Any person who is granted membership of the Institute becomes an Associate Chartered Accountant and is entitled to use the letters A.C.A. after his name. Generally, associates are members of the Institute with less than 5 years of membership after which they become entitled to apply for being a fellow member. Some associate members, particularly those not in practice, often voluntarily chose not to apply to be a fellow due to a variety of reasons.

An associate member who has been in continuous practice in India or has worked for a commercial or government organisation for at least five years and meets other conditions as prescribed can apply to the Institute to get designated as a "Fellow". A fellow Chartered Accountant is entitled to use the letters FCA. After his name. Responsibilities and voting rights
of both types of members remain the same but only fellows can be elected to the Council and Regional Councils of ICAI. Fellows are perceived as enjoying a higher status due to their longer professional experience.

**Practicing Chartered Accountants** Any member wanting to engage in public practice has to first apply for and obtain a *Certificate of Practice* from the Council of ICAI. Only members holding a Certificate of Practice may act as auditors or certify documents required by various tax and financial regulatory authorities in India. Once a member obtains a Certificate of Practice, his responsibility to the society increases manifold. The ethical principles applicable to a practising CA provided in first and second schedule of the Chartered Accountants Act, 1949 are more rigorous than the ones applicable to non-practicing CAs or both.\(^6\) In India an individual Chartered Accountant or a firm of Chartered Accountants can practice the profession of Chartered Accountancy. After the enactment of the *Limited Liability Partnership Act*, 2008 it is expected that in the near future a Limited Liability Partnership (LLP) will be legally allowed to practice. A Bill has already been introduced in the Indian Parliament to give effect to the same. Corporation, companies and other bodies corporate are prohibited from practising as Chartered Accountants in India.

**Role of Chartered Accountants** Chartered Accountants enjoy a statutory monopoly in audit of financial statements under the Companies Act, 1956, *Income Tax Act*, 1961 and various other statutes in India. Financial statements audited by a chartered accountant are presumed to have been prepared according to GAAP in India (otherwise the audit report should be qualified). However, not all Chartered Accountants work in audit. Firms of accountants provide varied business services, and many accountants are employed in commerce and industry. Their areas of expertise include financial reporting, auditing and assurance, arbitration, risk management, economics, corporate finance, management accounting, information systems audit, corporate law, direct tax, indirect tax and valuation of businesses. The Government of India is now planning to open up a new field of practice in social audit of government welfare schemes like MGNREGA and Jn NURM. Apart from the field of professional practice, some CAs work in industry and commerce in financial and general management positions such as CFO and CEO.

Council of the Institute The management of the affairs of the Institute is undertaken by a Council constituted under the Chartered Accountants Act, 1949. The Council consists of 32 elected fellow members and up to 8 members nominated by the Government of India. The elected members of the council are elected under the single transferable vote system by the members of the institute. The Council is re-elected every 3 years. The Council elects two of its members to be president and vice-president who hold office for one year. The president is the chief executive Authority of the Council.

Regional Councils The Institute also has five Regional Councils that assist it in its functions:

a) The Northern India Regional Council (NIRC)
b) The Western India Regional Council (WIRC)
c) The Central India Regional Council (CIRC)
d) The Eastern India Regional Council (EIRC)
e) The Southern India Regional Council (SIRC)

Code of Ethics The Institute has a detailed code of ethics and actions in contravention of such code results in disciplinary action against the erring members. The Institute publishes a Members Hand book containing the Chartered Accountants Act 1949, Chartered Accountants Regulation 1988, and Professional Opportunities for Members – an Appraisal, Code of Ethics and Manual for members. These together form the basis of regulation of the profession. The Council also has a Peer Review Board that ensures that in carrying out their professional attestation services assignments, the members of the Institute (a) comply with the Technical Standards laid down by the Institute and (b) have in place proper systems (including documentation systems) for maintaining the quality of the attestation services work they perform.

Disciplinary Process The Disciplinary Directorate, the Board of Discipline, and the Disciplinary Committee form the foundation of the disciplinary process of the Institute. These entities are quasi-judicial and have substantial powers like that of a Civil Court to summon and enforce attendance or require discovery or production of documents on affidavit or otherwise.
The Disciplinary Directorate is headed by an officer designated as Director (Discipline). On receipt of any information or complaint that a member has allegedly engaged in any misconduct, the Director (Discipline) shall arrive at a prima facie opinion whether or not there is any misconduct. If the Director (Discipline) is of the opinion that the misconduct is covered by the items listed in the first schedule of the Chartered Accountants Act, 1949, he shall refer the case to the Board of Discipline. If he is of the Opinion that the case is covered by the Second Schedule or both schedules of the CA Act, he will refer the case to the Disciplinary Committee. If the Board of Discipline finds a member guilty of professional or other misconduct, it may at its discretion reprimand the member, remove the name of the member from the register of members for up to three months or impose a fine up to ₹1,00,000/-. If the Disciplinary Committee finds a member guilty of professional or other misconduct, it may at its discretion reprimand the member, remove the name of the member from the register of members permanently or impose a fine up to ₹5,00,000/-. Any member aggrieved by any order may approach the Appellate Authority. It needs to be clarified that this disciplinary proceeding is not in lieu of or alternative for criminal proceedings in a court. Criminal proceedings against a Chartered Accountant and disciplinary action by ICAI are two separate issues and one need not wait for another to be completed first.

**Recent Actions** One of the most recent (2009–10) public actions of The ICAI Disciplinary Committee was proceedings for professional misconduct against two auditors from the firm Price Waterhouse partners for wrongly auditing and inflating the financial statements of Satyam Computer Services Limited. The Supreme Court of India (November 2010) rejected a plea by the two charged auditors to stay the proceedings by the ICAI Disciplinary committee. The court's order came in response to the pleas of the charged auditors seeking a stay on the disciplinary proceedings against them on the ground that it violated their fundamental right against self-incrimination under Article 20 (3) of the Constitution of India.\(^7\)

Other publicised actions included, the SEBI referred case of brokerage firm, Karvy, in which the internal auditors, Haribhakti & Co (an associate of BDO), were held guilty of negligence for failing to detect thousands of demat accounts being opened with the same address. The Committee has also taken action against members for alleged irregularities in the books of

\(^7\) *The Chartered Accountants Regulations, 1988*
Maytas Properties and Maytas Infra and the role played by their auditors. The names of the members found guilty of misconduct are published in ICAI's website. The ICAI website lists 35 as the number of cases in which inquiry was completed by the Disciplinary Committee in the past one year since February 2010. The list of members held guilty of professional or other misconduct is published periodically.

(3) Institute of Company Secretaries of India

The Institute of Company Secretaries of India (ICSI) is the organisation for the regulation and continuing professional development of company secretaries in India. As per the proviso to Section 383 A of the Companies Act, 1956, all the companies having a paid up capital of Rs. 500 M are mandatorily required to appoint a full time Company Secretary. Those companies having a paid capital greater than Rs. 10 M and less than Rs. 500 M are required to procure Compliance Certificate from a Practicing Company Secretary which has to be annexed to the Directors' Report along with the Annual Accounts. Thus there are two areas in the career Viz. In whole time employment and whole time Practice.

(4) Financial Regulations

Financial Regulation is a form of regulation or supervision, which subjects financial institutions to certain requirements, restrictions and guidelines, aiming to maintain the integrity of the financial system. This may be handled by either a government or non-government organization. Financial regulation has also influenced the structure of banking sectors, by decreasing borrowing costs and increasing the variety of financial products available.8

The objectives of financial regulators are usually:

- market confidence – to maintain confidence in the financial system
- financial stability – contributing to the protection and enhancement of stability of the financial system
- consumer protection – securing the appropriate degree of protection for consumers.
- reduction of financial crime – reducing the extent to which it is possible for a regulated business to be used for a purpose connected with financial crime.

Acts empower organizations, government or non-government, to monitor activities and enforce actions. There are various setups and combinations in place for the financial regulatory structure around the global.

8 Reinhart, Carmen; Rogoff, Rogoff (2009), This Time is Different: Eight Centuries of Financial Folly, Princeton U. Pr., ISBN 978-0-691-15264-6
Exchange acts ensure that trading on the exchanges is conducted in a proper manner. Most prominent the pricing process, execution and settlement of trades, direct and efficient trade monitoring.

Financial regulator ensures that listed companies and market participants comply with various regulations under the trading acts. The trading acts demands that listed companies publish regular financial reports, ad hoc notifications or directors' dealings. Whereas market participants are required to publish major shareholder notifications. The objective of monitoring compliance by listed companies with their disclosure requirements is to ensure that investors have access to essential and adequate information for making an informed assessment of listed companies and their securities.

**Supervision of Investment Management** Asset management supervision or investment acts ensures the frictionless operation of those vehicles.

**Supervision of Banks and Financial Services Providers** Banking acts lays down rules for banks which they have to observe when they are being established and when they are carrying on their business. These rules are designed to prevent unwelcome developments that might disrupt the smooth functioning of the banking system. Thus ensuring a strong and efficient banking system.

**Unique Jurisdictions** In most cases, financial regulatory authorities regulate all financial activities. But in some cases, there are specific authorities to regulate each sector of the finance industry, mainly banking, securities, insurance and pensions markets, but in some cases also commodities, futures, forwards, etc. For example, in Australia, the Australian Prudential Regulation Authority (APRA) supervises banks and insurers, while the Australian Securities and Investments Commission (ASIC) is responsible for enforcing financial services and corporations laws.9

Sometimes more than one institution regulates and supervises the banking market, normally because, apart from regulatory authorities, central banks also regulate the banking industry. For example, in the USA banking is regulated by a lot of regulators, such as the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the

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9 Ely, Bert (2008), "Financial Regulation", in David R. Henderson (ed.),
Currency, the National Credit Union Administration, the Office of Thrift Supervision, as well as regulators at the state level.

In addition, there are also associations of financial regulatory authorities. In the European Union, there are the Committee of European Securities Regulators (CESR), the Committee of European Banking Supervisors (CEBS) and the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS), which are Level-3 committees of the EU in the Lamfalussy process. And, at a world level, we have the International Organization of Securities Commissions (IOSCO), the International Association of Insurance Supervisors, the Basel Committee on Banking Supervision, the Joint Forum, and the Financial Stability Board.

The structure of financial regulation has changed significantly in the past two decades, as the legal and geographic boundaries between markets in banking, securities, and insurance have become increasingly "blurred" and globalized.

Section II – Regulatory Institutions in India

- Directorate General of Economic Enforcement

The Directorate General of Economic Enforcement (DED) is a law enforcement and economic intelligence agency responsible for enforcing economic laws and fighting economic crime in India. It is part of the Department of Revenue, Ministry of Finance. It comprises officers of the Indian Revenue Service. It was established on the 1st day of June, 2000 by the Central Govt. of India to investigate provisions of the Foreign Exchange Management Act, 1999.

Objective: The prime objective of the Enforcement Directorate is the enforcement of two key Acts of the Government of India namely, the Foreign Exchange Management Act 1999 (FEMA) and the Prevention of Money Laundering Act 2002 (PMLA). The ED's (Enforcement Directorate) official website enlists its other objectives which are primarily linked to checking money laundering in India.

Organizational Set Up The ED was commissioned with its headquarters at New Delhi and has ten zones at Mumbai, Kolkata, Delhi, Chandigarh, Chennai, Ahmedabad, Bangalore, Lucknow, Cochin and Hyderabad. Each of these zones are headed by the Deputy Directors. Officers are drawn from the Income Tax and Customs departments. Besides, there are nine sub-
zones at Indore, Agra, Srinagar, Jaipur, Varanasi, Calicut, Hyderabad, Guwahati Pajjim which are headed by the Assistant Directors. Moreover, there are three Special Directors of Enforcement and one Additional Director of Enforcement and two Deputy Director at Head Office.\textsuperscript{10}

\textbf{Special Courts} For the trial of an offence punishable under \textit{section 4 of PMLA}, the Central Government (in consultation with the Chief Justice of the \textit{High Court}), designates one or more \textit{Sessions Court} as Special Court(s). The court is also called "PMLA Court". Any appeal against any order passed by PMLA court can directly be filed in the \textit{High Court} for that jurisdiction.

\textbf{Controversies:} In Hasan Ali’s case premises were raided by ED as far back as 2007. However, according to several news reports, the probe against him appears to have been proceeded at an extremely slow pace and seems to hit a dead end.\textsuperscript{11}

\textbf{Adarsh Housing Society Scam:} On 28\textsuperscript{th} February 2012, \textit{Bombay High Court} severely castigated ED for its failure to initiate any probe in the matter. Expressing its unhappiness the court observed,

"It is unfortunate that ED has remained a mute spectator. There is a serious lapse on the agency's part for not probing into money laundering offence. ED has not moved an inch. It reflects a sorry state of affairs. We are summoning the director as there has been no assistance from his department to the court."\textsuperscript{12}

\begin{itemize}
  \item \textbf{Company Law Board}
  
  The Company Law Board is an independent \textit{quasi-judicial body} in \textit{India} which has powers to overlook the behaviour of companies within the \textit{Company Law}. The concept of Company Law Board in its present form was introduced through an amendment to the Companies Act of 1956 in the year 1988. It was constituted in its present form on May 31, 1991. Under Section 10E of the \textit{Companies Act, 1956} replacing the erstwhile Company Law
\end{itemize}

\begin{footnotesize}
\begin{itemize}
  \item \textsuperscript{10} http://www.ceib.nic.in/ed.htm
  \item \textsuperscript{11} Times of India, Nov., 30, 2011.
  \item \textsuperscript{12} India Today, May 6, 2012.
\end{itemize}
\end{footnotesize}
Board which was primarily as a delegatee of the Central government since 1.2.1964. The Company Law Board has framed Company Law Board Regulations 1991 wherein all the procedure for filing the applications/petitions before the Company Law Board has been prescribed. The Central Government has also prescribed the fees for making applications/petitions before the Company Law Board under the Company Law Board (Fees on applications and Petitions) Rules 1991.

The Board has its Regional Benches at Mumbai, Calcutta, Chennai & New Delhi besides the Principal Bench at New Delhi and another Principal branch for Southern States at Chennai. The matters falling under section 247, 250, 269, and 388B are dealt with by the Principal Bench at New Delhi. The Regional Benches are mainly concerned with petitions/applications under the provisions of Companies Act, 1956\(^\text{13}\) and matters falling under Chapter VI of Part VI of the Companies Act, 1956 and Section 45QA of the Reserve Bank of India Act, 1934. The matters falling under section 45QA of the Reserve Bank of India Act, which were earlier within the purview of the RBI, have now been entrusted to the Company Law Board. The Central Government have accordingly amended RBI Act giving powers to the Company Law Board to deal with the applications filed by the aggrieved depositors of Non-Banking Financial Companies (NBFCs) under section 45QA of the RBI Act, 1934. It is one of the branches of high court with the tribunal being the other one.

- **Special Police Establishment (SPE)**

  The Central Bureau of Investigation traces its origins to the Special Police Establishment (SPE) established in 1941 by the government. The functions of the SPE were to investigate bribery and corruption in transactions with the War and Supply Department of India, set up during World War II with its headquarters in Lahore. The superintendent of the War Department and the SPE was Khan Bahadur Qurban Ali Khan, who later became governor of the North West Frontier Province at the creation of Pakistan. The first legal advisor of the War Department was Rai Sahib Karam Chand Jain. After the end of the war, there was a continued need for a central governmental agency to investigate bribery and corruption by central-government employees. Rai Sahib Karam Chand Jain remained its legal advisor when the department was transferred to the Home Department by the 1946 Delhi Special Police Establishment Act.

  The SPE's scope was enlarged to cover all departments of the Government of India. Its

jurisdiction extended to the Union Territories, and could be further extended to the states with the 
consent of the state governments involved. Sardar Patel, first Deputy Prime Minister of free India 
and head of the Home Department, desired to weed out corruption in erstwhile princely states 
such as Jodhpur, Rewa and Tonk. Patel directed Legal Advisor Karam Chand Jain to monitor 
criminal proceedings against the dewans and chief ministers of those states.

The SPE acquired its current name when it was constituted by a resolution of the Home 
Ministry in 1963, and the bureau was consolidated. With the 1968 bank nationalisation, banks 
and their employees also fell within the remit of the CBI.

- **Central Bureau of Investigation**

  The Central Bureau of Investigation (CBI) is the foremost investigating police agency in 
  India, an elite force which plays a role in public life and ensuring the health of the national economy. It is under the jurisdiction of the Government of India. The CBI is involved in major 
criminal probes, and is the Interpol agency in India. The CBI was established in 1941 as the 
Special Police Establishment, tasked with domestic security. It was renamed the Central Bureau 
of Investigation on 1 April 1963. Its motto is "Industry, Impartiality, and Integrity".

  Agency headquarters is in the Indian capital, New Delhi, with field offices located in 
  major cities throughout India (including Mumbai). The CBI is overseen by the Department of 
  Personnel and Training of the Ministry of Personnel, Public Grievances and Pensions of the 
  Union Government, headed by a Union Minister who reports directly to the Prime Minister. 
  While analogous in structure to the FBI, the CBI's powers and functions are limited to specific 
crimes by Acts (primarily the Delhi Special Police Establishment Act, 1946).

  The CBI established a reputation as India's foremost investigative agency with the 
  resources for complicated cases, and it was requested to assist the investigation of crimes such as 
murder, kidnapping and terrorism. The Supreme Court and a number of high courts in the 
country also began assigning such investigations to the CBI on the basis of petitions filed by 
aggrieved parties. In 1987, the CBI was divided into two divisions: the Anti-Corruption Division 
and the Special Crimes Division.

  The founding Director of CBI was D. P. Kohli, who held the office from 1st April 1963 to

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15 [http://cbi.nic.in/aboutus/adminmanual](http://cbi.nic.in/aboutus/adminmanual)
31 May 1968. Before this, Kohli was Inspector-General of police for the Special Police Establishment from 1955 to 1963 and held law-enforcement positions in Madhya Bharat (as chief of police), Uttar Pradesh and local central-government offices. For distinguished service, Kohli was awarded the Padma Bhushan in 1967.

Kohli saw in the Special Police Establishment the potential to growing into a national investigative agency. He nurtured the organisation during his long career as inspector general and director and laid the foundation on which the agency grew.16

Organisational Structure The CBI is headed by a Director, an IPS officer with a rank of Director General of Police or Commissioner of Police (State). The Director is selected based on the CVC Act 2003, and has a two-year term. Other ranks in the CBI which may be staffed by the IPS or the IRS are special director, additional director, joint director, deputy inspector general of police, senior superintendent of police, superintendent of police, additional superintendent of police, deputy superintendent of police, sub-inspector, assistant sub-inspector, head constable, senior constable and Constable.

The CBI is subject to five ministries of the Government of India:

1. Ministry of Home Affairs: Cadre clearance
2. DoPT: Administration, budget and induction of officers
3. Union Public Service Commission: Officers above the rank of Deputy SP
4. Law and Justice Ministry: Public prosecutors
5. Central Vigilance Commission: Anti-corruption cases

Jurisdiction, Powers and Restrictions The legal powers of investigation of the CBI are derived from the DSPE Act 1946, which confers powers, duties, privileges and liabilities on the Delhi Special Police Establishment (CBI) and officers of the Union Territories. The central government may extend to any area (except Union Territories) the powers and jurisdiction of the CBI for investigation, subject to the consent of the government of the concerned state. Members of the CBI at or above the rank of sub-inspector may be considered officers in charge of police stations. Under the act, the CBI can investigate only with notification by the central government.

Relationship to State Police Maintaining law and order is a state responsibility as "police" is a State subject, and the jurisdiction to investigate crime lies with the state police

16 “CBI history and former directors”, CBI. Retrieved 2nd June, 2012
exclusively. The CBI being a Union subject may investigate:

- Offenses against central-government employees, or concerning affairs of the central government and employees of central public-sector undertakings and public-sector banks
- Cases involving the financial interests of the central government
- Breaches of central laws enforceable by the Government of India
- Major fraud or embezzlement; multi-state organised crime
- Mulit-agency or international cases

**Recommendations and Proposed Amendments** The Estimates Committee 1991-92 recommended in its 13th Report to the Lok Sabha on April 6, 1992, the “enactment of a new law laying down the organizational structure of the CBI, functions to be discharged by it, types of offences which it can investigate and providing for conferment of powers of Police laid down in Criminal Procedure Code, 1973, on the members of the CBI.” It also recommended a constitutional amendment to provide for extension of the CBI to any State without the consent of its government. A draft Constitution Amendment Bill and a draft Bill on the CBI were sent to the Home Ministry on June 12, 1990.

**High Courts and the Supreme Court** The High Courts and the Supreme Court have the jurisdiction to order a CBI investigation into an offense alleged to have been committed in a state without the state's consent, according to a five-judge constitutional bench of the Supreme Court. The bench ruled:

“Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.” The court clarified that this is an extraordinary power which must be exercised sparingly, cautiously and only in exceptional situations.

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17 In Civil Appeal 6249 and 6250 of 2001)
Right to Information (RTI) The CBI is exempted from the provisions of the Right to Information Act. This exemption was granted by the government on 9 June 2011 (with similar exemptions to the National Investigating Agency (NIA), the Directorate General of Income Tax Investigation and the National Intelligence Grid (Natgrid)) on the basis of national security. It was criticized by the Central Information Commission and RTI activists, who said the blanket exemption violated the letter and intent of the RTI Act. The exemption was upheld in Madras High Court.

Securities Commission

Securities Commission – is a general term used for a government department or agency responsible for financial regulation of securities products within a particular country. Its powers and responsibilities vary greatly from country to country, but generally cover the setting of rules as well as enforcing them for financial intermediaries and stock exchanges.

As long as there have been securities there have been regulations. However, in the early days this consisted primarily of self-regulated groups or societies. External government regulation has primarily been driven by financial crises or scandals. As early as the 13th century the king Edward I of England decreed that brokers should be licensed after he was forced to go to local money brokers that give much less favorable terms then his Italian brokers after the start of the Anglo-French war.

In 1720 the British Parliament passed the Bubble Act which had specific regulations for securities. However the motive of this act was more to support the ‘South Sea bubble’ than protect consumers. However this was the first time that prospectuses and disclosure in the modern sense were used. There was widespread distrust of brokers as the scams collapsed.

In the United States, although Massachusetts required the registration of railroad securities as early as 1852, and other states passed laws relating to securities in the late 19th and early 20th centuries, the real push for securities regulation came from the Midwestern and far western states. After common feeling that investors in these areas of the country were being victimized by capitalists in the east. However it was the failure of the Blue sky law and the 1930 financial crisis and Great Depression that led the United States government to pass legislation in 1934 to strengthen securities law and for the first time create a separate agency the Securities and Exchange Commission.
In the early 1980s as many countries deregulated their financial markets, they created specific government agencies to police the securities markets and stock exchanges so as to separate regulation from operation of financial markets. Some countries like the UK, created one large agency that covered all financial products. However, some countries use a different model where there are separate agencies for different financial products. Typically, securities, banking and insurance are split, but there may also be separate agencies for futures, options and commodities.

With the advent of derivatives and new financial products it has not always been easy to see who has jurisdiction and what their responsibilities are. A fact, that some unscrupulous financial companies have used to their advantage to skirt existing regulation.

The Financial crisis of 2007–2010 has seen much criticism of the securities regulators for failing to stop abuses of markets and their slowness in responding to the crisis and having suffered regulatory capture.

Most securities commissions are semi-independent government organisations that have a board of commissioners, usually appointed by the government of the country. They are often fully or partially funded by the organisations that are regulated through charges such as registration and licensing fees.

There is no common name for securities commission or financial regulatory agency in each country. Naming has become more complicated as some governments have consolidated or merged organisations and given them a wider remit. They sometimes contain the term securities and commission. Such as the Securities and Exchange Commission of the US or Securities and Futures Commission (Hong Kong). A number also have names based on Financial Authority, such as the Financial Services Authority of the UK or Financial Supervisory Authority (Sweden) or variations such as the Financial Services Agency (Japan).

Most securities commissions have a mandate to protect consumers, make sure there is an orderly and stable financial market and that brokers and participants behave fairly with clients and each other. Often local stock exchanges as well as brokers are covered by the commission.

International Cooperation Most financial regulators are members of the International Organization of Securities Commissions (IOSCO), an organisation that helps securities commissions cooperate. The main way that securities commission cooperate is through the
IOSCO Memorandum of Understanding, or through bilateral agreements between securities commissions.

Within the European Union there is the European Securities and Markets Authority (ESMA) which is advisory body for the European Commission [1] which attempts to coordinate rules between EU securities commissions.

. Securities & Exchange Board of India (SEBI)

The Securities and Exchange Board of India (frequently abbreviated SEBI) is the regulator for the securities market in India. It was established in the year 1988 and given statutory powers on 12 April 1992 through the SEBI Act, 1992.

It was officially established by the Government of India in the year 1988 and given statutory powers in 1992 with SEBI Act 1992 being passed by the Indian Parliament. SEBI has its Headquarter at the business district of Bandra Kurla Complex in Mumbai, and has Northern, Eastern, Southern and Western Regional Offices in New Delhi, Kolkata, Chennai and Ahmedabad respectively. Controller of Capital Issues was the regulatory authority before SEBI came into existence; it derived authority from the Capital Issues (Control) Act, 1947. Initially SEBI was a non statutory body without any statutory power. However in the year of 1995, the SEBI was given additional statutory power by the Government of India through an amendment to the Securities and Exchange Board of India Act 1992. In April, 1998 the SEBI was constituted as the regulator of capital markets in India under a resolution of the Government of India.

The SEBI is managed by its members, which consists of following: a) the chairman who is nominated by Union Government of India. b) Two members, i.e. Officers from Union Finance Ministry. c) One member from The Reserve Bank of India. d) The remaining 5 members are nominated by Union Government of India; out of them at least 3 shall be whole-time members. The office of SEBI is situated at SEBI Bhavan, Bandra Kurla Complex, Bandra East, Mumbai-400051, with its regional offices at Kolkata, Delhi, Chennai & Ahmedabad. It has recently opened local offices at Jaipur and Bangalore and is planning to open offices at Guwahati, Bhubaneshwar, Patna, Kochi and Chandigarh in Financial Year 2013 - 2014.

Organizational Structure The Preamble of the Securities and Exchange Board of India
describes the basic functions of the Securities and Exchange Board of India as "...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 has to be responsive to the needs of three groups, which constitute the market:

- the issuers of securities
- the investors
- the market intermediaries.

SEBI has three functions rolled into one body: quasi-legislative, quasi-judicial and quasi-executive. It drafts regulations in its legislative capacity, it conducts investigation and enforcement action in its executive function and it passes rulings and orders in its judicial capacity. Though this makes it very powerful, there is an appeal process to create accountability. There is a Securities Appellate Tribunal which is a three-member tribunal and is presently headed by Mr. Justice J P Devadhar, a former judge of the Bombay High Court. A second appeal lies directly to the [Supreme Court](https://www.supremecourtnic.in).

For the discharge of its functions efficiently, SEBI has been vested with the following powers:

1. To approve by−laws of stock exchanges. sebi
2. To require the stock exchange to amend their by−laws.
3. Inspect the books of accounts and call for periodical returns from recognized stock exchanges.
4. Inspect the books of accounts of a financial intermediaries.
5. Compel certain companies to list their shares in one or more stock exchanges.
6. Registration brokers.

**SEBI Committees**

1. Technical Advisory Committee
2. Committee for review of structure of market infrastructure institutions
3. Members of the Advisory Committee for the SEBI Investor Protection and Education Fund
4. Takeover Regulations Advisory Committee
5. Primary Market Advisory Committee (PMAC)
6. Secondary Market Advisory Committee (SMAC)
7. Mutual Fund Advisory Committee
8. Corporate Bonds & Securitization Advisory Committee

SEBI has enjoyed success as a regulator by pushing systematic reforms aggressively and successively. SEBI is credited for quick movement towards making the markets electronic and paperless by introducing T+5 rolling cycle from July 2001 and T+3 in April 2002 and further to T+2 in April 2003. The rolling cycle of T+2 means, Settlement is done in 2 days after Trade date. SEBI has been active in setting up the regulations as required under law. SEBI did away with physical certificates that were prone to postal delays, theft and forgery, apart from making the settlement process slow and cumbersome by passing Depositories Act, 1996.

SEBI has also been instrumental in taking quick and effective steps in light of the global meltdown and the Satyam fiasco. In October 2011, it increased the extent and quantity of disclosures to be made by Indian corporate promoters. In light of the global meltdown, it liberalised the takeover code to facilitate investments by removing regulatory structures. In one such move, SEBI has increased the application limit for retail investors to Rs 2 lakh, from Rs 1 lakh at present.

Controversies The Supreme Court of India heard a Public Interest Litigation (PIL) filed by India Rejuvenation Initiative that had challenged the procedure for key appointments adopted by Government of India. The petition alleged that, "The constitution of the search-cum-selection committee for recommending the name of chairman and every whole-time members of SEBI for appointment has been altered, which directly impacted its balance and could compromise the role of the SEBI as a watchdog." On 21 November 2011, the court allowed petitioners to withdraw the petition and file a fresh petition pointing out constitutional issues regarding appointments of regulators and their independence. The Chief Justice of India refused the finance ministry’s request to dismiss the PIL and said that the court was well aware of what was going on in SEBI. Hearing a similar petition filed by Bangaluru-based advocate Anil Kumar Agarwal, a two judge Supreme Court bench of Justice SS Nijjar and Justice HL Gokhale issued a notice to the
Government of India, SEBI chief UK Sinha and Omita Paul, Secretary to the President of India.

Further, it came into light that Dr KM Abraham (the then whole time member of SEBI Board) had written to the Prime Minister about malaise in SEBI. He said, "The regulatory institution is under duress and under severe attack from powerful corporate interests operating concertedly to undermine SEBI". He specifically said that Finance Minister's office, and especially his advisor Omita Paul, were trying to influence many cases before SEBI, including those relating to Sahara Group, Reliance, Bank of Rajasthan and MCX.

In a major upgrade of powers given to Sebi, the government has allowed it to pass orders like search and seizure, attachment of properties, arrest and detention of defaulters and pass disgorgement directions to recover the wrongful gains made in contravention of laws. At the same time, the government has also allowed Sebi to seek information from other regulators within India and abroad with retrospective effect, paving way for collection of details pertaining to cases pending for over 15 years now. In another retrospective change, which forms part of the Securities Laws Amendment Ordinance promulgated by the President of India last week, the individuals and companies being probed by Sebi can settle their pending investigations. Such settlements can be undertaken in cases that are currently pending for more than six years.

To tackle the growing menace of ponzi schemes being floated as Collective Investment Schemes (CIS), the rules have also been amended to classify any money collection of Rs 100 crore or more as CIS operation. Sebi has been given powers to crack down on illegal investment schemes floated by individuals as well, as against companies only as of now. However, all government-notified schemes would be out of the Collective Investment Scheme framework. The changes are part of as many as 22 amendments made by the government in three main Acts governing Sebi and its operations -- the Securities and Exchange Board of India (SEBI) Act, the Securities Contracts Regulation Act (SCRA) and the Depositories Act -- through a 16-page Ordinance. Among others, SEBI has also been given powers to pass disgorgement orders for amount equivalent to wrongful gains or to losses averted by contravention of regulations. Besides, the regulator can now enter and search buildings, places, vessels, vehicles and aircraft of defaulters.

Its officers can also also break open the lock of any door, box, locker, safe almirah, etc to get information from suspected entities. At the same time, the defaulters can seek settlement of pending cases with SEBI with retrospective effect from April 20, 2012. The Ordinance also
allows the government to set up as many special courts, as required, to expedite hearing of cases involving contravention of securities laws.

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. The powers to seek information from other domestic and foreign regulators have been made effective retrospectively from March 6, 1998. For seeking information from outside the country, SEBI can enter into an arrangement, agreement or understanding with relevant foreign authorities with the prior approval of the central government. At the same time, SEBI can now ask for information or records from any person, banks, authorities, boards or corporation, if the regulator is of the opinion that such details could be relevant to any investigation or inquiry being undertaken by it.

With regard to its new search and seizure powers, SEBI can also access the documents maintained in the electronic format.

On settlement, the Ordinance provides that any person against whom any proceedings have been or may be initiated by SEBI under certain sections, may file an application to SEBI proposing for settlement of such proceedings for the alleged defaults. After taking into account the "nature, gravity and impact of defaults", SEBI can accept or reject such a settlement on payment of an amount to be decided by the regulator, subject to various terms and conditions. However, no appeals can be made against SEBI's decision in these matters. The settlement provision has been made applicable retrospectively with effect from April 20, 2007.

For speedy trial of offences under various SEBI regulations, the Ordinance also provides for setting up of "as many special courts as may be necessary" by the central government. Such courts would consist of a single judge to be appointed by the central government with concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working. The judge would need to holding the office of a Sessions Judge or an Additional Sessions Judge immediately before such appointment. Also, the person conducting prosecution on behalf of SEBI before such a Special Court would be deemed to be a Public Prosecutor within the meaning of the relevant clause of the Code of Criminal Procedure. Such prosecutors would need to have been in practice as an advocate for at least 7 years or should have a minimum experience of seven years in a relevant government job. Till the time a Special
Court is established, any offences committed under SEBI Acts would be tried by a Session Court. If a person fails to pay the penalty imposed by SEBI or fails to comply with any direction for refund of money or any disgorgement orders, the recovery officer appointed by SEBI can proceed to recover such an amount.

. **Forward Markets Commission of India**

The Forward Markets Commission (FMC) is the chief regulator of forwards and futures markets in India. As of March 2009, it regulated Rs52 trillion worth of commodity trades in India. It is headquartered in Mumbai and this financial regulatory agency is overseen by the Ministry of Finance. Mr. Ramesh Abhishek replaced Mr. B.C. Khatua as the interim chairman of the commission in 2011.19

Established in 1953 under the provisions of the Forward Contracts (Regulation) Act, 1952, it consists of two to four members, all appointed by the Indian Government. Currently, the Commission allows commodity trading in 22 exchanges in India, of which 6 are national. From 2013 september 09, the commission is overseen by the Ministry of Finance. Since futures traded in India are traditionally on food commodities, earlier it was overseen by Ministry of Consumer Affairs, Food and Public Distribution (India).

India has a long history of trading commodities and considered the pioneer in some forms of derivatives trading. The first derivative market was set up in 1875 in Mumbai, where futures cotton was traded. This was followed by establishment of futures markets in edible oilseeds complex, raw jute and jute goods and bullion. This became an active industry with volumes reported to be large.

However, in 1935 a law was passed allowing the government to in part restrict and directly control food production (Defence of India Act, 1935). This included the ability to restrict or ban the trading in derivatives on those food commodities. Post independence, in the 1950s, India continued to struggle with feeding its population and the government increasingly restricting trading in food commodities. Just at the time the FMC was established, the government felt that derivative markets increased speculation which led to increased costs and

price instabilities. And in 1953 finally prohibited options and futures trading altogether.

The industry was pushed underground and the prohibition meant that development and expansion came to a halt. In the 1970s as futures and options markets began to develop in the rest of the world, Indian derivatives markets were left behind. The apprehensions about the role of speculation, particularly in the conditions of scarcity, prompted the Government to continue the prohibition well into the 1980s.

The result of the period of prohibition left India with a large number of small and isolated regional futures markets. The futures markets were dispersed and fragmented, with separate trading communities in different regions with little contact with one another. The exchanges had not yet embrace modern technology or modern business practices.²⁰

Next to the officially approved exchanges, there were also many havala markets. Most of these unofficial commodity exchanges have operated for many decades. Some unofficial markets trade 20–30 times the volume of the "official" futures exchanges. They offer not only futures, but also option contracts. Transaction costs are low, and they attract many speculators and the smaller hedgers. Absence of regulation and proper clearing arrangements, however, meant that these markets were mostly "regulated" by the reputation of the main players.

Responsibilities and Functions

The functions of the Forward Markets Commission are as follows:

(a) To advise the Central Government in respect of the recognition or the withdrawal of recognition from any association or in respect of any other matter arising out of the administration of the Forward Contracts (Regulation) Act 1952.

1. To keep forward markets under observation and to take such action in relation to them, as it may consider necessary, in exercise of the powers assigned to it by or under the Act.

• To collect and whenever the Commission thinks it necessary, to publish information regarding the trading conditions in respect of goods to which any of the provisions of the act is made applicable, including information regarding supply, demand and prices, and to submit to the Central Government, periodical reports on the working of forward

²⁰ Frida Youssef (October 2000). "Integrated report on Commodity Exchanges And Forward Market Commission (FMC)", FMC.
markets relating to such goods;

- To make recommendations generally with a view to improving the organization and working of forward markets;
- To undertake the inspection of the accounts and other documents of any recognized association or registered association or any member of such association whenever it considers it necessary.

It allows futures trading in 23 Fibers and Manufacturers, 15 spices, 44 edible oils, 6 pulses, 4 energy products, single vegetable, 20 metal futures, 33 others Futures.

The commission appeared in the news in March 2012 for their controversial ban on guar gum futures trading after it said the price quadrupled due to its use in fracking causing food inflation.