Investor Protection

Protection of the Interest of the Investor

Investors are the backbone of the securities market. They not only determine the level of activity in the securities market but also the level of activity in the economy. The growth in the numbers of investors in India is encouraging. The trends reveal that in addition to FIIs and Institutional Investors, small investors were also gradually beginning to regain the confidence in the capital markets that had been shaken consequent to the stock market scams during the past decade. It is imperative for the healthy growth of the corporate sector that this confidence is maintained. However, many investors may not possess adequate expertise/knowledge to take informed investment decisions. Some of them may not be aware of the complete risk-return profile of the different investment options. Some investors may not be fully aware of the precautions they should take while dealing with market intermediaries and dealing in different securities. They may not be familiar with the market mechanism and the practices as well as their rights and obligations.

The corporate systems and processes need to be credible and transparent, so that the interests of the investors may be safeguarded in a manner that enables them to exercise their choice in an informed manner while making investment decisions, and also providing them with a fair exit option. The Securities and Exchange Board of India (SEBI) has been mandated to protect the interests of investors in securities and to promote the development and regulate the securities market so as to establish a dynamic and efficient Securities Market contributing to Indian Economy.

The concept of investor protection has to be looked at from different angles taking into account the requirements of various kinds of investors i.e.

1. Investors in equity
2. Large institutional investors
3. Foreign Investors
4. Investors in debentures
5. Small investors/deposit holders etc.

SEBI does not give a guarantee for payment of money rather it helps you in recovering the amount back from the concerned entity (broker).

WORRIES FOR THE INVESTORS

In India, the worries for the investors in the securities market are shortage of application forms, preferential allotment to the financial institutions, miss-statements, concealment of facts and pushing the issue through advertisement, fraudulent company management, price volatility, price manipulation, insider-trading, unfair trade practices of brokers and sub-brokers, increasing the number of vanishing companies, lack of commitment for the corporate entities, stock market scams, price rigging, insider- trading, lack of professional expertise, defaults committed by brokers, multiplicity of number of investor complaints, absence of genuine investors, price rigging before issue, prevalence of insider-trading, lack of liquidity, scarcity of floating securities, lack of transparency, high volatility in the secondary market, dominance of public sector and financial institutions. The Former Chairman of SEBI G.N. Bajpai has so expressed in his tenure period as "My main priority is to build investors confidence and bring the small investor back". The same view was expressed in the report of the expert group headed by Justice Kania, for suggesting amendments to Securities and Exchange Board of India Act, 1992 deliberated that the investors in the equity market invest in risk capital and no assured return or compensation for non fulfillment of every expectation may be provided in the statute. However, the compensation in respect of fraud or misrepresentations or miss-statements by companies or intermediaries may be considered. Further, the compensation to small investors in respect of fraud or misrepresentations or miss-statements by companies or intermediaries may be considered as a matter of investor protection.

Regulatory Framework

At present, the five main Acts governing the securities markets are:

(a) The SEBI Act, 1992

(b) The Companies Act, 1956, which sets the code of conduct for the corporate sector in relation to issuance, allotment, and transfer of securities, and disclosures to be made in public issues.

(c) The Securities Contracts (Regulation) Act, 1956, which provides for the regulation of transactions in securities through control over stock exchanges.

(d) The Depositories Act, 1996 which provides for electronic maintenance and transfers of ownership of demat (dematerialized) shares.
(e) The Prevention of Money Laundering Act, 2002.

Legislations

The SEBI Act, 1992: The SEBI Act, 1992 was enacted to empower SEBI with statutory powers for:
(a) Protecting the interests of investors in securities,
(b) Promoting the development of the securities market, and
(c) Regulating the securities market. Its regulatory jurisdiction extends over corporate in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with the securities market.
It can conduct enquiries, audits, and inspection of all concerned, and adjudicate offences under the Act. It has the powers to register and regulate all market intermediaries, as well as to penalize them in case of violations of the provisions of the Act, Rules, and Regulations made there under. SEBI has full autonomy and the authority to regulate and develop an orderly securities market.
Securities Contracts (Regulation) Act, 1956: This Act provides for the direct and indirect control of virtually all aspects of securities trading and the running of stock exchanges, and aims to prevent undesirable transactions in securities. It gives the Central Government regulatory jurisdiction over:
(a) Stock exchanges through a process of recognition and continued supervision,
(b) Contracts in securities, and
(c) The listing of securities on the stock exchanges.

As a condition of recognition, a stock exchange complies with the conditions prescribed by the Central Government. Organized trading activity in securities takes place on a specified recognized stock exchange. The stock exchanges determine their own listing regulations, which have to conform to the minimum listing criteria set out in the Rules

Rules and Regulations

The Government has framed rules under the SCRA, the SEBI Act, and the Depositories Act. SEBI has framed regulations under the SEBI Act and the Depositories Act for the registration and regulation of all market intermediaries, and for the prevention of unfair trade practices, insider trading, etc. Under these Acts, the Government and SEBI issue notifications, guidelines, and circulars that the market participants need to comply with. The SROs, like the stock exchanges, have also laid down their own rules and regulations

Investors Protection Fund (IPF)

The Government has established an Investor Education and Protection Fund (IEPF) under Sec. 205 C of the Companies Act, 1956 under which unclaimed funds on account of dividends, matured deposits, matured debentures, share application money etc. are transferred through the IEPF to the Government by the company on completion of seven years. The Government is required to utilize this amount through an Investor Education and Protection Fund. For this purpose, the proceeds from the companies are credited to the Consolidated Fund of India through this fund. The Fund may then be entrusted with full fledged responsibility to carry out activities for education of investors and protection of their rights.

BSE is the first Exchange to have set up the 'Stock Exchange Investors Protection Fund (IPF) in the interest of the customer's of the defaulter members of the Exchange. This fund was set up on 10th July, 1986 and has been registered with the Charity Commissioner, Government of Maharashtra as a Charitable Fund. The maximum amount of Rs. 10,00,000 payable to an investor from Investor Protection Fund in the event of a default by a Trading Member has been revised to Rs. 15,00,000; which shall be applicable to the clients of the Trading Member of the Exchange, who will be declared Defaulter after 5th December, 2009. (This has been progressively raised by BSE from Rs.10,000 in 1988 to the present level).

BSE is the only Exchange in India, which offers the highest compensation of Rs.15lacs in respect of the approved claims of any Investor against the defaulter Trading Members of the Exchange.

The Trading members at present contribute 1 paisa per 1lakh of gross turnover. The Stock Exchange contributes 2.5% of the listing fees collected by it. Also the entire interest earned by the Exchange on 1% security deposit kept by with it by the companies making public / rights issues is credited to the Fund.

Investor Awareness Program

Launching the Securities Market Awareness Campaign organized by SEBI (January 2003), the Prime Minister said the prolonged quietness in the stock markets had tested the confidence of the small investor who was the backbone of the securities market. If investors are not attracted, then companies will not be able to raise money through the capital market. The Indian household investor, off late, has been putting much of his savings in non-financial assets. Even with financial assets, most of the savings are going to the banking system. This is not the best or the most productive use of our savings, he said. In recent years, there had been many instances of companies raising money from the market by creating hype and then defrauding the investor. Many of them issued shares at hefty premiums; most of their scrip are now trading well below their face value. Stock market scams brought a bad name to the Indian business community. This is how boom went bust and hopes turned to dust for many gullible investors. And that is how the investor community lost confidence in the market, leading to prolonged stagnation. The Prime Minister, therefore, called upon the market regulator and the intermediaries to learn the right lessons from our experience of the past few years. He said we need markets that are known for their safety and integrity.

Investor Awareness Program

Investor Awareness programs are being regularly conducted by stock exchanges to educate the investors and to create awareness among the Investors regarding the working of the capital market and in particular the working of the Stock Exchanges. These programs have been conducted in almost all over the country.

The Investor Awareness program covers extensive topics like Instruments of Investment, Portfolio approach, Mutual funds, Tax provisions, Trading, Clearing and Settlement, Rolling Settlement, Investors' Protection Fund, Trade Guarantee Fund, Dematerialization of shares, information on Debt Market, Investors’ Grievance Redressal system available with SEBI, BSE & Company Law Board, information on Sensex and other Indices, workshops and Information on Derivatives, Futures and Options etc.

Further, for the benefit of the Investors’ the Bombay Stock Exchange has:

· BSE Training Institute which organizes Training programs periodically on various subjects like comprehensive programs on Capital Markets, Fundamental Analysis, Technical Analysis, Derivatives, Index Futures and Options, Debt Market, etc. Further, for the Derivatives market BSE also conducts the compulsory BSE's Certification on Derivatives Exchange (BCDE) certification for Trading Members and their dealers to impart basic minimum knowledge of the derivatives markets.

Compensation to the Investors

Capital market includes investment into risk bearing instruments. In such cases, the investor is required to make his own assessment of risk and reward. No compensation could be visualized for such investors whose investments were in risk bearing instruments. Similarly, investment in a fixed return instrument necessitated a careful review of the borrowing entity. Such actions would also be subjected to known or declared risks. Besides, the capital market also provides an opportunity for an investor to exit. The need therefore, is to ensure proper and healthy market operation so that investors could exercise their exit options in a reasonable and equitable environment. However, there may be situations where such a frame work is distorted through frauds. There may be provisions for compensation in the event of fraud by companies being established in securing funds from investors. For this purpose lifting of corporate veil may be enabled by the law.

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Investor Grievance Redressal

An effective investor grievance redressal mechanism at the corporate level could ensure protection of the interest of investors through timely interventions. The Stakeholders Relationship Committee should be mandatory for a company having a combined shareholder/deposit holder/debenture holder base of 1000 or more.

Disclosures and Investor Protection

Proper and timely disclosures are central to safeguarding investor interests. The law should ensure a disclosure regime that compels companies to disclose material information on a continuous, timely and equitable basis. Information should be disclosed when it is still relevant to the market. The companies should, therefore, be made to disclose routine information on a periodic basis and price sensitive information on a continuous basis. Capital market regulator and stock exchanges have a significant role to play in ensuring that such information is accessible by all market participants rather than a few select market players.

Use of modern technology, internet, computers, should be enabled to enhance the efficiency of the disclosure process. It should be possible to submit and disseminate financial and non-financial information by electronic means.

Investor Rights and obligations

Investor Rights:

The right to get

· The best price

· Proof of price/brokerage charged.

· Money/shares on time.

· Shares through auction where delivery is not received.

· Square up amount where delivery not received in auction.

· Statement of Accounts from trading member.

Investor Obligations

The obligation to :

· Sign a proper Member-Constituent Agreement

· Possess a valid contract or purchase/sale note

· Deliver securities with valid documents and proper signatures

The right for redressal against:

· Fraudulent price

· Unfair brokerage

· Delays in receipt of money or shares

· Investor unfriendly companies

The obligation to ensure :

· To make payment on time

· To Deliver shares on time

· To send securities for transfer to the company on time.

· Forwarding all the papers received from the company under objections to the broker on time

Steps taken by SEBI to make investors aware of their rights and obligations

The Primary function of Securities and Exchange Board of India under the SEBI Act, 1992 is the protection of the investors' interest and the healthy development of Indian financial markets. No doubt, it is very difficult and herculean task for the regulators to prevent the scams in the markets considering the great difficulty in regulating and monitoring each and every segment of the financial markets and the same is true for the Indian regulator also. But what are the responsibilities of the regulators to set the system right once the scam has taken place, especially the responsibility of redressing the grievances of the investors so that their confidence is restored? The redressal of investors' grievances, after the scam, is the most challenging task before the regulators all over the world and the Indian regulator is not an exception. One of the weapons in the hand of the regulators is the collection and distribution of disgorged money to the aggrieved investors. SEBI had issued guidelines for the protection of the investors through the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000. The Securities and Exchange Board of India under Section 11 of the Securities and Exchange Board of India Act, 1992, have issued these Guidelines.

SEBI launched a comprehensive education campaign aimed at creating awareness among investors about securities market, which has been christened – "Securities Market Awareness Campaign" (SMAC). The motto of the campaign is – 'An Educated Investor is a Protected Investor.'

The campaign was launched at the national level by the then Prime Minister, Shri Atal Bihari Vajpayee, on January 17, 2003. The national launch was closely followed by launches in 12 states. The structural foundation of the campaign is based on workshops that are being conducted all across the country with the continued and active participation of market participants, market intermediaries, Investors Associations etc, to spread SEBI's message of "Invest with Knowledge".

Workshops- At workshops, the aim is to acclimatize the investors with the functioning of the securities market, the basic fundamentals of investment and risk management and their rights and responsibilities

Till date, more than 2188 workshops have been conducted in around 500 cities/towns across the country.

Advertisement- SEBI has prepared simple "dos and don'ts" for investors relating to various aspects of the securities market. Till date, over 700 advertisements relating to various aspects of Securities Market have appeared in 48 different newspapers/magazines, covering approximately 111 cities and 9 regional languages, apart from English and Hindi.

Educative Materials-SEBI has prepared a standardized reading material and presentation material for the workshops.

All India Radio- With regard to educating investors through the medium of radio, SEBI Officials regularly participate in programmes aired by All India Radio.

Cautionary Message on television- With a view to use the electronic media to reach out to a larger number of investors, a short cautionary message, in the form of a 40 seconds film let, has been prepared and the same is being aired on television
Internet based response system: A simple and effective internet based response to investor complaints has been set up. On filing of your complaint electronically, an acknowledgement mail would be sent to your specified email address and you will be issued a complaint registration number instantaneously.

Grievances undertaken by SEBI

There will be occasions when you have a grievance against a listed company/intermediary registered with SEBI. In the event of such grievance you should first approach the concerned company/ intermediary against whom you have a grievance. However, you may not be satisfied with their response. Therefore, you should know whom you should turn to, to get your grievance redressed.

SEBI takes up grievances related to issue and transfer of securities and non-payment of dividend with listed companies. In addition, SEBI also takes up grievances against the various intermediaries registered with it and related issues.

General Do's and Don'ts for Investors

Do's

1. Always deal with the intermediaries registered with SEBI/ stock exchanges.

2. Always keep copies of all investment documentation (e.g. application forms, acknowledgement slips, contract notes).

3. Always keep copies of documents you are sending to companies etc.

4. Send important documents by reliable mode / registered post to ensure deliver.

5. Ensure that you receive contract note at the end of the day/ account statements for every transaction.

6. Ensure that you have money before you buy.

7. Always settle the dues through the normal banking channels with the market intermediaries.

8. Ensure that you have are holding securities before you sell.

9. Follow up diligently and promptly e.g. If you do not receive the required documentation within a reasonable time contact the concerned person i.e. the Trading Member, Company etc. immediately.

10. Give clear and unambiguous instruction to your Trading Member /agent/ depository participant.

11. Mention clearly whether you want to transact in physical mode or demat.

12. Investors should take informed investment decision without being influenced by misleading recommendations given in the public media such as newspapers, electronic media, website etc. verify all the claims made in such advertisements.

13. Before placing an order with the market intermediaries, please check about the credentials of the companies, its management, fundamentals and recent announcements made by them and various other disclosures made under various regulations. The sources of information are the websites of Exchanges and companies, databases of data vendor, business magazines etc.

14. Adopt trading / investment strategies commensurate with your risk-bearing capacity as all investments carry some risk, the degree of which varies according to the investment strategy adopted.

15. Carry out due diligence before registering as client with any intermediary. Carefully read and understand the contents stated in the Risk Disclosure Document, which forms part of the investor registration requirement for dealing through brokers.

16. Be cautious about stocks which show a sudden spurt in price or trading activity, especially low price stocks.

17. There are no guaranteed returns on investment in the stock market.

18. Lodge your complaint or Arbitration Application against the Trading Member, at the concerned Regional Arbitration Centre, by confirming geographical jurisdiction.

The period consumed in redressal of complaint thru IGRC services will not be considered while measuring period of ‘limitation’ in filing arbitration application provided the complaint and / or arbitration application is / are filed at the concerned Regional Arbitration Centre.

19. Lodge your complaint against a company listed on BSE, at the concerned Regional Arbitration Centre, by confirming geographical jurisdiction. Please use your address for deciding the geographical jurisdiction. This will enable to process the complaint expeditiously.

Don’ts

1. Don’t deal with unregistered Trading Members/ sub-brokers, intermediaries.

2. Don't execute any documents with any intermediary without fully understanding its terms and conditions.

3. Don’t file your grievance/s and / or arbitration application against trading member, in the Regional Arbitration Centre having no geographical jurisdiction over the matter.
The Exchange redresses investors’ complaints through arbitration and IGRC mechanism, which are quasi-judicial in nature. The period consumed in redressal of complaint thru IGRC will not be considered while measuring period of ‘limitation’ in filing arbitration application provided the complaint is filed at the concerned Regional Arbitration Centre.

4. Don’t file your grievance /s against companies listed on BSE, in the Regional Arbitration Centre having no geographical jurisdiction over the matter, for its expeditious redressal.

5. Don’t forgo taking due documents of transactions, in good faith even from people whom you know.

6. Don’t fall prey to promise of unrealistic high returns.

7. Don’t get misled by companies showing approval / registrations from Government agencies as the approvals could be for certain other purposes and not for the securities you are buying.

8. Don’t transact based on rumours generally called ‘tips’.

9. Don't leave the custody of your Demat Transaction slip book in the hands of any intermediary.

10. Don’t forget to take note of risks note of risks involved in the investment.

11. Don’t get misled by guarantees of repayment of your investments through post-dated cheques.

12. Don’t hesitate to approach concerned persons and then the appropriate Authorities.

13. Don’t get swayed by promises of high returns.

14. Don't get carried away with advertisements about the financial performance of companies in print and electronic media.

15. Don't blindly follow media reports on corporate developments, as some of these could be misleading.

16. Don't blindly imitate investment decisions of others who may have profited from their investment decisions.

Grievance Redressal

There will be occasions when you have a grievance against the company in which you are a stake-holder. It may be that you have not received the share certificates on Allotment or on transfer, it may be that you did not receive the dividend/ interest warrant or refund order, perhaps you did not receive the Annual accounts etc. You would first approach the company in that regard you may not be satisfied with the company’s response there to .You would like to know whom you should contact to get your grievance redressed. The following table would provide you the guidance in this regard.

	Types of Complaints	Can be taken up with
a.	Re-validation of transfer deeds	Registrar of Companies (RoC)
b.	Regarding bad delivery of shares	Bad Delivery Cell of the Stock Exchange
c.	Regarding shares or debentures in unlisted companies	Ministry of Corporate Affairs
d.	Deposits in collective investment schemes like plantations etc.	SEBI

e.	Units of Mutual Funds	SEBI
f.	Fixed Deposits in Bank and Finance Companies	Reserve Bank of India
g.	Fixed Deposits in manufacturing companies	Dept. of Company Affairs
h.	Non-receipt of money: Refund in Public / Rights issue Interest on debt securities Redemption of debt securities Fractional entitlement	Stock Exchange / SEBI
i.	Non-receipt of Equity shares (demat & Physical): In Public / Rights issue (including allotment letter) Remit Transfer Transmission Conversion / endorsement / consolidation / splitting / duplicate certificate	Stock Exchange / SEBI
j.	Non-receipt of Debt Securities (demat & Physical): In Public / Rights issue (including allotment letter) Remit Transfer Transmission Conversion / endorsement / consolidation / splitting / duplicate certificate	Stock Exchange / SEBI
k.	Non receipt of corporate benefits / entitlements: Dividend Bonus Rights form Buyback letter of offer Delisting letter of offer Annual Report	Stock Exchange / SEBI

l.	Non-receipt of interest for delay in: Refunds Dividend Interest on debt security Redemption of debt security Securities	Stock Exchange / SEBI
m.	Others: (including non adherence to corporate governance norms)	Stock Exchange / SEBI

Reference:

http://www.legalservicesindia.com
https://www.sebi.gov.in/
https://www.rbi.org.in/