

Bar ^{and} Bench

The process and the past controversies in appointment of SEBI Chairman



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On January 24, 2020 the Department of Economic Affairs (DEA), Ministry of Finance (MoF), [released an advertisement](#) for filling up the post of Chairman, Securities and Exchange Board of India (SEBI) for a tenure not exceeding 5 years

Applications were invited from persons of ability, integrity, eminence and reputation with a preference for those with more than 25 years of professional experience (of law, finance, economics, accountancy, administration or in any other discipline which, in Government's opinion shall be useful to SEBI) and more than 50 years of age. Immediately after the release of the advertisement, the media is ripe with guesses of the names that may occupy the hot-seat on the 8th floor of SEBI Bhavan, Mumbai.

Interestingly, the incumbent Chairman, SEBI Mr. Ajay Tyagi was initially [appointed](#) for an earlier period of not exceeding 5 years or till 65 years of age or until further orders by the Appointments Committee of Cabinet (ACC). However, the gazette notification appointed him *'initially for a period of 03 years, from the date he assumes charge of the post, or until further orders, whichever is earlier'*.



Ajay Tyagi <https://www.newindianexpress.com/business/2020/jan/29/finance-ministry-hunts-for-new-sebi-chief-as-ajay-tyagis-tenure-ends-in-march-2095844.html>

The issuance of an advertisement by Finance Ministry has been taken to indicate that there may be a 9th chairperson of SEBI, although the incumbent is eligible for reappointment as well as for extension.

A look at the previous chairmen, their tenure and their background, suggests that largely bureaucrats (IAS) have been appointed with few exceptions so far. Further, no woman has headed SEBI so far. Further, appointment of at least 2 chairmen were challenged albeit unsuccessfully.

S.No	Chairperson	Tenure	Gazette Notification
1.	Ajay Tyagi, IAS (HP:1984)	01.03.2017 – Till date	S.O.521(E) dated 17.02.2017
2.	U.K. Sinha, IAS (Bihar: 1976) CMD, UTI AMC	18.02.2011 to 01.03.2017	S.O. 241(E) dated 03.02.2011 (Extended) S.O.363(E) dated 06.02.2014 w.e.f 18.02.2014 for 2 years (Reappointed) S.O.524(E) dated 18.02.2016 w.e.f 18.02.2016 up to 01.03.2017
3.	C.B. Bhave, IAS (MH: 1975), ex-NSDL	19.02.2008 to 17.02.2011	S.O.332(E) dated 15.02.2008
4.	M. Damodaran, IAS (MT: 1971)	18.02.2005 to 18.02.2008	S.O.233(E) dated 18.02.2005
5.	G. N. Bajpai, Chairman LIC	20.02.2002 to 18.02.2005	S.O.215(E) dated 19.02.2002
6.	D.R. Mehta, IAS (RJ: 1961)	21.02.1995 to 20.02.2002	S.O.109(E) dated 17.02.1995 for a period of 5 years from date of assuming charge upon bereavement of Mr. S.S. Nadkarni during tenure (Reappointed) S.O.139(E) dated 19.02.2000 w.e.f. 21.02.2000 for 2 years
7.	S.S. Nadkarni, ICICI/IDBI/LIC	17.01.1994 to 31.01.1995	Appointed for 3 years <i>vide</i> Notification no. S.O.27(E) dated 17.01.1994 on acceptance of resignation of Mr. G.V. Ramakrishna by Central Government
8.	G.V. Ramakrishna, IAS (AP: 1952)	24.08.1990 to 17.01.1994	Not traceable
9.	S. A. Dave, IDBI	12.04.1988 to 23.08.1990	Not traceable

Previous Chairmen of the SEBI

Process of Appointment

Section 4 of the SEBI Act, 1992 lays down provisions relating to the management of SEBI consisting of the following (9-member Board):

- 1 Chairman
- 2 members from the Ministry of Finance and Ministry of Corporate Affairs (MCA)
- 1 member from the officials of Reserve Bank of India (RBI)
- 5 other members of whom, at least 3 shall be Whole-Time Members (WTM)

The members of SEBI are appointed by the central government, save for officials from specific ministries and the RBI, who are nominated.



SEBI

Currently, SEBI has 4 WTM's - Mr. G Mahalingam (ex-ED, RBI), Ms. Madhabi Puri Buch (ex-ICICI Securities), Mr. S.K. Mohanty (ex-FMC, Income Tax), and Mr. Ananta Barua (ex ED, SEBI) – and 4 part-time members – Mr. Atanu Chakraborty (Secy, DEA, MoF), Mr. N.S. Vishwanathan (Dy. Governor, RBI), Mr. K.V.R Murty (Jt. Secy, MCA), Mr. Ravi Anshuman (IIM-B).

The appointment process is more specifically governed by the SEBI (Terms and Conditions of Service of Chairman and Members) Rules, 1992 (**Service Rules**). Rule 3 of the Service Rules dealing with the terms and conditions of service *inter alia* provides for the following with respect to the chairperson:

- S/he shall be a person who does not have any financial interests which may prejudicially affect their functions as a chairperson.
- S/he shall hold office for a period not exceeding 5 years but will be eligible for reappointment
- S/he shall not hold office after attaining 65 years of age

When a vacancy is advertised, the interested (and eligible) candidates are required to express interest by submitting application forms issued by the government along with certain specific reports and clearance certificates in case of Government Servants, employees of PSUs and Academic and Research Institutions, as provided in the respective advertisement.

The SEBI chairperson is appointed based on the recommendation of the Financial Sector Regulatory Appointments Search Committee (**FSRASC**). Prior to 2015, the recommendation was made by the Search-cum-Selection Committee (**SSC**), with a slightly different composition than the current FSRASC. However, due to certain litigation pending at Supreme Court and in order to bring uniformity to the process of appointment in the financial sector regulators, Government of India notified FSRASC. Presently, under the Service Rules, the FSRASC (for the purpose of appointing the Chairman) is composed of 6 individuals:

- Cabinet Secretary (Chairman) – Currently Mr. Rajiv Gauba, IAS (Bihar: 1982)
- Additional PS to the Prime Minister - Currently Dr. Pramod Kumar Mishra, IAS (GJ: 1972)
- Secretary, Department of Economic Affairs - Mr. Atanu Chakraborty, IAS (GJ: 1985)
- 3 outside experts of repute nominated by the Central Government

In the past, the outside experts have included a director of a National Law University, a director of an advanced research institute and a senior fellow at a leading Think Tank.

The FSRASC recommends names of chairperson and members of SEBI, IRDAI and the Governor and Deputy Governors of RBI. While the MoF has invited applications for SEBI Chairperson, the FSRASC also has the power to interview and/or recommend any other person who has not even applied for the post. Further, while FSRASC may recommend any person, it remains a recommendation and the Central Government is not bound by it. In the past, the Central Government had ignored the recommendation of the FSRASC for SEBI Chairman in 2016 and reappointed Mr. U.K. Sinha for a year, which was revealed through [reported RTI applications](#).

Interestingly, there has been [a time in the past](#) where a SEBI Chairman was called for an interview by Search cum Selection Committee for considering his extension / reappointment but he denied appearing before the committee, and rather chose to write a letter to Cabinet Secretary, saying he can be judged by his track record.

Past Controversies

The former chairmen have had their fair share of controversies and on more than one occasion, their appointments have been challenged. The most contested among the lot is that of the appointment, extension and reappointment of Mr. U.K. Sinha which was challenged through five different petitions.

UK Sinha



UK Sinha <http://www.businessworld.in/article/India-May-Soon-Allow-Institutions-To-Trade-Commodity-Futures-Says-Sebi-Chief-U-K-Sinha/17-02-2017-113122/>

In Writ Petition (Civil) No. 392 of 2011 filed in the Supreme Court of India (“**Supreme Court**”) challenging the appointment, the petitioners, including former Chief of Air Staff, alleged that the then finance minister interfered with SSC’s functioning and that such appointment will be detrimental to the independent functioning of SEBI. By its [order dated 21.11.2011](#), the Supreme Court noted that the petition was identical to Writ Petition No. 340 of 2011 and refused to intervene in the appointment/continuity of Mr. U.K. Sinha.

Separately, a [letter complaining of interference](#) by the Finance Minister along with Mr. U.K. Sinha into the investigations by SEBI in certain high-profile matters was written by Dr. K.M. Abraham, IAS (KL: 1982), former WTM, SEBI to the then Prime Minister of India.

In [Writ Petition \(Civil\) No. 374 of 2012](#) decided by the Supreme Court on 01.11.2013, the petitioner Arun Kumar Agrawal challenged the first appointment of Mr. U.K. Sinha on the grounds that he was not person of high integrity and his appointment was the result of manipulation, misrepresentation and suppression of vital material before the SSC and the ACC and that his appointment is *mala fide*. The Supreme Court, while noting that there were various reasons for the petition to not be maintainable, went into the merits of the petition and dismissed the petition stating that “*we have chosen to examine the entire issue to satisfy our judicial conscience that the appointment to such a High Powered Position has actually been made fairly and in accordance with the procedure established by law.*”

In [Writ Petition \(Civil\) No. 246 of 2012](#) which came up for hearing before the Supreme Court on 13.04.2016, the Apex Court noted that the due to amendment of the Service Rules, the concerns of the petitioners were taken care of and nothing further survived.

In [Writ Petition No. 238 of 2016](#), the one-year reappointment of Mr. U. K. Sinha was challenged and the petition was dismissed by the Supreme Court *vide* its order dated 26.04.2016 for lack of merits.

In [Arun Kumar Agrawal vs SEBI \(2016\)](#), disclosure of the assets and liabilities statement of Shri U.K. Sinha, Chairman, SEBI and the total emoluments along with perquisites were rejected by Chief Information Commission on the ground of lack of bona fide and unwarranted invasion of privacy of the individual.

CB Bhave



CB Bhave <https://www.livemint.com/Industry/rcUauQJl9uhOWNBD2IL2gP/CBI-working-with-crazy-logic-ignoring-facts-CB-Bhave.html>

When Mr. C. B. Bhave was appointed as SEBI Chairman, SEBI had already passed certain adverse orders against depositories in a matter relating to multiple demat IPO scam. Upon becoming Chairman of SEBI, Mr. C. B. Bhave (who was earlier the Chairman of National Securities Depositories Limited) had recused himself from issues relating to the IPO scam and the role of depositories. SEBI in fact in its Board Meeting held on 04.12. 2008, adopted a '[Code of Conflict of Interests for Members of Board](#)' in order to avoid conduct of its members which may compromise the ability of SEBI Chairman/Members to discharge their responsibilities free from any compromise.

In an unreported case decided by the Delhi High Court in WP (C) No. 6621/2010 in *Social Action Forum for Manav Adhikar v. Union of India & Ors.* (along with another PIL in Andhra Pradesh High Court [filed by one V Narayan Reddy](#) as per [media reports](#)) it was alleged that although the then chairman Mr. C. B. Bhave had recused himself from issues related to the IPO scam, the entire SEBI through the WTMs appointed by him to deal with the issues, showed undue favours to National Securities Depository Limited (NSDL) and the report of the Mohan Gopal-V Leeladhar Committee, in connection with the 2006 multiple-applications to IPO

(initial public offerings) scam, was not considered. In the same petition, appointment and continuity of Mr. C. B. Bhave was challenged. However, due to change in Chair, in Supreme Court, petition for Special Leave to Appeal (Civil) 2801/2011 [it was ordered by SC](#) if SEBI will re-consider the report of the Mohan Gopal-V Leeladhar Committee with reference to NSDL/DSQ and pass appropriate resolution, without going into merits of allegations with respect to eligibility/continuity of Mr. C. B. Bhave on the grounds of conflict of interest.

DR Mehta



Devendra Raj Mehta <https://www.skillsphere.org/global-jigyasa/padma-bhushan-devendra-raj-mehta/>

Another former chairman who had faced a challenge to his appointment for 5 years tenure was Mr. D.R. Mehta, on the concerns relating to term of appointment and the age limit, in [Arun Kumar Agarwal v. Union of India and Ors. \(2000\) 100 Comp Cas 406 \(Del\)](#) where ultimately the Delhi High Court dismissed the petition. The petitioner challenged the said appointment contending that the same had been made in violation of the provisions of rule 3(2) of Service Rules which provided a term not exceeding three years and that the power to relax the provision contained in rule 20 had not been exercised. Drawing the detailed reference to the notings of then Finance Minister and Cabinet Secretary, Delhi HC held that there was deemed relaxation by Central Government of three-year rule while making appointment for five years.

Separately, it is noteworthy that the most developed economies do not have any minimum age criterion to head securities regulators but only experience requirements. The likes of G. Bradford Cook, a distinguished lawyer at the age of 35 chairing U.S. Securities and Exchange Commission (SEC) in 1970s is still at least two decade away in the young, skilled and bureaucratic India.

While India is looking for a vibrant capital market, the appointment of SEBI Chair is in the spotlight. It is hoped that the process this time will not be mired in any controversy.

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