

When market infrastructure institutions become the state

ILLUSTRATION: BINAY SINHA

The concluding part of a three-part series on the Securities Markets Code turns the spotlight on MIIs, which are no longer operating on the margins of the state. Nor are they quasi-private regulators straddling public and private law



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The Securities Markets Code, 2025 (Code), quietly reconfigures India's regulatory state. For the first time, a parliamentary statute defines market infrastructure institutions (MIIs) to mean stock exchanges, clearing corporations, depositories, and other notified entities, and vests them with powers that are unmistakably public in character. What had earlier evolved through regulation, practice, and sporadic judicial recognition is now placed on a clear statutory footing. MIIs are no longer merely regulated market utilities; they are statutorily embedded organs of governance.

In their seminal work on regulatory delegation, political scientists Dietmar Braun and Fabrizio Gilardi describe the modern regulatory state as a hierarchy of principals and agents, authority flowing from the people to the legislature, to the executive, to specialised regulators, and further to subordinate bodies. By statutorily empowering MIIs to exercise regulatory, supervisory, and adjudicatory functions, the Code formalises the sixth layer in the chain, as statutory actors, exercising delegated state authority within a legally bounded framework.

This is reflected most starkly in the Code's provision enabling the Securities and Exchange Board of India (Sebi) to delegate to MIIs powers relating to the registration of intermediaries and investors. In exercising such delegated authority, MIIs must follow due process identical to Sebi's, adhering to fairness, confidentiality, and natural justice, including reasoned orders and the right of hearing. MIIs may also be entrusted with regulating classes of market participants. These are not auxiliary tasks; they are core regulatory functions.

The Code reinforces this transformation by insisting that MIIs be *registered*, not merely recognised. Recognition implies accreditation; registration confers statutory existence. An MII comes into being only upon registration *in the interest of trade and in public interest*, and remains subject to statutory conditions relating to governance, supervision, transparency, and even supersession. This decisively distinguishes MIIs from intermediaries, who serve clients, and from self-regulatory organisations, which represent sectional interests. MIIs do neither: They operate the market itself. They are not private bodies exercising discretion by regulatory tolerance; they are formal components of the state's market governance architecture.

Equally significant is the reconfiguration of *membership*. While exchanges and clearing corporations have long functioned through members, depositories are, for the first time, statutorily required to have members, namely, depository participants, who were previously treated as agents. Membership under the Code

is no longer just a functional right to access infrastructure. Members may hold shares in the MII and participate in institutional decision-making. Coupled with mandatory dispersed shareholding norms and demutualisation, this elevates members from users of infrastructure to stakeholders in governance, strengthening internal accountability while mitigating the risk of dominance by any single interest.

The public character of MIIs is reinforced through stringent governance requirements. Members of governing boards must meet eligibility and fit-and-proper criteria, and boards must include independent directors. The governing board is expected to act not as a representative forum of sectional interests, but as a fiduciary steward of the market's integrity. Importantly, the Code imposes confidentiality obligations on MIIs and their officers with respect to regulatory data and commercially sensitive information, underscoring their quasi-sovereign role in handling market-critical information.

MIIs are empowered to make bylaws governing their operations, the conduct of members, and even market participants. These bylaws are not private rules. They require public consultation, prior approval by Sebi, publication, and have to be laid before Parliament. The process closely mirrors Sebi's own regulation-making powers. Even Sebi may make or amend the bylaws in specified circumstances. The bylaws thus assume the character

of subordinate legislation exercised within a public-law framework. They must promote the objectives of the Code, ensure non-discriminatory access, prevent market abuse, foster transparency, and ensure interoperability across MIIs.

MIIs also perform executive functions. They supervise

members, enforce compliance, manage risk, and administer market operations. They have mechanisms to monitor and identify contraventions of the provisions of the Code, rules and regulations, or bylaws. When Sebi delegates registration or related regulatory tasks, MIIs act as the frontline regulators of securities regulation.

The Code vests MIIs with quasi-judicial powers. Contraventions of bylaws are addressed through structured proceedings grounded in natural justice, culminating in reasoned orders that may impose penalties, suspend or expel members, annul transactions, or direct payment of compensation. Sebi has concurrent enforcement powers for non-com-

pliance with MII bylaws. A person aggrieved by an order or decision of an MII may prefer an appeal to the Securities Appellate Tribunal, and civil courts are barred from exercising jurisdiction over matters entrusted to MIIs.

Operational independence is integral to the MII framework. While MIIs remain subject to Sebi's oversight, their day-to-day regulatory, supervisory, and enforcement functions are insulated from ad hoc interference from any authority. The autonomy within a clearly defined statutory framework mirrors the design of modern regulators.

With power comes accountability. The Code subjects MIIs to a transparency and accountability regime: Publication of bylaws and decisions, submission of annual reports, fit-and-proper requirements for directors, and the ultimate sanction of supersession in defined circumstances. Supersession is a sovereign remedy, and its availability leaves no doubt that MIIs are treated as public institutions exercising delegated state power.

Taken together, these provisions complete a long arc of regulatory evolution. MIIs are no longer market utilities operating on the margins of the state. Nor are they quasi-private regulators straddling public and private law. They are statutory institutions exercising quasi-legislative, executive, and quasi-judicial powers within a constitutionally recognisable framework. The Code takes regulatory norms that had evolved piecemeal through circulars, bylaws, regulations, and earlier statutes, confers upon them an explicit state character, and elevates them to a higher statutory pedestal.

This recognition carries consequences. Institutions entrusted with state functions must meet state standards of governance, independence, transparency, and accountability, not as a matter of regulatory grace, but as a matter of constitutional discipline. The Code supplies much of this architecture, but its success will rely on implementation and institutional self-understanding. MIIs must now see themselves not merely as service providers to the market or platforms for commercial activity, but as public institutions exercising delegated sovereign authority in trust for investors and the market as a whole. Courts, regulators, and policymakers, in turn, must hold them to that standard. If this culture shift accompanies the shift in law, the Code will have achieved more than regulatory reform; it will have constitutionalised the infrastructure of India's securities markets.

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