By the end of this chapter, students will be able to-

- Explain the role, powers and functions of the Securities and Exchange Board of India
- Identify how the SEBI regulates the capital markets in India under a resolution of the Government of India.
- Understand the prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control
- Know the penalties and adjudication and identify the establishment, jurisdiction, authority and procedure of Appellate Tribunal.
- Know about the significant regulations governed by the SEBI (ICDR) Regulations, 2009 and SEBI (LODR), Regulations, 2015.
1. INTRODUCTION

The Securities and Exchange Board of India was established in 1988. It got legal character in 1992. SEBI was primarily set up to regulate the activities of the merchant banks, to control the operations of mutual funds, to work as a regulator of the stock exchange activities and to act as a regulatory authority of new issue activities of companies. The reason the SEBI was constituted was because before the SEBI the law relating to the securities market in India was contained in different enactments like Companies Act, 1956, Securities Contract (Regulation) Act, 1956, and the Capital Issues (Control) Act, 1947. Then, at times when the capital market witnessed tremendous growth, it was found, that the legislation was scattered in different laws and administrative agencies did not have proper manpower or expertise to deal with the investors. Even there was no monitoring or prosecuting machinery to check malpractices, insider trading, etc. Then, Government of India decided to set up an agency or regulatory body known as Securities Exchange Board of India (SEBI). It was constituted on 12th April 1988 as an interim administrative body under the Finance Ministry. In April, 1988 the SEBI was constituted as the regulator of capital markets in India under a resolution of the Government of India.

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.

The prime objective of the SEBI Act,1992 are:

1. Protecting the interests of the investors in securities;
2. Promoting the development of, and;
3. Regulating, the securities market and for matters connected therewith or incidental thereto.

SEBI as the watchdog of the industry has an important and crucial role in the market participants and crucial role in the market participants perform three duties in accordance with the regulatory norms. The preamble of the SEBI describes the basic functions of the SEBI as ‘...to protect the interest of investors in the securities and to promote the development of, and to regulate the securities market and for matters connected therewith’.

This SEBI Act deemed to have come into force on the 30th day of January, 1992 and extended to whole of India as per section 1 of the SEBI Act, 1992.

2. IMPORTANT DEFINITIONS

According to section 2 of the SEBI Act, 1992, following are some of the important definitions of terms used in the Act-

Board means the Securities and Exchange Board of India established under section 3; [Section 2(1) (a)]
**Collective investment scheme** means any scheme or arrangement which satisfies the conditions specified in section 11AA [Section 2(1)(ba)]

1. **Judicial Member** means a Member of the Securities Appellate Tribunal appointed under sub-section (1) of section 15MA and includes the Presiding Officer; [Section 2(1)(db)]

**Member** means a member of the Board and includes the Chairman; [Section 2(1)(e)]

**Regulations** means the regulations made by the Board under this Act; [Section 2(1)(h)]

**Reserve Bank** means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 [Section 2(1)(ha)]

**Securities** has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(1)(i)]

2. **Technical Member** means a Technical Member appointed under sub-section (1) of section 15MB. [Section 2(1)(j)]

(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996, shall have the meanings respectively assigned to them in that Act.

### 3. ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

**Establishment and incorporation of Board [Section 3]**

SEBI (hereinafter called 'the Board') has been established as-

- a body corporate
- having perpetual succession and a common seal,
- with powers to acquire, hold and dispose of property, both movable and immovable, and
- to contract as also to sue or be sued by the name of SEBI.
- The head office of the Board shall be at Mumbai.
- Further the Board may establish offices at other places in India.

**Management of the Board [Section 4]**

The SEBI board is managed by its members, which consists of following:

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1 Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Pt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

2 Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Pt II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

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The Chairman and the five other members as referred in the section, shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance; economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board [Section 4(5)].

The general superintendence, direction and management of the affairs of the Board shall vest in a Board of Members, which may exercise all powers and do all acts and things, which may be exercised or done by the Board. [Section 4(2)]

**Term of office and conditions of service of Chairman and members of the Board [Section 5]**

The term of office and other conditions of service of Chairman and other Members of the Board as appointed in section 4(1)(d) shall be such as may be prescribed by rules made under the Act.

The Central Government will have the right to terminate the services of the Chairman or other members appointed to the Board (other than its own officials or of the Reserve Bank on the Board) at any time before the expiry of their tenure-

- by giving not less than three months’ notice in writing, or
- three months’ salary and allowance in lieu thereof.

The Chairman and other members shall have the right to relinquish office at any time before the expiry of their tenure by giving a notice of three months in writing to the Central Government.

As per the rules framed in this regard, the Chairman and Whole time Members may hold office for a period of three years subject to the maximum age limit of 65 years and can be re-appointed by the Central Government.

A part-time member may also hold office for a maximum of three years but there is no age limit.
Removal of Members of the Board [Section 6]
The Central Government shall have the power to remove a member or the Chairman appointed to the Board, if he:

- at any time has been adjudicated as insolvent;
- has been declared by a competent court to be of unsound mind;
- has been convicted of an offence which in the opinion of the Central Government, involves a moral turpitude.
- has in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member or the Chairman, he will be given a reasonable opportunity of being heard in the matter.

Meetings of the Board [Section 7]
The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations made under Section 30 of the Act.

In the absence of the Chairman, if for any reason, he is unable to attend a meeting, any member chosen by the members present from amongst themselves shall preside over the meeting.

Decision by majority vote: All questions which come up before any meeting shall be decided by majority vote of the members present and the Chairman or the presiding member will have a second or casting vote, in the event of equality of votes.

Member not to participate in meetings in certain cases [Section 7A]
Any member-

- who is a director of a company, and
- who as such director has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board,

shall, as soon as possible after relevant circumstances have come to his knowledge, disclose the nature of his interest at such meeting and such disclosure shall be recorded in the proceedings of the Board, and the member shall not take any part in any deliberation or decision of the Board with respect to that matter.
2.6 CORPORATE AND ECONOMIC LAWS

Vacancies, etc., not to invalidate proceedings of the Board [Section 8]

- Any vacancy in the Board shall not invalidate any of the acts or proceeding of the Board. Similarly, the following reason shall not invalidate any act or proceeding of the Board-

4. POWERS AND FUNCTIONS OF SEBI [SECTION 11]

Subject to the provisions of this Act, it shall be the duty of the Board to protect the interest of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

The measures may provide for:

(a) regulating the business in stock exchanges and any other securities markets;
(b) registering and regulating the working of stock brokers, sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be associated with securities markets in any manner;
(ba) registering and regulating the working of the depositories, participants, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.
(c) registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
(d) promoting and regulating self-regulatory organisations;
(e) prohibiting fraudulent and unfair trade practices relating to securities markets;
(f) promoting investors' education and training of intermediaries' of securities markets;
(g) prohibiting insider trading in securities;
(h) regulating substantial acquisition of shares and take-over of companies;

(i) calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with securities market, intermediaries and self-regulatory organizations in the securities market;

(ia) calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;

(ib) calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;

(j) performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956, as may be delegated to it by the Central Government.

(k) levying fees or other charges for carrying out the purposes of this section.

(l) conducting research for the above purposes;

(la) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions.

(m) performing such other functions as may be prescribed.

Power with respect to inspection of books and Documents: Further, the Board may take measures to undertake inspection of any book, or register, or other document or record of any listed public company or a public company which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market.

Board are vested with same power as that of civil court: The Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:
Passing of an order by an Board: The Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

(a) suspend the trading of any security in a recognised stock exchange;

(b) restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

(c) suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;

(d) impound and retain the proceeds or securities in respect of any transaction which is under investigation;

(e) attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:
However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

(f) direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

The amount disgorged, pursuant to a direction issued, under the SEBI Act or the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996, as the case may be-

- shall be credited to the Investor Protection and Education Fund (IPEF) established by the Board, and
- such amount shall be utilised by the Board in accordance with the regulations made under this Act.”.

Additional functions of SEBI under the Securities Contracts (Regulation) Act, 1956: The Securities Contracts (Regulation) Act, 1956 which was enacted to prevent undesirable transactions in securities and to regulate the business of securities had given certain powers to the Central Government, under the provisions of that Act. The functions of the Central Government under that Act have been granted to SEBI. These functions are:

(a) Power to call for periodical returns or direct enquiries to be made (Section 6 of SCRA): SEBI will receive from every recognised Stock Exchange such periodical returns relating to its affairs as may be prescribed by SCRA rules.

<table>
<thead>
<tr>
<th>Description of Powers</th>
<th>Powers of SEBI</th>
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<tbody>
<tr>
<td>Power to inspect</td>
<td>It shall be open to SEBI to inspect at all reasonable times books of accounts and other documents to be maintained by the Stock Exchanges for periods not exceeding five years as may be prescribed in the public interest and in the interest of trade by the Central Government.</td>
</tr>
<tr>
<td>Power of SEBI to call for information/ explanation relating to affairs of the stock exchange</td>
<td>It shall also be open to SEBI to call upon recognised stock exchanges or any member thereof to furnish in writing such information or explanation relating to the affairs of the Stock Exchange or of the member in relation to the stock exchange as may be required by SEBI in the interest of trade or in the public interest.</td>
</tr>
<tr>
<td>SEBI to appoint persons to make an inquiry</td>
<td>It shall also be open to SEBI to appoint, by order in writing, one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the stock exchange.</td>
</tr>
</tbody>
</table>
### 2.10 CORPORATE AND ECONOMIC LAWS

| **governing body of stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such enquiry to SEBI within the time as, specified in the order. In the case of affairs of any of the members/ of a stock exchange, SEBI can direct the governing body of such stock exchange to make an inquiry and submit its report.** |
| **SEBI will bound the concerned persons to produce documents before himself /other enquiry officer** |
| **Every director, manager, secretary or other officer of such stock exchange, every member of such stock exchange and every constituent or agent of such member if it is a firm and every other person or body of persons having dealings with any of these persons whether directly or indirectly shall be bound to produce before SEBI or other enquiry officer, all books of accounts and other documents in his custody or power relating to the subject matter of the enquiry. This has to be done within the time specified and as may be required by the enquiry authority.** |

(b) **Power to approve the bye-laws of stock exchanges:** Section 9 of SCRA provides that any recognised stock exchange may make bye-laws for the regulation and control of contracts with the previous approval of SEBI. Such bye-laws may provide for submission of periodical settlements carried out by clearing houses to SEBI or publication of such particulars by clearing houses subject to SEBI’s directions. Such bye-laws have to be published for public comments and after approval by SEBI shall have to be published in the Gazette of India and also in the Official Gazette of the State unless SEBI, by written order with reasons dispense with the condition of previous publication.

(c) **Power of SEBI to make or amend bye-laws of recognised stock exchanges (Section 10, SCRA):** SEBI may either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion make bye-laws on matters specified in Section 9 of SCRA or amend any bye-laws made by such stock exchange. SEBI will have to be satisfied, after consultation with the governing body of the stock exchange, that it is necessary or expedient to make or amend the bye-laws and record its reasons also.

(d) **Licensing of dealers in securities in certain areas (Section 17 SCRA):** SEBI has been empowered to grant a license to any person for the business of dealing in securities in any State or area to which Section 13 of SCRA has not been declared to apply. Section 13 of SCRA deals with contracts in notified areas to be illegal in certain circumstances.
(e) **Public Issue and listing of securities referred to in section 2 (h) (ie) of SCRA:** As per section 17A, securities of the nature referred to in section 2 (h) (ie) shall be offered to the public or listed on any stock exchange unless the issuer fulfills eligibility criteria and complies with other requirements as may be specified by SEBI by regulations.

(f) **Power to delegate:** Section 29A of SCRA provides that the Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of the SCRA shall, in relation to such matters and subject to such conditions, if any as may be specified in the order, be exercisable also by SEBI or the Reserve Bank of India.

**More Powers for SEBI:** Certain additional powers with regard to certain provisions under the Companies Act, 2013, related to issue and transfer of securities and non-payment of dividend, in the case of listed public companies intending to get their securities listed on any recognised stock exchange, shall be administered by SEBI.

5. **BOARD TO REGULATE OR PROHIBIT ISSUE OF PROSPECTUS, OFFER DOCUMENT OR ADVERTISEMENT SOLICITING MONEY FOR ISSUE OF SECURITIES [SECTION 11A]**

(1) As per the section, the Board may, for the protection of investors,—

Specify, by regulations

- the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
- the manner in which such matters shall be disclosed by the companies;

by general or special orders—

- prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
- specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

(2) The Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.

6. **COLLECTIVE INVESTMENT SCHEME [SECTION 11AA]**

Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) or sub-section (2A) shall be a collective investment scheme.
Provided that any pooling of funds under any scheme or arrangement, which is not registered with the Board or is not covered under sub-section (3), involving a corpus amount of one hundred crore rupees or more shall be deemed to be a collective investment scheme.

Requisite conditions: Any scheme or arrangement made or offered by any person under which, -

(i) the contributions, or payments made by the investors, by whatever name called, are pooled and utilized for the purposes of the scheme or arrangement;

(ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive profits, income, produce or property, whether movable or immovable, from such scheme or arrangement;

(iii) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors;

(iv) the investors do not have day-to-day control over the management and operation of the scheme or arrangement.[Sub-section 2]

(v) Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act [sub-section (2A)].

Exceptions: Any scheme or arrangement -

(i) made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;

(ii) under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

(iii) being a contract of insurance to which the Insurance Act, 1938 applies;

(iv) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952;

(v) under which deposits are accepted under the Companies Act, 2013

(vi) under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under the Companies Act, 2013;

(vii) falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;

(viii) under which contributions made are in the nature of subscription to a mutual fund;

(ix) such other scheme or arrangement which the Central Government may, in consultation with the Board, notify,

-shall not be a collective investment scheme.
7. POWER TO ISSUE DIRECTIONS [SECTION 11B]

Save as otherwise provided in Section 11, if after making or causing to be made an enquiry, the Board is satisfied that it is necessary:

- in the interest of investors, or orderly development of securities market; or
- to prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to interest of investors or securities market; or
- to secure the proper management of any such intermediary or persons,

Board may issue directions

to any person or class of persons

to any company in respect of matters specified in Section 11A,

referred to in Section 12, or

associated with the securities market;

in the interests of investors in securities, and

the securities market.

Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.
8. INVESTIGATION [SECTION 11C]

(1) **Grounds for issue of an order of investigation:** Where the Board has reasonable ground to believe that—

(a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or

(b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board there under.

It may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the securities market and to report thereon to the Board.

(2) **Furnishing of relevant documents to the investigating authority:** It shall be the duty of—

- every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12, or
- every person associated with the securities market to preserve, and
- to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

(3) **Period of custody:** The Investigating Authority may keep in its custody any books, registers, other documents and record produced for six months and thereafter shall return the same to any intermediary or any person associated with securities market by whom or on whose behalf the books, registers, other documents and record are produced:

The Investigating Authority may call for any book, register, other document and record if they are needed again.

If the person on whose behalf the books, registers, other documents and record are produced requires certified copies of the books, registers, other documents and record produced before the Investigating Authority, it shall give certified copies of such books, registers, other documents and record to such person or on whose behalf the books, registers, other documents and record were produced.

(4) **Examination on oath:** Any person, directed to make an investigation, may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his
business and may administer an oath accordingly and for that purpose may require any of
those persons to appear before it personally.

(5) **On failure**: If any person fails without reasonable cause or refuses—

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<tr>
<th>Failure in compliance</th>
<th>Punishment</th>
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<tr>
<td>(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty to produce; or</td>
<td>Person shall be punishable with-</td>
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<td>• imprisonment for a term which may extend to one year, or</td>
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<td></td>
<td>• with fine, which may extend to one crore rupees, or</td>
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<td>• with both, and</td>
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<td>• also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.</td>
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<td>(b) to furnish any information which is his duty to furnish; or</td>
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<td>(c) to appear before the Investigating Authority personally or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or</td>
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<td>(d) to sign the notes of any examination,</td>
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(6) **Notes of examination to be used as examination**: Notes of any examination shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

(7) **Impounding of documents**: Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and record.

(8) **Demand of services of other officers**: The authorized officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes as specified above with respect to impounding of documents and it shall be the duty of every such officer to comply with such requisition.

(9) **Order of court**: After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority —
2.16 CORPORATE AND ECONOMIC LAWS

Exemptions: Provided that the Magistrate or Judge of the Designated Court shall not authorise seizure of books, registers, other documents and record, of any listed public company or a public company (not being the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

(10) Impounded documents will remain in the custody of investigating authority: The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate or Judge of the Designated Court of such return:

Provided that the Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof.

(11) Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures made under that Code.

9. CEASE AND DESIST PROCEEDINGS [SECTION 11D]

If the Board finds, after causing an inquiry to be made, that any person has violated, or is likely to violate, any provisions of this Act, or any rules or regulations made thereunder, it may pass an order requiring such person to cease and desist from committing or causing such violation:

Provided that the Board shall not pass such order in respect of any listed public company or a public company (other than the intermediaries specified under section 12) which intends to get its securities listed on any recognised stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.”

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## 10. REGISTRATION CERTIFICATE [SECTION 12]

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<tr>
<th>Provision related to</th>
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<tbody>
<tr>
<td>Persons who are authorized to buy, sell or deal in securities</td>
<td>Stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act</td>
</tr>
<tr>
<td>Board may by notification specify the persons who shall buy or sell or deal in securities</td>
<td>Depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act;</td>
</tr>
<tr>
<td>Person who shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds and collective investment scheme including mutual funds</td>
<td>Shall be, who obtains certificate of registration from the Board in accordance with the regulations.</td>
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</table>

**Manner of application for registration:** Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

**Suspension/cancellation of a certificate of registration:** The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations; Provided that no order under this sub-section shall be made unless the person concerned has been -given a reasonable opportunity of being heard.
11. PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL [12A]

<table>
<thead>
<tr>
<th>Persons who is prohibited</th>
<th>From performing following activities</th>
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| No person shall directly or indirectly | use or employ in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange,  
  • any manipulative or deceptive device or  
  • contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;  
employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;  
engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;  
engage in insider trading;  
  • deal in securities while in possession of material or non-public information or  
  • communicate such material or non-public information to any other person,  
in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;  
• acquire control of any company or securities more than the percentage of equity share capital of a company -whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act. |
12. FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government [Section 13]
The Central Government may, after due appropriation made by Parliament by law in this behalf, make to the Board grants of such sums of money as that Government may think fit for being utilized for the purposes of this Act.

Fund [Section 14]

(1) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto—
  • all grants, fees and charges received by the Board under this Act;
  • all sums received by the Board from such other sources as may be decided upon by the Central Government.

(2) The Fund shall be applied for meeting—
  • the salaries, allowances and other remuneration of the members, officers and other employees of the Board;
  • the expenses of the Board in the discharge of its functions under section 11;
  • the expenses on objects and for purposes authorised by this Act.

Accounts and audit [Section 15]

(1) Preparation of annual financial statement of Board in consultation with CAG of India: The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) Audit of accounts of Board: The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(3) Right and Privileges: The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(4) Certified Accounts and Audit reports to be forwarded to the Central Government: The accounts of the Board as certified by the Comptroller and Auditor-General of India or any...
other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.

13. PENALTIES AND ADJUDICATION

**Penalty for failure to furnish information, return, etc. [Section 15A]**

If any person, who is required under this Act or any rules or regulations made thereunder,—

- to furnish any document, return or report to the Board, fails to furnish the same
- to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations,
- to maintain books of account or records, fails to maintain the same

he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

**Penalty for failure by any person to enter into agreement with clients [Section 15B]**

If any person, who is registered as an intermediary and is required under this Act or any rules or regulations made thereunder to enter into an agreement with his client, fails to enter into such agreement,

- he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
Penalty for failure to redress investors’ grievances [Section 15C]

If any listed company or any person who is registered as an intermediary, after having been called upon by the Board in writing, to redress the grievances of investors, fails to redress such grievances within the time specified by the Board,

- such company or intermediary shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for certain defaults in case of mutual funds [Section 15D]

<table>
<thead>
<tr>
<th>Person liable</th>
<th>Defaults</th>
<th>Punishments</th>
</tr>
</thead>
<tbody>
<tr>
<td>Any person, who is—</td>
<td>required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, whistleblower or any other person responsible for obtaining such certificate of registration</td>
<td>he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;</td>
</tr>
<tr>
<td></td>
<td>registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration</td>
<td>he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;</td>
</tr>
<tr>
<td></td>
<td>registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in</td>
<td>he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;</td>
</tr>
<tr>
<td>Activity</td>
<td>Penalty</td>
<td></td>
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<tr>
<td>------------------------------------------------------------------------</td>
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<tr>
<td>the regulations governing such listing</td>
<td>to a maximum of one crore rupees;</td>
<td></td>
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<tr>
<td>registered as a collective investment scheme, including mutual funds,</td>
<td>he shall be liable to a penalty which shall not be less than one lakh</td>
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<tr>
<td>despatch unit certificates of any scheme in the manner provided in the</td>
<td>rupees but which may extend to one lakh rupees for each day during</td>
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<tr>
<td>regulation governing such despatch</td>
<td>which such failure continues subject to a maximum of one crore rupees;</td>
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</tr>
<tr>
<td>registered as a collective investment scheme, including mutual funds,</td>
<td>he shall be liable to a penalty which shall not be less than one lakh</td>
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</tr>
<tr>
<td>fail to despatch unit certificates</td>
<td>rupees but which may extend to one lakh rupees for each day during</td>
<td></td>
</tr>
<tr>
<td>the manner provided in the regulation governing such despatch</td>
<td>which such failure continues subject to a maximum of one crore rupees.</td>
<td></td>
</tr>
<tr>
<td>registered as a collective investment scheme, including mutual funds,</td>
<td>he shall be liable to a penalty which shall not be less than one lakh</td>
<td></td>
</tr>
<tr>
<td>fail to refund the application monies paid by the investors within the</td>
<td>rupees but which may extend to one lakh rupees for each day during</td>
<td></td>
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<tr>
<td>period specified in the regulations</td>
<td>which such failure continues subject to a maximum of one crore rupees.</td>
<td></td>
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<tr>
<td>registered as a collective investment scheme, including mutual funds,</td>
<td>he shall be liable to a penalty which shall not be less than one lakh</td>
<td></td>
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<tr>
<td>fail to invest money collected by such collective investment schemes</td>
<td>rupees but which may extend to one lakh rupees for each day during</td>
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<tr>
<td>in the manner or within the period specified in the regulations</td>
<td>which such failure continues subject to a maximum of one crore rupees.</td>
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**Penalty for failure to observe rules and regulations by an asset management company [Section 15E]**

Where any asset management company of a mutual fund registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the asset management companies,

- such asset management company shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.
### Penalty for default in case of stock brokers [Section 15 F]

<table>
<thead>
<tr>
<th>Default</th>
<th>Description</th>
<th>Penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Person, registered as a stock broker fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member</td>
<td>he shall be liable to a penalty of more than 1 lakh but which may extend to for which the contract note was required to be issued by that broker</td>
<td></td>
</tr>
<tr>
<td>fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations</td>
<td>he shall be liable to a penalty of more than 1 lakh but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees</td>
<td></td>
</tr>
<tr>
<td>charges an amount of brokerage which is in excess of the brokerage specified in the regulations</td>
<td>he shall be liable for more than 1 lakh but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher</td>
<td></td>
</tr>
</tbody>
</table>

### Penalty for insider trading [Section 15G]

Any insider shall be liable to a penalty of more than ten lakh rupees extending upto twenty-five crore rupees / three times the amount of profits made out of insider trading, whichever is higher, who-

- either on his own behalf or on behalf of any other person
- communicates any unpublished price-sensitive information to any person, with or without his request for such information
- counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information except as required in the ordinary course of business or under any law, or
- deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

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Penalty for non-disclosure of acquisition of shares and takeovers [Section 15 H]

If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—

- disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- make a public announcement to acquire shares at a minimum price; or
- make a public offer by sending letter of offer to the shareholders of the concerned company; or
- make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for fraudulent and unfair trade practices [Section 15HA]

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall —

- not be less than five lakh rupees but
- which may extend to twenty-five crore rupees or
- three times the amount of profits made out of such practices,

Which ever is higher

Penalty for contravention where no separate penalty has been provided [Section 15HB]

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.
<table>
<thead>
<tr>
<th>On the matters related to</th>
<th>Power to adjudicate</th>
</tr>
</thead>
<tbody>
<tr>
<td>For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB</td>
<td>Board shall appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.</td>
</tr>
<tr>
<td>On holding of an inquiry</td>
<td>The adjudicating officer shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.</td>
</tr>
<tr>
<td>Order passed by adjudicating officer is not justified</td>
<td>The Board may call for and examine the record of any proceedings and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify: Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter: <strong>Limitation period:</strong> Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.</td>
</tr>
</tbody>
</table>
Factors to be taken into account by the adjudicating officer [Section 15J]

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

The power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the Provisions of this section.

Crediting sums realised by way of penalties to Consolidated Fund of India [Section 15JA]

All sums realised by way of penalties under this Act shall be credited to the Consolidated Fund of India.

Settlement of administrative and civil proceedings [Section 15 JB]

(1) **Filing of an application:** Any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.

(2) **Board may consider for settlement of defaults:** The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.

(3) **Mode of settlement proceedings:** The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.

(4) **No appeal preferred:** No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.

14. ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF SECURITIES APPELLATE TRIBUNAL (SAT)

Establishment of Securities Appellate Tribunals [Section 15K]

(1) The Central Government shall, by notification, establish a Tribunal to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on it by or under this Act or any other law for the time being in force.
(2) The Central Government shall also specify in the notification referred to in sub-section (1), the matters and places in relation to which the Securities Appellate Tribunal may exercise jurisdiction.

Composition of Securities Appellate Tribunal [Section 15L]

(1) The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.

(2) Subject to the provisions of this Act,—

(a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;

(b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit:

Provided that every Bench constituted shall include at least one Judicial Member and one Technical Member;

(c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.

(3) The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

Qualification for appointment as Presiding Officer or Member of Securities Appellate Tribunal [Section 15M]

A person shall not be qualified for appointment as the Presiding Officer or a Judicial Member or a Technical Member of the Securities Appellate Tribunal, unless he—

(a) is, or has been, a Judge of the Supreme Court or a Chief Justice of a High Court or a Judge of High Court for at least seven years, in the case of the Presiding Officer; and

(b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or

(c) in the case of a Technical Member—

(i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or
(ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

**Appointment of judicial member [Section 15MA]**

The Presiding Officer and Judicial Members of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

**Appointment of technical member [15MB]**

(1) The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:—

(a) Presiding Officer, Securities Appellate Tribunal—Chairperson;
(b) Secretary, Department of Economic Affairs—Member;
(c) Secretary, Department of Financial Services—Member; and
(d) Secretary, Legislative Department or Secretary, Department of Legal Affairs—Member.

(2) The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum Selection Committee.

(3) The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed under sub-section (1).

**Validity of appointment of Presiding officer and members of SAT [15MC]**

(1) No appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Search cum-Selection Committee.

(2) **Disqualification of members:** A member or part time member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.

(3) **Effect of holding of office by officer or members on commencement of Finance Act, 2017:** The Presiding Officer or such other member of the Securities Appellate Tribunal, holding office on the date of commencement of Part VIII of Chapter VI of the Finance Act, 2017 shall continue to hold office for such term as he was appointed and the other
provisions of this Act shall apply to such Presiding Officer or such other member, as if Part VIII of Chapter VI of the Finance Act, 2017 had not been enacted.

Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal [Section 15N]

The Presiding Officer or every Judicial or Technical Member of the Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, and shall be eligible for reappointment for another term of maximum five years:

Provided that no Presiding Officer or the Judicial or Technical Member shall hold office after he has attained the age of seventy years.

Salary and allowances and other terms and conditions of service of Presiding Officers [Section 15-O]

The salary and allowances payable to and the other terms and conditions of service including pension, gratuity and other retirement benefits of the Presiding Officer and other Members of a Securities Appellate Tribunal shall be such as may be prescribed.

Provided that neither the salary and allowances nor the other terms and conditions of service of the Presiding Officer and other Members of a Securities Appellate Tribunal shall be varied to their disadvantage after appointment.

Filling up of vacancies [Section 15P]

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer or any other Member of a Securities Appellate Tribunal-

• then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and

• the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

In the event of occurrence of any vacancy in the office of the Presiding Officer of the Securities Appellate Tribunal by reason of his death, resignation or otherwise, the senior-most Judicial Member of the Securities Appellate Tribunal shall act as the Presiding Officer until the date on which a new Presiding Officer is appointed in accordance with the provisions of this Act. [Section 15PA]

Resignation and removal [section 15Q]

(1) Resignation by notice in writing: The Presiding Officer or any other Member of a Securities Appellate Tribunal may, by notice in writing under his hand addressed to the Central Government, resign his office.

Provided that the Presiding Officer or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office-
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- until the expiry of three months from the date of receipt of such notice or
- until a person duly appointed as his successor enters upon his office or
- until the expiry of his term of office,

(2) Removal of Presiding officer/Judicial member/ Technical member: The Central Government may, after an inquiry made by the Judge of the Supreme Court, remove the Presiding Officer or Judicial Member or Technical Member of the Securities Appellate Tribunal, if he—

(a) is, or at any time has been adjudged as an insolvent;

(b) has become physically or mentally incapable of acting as the Presiding Officer, Judicial or Technical Member;

(c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude;

(d) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental to the public interest; or

(e) has acquired such financial interest or other interest as is likely to affect prejudicially his functions as the Presiding Officer or Judicial or Technical Member:

Provided that he shall not be removed from office under clauses (d) and (e), unless he has been given a reasonable opportunity of being heard in the matter.

(3) Central Government authorized to regulate the procedure of investigation: The Central Government may, by rules, regulate the procedure for the investigation of misbehavior or incapacity of the Presiding Officer or any other Member.

Appointment, qualification and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal to be governed by Finance Act, 2017 [15QA]

(i) Where the qualification, appointment etc. is after the commencement of Finance Act, 2017: Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal appointed after the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act.

(ii) Where the qualification, appointment etc. is before the commencement of Finance Act, 2017: Provided that the Presiding Officer and Member appointed before the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall continue to be
governed by the provisions of this Act and the rules made thereunder as if the provisions of section 184 of the Finance Act, 2017 had not come into force.

Orders constituting Appellate Tribunal to be final and not to invalidate its proceedings [15R]

No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of any defect in the constitution of a Securities Appellate Tribunal.

Staff of the Securities Appellate Tribunal [Section 15S]

(1) The Central Government shall provide the Securities Appellate Tribunal with such officers and employees as that Government may think fit.

(2) The officers and employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.

(3) The salaries and allowances and other conditions of service of the officers and employees of the Securities Appellate Tribunal shall be such as may be prescribed.

Appeal to the Securities Appellate Tribunal Section 15T]

(1) any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

(2) Every appeal under sub-section (1) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(3) On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
(4) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

(5) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

**Procedure and powers of the Securities Appellate Tribunal [Section 15U]**

(1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, and of any rules, the Securities Appellate Tribunal shall have powers to regulate their own procedure including the places at which they shall have their sittings.

(2) The Securities Appellate Tribunal shall have, for the purposes of discharging their functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) issuing commissions for the examination of witnesses or documents;
- (e) reviewing its decisions;
- (f) dismissing an application for default or deciding it *ex parte*;
- (g) setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
- (h) any other matter which may be prescribed.

(3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) Where Benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with, by each Bench.
(5) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.

(6) If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

Right to legal representation [Section 15V]

The appellant may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Limitation [Section 15W]

The provisions of the Limitation Act, 1963 shall, as far as may be, apply to an appeal made to a Securities Appellate Tribunal.

Presiding Officer, Members and staff of Securities Appellate Tribunals to be public servants [Section 15X]

The Presiding Officer, Members and other officers and employees of a Securities Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

Civil Court not to have jurisdiction [Section 15Y]

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to Supreme Court [Section 15Z]

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may-

- file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:
Provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

15. MISCELLANEOUS

Power of Central Government to issue directions [Section 16]

(1) Without prejudice to the foregoing provisions of this Act or the Depositories Act, 1996, the Board shall, in exercise of its powers or the performance of its functions under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time.

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of policy or not shall be final.

Power of Central Government to supersede the Board [17]

If at any time the Central Government is of opinion that Board unable to perform its functions, it may by notification, supersede the Board for such period, not exceeding six months.

Reasons to supersede the Board—

- on account of grave emergency, the Board is unable to discharge the functions and duties under the provisions of this Act; or
- that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or
- default in the discharge of the functions and duties imposed under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated; or
- that circumstances exist which render it necessary in the public interest so to do

Effect of publication of notification of superseding the Board:

Upon the publication of a notification of superseding the Board,—

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted, be exercised and discharged by such person or persons as the Central Government may direct; and
(c) all property owned or controlled by the Board shall, until the Board is reconstituted vest in the Central Government.

Reconstitution of Board on the expiration of the period of supersession:

On the expiration of the period of supersession specified in the notification, the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices, shall not be deemed disqualified for appointment:

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action.

Complete reports and action taken to be laid before the Parliament: The Central Government shall cause a notification issued and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

Returns and reports [Section 18]

(1) Furnishing of returns and reports by the Board to the Central Government: The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.

(2) Report of previous financial year by the Board: the Board shall, within ninety days after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) Report to be presented before Parliament: A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Appeals [Section 19]

(1) Appeal to Central Government: Any person aggrieved by an order of the Board made, before the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may be prescribed.

(2) No appeal after expiry of limitation: No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor.

However it is admitted after the expiry of the period prescribed if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.
(3) **Appeal shall be made in prescribed form with a copy of an order:** Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed. Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard.

### Bar of Jurisdiction [Section 20A]

- No order passed by the Board or the Adjudicating Officer under this Act shall be appealable except as provided in section 15T or section 20, and
- No civil court shall have jurisdiction in respect of any matter which the Board or the Adjudicating Officer is empowered by, or under, this Act to pass any order, and
- No injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the Adjudicating Officer by, or under, this Act.

### Members, Officers and Employees of the Board to be Public Servants [Section 22]

All members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

### Protection of Action Taken in Good Faith [Section 23]

No suit, prosecution or other legal proceedings shall lie against the -

- Central Government or
- Board or
- Any officer of the Central Government or
- Any member, officer or other employee of the Board

for anything which is in good faith done /intended to be done under this Act/the rules or regulations
Offences [Section 24]

(1) Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with imprisonment for a term which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

(2) If any person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any of his directions or orders, he shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to ten years, or with fine, which may extend to twenty-five crore rupees or with both.

Composition of certain offences [Section 24A]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant immunity [Section 24B]

(1) The Central Government may, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation,

- grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

Exception: Provided that no such immunity shall be granted by the Central Government in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of application for grant of such immunity.

Provided further that recommendation of the Board under this sub-section shall not be binding upon the Central Government.

(2) Withdrawal of granted immunity by the Central Government: An immunity granted to a person above may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and
shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Cognizance of offences by courts [Section 26]

(1) No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by the Board.

Special Courts [Section 26A]

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<th>Establishment of Special Courts [Section 26A]</th>
<th>Offences triable by Special Courts [Section 26B]</th>
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<tr>
<td>(1) Establishment of Special Court: The Central Government may, for the purpose of providing speedy trial of offences under this Act, by notification, establish or designate as many Special Courts as may be necessary.</td>
<td></td>
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<tr>
<td>(2) Composition: A Special Court shall consist of a single judge who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.</td>
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<tr>
<td>(3) Qualification for appointment: A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, holding the office of a Sessions Judge or an Additional Sessions Judge, as the case may be.</td>
<td></td>
</tr>
<tr>
<td>All offences under this Act committed prior to the date of commencement of the Securities Laws (Amendment) Act, 2014 or on or after the date of such commencement, shall be taken cognizance of and tried by-</td>
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<tr>
<td>• the Special Court established for the area in which the offence is committed or where there are more Special Courts than one for such area, by</td>
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<tr>
<td>• such one of them as may be specified in this behalf by the High Court concerned.</td>
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</tbody>
</table>

Appeal and revision [Section 26C]

The High Court may exercise, so far as may be applicable, all the powers conferred by Chapters XXIX and XXX of the Code of Criminal Procedure, 1973 on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

Application of Code to proceedings before Special Court [Section 26D]

(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person
conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.

(2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional provisions [26E]

Any offence committed under this Act, which is triable by a Special Court shall, until a Special Court is established, be taken cognizance of and tried by a Court of Session exercising jurisdiction over the area, notwithstanding anything contained in the Code of Criminal Procedure, 1973:

Provided that nothing contained in this section shall affect the powers of the High Court under section 407 of the Code of Criminal Procedure, 1973 to transfer any case or class of cases taken cognizance by a Court of Session under this section.

Offences by companies [Section 27]

(1) Where an offence under this Act has been committed by a company - every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Exemption: This sub-section shall not render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,—

(a) company means any body corporate and includes a firm or other association of individuals; and

(b) director, in relation to a firm, means a partner in the firm.
Recovery of amounts [Section 28A]

(1) If a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—

(a) attachment and sale of the person's movable property;
(b) attachment of the person's bank accounts;
(c) attachment and sale of the person's immovable property;
(d) arrest of the person and his detention in prison;
(e) appointing a receiver for the management of the person's movable and immovable properties,

and for this purpose, the provisions of sections 220 to 227, 228A, 229, 232, the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, in so far as may be, apply with necessary modifications as if the said provisions and the rules made thereunder were the provisions of this Act and referred to the amount due under this Act instead of to income-tax under the Income-tax Act, 1961.

Explanation 1— For the purposes of this sub-section, the person's movable or immovable property or monies held in bank accounts shall include any property or monies held in bank accounts which has been transferred directly or indirectly on or after the date when the amount specified in certificate had become due, by the person to his spouse or minor child or son's wife or son's minor child, otherwise than for adequate consideration, and which is held by, or stands in the name of, any of the persons aforesaid; and so far as the movable or immovable property or monies held in bank accounts so transferred to his minor child or his son's minor child is concerned, it shall, even after the date of attainment of majority by such minor child or son's minor child, as the case may be, continue to be included in the person's movable or immovable property or monies held in bank accounts for recovering any amount due from the person under this Act.

Explanation 3.— Any reference to appeal in Chapter XVIID and the Second Schedule to the Income-tax Act, 1961, shall be construed as a reference to appeal before the Securities Appellate Tribunal under section 15T of this Act.

(2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).

(3) Notwithstanding anything contained in any other law for the time being in force, the recovery of amounts by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.

(4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

Power to make rules [Section 29]

(1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;

(b) the additional functions that may be performed by the Board under section 11;

(c) Omitted

(d) the manner in which the accounts of the Board shall be maintained under section 15;

(da) the manner of inquiry under sub-section (1) of section 15-I;

(db) the salaries and allowances and other terms and conditions of service of the Presiding Officers, Members and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;

(dc) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers, or other Members of the Securities Appellate Tribunal under sub-section (3) of section 15Q;

(dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal;

(e) the form and the manner in which returns and report to be made to the Central Government under section 18;
(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Power to make regulations [Section 30]

(1) The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:

(a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;

(b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;

(c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;

(ca) the utilisation of the amount credited under sub-section (5) of section 11;

(cb) the fulfilment of other conditions relating to collective investment scheme under subsection (2A) of section 11AA;

(d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.

(da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;

(db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

Rules and regulations to be laid before Parliament [Section 31]

Every rule and every regulation made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.
Application of other laws not barred [Section 32]

The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

Power to remove difficulties [Section 34]

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no order shall be made under this section after the expiry of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

Validation of certain acts [Section 34A]

34A. Any act or thing done or purporting to have been done under the principal Act, in respect of calling for information from, or furnishing information to, other authorities, whether in India or outside India, having functions similar to those of the Board and in respect of settlement of administrative and civil proceedings, shall, for all purposes, be deemed to be valid and effective as if the amendments made to the principal Act had been in force at all material times.
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SECURITIES AND EXCHANGE BOARD OF INDIA
(ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS)
REGULATIONS, 2009

1. SCOPE

The SEBI (ICDR) Regulations, 2009 lays down guidelines relating to conditions for various kinds of issues including Public and Right Issue. The Regulations provide detailed provisions relating to Public issue such as conditions of an Initial Public Offer (IPO) and Further Public Offer (FPO), conditions relating to pricing in Public Offerings, conditions governing promoters Contribution, restricting transfer of Promoter’s Contribution, Minimum Offer to public reservations etc.

2. INTRODUCTION

The SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 govern the public issues, rights issues, preferential allotments, etc. made by companies. These Guidelines were notified on 26th August, 2009.

As per the Regulation 3, it shall apply to the following:

- Public Issues
- Rights issue, in excess of ₹ 50 lakhs by a listed company
- Preferential Allotments; Bonus Issue; QIPs by listed companies
- An issue of Indian Depository Receipts
Public issues can be further classified into Initial Public offerings and further public offerings. In a public offering, the issuer makes an offer for new investors to enter into shareholding family. The issuer company makes detailed disclosures as per SEBI (Issue Capital and Disclosure Requirements) Regulations 2009 in its offer document.

Initial Public Offering (IPO) is when an unlisted company makes either a fresh issue of securities or an offer for sale of its existing securities or both for the first time to the public. This paves way for listing and trading of the issuer’s securities.

A Further public offering (FPO) is when an already listed company makes either a fresh issue of securities to the public or an offer for sale to the public, through an offer document. An offer for sale in such scenario is allowed only if it is made to satisfy listing or continuous listing obligations.

Rights Issue (RI) is when a listed company which proposes to issue fresh securities to its existing shareholders as on a record date. The rights are normally offered in a particular ratio to the number of securities held prior to the issue. This route is best suited for companies who would like to raise capital without diluting stake of its existing shareholders unless they do not intend to subscribe to their entitlements.

Bonus issue is when an issuer makes an issue of securities to its existing shareholders as on a record date, without any consideration from them, it is called a bonus issue. The shares are issued out of the Company’s free reserve or share premium account in a particular ratio to the number of securities held on a record date.

A Private Placement is an issue of shares or of convertible securities by a company to a select group of persons under Section 42 of the Companies Act, 2013 which is neither a rights issue nor a public issue. This is a faster way for a company to raise equity capital. A private placement of shares or of convertible securities by a listed company is generally known by name of preferential allotment. A listed company going for preferential allotment has to comply with the requirements contained in Chapter VII of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009.

Qualified Institutions Placement means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis in terms of SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009.

3. CONDITIONS FOR PUBLIC ISSUES AND RIGHT ISSUE

Public Issue:

- A “public issue” means an initial public offer or further public offer;
- An “initial public offer” means offer of specified securities by an unlisted company and includes offer for sale of specified securities by the existing shareholders of an unlisted company;
• A “further public offer” means offer of specified securities by a listed company and includes offer for sale of specified securities by the existing shareholders of a listed company to the public;

**When can a Public Issue be made:**

Every Company needs funds for its business. Funds requirement can be for short term or for long term. To meet short term requirements, they may approach banks, lenders & may even accept fixed deposits from public/shareholders. To meet its long term requirements, funds can be raised either through loans from lenders, Banks, Institutions etc. (which carry financial burden) or through issue of capital.

Capital can be raised through private placement of shares, public issue, right issue etc. Public issue means raising funds from public. Promoters of the Company may have plans for the Company, which may require infusion of money. The main purpose of the public issue, amongst others, is to raise money through public and get its shares listed at any of the recognized stock exchanges in India.

**Entry Norms for the Public Issue**

Entry norms for the Public Issue are governed by the SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2009.

Entry under the companies can be categorized into the following:

- Unlisted Companies
- Listed Companies.

**Unlisted Companies**

Unlisted Companies are those public limited Companies which are presently not listed at any of the recognized stock exchanges in India. The shares of such Companies are therefore not traded at any stock exchanges in India.

**Listed Companies**

Listed Companies are those which are presently listed on any one or more recognized Stock Exchange in India. The securities of such companies are traded on such stock exchange where they are traded.

**Pre-Requisites for a Company to be eligible to opt for IPO with respect to Securities Exchange Board of India:**-

Under SEBI (ICDR) Regulations, 2009 guidelines have been provided that regulate the public issues by unlisted companies. For Unlisted Companies in order to opt for Initial Public Offerings:

1. An issuer may make an initial public offer, if:
(a) They have a net tangible assets of at least three crore rupees in each, of the preceding three full years (of twelve months each), of which not more than fifty percent are held in monetary assets.

A **monetary asset** is an asset whose value is stated in or convertible into a fixed amount of cash. Thus, the term can be more tightly defined to exclude any assets that cannot be readily converted into cash such as long-term investments or notes receivable also provided that if more than fifty percent of the net tangible assets are held in monetary assets, the issuer has made firm commitments to utilise such excess monetary assets in its business or project;

(b) It has a minimum average pre-tax operating profit of rupees fifteen crore, calculated on a restated and consolidated basis, during the three most profitable years out of the immediately preceding five years;

(c) It has a net worth of at least one crore rupees in each of the preceding three full years (of twelve months each);

(d) The aggregate of the proposed issue and all previous issues made in the same financial year in terms of issue size does not exceed five times its pre-issue net worth as per the audited balance sheet of the preceding financial year;

(e) If it has changed its name within the last one year, at least fifty percent of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name.

2. An issuer not satisfying the conditions so mentioned above may make an Initial Public Offer if the issue is made through the book-building process and the issuer undertakes to allot, at least 75% of the net offer to public, to qualified institutional buyers and to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

3. An issuer may make an initial public offer of Convertible Debt Instruments without making a prior public issue of its equity shares and listing thereof.

4. An issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than 1000.

5. No issuer shall make an initial public offer if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares like ESOP/ESPS.
Steps Involved to opt for Initial Public Offering (IPO)

The major steps for Initial Public Offering (IPO) are of given below in brief:-

A. **Appointing a Merchant Bank:** A bank that deals with international finance, long term loans for companies and underwriting. These banks do not provide regular banking services to the general public. It should have valid SEBI registration to be an eligible merchant banker. There are other intermediaries such as registrar to the issue who provides administrative support to issue process, bankers to the issue who do a collection of application forms and money and broker to the issue who provide marketing support, underwriting support and help with the investors.

B. **Registration of Offer Documents:** For registration, 10 copies of the draft prospectus should be filed with SEBI. The draft prospectus filed is treated as a public document. Any amendments to be made in the prospectus should be done within 21 days of filing the offer document. Thereafter the offer document is deemed to have been cleared by SEBI.

C. **Marketing of issue:** Proper evaluation of timing of issue should be done. Many a time during recession public would be unwilling to invest in the IPO so it may be a business of loss for the company.

D. Last but not the least **after the closure of the subscription list,** the merchant banker should inform, within 3 days of the closure, whether 90% of the amount has been subscribed or not. If it is not subscribed up to 90%, then the underwriters should bring the shortfall amount within 60 days. In case of over-subscription, the shares should be allotted on a pro-rata basis, and the excess amount should be refunded with interest to the shares holders within 30 days from the date of closure. Also there are several rules and regulation which should be adhered to with respect to disclosures as provided by SEBI.

IPC can be made through-

- The Fixed Price Method,
- Book Building Method or,
- Combination of both.
Types of Public issues: There are two types of Public Issues:

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<td>Fixed Price Issues</td>
<td>Price at which the securities are offered and would be allotted is made known in advance to the investors</td>
<td>Demand for the securities offered is known only after the closure of the issue</td>
<td>100 % advance payment is required to be made by the investors at the time of application.</td>
<td>50 % of the shares offered are reserved for applications below ₹ 1 lakh and the balance for higher amount applications.</td>
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<td>Book Building Issues</td>
<td>A 20 % price band is offered by the issuer within which investors are allowed to bid and the final price is determined by the issuer only after closure of the bidding.</td>
<td>Demand for the securities offered, and at various prices, is available on a real time basis on the BSE website during the bidding period.</td>
<td>10 % advance payment is required to be made by the QIBs along with the application, while other categories of investors have to pay 100 % advance along with the application.</td>
<td>50 % of shares offered are reserved for QIB’S, 35% for small investors and the balance for all other investors.</td>
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4. BOOK BUILDING ROUTE

Meaning: Book Building is essentially a process used by companies raising capital through Public Offerings- both Initial Public Offers (IPOs) or Follow-on Public Offers (FPOs) to aid price and demand discovery.

It is a mechanism where, during the period for which the book for the offer is open, the bids are collected from investors at various prices, which are within the price band specified by the issuer. The process is directed towards both the institutional as well as the retail investors. The issue price is determined after the bid closure based on the demand generated in the process.

Book Building Process:

The Issuer who is planning an offer nominates lead merchant banker(s) as 'book runners'.

- The Issuer specifies the number of securities to be issued and the price band for the bids.
- The Issuer also appoints syndicate members with whom orders are to be placed by the investors.
The syndicate members input the orders into an 'electronic book'. This process is called 'bidding' and is similar to open auction.

- The book normally remains open for a period of 5 days.
- Bids have to be entered within the specified price band.
- Bids can be revised by the bidders before the book closes.
- On the close of the book building period, the book runners evaluate the bids on the basis of the demand at various price levels.
- The book runners and the Issuer decide the final price at which the securities shall be issued.
- Generally, the numbers of shares are fixed, the issue size gets frozen based on the final price per share.
- Allocation of securities is made to the successful bidders. The rest get refund orders.
Requirements for a Public Issue: The requirements for a Public Issue by a Listed Company are as follows:

- **Limit of issue size:** Issue size should not be more than 5 times pre-issue net-worth as per the audited balance sheet of the preceding year.

- **On the change of the name:** If it has changed its name within the last one year, at least 50% of the revenue for the preceding one full year has been earned by it from the activity indicated by the new name;

- **On failure of satisfying the conditions:** If it does not satisfy this condition, then it can make an issue subject to compliance with the conditions applicable for an ineligible unlisted company for making an IPO.

5. PRICING IN PUBLIC ISSUE

The issuer determines the price of the equity shares and convertible securities in consultation with the lead merchant banker or through the book building process. In case of debt instruments, the issuer determines the coupon rate and conversion price of the convertible debt instruments in consultation with the lead merchant banker or through the book building process. Face Value of shares can be determined by the companies cannot be a decimal of a rupee.

In case of an IPO the following additional conditions apply:

(a) if the **issue price is ₹ 500 or more** then the Company may fix the face Value below ₹ 10 per share but not lower than ₹ 1 per share

(b) if the **issue price is less than ₹ 500** then the Company must have a face Value of ₹ 10 per share

**The minimum offer to the Public**

1. 25% of the issue size if the post issue capital of the company calculated at the offer price is less than or equal to ₹ 1,600 crores.

2. Such percentage of each class of the equity shares equivalent to a value of ₹ 400 crores., if the post issue capital of the company calculated at the offer price is more than ₹ 1,600 crores but less than ₹ 4,000 crores.

3. 10% of the issue size if the post issue capital of the company calculated at the offer price is above ₹ 4,000 crores.

There, is Promoters Contribution also, basically the promoter(s) is the person who starts or promotes a business. Their name is so registered in the prospectus and in the annual report of the company.
In general, a promoter will have a majority stake in the business. A promoter may sit on the Board (of directors) of the company and may also serve as its Chief Executive Officer (CEO) or Chief Financial Officer (CFO) or in any other managerial capacity.

Under the SEBI (ICDR) Regulation, 2009 ‘promoter’ is defined as in [2(za) & (zb)]:

1. the person or persons who are in control of the issuer;
2. the person or persons who are instrumental in the formulation of a plan or programme pursuant to which specified securities are offered to public;
3. the person or persons named in the offer document as promoters.

Provided that a director or officer of the issuer or a person, if acting as such merely in his professional capacity, shall not be deemed as a promoter:

‘Promoter group’ includes:

- the promoter;
- an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse);
- In case promoter is a body corporate:
  1. a subsidiary or holding company of such body corporate;
  2. anybody corporate in which the promoter holds 10% or more of the equity share capital or which holds 10% or more of the equity share capital of the promoter;
  3. anybody corporate in which a group of individuals or companies or combinations thereof which hold 20% or more of the equity share capital in that body corporate also holds 20% or more of the equity share capital of the issuer;
- In case the promoter is an Individual:-
  1. anybody corporate in which 10% or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;
  2. anybody corporate in which a body corporate as provided in (a) above holds 10% or more, of the equity share capital;
  3. any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than 10% of the total;

Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be a promoter merely by virtue of the fact that 10 % or more of the equity share capital of the issuer is held by such person.
Promoters' Contribution

The promoters’ minimum contribution varies from case to case. The promoters of the issue are required to contribute in the public issue as follows:

- **In case of an initial public offer**, the minimum contribution should not be less than 20% of the post issue capital;
- **In case of further public offer**, it should be either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital;
- **In case of a composite issue**, either to the extent of 20% of the proposed issue size or to the extent of 20% of the post-issue capital excluding the rights issue component.

Lock in Period: “Lock-in” indicates a freeze on the shares under this period shares are non-transferable. SEBI (ICDR) Regulations 2009 have stipulated lock-in requirements on shares of promoters mainly to ensure that the promoters or main persons, who are controlling the company, shall continue to hold some minimum percentage in the company after the public issue. The following are the Lock-in requirements at the time of IPO:

- Minimum Promoter Contribution shall be locked-in for 3 years from commencement of commercial production or date of allotment, whichever is later.
- Promoters holding in excess of minimum Promoter’s contribution shall be locked-in for 1 year from allotment subject to some exceptions.
- In case of an IPO, the entire pre-issue capital of an Unlisted Company subject to certain exceptions is locked in for 1 year from date of allotment in the IPO;
- Locked-in shares can be pledged or transferred inter-se between promoters.

6. CROSS-LISTING

Cross-listing is the listing of a company's common shares on a different exchange than its primary and original stock exchange. In order to be approved for cross-listing, the company in question must meet the same requirements as any other listed member of the exchange, such as basic requirements for the share count, accounting policies, filing requirements for financial reports and company revenues. The advantages to cross-listing include having shares trade in multiple time zones and in multiple currencies. This gives issuing companies more liquidity and a greater ability to raise capital.

A listed security is a financial instrument that is traded through an exchange, such as the NYSE (New York Stock Exchange) or NASDAQ (American stock exchange). When a private company decides to go public and issue shares, it will need to choose an exchange on which to be listed. To do so, it must be able to meet the exchange's listing requirements and pay both the exchange's entry and yearly listing fees. Listing requirements vary by exchange and include minimum stockholder's equity, a minimum share price and a minimum number of shareholders.
Exchanges have listing requirements to ensure that only high quality securities are traded on them and to uphold the exchange’s reputation among investors.

7. RIGHTS ISSUES

A rights issue is a direct offer of shares to all the existing shareholders of the Company in proportion to their current holding.

The company also sets a time limit for the shareholder to buy the shares. Companies pursue Rights Issue as an avenue to raise funds for various reasons, ranging from expansion or acquisitions to paying down debts.

The definition of Right Issue in the ICDR Regulations, 2009 is defined under Section 2(zg) of the regulations as “an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose (ICDR Regulations).”

Section 62 of the Companies Act, 2013 contains provisions on “Further issue of capital”, and enacts the principal of preemptive rights of shareholders of a company to subscribe to new shares of the company.

Section 62 of the Companies Act, 2013 are mandatory for all the private companies, public companies, listed as well as unlisted companies in relation to further Issue of Capital under which the securities are offered to the existing shareholders of the Company through letter of offer.

A listed issuer company cannot make any rights issue of securities, where the aggregate value of such securities, including premium, if any exceeds 50 lakhs unless a draft letter of offer has been filed with the board, through a merchant Banker, at least 30 days prior to the filing of the letter of offer with the designated Stock Exchange. However, where the listed issuer company’s aggregate value of such securities is less than 50 Lakhs, the company shall prepare the letter of offer in accordance with the disclosure requirements specified in the regulations and file the same with the SEBI for its information and for being put on the SEBI website.

A listed issuer making a rights issue shall announce a record date for the purpose of determining the shareholders eligible to apply for specified securities in the proposed rights issue. The issuer company shall not withdraw rights issue after announcement of the record date. If the issuer withdraws the rights issue after announcing the record date, it shall not make an application for listing of any of its specified securities on any recognized stock exchange for a period of twelve months from the record date announced.

The abridged letters of offer in case of the letter of offer shall be dispatched by the merchant Banker to all the shareholders. In case, a right issue is managed by more than one merchant banker the rights, obligations, and responsibility of each merchant banker shall be demarcated.
In case listed company ensure to notify the stock exchange concerned the date of board meeting at which the right issue is proposed to be considered at least 2 days in advance and ensure to keep the right issue open for at least 30 days and not more that 60 days.

8. BONUS ISSUE

Bonus issue refers to a further issue of shares made by a company having share capital to its existing shareholders without receipt of any consideration from the shareholders for issuance of the shares. It is an offer of free additional shares to existing shareholders in proportion to their holdings.

For example, the company may give one bonus share for every five shares held. These are company’s accumulated earnings which are not given out in the form of dividends, but are converted into free shares. It is not a taxable income as no amount is to be paid under it.

Under the Companies Act, 2013, issue of bonus shares is covered under Section 63 of the Companies Act, 2013. The Company shall issue fully paid up Bonus Shares out of:

(a) Free Reserves of the Company,
(b) The securities premium account; or
(c) The capital redemption reserve account

Provided that no issue of bonus shares shall be made by capitalizing reserves created by the revaluation of assets.

Under, the SEBI (ICDR) Regulations 2009, there are conditions for Bonus Issue that has to be fulfilled before issuing the bonus shares.

- The Company is authorized by its articles of Associations for issue of bonus shares, Provided that if there is no such provision in the articles of associations, the issuer shall pass a resolution at its general body meeting making provisions in the articles of associations for capitalization of reserve;
- The Board has to recommend the issue of Bonus shares;
- The company in general meeting should authorize the issue of bonus shares,

Further, it should be checked that it has not been defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it and further, it has sufficient reason to believe that it, has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity and bonus further, the partly paid shares, if any outstanding on the date of allotment, are made fully paid up.
Restrictions:

Issuer shall not make any bonus issue of equity shares if it has outstanding fully or partly convertible debt instruments at the time of making bonus issue, unless it has made reservation of equity shares of the same class in favour of the holders of such outstanding convertible debt instruments in proportion to the convertible part thereof.

The equity shares reserved for the holders of fully or partially convertible debt instruments shall be issued at the time of conversion of such convertible debt instruments on the same terms on which the equity shares offered in the bonus issue were issued.

The bonus share shall not be issued in lieu of dividend. An issuer, announcing a bonus issue after the approval of its board of directors, shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors, however, where the issuer is required to seek shareholders’ approval for capitalization of profits or reserves for making the bonus issue, the bonus issue shall be implemented within two months from the date of the meeting of its board of directors. Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

9. PREFERENCE ALLOTMENT

Preferential Allotment means an issue of shares by a body corporate under Section 62 (1) (c) of the Companies Act, 2013. The expression ‘preferential allotment’ means an issue of shares or other securities, by a company to any select person or groups of person on a preferential basis and does not include shares or other securities offered through a public issue, employee stock option scheme, or an issue of sweat equities or bonus shares or depository receipts issued in a country outside India or foreign securities.

Conditions: Under the SEBI (ICDR) Regulations 2009, following Conditions must be followed for the preferential issue by listed Company:

1. Approval from shareholders shall be taken.
2. Existing proposed allottees shall have shares in dematerialized form.
3. Shall not make preferential issue unless it:
   (i) Is in compliance with the conditions of continuous listing;
   (ii) Has obtained PAN of all the proposed allottees.
4. Issuer company cannot make issue to an person who has sold any equity shares during the six months preceding relevant date
## 10. PRICING REQUIREMENT

<table>
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| Frequently traded shares listed for 26 weeks or more | Higher of the average of weekly high/low of volume weighted average prices during:  
• 26 weeks prior to  
• 2 weeks prior to  
Relevant Date = 30 days prior to EGM date where resolution u/s. 81(1A) is passed                                                                                                                     |
| Shares listed for less than 26 weeks              | Higher of the:  
• Average of weekly high/low of volume weighted average prices during the period prior to the relevant date  
• IPO Price or value arrived at under Scheme of Arrangement  
• Average of weekly high/low of volume weighted average prices during the 2 weeks prior to the relevant date  
Relevant Date = 30 days prior to EGM date where resolution u/s. 81(1A) is passed                                                                                                                     |
| Preferential Allotment to QIBs not exceeding 5 in number | Average of weekly high/low of volume weighted average prices during 2 weeks prior to the:  
Relevant Date = 30 days prior to EGM date where resolution u/s. 81(1A) is passed                                                                                                                      |
| Shares arising out of Warrants/ FCD/PCD           | Same as above. Relevant Date = as above or as at Company’s option a date 30 days prior to date of exercise of warrants/FCD*                                                                                                           |
| Infrequently traded shares                        | Other valuation parameters, such as, book value, comparable trading multiples, etc., may be considered. A Certificate from a CA / Merchant Banker should be obtained for the same.                                                                                               |

If Relevant Date falls on a Weekend or a Holiday, then the Day before such Weekend / Holiday

There are **Lock-in Requirements** that has to be fulfilled which are as follow:

1. **Securities allotted to the Promoter and promoter group:** If excess of 20% of total capital of the Company then lock in for a period of 1 year otherwise for 3 years from the date of allotment;

2. **Other than promoter and promoter group:** Lock in for a period of 1 year from the date of the allotment.

3. **Shares acquired on conversion of warrants/ FCD in this case the lock-in period shall be reduced by the period of warrants/FCD (fully convertible debentures).**
4. **The entire Pre-preferential capital held by the allottees** for such the Lock-in Period shall be 6 months from the preferential allotment.

11. **QIP–QUALIFIED INSTITUTIONAL PLACEMENT**

QIP means allotment of eligible securities (i.e. equity shares, non-convertible debt instruments along with warrants and convertible securities by a listed company to Qualified Institutional Buyers (QIBs) on private placement basis as provided in the regulations. QIP is discussed under Chapter VIII of SEBI (ICDR) Regulation, 2009.

There is the difference between the QIP and Preferential allotment of shares, i.e. the QIPs allotment can be made only to QIBs and preferential allotment can be made to selected persons/organizations including QIBs.

QIP is a convenient & speedy method of private placement whereby a listed company can issue shares or convertible securities to selected QIBs. The Securities and Exchange Board of India (SEBI) introduced QIPs on May 8, 2006 through a circular issued to encourage Indian companies to raise funds from within our country without moving to overseas market. QIP is advantageous when compared to other capital raising methods as the issuing company does not have to undergo time consuming procedural requirements to raise capital.

**Qualified Institutional Buyers means** following:-

- a mutual fund, venture capital fund, Alternative Investment Fund and foreign venture capital investor registered with the Board;
- a foreign portfolio investor other than Category III foreign portfolio investor, registered with the Board;
- a public financial institution as defined in section 4A of the Companies Act, 1956;
- a scheduled commercial bank;
- a multilateral and bilateral development financial institution;
- a state industrial development corporation;
- an insurance company registered with the Insurance Regulatory and Development Authority;
- a provident fund with minimum corpus of twenty five crore rupees;
- a pension fund with minimum corpus of twenty five crore rupees;
- Insurance funds set up and managed by army, navy or air force of the Union of India
- Insurance funds set up and managed by the Department of Posts, India.
Procedure for QIP: The ICDR regulations have been laid down with certain conditions and restrictions for QIP which are to be complied by the company as a procedure without fail. The company shall adhere to the following procedure:

(a) **Approval of shareholders & validity of Shareholders:** The Company shall pass a Special resolution approving the qualified institutional placement by its shareholders. Further, the allotment of securities pursuant to the special resolution referred to in clause (a) of ICDR regulation 82 shall be completed within a period of 12 months from the date of passing of the resolution.

(b) **Merchant Banker:** A QIP shall be managed by the merchant banker(s) registered with the board who shall exercise the due diligence. It is the duty of the merchant banker to seeking-in the approval for the listing of the eligible securities issued under QIPs and other requirements of the chapter.

(c) **Listed securities:** The class of eligible securities, the equity shares of the same class, which are to be allotted through QIPs or there for conversion should have been listed in the stock exchange having nationwide trading terminal for a period of at least one year prior to the date of issuance of AGM notice to its shareholders. [Transferee Company in a scheme of merger, de-merger, amalgamation or arrangement sanctioned by a High Court under sections 391 to 394 of the Companies Act, 1956, may make QIP, where the equity shares of the same class of the transferor company were listed for a period of 1 year as mentioned above.]

(d) **Allotment of securities under QIP:** the listed issuer to make QIPs may satisfies that it is in compliance with the requirement of minimum public shareholding under Securities Contract (1956).

(e) **Minimum Number of Allottee:** the minimum number of allottees for each placement of eligible securities that has to be made under QIPs shall not be less than two, where the issue size is less than or equal to ₹250 crores; and five, where the issue size is greater than ₹250 crores. However, no single allottee shall be allotted more than 50% of the issue size.

(f) **Pricing:** Issue of shares under QIP shall be made at a price not less than the average of the weekly high and low of the closing prices of the equity shares of the same class quoted on the stock exchange during the two weeks preceding the relevant date. Where eligible securities are convertible into or exchangeable with equity shares of the issuer, the issuer shall determine the price of such equity shares allotted pursuant to such conversion or exchange taking the relevant date as decided and disclosed by it while passing the special resolution.

(g) **Partly paid-up:** the issuer shall not allot partly paid-up eligible securities, however case of the non-convertible debt instruments along with warrants, the allottees may pay full considerations or part thereof payable with respect to warrants, at the time of allotment of
such warrants, however further, on allotment of equity shares on exercise of the options attached to warrants, such equity shares shall be fully paid up.

(h) **Allotment Conditions:** At the time of allotment under the QIPs, minimum 10% of the eligible securities shall be allotted to mutual funds, however, if the mutual funds do not subscribe to the said minimum percentage or any part, such minimum portion or part may be allotted to other QIB’s.

(i) **Allotment to promoters:** No allotment shall be made, either directly or indirectly, to any qualified institutional buyer who is a promoter or any person related to promoters of the issuer.

(j) **BIDS:** The applicants in qualified institutional placement shall not withdraw their bids after the closure of the issue.

(k) **Quantum of issue:** The aggregate of the proposed qualified institutional placement and all previous qualifies institutional placements made by the issuer in the same financial year shall not exceed 5 times the net worth of the issuer as per the audited balance sheet of the previous financial year.

(l) **Tenure of convertible securities:** The tenure of the convertible or exchangeable securities issued through qualified institutions placement shall not exceed 60 months from the date of allotment.

(m) **Transferability of eligible securities:** the eligible securities under QIP shall not be sold by the allotee for a period of one year from the date of the allotment, except on a recognized stock exchange.

(n) **Placement Document:** this is the most important provision as it tells that QIPs shall be made on the basis of a placement document which shall contain all material information. The following shall be submitted to Stock exchange-

- Hard copy of the preliminary Placement document;
- Soft copy of the Preliminary Placement Document;
- Due diligence Certificate of the lead Merchant Banker in compliance with ICDR regulations.

There is no pre-issue filing of the placement document with SEBI. The (final) placement document shall be serially numbered and copies shall be circulated only to QIBs. The placement document shall contain a disclaimer to the effect that it is in connection with a qualified institutions placement and that no offer is being made to the public or to any other category of investors. However, a copy of the placement document shall be filed with the Board for its record within 30 days of the allotment of eligible securities.
SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

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1. SCOPE

On September 2, 2015, SEBI notified the Listing Obligations and Disclosure Requirements Regulations, 2015 to be called as the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 with objectives:

To align clauses of the listing agreement with Companies Act and secondly, to consolidate the conditions under different securities' listing agreements in one single regulation. The 2015 Regulations are applicable to any entity (whether a company or not) accessing the stock exchange, for listing equity shares (on main board, SME exchange, institutional trading platforms), debt securities, preference shares, depository receipts, securitized debt instruments, mutual fund units, and other securities as may be specified by SEBI.

2. INTRODUCTION

Securities and Exchange Board of India (SEBI), on September 2, 2015, issued SEBI (Listing and Disclosure) Regulations, 2015 on listing of different segments of the capital market and disclosure norms in relation thereto.

These regulations have been structured into single document with the aim to consolidate and streamline the provision of existing listing agreements for different segments of capital markets, such as equity shares (including convertibles), non-convertible debt securities, etc. for ensuring better enforceability.

The latest set of norms provides broad principles for periodic disclosures by listed entities, apart from incorporating corporate governance principles. These regulations shall apply to the listed entity who has listed any of the following designated securities on recognized stock exchange(s):

- Specified securities listed on main board or SME Exchange or Institutional trading platform;
- Non-convertible debt securities, non-convertible redeemable preference Shares, perpetual debt instrument, perpetual non-cumulative preference Shares;
- Indian depository receipts;
- Securitized debt instruments;
- Units issued by mutual funds;
- Any other securities as may be specified by the Board.
There are some of the broad features of the SEBI (LODR) Regulations, 2015 are as follow:

1. Time Limit to comply with other provisions of the regulations has been given for 90 Days i.e. it became effective from 01st December, 2015

2. The regulations have provided broad principles for periodic disclosures by the listed entities and also have incorporated the principles for corporate governance they have been formed on the lined with OECD.

3. The Regulations have been structured and designed in such a way so that they are aligned with Companies Act, 2013.

4. In order to avoid any sort of confusion or overlapping, pre-listing as well as post listing requirements have been incorporated in the Listing Regulations.

5. Obligations which are applicable to specific types of securities have been incorporated in separate chapters.

Further, the Listing Regulations have been sub-divided into two parts viz.,:

(a) Substantive provisions incorporated in the main body of Regulations,

(b) Procedural requirements in the form of schedules to the Regulations

3. COMMON OBLIGATIONS OF LISTED ENTITIES

This part deals with the obligations and responsibilities upon all the listed entities. A responsibility has been cast upon Key Managerial Personnel (KMP’S), Directors, and Promoters that they shall comply with responsibilities or obligations assigned to them under the regulations.

The following are the common obligations on Listed entities:-

1. **Regulation 6: Compliance Officer And his Obligations**

   A listed entity shall appoint a qualified Company Secretary as the Compliance Officer. The Compliance officer so appointed shall be responsible for ensuring conformity with regulatory compliance, co-ordination and reporting to the Board, ensuring that correct procedures have been followed that would result in correctness of information filed by listed entity under the regulations and monitoring email address of grievance redressal division.

2. **Regulation 7: Share Transfer Agent**

   The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.
4. REGULATION 24 : CORPORATE GOVERNANCE REQUIREMENTS WITH RESPECT TO SUBSIDIARY OF LISTED ENTITY.

The Board: Atleast one Independent Director on Board shall be a Director on Board of Unlisted Material Subsidiary. The management of the unlisted subsidiary shall periodically bring to the notice of the board of directors of the listed entity, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary.

A listed entity shall not dispose of shares in its material subsidiary resulting in reduction of its shareholding (either on its own or together with other subsidiaries) to less than 50 % or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting except in cases where such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal.

Selling, disposing and leasing of assets amounting to more than 20% of the assets of the material subsidiary on an aggregate basis during a financial year shall require prior approval of shareholders by way of special resolution, unless the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal.

5. QUARTERLY COMPLIANCES– Listed Entity

A. Regulation 13(3):- Grievance Redressal Mechanism

The listed entity shall file with the recognized stock exchange(s) on a quarterly basis, within 21 days from the end of each quarter, a statement giving the number of investor complaints pending at the beginning of the quarter, those received during the quarter, disposed of during the quarter and those remaining unresolved at the end of the quarter.

B. Regulation 27(2):- Other Corporate Governance Requirements

A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s), Within 15 days from close of quarter.

C. Regulation 31(1): Holding of Specified Securities and Shareholding Pattern.

A listed entity shall submit a statement showing holding of securities and shareholding pattern separately for each class of securities :-

(a) One day prior to listing of its securities on the stock exchange(s);

(b) On a quarterly basis, within 21 days from the end of each quarter; and,

(c) Within 10 days of any capital restructuring of the listed entity resulting in a change exceeding 2 % per cent of the total paid-up share capital.

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D. Regulation 33(3): Financial Results

The listed entity shall submit quarterly and year-to-date standalone financial results to the stock exchange within **45 days** of end of each quarter, other than the last quarter.

E. Regulation 32(1): Statement of Deviation(S) Or Variation(S)

A listed entity shall submit to the stock exchange the following statement(s) on a quarterly basis for public issue, rights issue, preferential issue etc. -

(a) **indicating deviations**, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;

(b) **indicating category wise variation** (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

### 6. PRIOR INTIMATION OF BOARD MEETING

A. Regulation 29(1): Financial Results

At least **5 days** in advance (excluding date of meeting and date of intimation).

B. Other Matters Regulation 29(2)

For following purposes Intimation shall be required to be made at least **2 working days** in advance, excluding the date of the intimation and date of the meeting:-

- Proposal for **Voluntary Delisting** by the listed entity from the stock exchange(s);
- Fund raising by way of further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price.
- Declaration/recommendation of dividend, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend
- The proposal for declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers;
- Proposal for Buyback of Securities.

C. Regulation 29(3): Prior Intimation

The listed entity shall give intimation to the stock exchange(s) at least **11 working days** before any of the following proposal is placed before the board of directors -
• Any alteration in the form or nature of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.

• Any alteration in the date on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

D. Regulation 42(2): Record Date or Date of Closure of Transfer Books

A listed entity shall give notice in to stock exchange(s) of record date specifying the purpose of the record date, at least 7 working days (excluding the date of intimation and the record date).

E. Regulation 42(3): Dividend

A listed entity shall recommend or declare all dividend and/or cash bonuses At least 5 working days (excluding the date of intimation and the record date) before the record date.

F. Regulation 46(3): Website

A listed entity shall update any change in the content of its website Within 2 working days from the date of such change in content.

7. ANNUAL / YEARLY COMPLIANCES

The annual/yearly compliances that have to be followed are as follows:

A. Regulation 33(3): Financial Results

Listed entity shall submit audited standalone financial results for the financial year, along with the audit report and either Form A (for audit report with unmodified opinion) or Form B (for audit report with modified opinion) within 60 days from end of Financial Year.

B. Regulation 34: Annual Report

A listed entity shall submit the annual report to the stock exchange within 21 working days of it being approved and adopted in the Annual General Meeting as per the provisions of the Companies Act, 2013.

C. Regulation 36(2): Documents & Information to Shareholders:

A listed entity shall send annual report to the holders of securities not less than 21 days before the Annual General Meeting.

8. ROLE OF COMPLIANCE OFFICER

The role of a Compliance Officer is as follows:

• Listed Company shall ensure KMP, Directors, Promoters complies with obligations
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• Compliance Officer ensure listed Company confirms with regulatory provisions in letter and spirit.
• Co-ordination with – Board and Stock Exchange
• Report to – Board and Stock Exchange.
• Ensure – Correct, Authentic, Comprehensive info is filed.
• Monitor email id for grievance redressal.
• Determining materiality of information to be reported to stock exchange.
• Report to Board about compliance.
• Ensure compliance with SS 1(Board Meeting) and SS 2(General Meeting)
  o To provide guidance to director about their Duties.
  o To assist board in conduct of affairs of the Company.
  o Assist and Advice board in complying with CG and best practices.
  o Facilitate meeting / represent company etc...

9. CORPORATE GOVERNANCE

• Approval for related party transactions through a resolution [As per Clause 49 of Listing Agreement, it was Special Resolution]

• All existing material related party contracts / arrangements, prior to the date of notification of these Regulations, and which may continue beyond, to be placed for approval of the shareholders in first General Meeting subsequent to notification of these Regulations.

Compliance Report on Corporate Governance

The following reports are submitted to Stock Exchange:

• Quarterly Compliance Report – to be submitted within 15 days from end of quarter
• Compliance Report to be submitted within 6 months from the end of financial year – may be submitted along with second quarter report.
• Annual Compliance Report.

10. TYPES OF COMMITTEES UNDER LODR REGULATIONS

A. Audit Committee:

Every listed entity shall constitute a qualified and independent audit committee which shall have:

(a) The audit committee shall have minimum three directors as members.
(b) **Two-thirds** of the members of audit committee shall be independent directors.

(c) **All** members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

(d) The chairperson of the audit committee shall be an **Independent Director** and he shall be present at Annual general meeting to answer shareholder queries.

(e) The Company Secretary shall act as the secretary to the audit committee.

(f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee.

**Meetings of Audit Committee:**

(a) The audit committee shall meet at least **four** times in a year and not more than **120** days shall elapse between two meetings.

(b) The **Quorum** for audit committee meeting shall either be **two** members or **one third** of the members of the audit committee, whichever is greater, with at least **2** Independent directors.

(c) The audit committee shall have powers to investigate any activity within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

**B. Nomination and Remuneration Committee:**

The Board of directors shall constitute the nomination and remuneration committee as follows:

- The committee shall comprise of at least **3** directors;
- All directors of the committee shall be **Non-Executive Directors**; and
- At least **50 percent** of the directors shall be independent directors.

The **Chairperson** of the nomination and remuneration committee shall be an independent director: **Provided** that the chairperson of the listed entity, whether executive or non-executive, may be appointed as a member of the Nomination and Remuneration Committee and shall not chair such Committee.

**C. Stakeholders Relationship Committee:**

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into the mechanism of redressal of grievances of shareholders, debenture holders and other security holders.

- The Chairperson of this committee shall be a **Non-Executive** director.
- The Board of Directors shall decide other **members** of this committee.
D. Risk Management Committee

- The Board of directors shall constitute a Risk Management Committee.
- The majority of members of Risk Management Committee shall consist of members of the board of directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- The Board of directors shall define the role and responsibility of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit.
- The provisions of this regulation regarding risk management committee shall be applicable to top 100 listed entities, determined on the basis of market capitalization, as at the end of the immediate previous financial year.
Question 1

A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advise.

Answer

Removal of Member of the SEBI (Section 6 of the Securities and Exchange Board of India Act, 1992)

According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he:

(i) is, or at any time has been adjudicated as insolvent;
(ii) is of unsound mind and stands so declared by a competent court;
(iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
(iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

Before removing a member, he will be given a reasonable opportunity of being heard in the matter.

In the present case, a group of complainants have alleged that Mr. Z, a member of the SEBI has pecuniary interest in some of the cases that came up before the Board and he misused his position and therefore, he should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Z, a member of the SEBI and if the Central Government is of the opinion that Mr. Z has so abused his position as to render his continuation in office detrimental to the public interest, the Central Government may remove Mr. Z from his office after giving him a reasonable opportunity of being heard in the matter.

Question 2

SEBI received complaints from some investors alleging that ABC Ltd. and some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.
Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.

(i) Suspend the trading of any security (in this case the securities of ABC Ltd.) in a recognized stock exchange.

(ii) Restrain persons (in this case ABC Ltd.) from accessing the securities market. It can also prohibit any person associated with securities market (i.e. brokers who have indulged in price manipulation) to buy, sell or deal in securities market.

SEBI may issue the above orders for reasons to be recorded in writing. SEBI shall, either before or after passing such orders give an opportunity of hearing to company and brokers concerned (proviso 2 to Section 11(4)) SEBI may also appoint an adjudicating officer who may levy penalty under section 15 HA after holding an enquiry in the prescribed manner. According to section 15HA if any person indulges in fraudulent and unfair trade practices relating to securities, he shall be leviable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Prohibition on manipulation and deceptive practices: Further according to section 12A, no person shall directly or indirectly indulge in following (i.e.) (a) using in manipulative or deceptive device in connection with purchase, sale or securities listed (b) Employ any scheme or device to defraud in connection with dealing in securities which are listed (c) engage in an act which would operate as fraud or deceit upon any person in connection with dealing in securities which are listed. SEBI may impose penalty which shall not be less than one lakh rupees but which may extend to one crore rupees. (Section 15 HB).

Question 3

Clever who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI.

Answer

Remedies against SEBI order: Section 15B of the Securities and Exchange Board of India Act, 1992 lays down that if any person, who is registered as an intermediary and is required under this Act or any rules or regulations made there under, to enter into an agreement with his client, fails to enter into such agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Mr. Clever has been penalised under the above mentioned provision. Two remedies are available to Mr. Clever in this matter:-
(i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, (1) any person aggrieved,—

(a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder; or

(b) by an order made by an adjudicating officer under this Act; or

(c) by an order of the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.

Every appeal shall be filed within a period of forty-five days from the date on which a copy of the order made by the Board or the Adjudicating Officer or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed:

Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

On receipt of an appeal under sub-section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.

The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavor shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

(ii) **Appeal to the Supreme Court:** Section 15Z of the SEBI Act, 1992 provides that any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within 60 days from the date of communication of the decision or order to him on any question of fact or law arising out of such order. The Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

**Question 4**

A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances.
Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.

**Answer**

The Securities and Exchange Board of India (SEBI) was established primarily for the purpose of

1. to protect the interests of investors in securities
2. to promote the development of securities market
3. to regulate the securities market and
4. For matters connected therewith and incidental thereto.

The following defaults by stock brokers come within the purview of SEBI Act:

(a) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.

(b) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.

(c) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)

**Question 5**

Mr. Raman, an investor is not satisfied with the dealings of his stock broker who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries.

**Answer**

Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Raman is advised that the complaint against the erring stock broker may be submitted to SEBI.

The grounds on which or the defaults for which complaints may be made to SEBI are as follows:

(a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.

(b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.

(c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.
Question 6

On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehra under the Securities and Exchange Board of India Act, 1992.

Answer

Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

(ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary cause of business or under any law, or

(iii) counsels or procures for, any other person to deal in any securities of any body corporate on the basis of unpublished price sensitive information,

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehra. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

Question 7

Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.

Answer

As per section 11 (4) of the Securities and Exchange Board of India Act, 1992, the Board may, by an order, for reasons to be recorded in writing, in the interest of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

1. suspend the trading of any security in a recognised stock exchange;

2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;

3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;

5. attach, after passing of an order on an application made for approval by the Judicial Magistrate of the first class having jurisdiction, for a period not exceeding one month, one or more bank account or accounts of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

However only the bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached;

6. direct any intermediary or any person associated with the securities market in any manner not to dispose of or alienate an asset forming part of any transaction which is under investigation.

Question 8

Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company?

Answer

According to Section 28A of the Securities and Exchange Board of India Act, 1992, if a person fails to pay the penalty imposed by the adjudicating officer or fails to comply with any direction of the Board for refund of monies or fails to comply with a direction of disgorgement order issued under section 11B or fails to pay any fees due to the Board, the Recovery Officer may draw up under his signature a statement /certificate in the specified form specifying the amount due from the person and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:

(a) attachment and sale of the person’s movable property;
(b) attachment of the person’s bank accounts;
(c) attachment and sale of the person’s immovable property;
(d) arrest of the person and his detention in prison;
(e) appointing a receiver for the management of the person’s movable and immovable properties.

The expression ‘Recovery Officer’ means any officer of the Board who may be authorized by general or special order in writing, to exercise the powers of a Recovery Officer. The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers.