

## **THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992**

No.15 of 1992

An Act to provide for the establishment of a Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-third Year of the Republic of India as follows;-

- ? CHAPTER I (Preliminary)
- ? CHAPTER II (Establishment Of The Securities And Exchange Board Of India)
- ? CHAPTER III (Transfer Of Assets, Liabilities, etc. Of The Existing Securities And Exchange Board To The Board)
- ? CHAPTER IV (Powers And Functions Of The Board)
- ? CHAPTER V (Registration Certificate)
- ? CHAPTER VI (Finance, Accounts And Audit)
- ? CHAPTER VIIA (Penalties and Adjudication)
- ? CHAPTER VIB (Establishment, Jurisdiction, Authority and Procedure of Appellate Tribunal)
- ? CHAPTER VII (Miscellaneous)

### **CHAPTER I PRELIMINARY**

#### **Short title & commencement**

1. (1) This Act may be called the Securities and Exchange Board of India Act, 1992.
- (2) It extends to the whole of India.
- (3) It shall be deemed to have come into force on the 30th day of January 1992.

#### **Definitions**

2. (1) In this Act, unless the context otherwise requires, -
  - (a) "Board" means the Securities and Exchange Board of India established under section 3;
  - (b) "Chairman" means the Chairman of the Board;
  - (ba) *"collective investment scheme" means any scheme or arrangement which satisfies the conditions specified in Section 11AA<sup>1</sup>;*
  - (c) "existing Securities and Exchange Board" means the Securities and Exchange Board of India constituted under the Resolution of the Government of India in the Department of Economic Affairs No.1 (44)SE/86, dated the 12th day of April, 1988;
  - (d) "Fund" means the fund constituted under Section 14;
  - (e) "member" means a member of the Board and includes the Chairman;
  - (f) "notification" means a notification published in the Official Gazette;

(g) "prescribed" means prescribed by rules made under this Act;

(h) "regulations" means the regulations made by the Board under this Act;

(ha) "Reserve Bank" means the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934<sup>2</sup>.

42 of 1956 (i) "securities" has the meaning assigned to it in section 2 of the Securities Contracts (Regulation) Act, 1956.

42 of 1956 (2) Words and expressions used and not defined in this Act but defined in...<sup>3</sup> *the Securities Contracts (Regulation) Act, 1956, [or the Depositories Act, 1996]*<sup>4</sup>, shall have the meanings respectively assigned to them in *that*<sup>5</sup> Act.

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<sup>1</sup>Inserted by Securities Laws (Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999.

<sup>2</sup> Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>3</sup>The following words 'the Capital Issues (Control) Act, 1947, or' deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>4</sup>The words 'the Securities Contracts (Regulation) Act, 1956' substituted by words 'the Securities Contracts (Regulation) Act, 1956 or the Depositories Act, 1996 (22 of 1996) by the Depositories Act, 1996 (w.e.f. 12.8.96)

<sup>5</sup>The word 'those' substituted by word 'that' by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.3.95)

## CHAPTER II

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

#### **Establishment and incorporation of Board**

3. (1) With effect from such date as the Central Government may, by notification, appoint, there shall be established, for the purposes of this Act, a Board by the name of the Securities and Exchange Board of India.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The head office of the Board shall be at Bombay.

(4) The Board may establish offices at other places in India.

#### **Management of the Board**

4. (1) The Board shall consist of the following members, namely:-

(a) a Chairman;

(b) two members from amongst the officials of the [Ministry]<sup>6</sup> of the Central Government dealing with Finance [and administration of the Companies Act, 1956]<sup>7</sup>; 2 of 1934

(c) one member from amongst the officials of [the Reserve Bank]<sup>8</sup>;

[(d) five other members of whom at least three shall be the whole-time members]<sup>9</sup>.

(2) 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.

(3) Save as otherwise determined by regulations, the Chairman shall also have powers of general superintendence and direction of the affairs of the Board and may also exercise all powers and do all acts and things which may be exercised or done by the Board.

(4) The Chairman and members referred to in clauses (a) and (d) of sub-section (1) shall be appointed by the Central Government and the members referred to in clauses (b) and (c) of that sub-section shall be nominated by the Central Government and the [Reserve Bank]<sup>10</sup> respectively.

(5) The Chairman and the other members referred to in clauses (a) and (d) of sub-section (1) shall be from amongst the 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.

**Term of office and conditions of service of Chairman and members of the Board** 5. (1) The term of office and other conditions of service of the Chairman and the members referred to in clause (d) of sub-section (1) of section 4 shall be such as may be prescribed.

(2) Notwithstanding anything contained in sub-section (1), the Central Government shall have the right to terminate the services of the Chairman or a member appointed under clause (d) of sub-section (1) of section 4, at any time before the expiry of the period prescribed under sub-section (1), by giving him notice of not less than three months in writing or three months salary and allowances in lieu thereof, and the Chairman or a member, as the case may be, shall also have the right to relinquish his office, at any time before the expiry of the period prescribed under sub-section (1), by giving to the Central Government notice of not less than three months in writing.

**Removal of member from office** 6<sup>11</sup>. The Central Government shall remove a member from office if he -

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

(b) is of unsound mind and stands so declared by a competent court;

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

[(d) ...]<sup>12</sup>

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

Provided that no member shall be removed under this clause unless he has been given a reasonable opportunity of being heard in the matter.

**Meetings** 7. (1) 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.

(2) The Chairman or, if for any reason, he is unable to attend meeting of the Board, any other

member chosen by the members present from amongst themselves at the meeting shall preside at the meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority vote of the members of the Board present and voting, and in the event of an equality of votes, the Chairman, or in his absence, the person presiding, shall have a second or casting vote.

**Member not to participate in meetings in certain cases** [7A. Any member, who is a director of a company and who as such director has any direct or 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.]<sup>13</sup>

**Vacancies, etc. not to invalidate proceedings of Board** 8. No act or proceeding of the Board shall be invalid merely by reason of -

- (a) any vacancy in, or any defect in the constitution of, the Board; or
- (b) any defect in the appointment of a person as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

**Officers and employees of the Board** 9. (1) The Board may appoint such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The term and other conditions of service of officers and employees of the Board appointed under sub- section (1) shall be such as may be determined by regulations.

<sup>6</sup> Substituted for the word "Ministries" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>7</sup> Substituted for the words "and Law" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>8</sup> Substituted for the words and figures "the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>9</sup> Substituted for the clause "two other members, to be appointed by the Central Government" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>10</sup> Substituted for the words "Reserve Bank of India" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>11</sup> The brackets and figure (1) deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f.25.1.95)

<sup>12</sup> Clause (d) which read as 'is appointed as a director of a company' has been deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) w.f.(25.1.95)

<sup>13</sup> Section 7A inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f.25.1.95)

### CHAPTER III

#### TRANSFER OF ASSETS, LIABILITIES, ETC. OF THE EXISTING SECURITIES AND EXCHANGE BOARD TO THE BOARD

**Transfer of assets, liabilities, etc. of existing Securities and Exchange Board to the Board** 10.

(1) On and from the date of establishment of the Board,-

- (a) any reference to the existing Securities and Exchange Board in any law other than this Act

or in any contract or other instrument shall be deemed as a reference to the Board;

(b) all properties and assets, movable and immovable, of or belonging to the existing Securities and Exchange Board, shall vest in the Board;

(c) all rights and liabilities of the existing Securities and Exchange Board shall be transferred to and be the rights and liabilities of the Board;

(d) Without prejudice to the provisions of clause (c), all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the existing Securities and Exchange Board immediately before that date, for or in connection with the purpose of the said existing Board shall be deemed to have been incurred, entered into, or engaged to be done by, with or, for, the Board;

(e) all sums of money due to the existing Securities and Exchange Board immediately before that date shall be deemed to be due to the Board;

(f) all suits and other legal proceedings instituted or which could have been instituted by or against the existing Securities and Exchange Board immediately before that date may be continued or may be instituted by or against the Board; and

(g) every employee holding any office under the existing Securities and Exchange Board immediately before that date shall hold his office in the Board by the same tenure and upon the same terms and conditions of service as respects remuneration, leave, provident fund, retirement and other terminal benefits as he would have held such office if the Board had not been established and shall continue to do as an employee of the Board or until the expiry of the period of six months from the date if such employee opts not to be the employee of the Board within such period.

(2) Notwithstanding anything contained in the Industrial Disputes Act, 1947<sup>14</sup>, or in any other law for the time being in force, absorption of any employee by the Board in its regular service under this section shall not entitle such employee to any compensation under that Act or other law and no such claim shall be entertained by any court, tribunal or other authority.

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<sup>14</sup>. Act No.14 of 1947

## CHAPTER IV

### POWERS AND FUNCTIONS OF THE BOARD

**Functions of the Board** 11. (1) Subject to the provisions of this Act, it shall be duty of the Board to protect the interests of the investors in securities and to promote and development of, and to regulate the securities market by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein 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,]<sup>15</sup> custodians of

securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.]<sup>16</sup>

(c) registering and regulating the working of [venture capital funds and collective investment schemes]<sup>17</sup> 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]<sup>18</sup> and other persons associated with the securities market and intermediaries and self-regulatory organisations in the securities market;

[(ia) calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any Central, State or Provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;]<sup>19</sup>

(j) performing such functions and exercising such powers under the provisions of [...] <sup>20</sup> 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 purpose 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;<sup>21</sup>

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

[(2A) Without prejudice to the provisions contained in sub-section (2), 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 (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognized 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.]<sup>22</sup>

(3) Notwithstanding anything contained in any other law for the time being in force while exercising the powers under [clause (i) or clause (ia) of sub-section (2) or sub-section (2A)]<sup>23</sup>, the Board shall have the same powers as are vested in a civil court under the [Code of Civil Procedure, 1908 (5 of 1908)]<sup>24</sup> while trying a suit, in respect of the following matters, namely:-

(i) the discovery and production of books of account and other documents, at such place and such time as may be specified by the Board;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) inspection of any books, registers and other documents of any person referred to in section 12, at any place<sup>25</sup>;

[(iv) inspection of any book, or register, or other document or record of the company

referred to in sub-section (2A);

(v) issuing commissions for the examination of witnesses or documents.]<sup>26</sup>

[(4) Without prejudice to the provisions contained in sub-sections (1), (2), (2A) and (3) and section 11B, 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 recognized 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:

Provided that 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:

Provided that the Board may, without prejudice to the provisions contained in sub-section (2) or sub-section (2A), take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognized 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:

Provided further that the Board shall, either before or after passing such orders, give an opportunity of hearing to such intermediaries or persons concerned.]<sup>27</sup>

[Board to regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities. 11A. (1) Without prejudice to the provisions of the Companies Act, 1956, the Board may, for the protection of investors, -

- (a) specify, by regulations –
  - (i) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and
  - (ii) the manner in which such matters shall be disclosed by the companies;
- (b) by general or special orders –
  - (i) prohibit any company from issuing prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities;
  - (ii) specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.



(2) Without prejudice to the provisions of section 21 of the Securities Contracts (Regulation) Act, 1956, the Board may specify the requirements for listing and transfer of securities and other matters incidental thereto.”<sup>28</sup>

11AA (1) Any scheme or arrangement which satisfies the conditions referred to in sub-section (2) shall be a collective investment scheme.

(2) Any scheme or arrangement made or offered by any company under which,---

- i. the contributions or payments made by the investors, by whatever name called, are pooled and utilized solely 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 the profits, income, produce or property, whether movable or immovable from such scheme or arrangement;
- iii. the property, the 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.

(3) Notwithstanding anything contained in sub-section (2), 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 cooperative 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 issuance to which the Insurance Act, 1938, applies;
  - iv. providing for any scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
  - v. under which deposits are accepted under section 58A of the Companies Act, 1956;
  - vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956;
  - 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;
- shall not be a collective investment scheme<sup>29</sup>

**Power to issue directions** 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,-

- (i) in the interest of investors, or orderly development of securities market; or
- (ii) to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or
- (iii) to secure the proper management of any such intermediary or person, it may issue such directions,-



(a) to any person or class of persons referred to in section 12, or associated with the securities market; or

(b) to any company in respect of matters specified in section 11A as may be appropriate in the interests of investors in securities and the securities market<sup>30</sup>.

**Investigations** 11C. (1) 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 thereunder.

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) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956, 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) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

(4) The Investigating Authority may keep in its custody any books, registers, other documents and record produced under sub-section (2) or sub-section (3) 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:

Provided that the Investigating Authority may call for any book, or register, other document and record if they are needed again:

Provided further that 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.

(5) Any person, directed to make an investigation under sub-section (1), 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.

(6) If any person fails without reasonable cause or refuses –

(a) to produce to the Investigating Authority or any person authorised by it in this behalf any

book, register, other document and record which it is his duty under sub-section (2) or sub-section (3) to produce; or

(b) to furnish any information which it is his duty under sub-section (3) to furnish; or

(c) to appear before the Investigating Authority personally when required to do so under sub-section (5) or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or

(d) to sign the notes of any examination referred to in sub-section (7),

he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and 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.

(7) Notes of any examination under sub-section (5) 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.

(8) 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 Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record.

(9) After considering the application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorize the Investigating Authority –

(a) to enter, with such assistance, as may be required, the place or places where such books, registers, other documents and record are kept;

(b) to search that place or those places in the manner specified in the order; and

(c) to seize books, registers, other documents and record it considers necessary for the purposes of the investigation:

Provided that the Magistrate shall not authorize 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) 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 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) Save as otherwise provided in this section, every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

**Cease and desist proceedings** 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 recognized stock exchange unless the Board has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.]<sup>37</sup>

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<sup>15</sup>For the words `depositories, custodians,' the words `depositories, participants, custodian' substituted by The Depositories Act, 1996, (22 of 1996) (w.f. 12.8.96)

<sup>16</sup> Clause (ba) inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.3.95)

<sup>17</sup>Substituted for `collective investment schemes' by Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>18</sup> The words `mutual funds' inserted in clause (i) in place of the word `and' by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>19</sup> Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>20</sup> The words `the Capital Issues (Control) Act, 1947 and' deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>21</sup> Clause (la) inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>22</sup> Sub-section (2A) inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>23</sup> Substituted for "clause (i) of sub-section (2)" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>24</sup> The words `Code of Civil Procedure, 1908', substituted by the words `Code of Civil Procedure, 1908 (5 of 1908)'.

<sup>25</sup> Sub-section (3) inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>26</sup> Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>27</sup> Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>28</sup> Substituted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002 for following Section 11A. "Matters to be disclosed by the companies 11A. Without prejudice to the provisions of the Companies Act, 1956, (1 of 1956) the Board may, for the protection of investors, specify, by regulations,-

(a) the matters relating to issue of capital, transfer of securities and other matters incidental thereto; and

(b) the manner in which such matters, shall be disclosed by the companies.”

<sup>29</sup> Inserted by Securities Laws (Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999

<sup>30</sup>. Ibid

<sup>31</sup>. Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

## CHAPTER V

### REGISTRATION CERTIFICATE

**Registration of stock broker, sub-broker, share transfer agents etc.** 12. (1) No 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 except under, and in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations<sup>32</sup> made under this Act.

Provided that a person buying or selling securities or otherwise dealing with the securities market as a 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 immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

Provided further that any certificate of registration, obtained immediately before the commencement of the Securities Laws (Amendment) Act, 1995, shall be deemed to have been obtained from the Board in accordance with the regulations providing for such registration. <sup>33</sup>

(1A) No depository, [participant],<sup>34</sup> 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 except under and in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act.

Provided that a person buying or selling securities or otherwise dealing with the securities market as a depository, [participant,] custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995, for which no certificate of registration was required prior to such commencement, may continue to buy or sell securities or otherwise deal with the securities market until such time regulations are made under clause (d) of sub-section (2) of section 30.<sup>35</sup>

(1B) No person shall sponsor or cause to be sponsored or carry on or cause to be carried on any venture capital funds or collective investment schemes including mutual funds, unless he obtains a certificate of registration from the Board in accordance with the regulations.

Provided that any person sponsoring or causing to be sponsored, carrying or causing to be carried on any venture capital funds or collective investment schemes operating in the securities market immediately before the commencement of the Securities Laws (Amendment) Act, 1995 for which no certificate of registration was required prior to such commencement, may continue to operate till such time regulations are made under clause (d) of sub-section (2) of section 30.<sup>36</sup>

(2) Every application for registration shall be in such manner and on payment of such fees as may be determined by regulations.

(3) 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.

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<sup>32</sup> The word `rules' substituted by the word `regulations' by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>33</sup> Proviso 2 to section 12(1) inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>34</sup> For the words `depository, custodian' at both the places where they occur, the words `depository, participant, custodian' were substituted by the Depositories Act, 1996, (22 of 1996) (w.e.f. 12.8.96)

<sup>35</sup> Sub-section (1A) along with proviso inserted in Section 12 by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>36</sup> Sub-section (1B) along with proviso inserted in Section 12 by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

## **[CHAPTER VA**

### **PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL**

#### **Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities and control** 12A. No person shall directly or indirectly –

- (a) 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;
- (b) 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 recognized stock exchange;
- (c) 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 recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (d) engage in insider trading;
- (e) 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;

- (f) 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 recognized stock exchange in contravention of the regulations made under this Act.]<sup>37</sup>

<sup>37</sup>. Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

## CHAPTER VI

### FINANCE, ACCOUNTS AND AUDIT

**Grants by the Central Government** 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 the Central Government may think fit for being utilised for the purposes of this Act.

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-

(a) all grants, fees and charges received by the Board under this Act;

[\*\*\*]<sup>38</sup>

(b) 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 -

(a) the salaries, allowances and other remuneration of members, officers and other employees of the Board;

(b) the expenses of the Board in the discharge of its functions under Section 11;

(c) the expenses on objects and for purposes authorised by this Act.

15. (1) 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) 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) 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) 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.

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<sup>38</sup>. The following clause omitted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

*“(aa) all sums realised by way of penalties under this Act; and “*

## CHAPTER VIA<sup>39</sup>

### PENALTIES AND ADJUDICATION

**Penalty for failure to furnish information, return, etc.** 15A. If any person, who is required under this Act or any rules or regulations made thereunder, -

(a) to furnish any document, return or report to the Board, fails to furnish the same, 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]<sup>40</sup>;

(b) 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, 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]<sup>41</sup>;

(c) to maintain books of accounts or records, fails to maintain the same, 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.]<sup>42</sup>

**Penalty for failure by any person to enter into an agreement with clients** 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]<sup>43</sup>

**Penalty for failure to redress investors' grievances** 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]<sup>44</sup>

**Penalty for certain defaults in case of mutual funds** 15D. If any person, who is -

(a) 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, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to [a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds, or one crore rupees, whichever is less.]<sup>45</sup>

(b) 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, 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.]<sup>46</sup>



(c) 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 the regulations governing such listing, 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.]<sup>47</sup>

(d) registered as a collective investment scheme, including mutual funds, fails to despatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, 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.]<sup>48</sup>

(e) registered as a collective investment scheme, including mutual funds, fails to refund the application moneys paid by the investors within the period specified in the regulations, he shall be liable to pay [a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]<sup>49</sup>

(f) registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, 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.]<sup>50</sup>

**Penalty for failure to observe rules and regulations by an asset management company** 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.]<sup>51</sup>

**Penalty for failure in case of stock brokers** 15F. If any person, who is registered as a stock broker under this Act, -

(a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker;

(b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner or within the period specified in the regulations, 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.]<sup>52</sup>

(c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to [a penalty of one lakh rupees]<sup>53</sup> or five times the amount of brokerage charged in excess of the specified brokerage whichever is higher.

**Penalty for insider trading** 15G. If any insider who,-

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed 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 course 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 [twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.]<sup>54</sup>

**Penalty for non-disclosure of acquisition of shares and take-overs** 15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to-

- (i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- (ii) make a public announcement to acquire shares at a minimum price, he shall be liable to a penalty [twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.]<sup>55</sup>
- [(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
- (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer.]<sup>56</sup>

**Penalty for fraudulent and unfair trade practices** 15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

**Penalty for contraventions where no separate penalty has been provided** 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 may extend to one crore rupees.]<sup>57</sup>

**Power to adjudicate** 15I. (1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, [15H, 15HA and 15HB]<sup>58</sup> the Board shall appoint any of its 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.

(2) While holding an inquiry 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 sub-section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

**Factors to be taken into account by the adjudicating officer** 15J. While adjudging quantum of penalty under section 15J, 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.

[15JA. All sums realized by way of penalties under this Act shall be credited to the Consolidated Fund of India.]<sup>59</sup>

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<sup>39</sup>. Chapter VIA inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

- <sup>40</sup>. Substituted for the words “a penalty not exceeding one lakh and fifty thousand rupees for each such failure” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>41</sup>. Substituted for the words “a penalty not exceeding five thousand rupees for every day during which such failure continues” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>42</sup>. Substituted for the words “a penalty not exceeding ten thousand rupees for every day during which the failure continues” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>43</sup>. Substituted for the words “a penalty not exceeding five lakh rupees for every such failure” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>44</sup>. Substituted for the following section 15C “If 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, he shall be liable to a penalty not exceeding ten thousand rupees for each such failure” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>45</sup>. Substituted for the words “a penalty not exceeding ten thousand rupees for each day during which he carries on any such collective investment scheme, including mutual funds, or ten lakh rupees, whichever is higher” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>46</sup>. Substituted for the words “a penalty not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>47</sup>. Substituted for the words “a penalty not exceeding five thousand rupees for each day during which such failure continues or five lakh rupees, whichever is higher” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>48</sup>. Substituted for the words “a penalty not exceeding five thousand rupees for each day during which such failure continues” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>49</sup>. Substituted for the words “a penalty not exceeding one thousand rupees for each day during which such failure continues” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>50</sup>. Substituted for the words “a penalty not exceeding five lakh rupees for each such failure” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>51</sup>. Substituted for the words “a penalty not exceeding five lakh rupees for each such failure” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>52</sup>. Substituted for the words “a penalty not exceeding five thousand rupees for each day during which such failure continues” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>53</sup>. Substituted for the words “a penalty not exceeding five thousand rupees” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>54</sup>. Substituted for the words “not exceeding five lakh rupees” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>55</sup>. Substituted for the words “not exceeding five lakh rupees” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>56</sup>. Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.
- <sup>57</sup>. Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>58</sup>. Substituted for the words “and 15H” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>59</sup>. Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

## **CHAPTER VIB<sup>60</sup>**

### **ESTABLISHMENT, JURISDICTION, AUTHORITY AND PROCEDURE OF APPELLATE TRIBUNAL**

**Establishment of Securities Appellate Tribunals** 15K. (1) The Central Government shall by notification, establish one or more Appellate Tribunals to be known as the Securities Appellate Tribunal to exercise the jurisdiction, powers and authority conferred on such Tribunal by or under this Act or any other law for the time being in force<sup>61</sup>.

(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**

15L. A Securities Appellate Tribunal shall consist of a Presiding Officer and two other Members, to be appointed, by notification, by the Central Government:

Provided that the Securities Appellate Tribunal, consisting of one person only, established before the commencement of the Securities and Exchange Board of India (Amendment) Act, 2002, shall continue 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 till two other Members are appointed under this section.

#### **Qualification for appointment as Presiding Officer or Member of the Securities Appellate Tribunal**

15M. (1) A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court:

Provided that the Presiding Officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with the Chief Justice of India or his nominee.

(2) A person shall not be qualified for appointment as Member of a Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy:

Provided that a member of the Board or any person holding a post oat senior management level equivalent to Executive Director in the Board shall not be appointed as Presiding Officer or Member of a Securities Appellate Tribunal during his service or tenure as such with the Board or within two years from the date on which he ceases to hold office as such in the Board.]<sup>62</sup>

**Tenure of office of Presiding Officer and other Members of Securities Appellate Tribunal** 15N. The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a terms of five years from the date on which he enters upon his office and shall be eligible for re-appointment:

Provided that no person shall hold office as the Presiding Officer of the Securities Appellate Tribunal after he has attained the age of sixty-eight years:

Provided further that no person shall hold office as Member of the Securities Appellate Tribunal after he has attained the age of sixty-two years.]<sup>63</sup>

**Salary and allowances and other terms and conditions of service of Presiding Officers**

15O. 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]<sup>64</sup>, shall be such as may be prescribed.

Providing 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]<sup>65</sup> shall be varied to their disadvantage after appointment.

**Filling up of vacancies**

15P. If, for reason other than temporary absence, any, vacancy occurs in [the office of the Presiding Officer or any other Member]<sup>66</sup> 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 continues before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

**Resignation and removal**

15Q. (1) The [Presiding Officer or any other Member of a Securities Appellate Tribunal]<sup>67</sup> 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]<sup>68</sup> shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office, 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, whichever is the earliest.

(2) The [Presiding Officer or any other Member]<sup>69</sup> of a Securities Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after inquiry made by a Judge of the Supreme Court, in which the [Presiding Officer or any other Member]<sup>69</sup> concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

(3) The Central Government may, by rules, regulate the procedure for the investigation of misbehaviour or incapacity of the [the Presiding Officer or any other Member]<sup>70</sup>.

**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]<sup>71</sup> 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**

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**

15T. (1) Save as provided in sub-section (2), 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, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter<sup>72</sup>

(2) No appeal shall lie to the Securities Appellate Tribunal from an order made\_\_\_

- a. by the Board on and after the commencement of the Securities Laws (Amendment) Act, 1999;
- b. an adjudicating office, with the consent of the parties.<sup>73</sup>

(3) 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, as the case may be <sup>74</sup>, 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.

(4) 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.

(5) The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, the parties<sup>75</sup> to the appeal and to the concerned Adjudicating Officer.

(6) The appeal filed before the Securities Appellate Tribunal under sub-section (1) shall be dealt with by it as expeditiously as possible and endeavour 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**

15U. (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 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, 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 decision;
- (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 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.

#### **Right to legal representation**

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.

Explanation:- For the purposes of this section,--

- a. "chartered accountant" means a chartered accountant as defined in clause(b) of sub-section(1) of section 2 of the Chartered Accountants Act, 1949 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- b. "company secretary" means a company secretary as defined in clause(c) of sub-section(1) of section 2 of the Company Secretaries Act, 1980 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- c. " cost accountant" means a cost accountant as defined in clause(b) of sub-section(1) of section 2 of the Cost and Works Accountants Act, 1959 and who has obtained a certificate of practice under sub-section (1) of section 6 of that Act;
- d. "legal practitioner" means an advocate, vakil or an attorney of any High Court, and includes a pleader in practice<sup>26</sup>.

#### **Limitation**

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**

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.]<sup>77</sup>

### **Civil Court not to have jurisdiction**

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**

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.]<sup>78</sup>

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<sup>60.</sup> Chapter VIB inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>61.</sup> Inserted by the Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999

<sup>62.</sup> Substituted for the following “15L. A Securities Appellate Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Securities Appellate Tribunal) to be appointed, by notification, by the Central Government.

15M. A person shall not be qualified for appointment as the Presiding Officer of a Securities Appellate Tribunal unless he-

- (a) is, or has been, or is qualified to be, a Judge of a High Court; or
- (b) has been a member of the Indian Legal Service and has held a post in Grade I of that Service for atleast three years; or
- (c) has held office as the Presiding Officer of a Tribunal for atleast three years.”

by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>63.</sup> Substituted for the following “**Term of office** 15N. The Presiding Officer of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier”, by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>64.</sup> Substituted for the words “Presiding Officer of a Securities Appellate Tribunal” by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>65.</sup> Substituted for the words "said Presiding Officers" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>66.</sup> Substituted for the words "office of the Presiding Officer" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>67.</sup> Substituted for the words "Presiding Officer of a Securities Appellate Tribunal" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>68.</sup> Substituted for the words "the said Presiding Officer" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>69.</sup> Substituted for the words "Presiding Officer" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>70.</sup> Substituted for the words "aforesaid Presiding Officer" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>71.</sup> Substituted for the words "Presiding Officer" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>72.</sup> Substituted by the Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999 for the following:-

"(1) Save as provided in sub-section (2), any person aggrieved by an order made by an Adjudicating Officer under this Act, may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter."

<sup>73.</sup> Substituted by the Securities Laws (Secnd Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999 for the following: -(2) No appeal shall lie to the Securities Appellate Tribunal from an order made by an adjudicating officer with the consent of the parties."

<sup>74.</sup> Substituted for the words "a copy of the order made,by the Adjudicating officer" by Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999.

<sup>75.</sup> Substituted by Securities Laws (Second Amendment ) Act, 1999 vide Gazette Notification dated December 16, 1999 for the word "parties"

<sup>76.</sup> Substituted by Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999 for the following: - "The appellant may either appear in person or authorise one or more legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal."

<sup>77.</sup> Substituted for the following "**Presiding Officer and staff of Securities Appellate Tribunal to be public servants** 15X. The Presiding Officer 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" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>78.</sup> Substituted for the following "**Appeal to High Court** 15Z. Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the High 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 fact or law arising out of such order:

Provided that the High 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 sixty days", by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

## CHAPTER VII

### MISCELLANEOUS

**Power of Central Government to issue directions** 16.(1) Without prejudice to the foregoing provisions of this Act or the Depositories Act, 1996<sup>79</sup>, the Board shall, in exercise of its powers or the performance of its functions under this Act or the Depositories Act, 1996<sup>80</sup>, 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.(1) If at any time the Central Government is of the opinion-

(a) that on account of grave emergency, the Board is unable to discharge the functions and duties imposed on it by or under the provisions of this Act; or

(b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or 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

(c) that circumstances exist which render it necessary in the public interest so to do, the Central Government may, by notification, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) 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 under sub-section (3), 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 under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by fresh appointment and in such case any person or persons who vacated their offices under clause (a) of sub-section (2), 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 under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) 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** 18.(1) 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) Without prejudice to the provisions of sub-section (1), the Board shall within ninety<sup>81</sup> 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) 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.

### **Delegation**

19. The Board may, by general or special order in writing, delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Act (except the powers under section 29) as it may deem necessary.

**Appeals** 20.(1) Any person aggrieved by an order of the Board made, before the commencement of Securities Laws (Second Amendment) Act, 1999<sup>82</sup> 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 shall be admitted if it is preferred after the expiry of the period prescribed therefor.

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) 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** 20A. No order passed by the Board or the adjudicating officer<sup>83</sup> under this Act shall be appealable except as provided in section 15T or section 20<sup>84</sup> and no Civil Court shall have jurisdiction in respect of any matter which the Board or the adjudicating officer<sup>85</sup> 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<sup>86</sup> by, or under, this Act.<sup>87</sup>

**Savings** 21. Nothing in this Act shall exempt any person from any suit or other proceedings which might, apart from this Act, be brought against him.

**Members, Officers and employees of the Board to be public servants** 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. (45 of 1860)

**Protection of action taken in good faith** 23. No suit, prosecution or other legal proceedings shall lie

against the Central Government or Board<sup>88</sup> 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 or intended to be done under this Act or the rules or regulations made thereunder.

### **Offences**

24.(1) Without prejudice to any award of penalty by the Adjudicating Officer under this Act, if any person<sup>89</sup> 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.]<sup>90</sup>

(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.]<sup>91</sup>

**Composition of certain offences** 24A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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** 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:

Provided that no such immunity shall be granted by the Central Government to 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) An immunity granted to a person under sub-section (1) 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 become liable, had not such immunity been granted.]<sup>92</sup>

### **Exemption from tax on wealth and income(27 of 1957) (43 of 1961)**

25. Notwithstanding anything contained in the Wealth Tax Act, 1957, the Income Tax Act, 1961 or any other enactment for the time being in force relating to tax on wealth, income, profits or gains -

(a) the Board;

(b) the existing Securities and Exchange Board from the date of its constitution to the date of

establishment of the Board, shall not be liable to pay wealth-tax, income-tax or any other tax in respect of their wealth, income, profits or gains derived.

**Cognizance of offences by courts** 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. [ ]<sup>93</sup>

(2) No court inferior to that of [a Court of Session]<sup>94</sup> shall try an offence punishable under this Act.

**Offences by companies** 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:

Provided that nothing contained in this sub-section shall 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 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 of the firm.

**Power to exempt** 28. [Deleted]<sup>95</sup>

**Power to make rules** 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) [Deleted]<sup>96</sup>

(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;<sup>97</sup>

(db) the salaries and allowances and other terms and conditions of service of the [Presiding Officers, Members]<sup>98</sup> and other officers and employees of the Securities Appellate Tribunal under section 15O and sub-section (3) of section 15S;<sup>99</sup>

(dc) the procedure for the investigation of misbehaviour or incapacity of the [Presiding Officers or other Members]<sup>100</sup> of the Securities Appellate Tribunals under sub-section (3) of

section 15Q;<sup>101</sup>

(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.<sup>102</sup>

(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**

30. (1) The Board may, [\*\*\*] <sup>103</sup>by notification, make regulations consistent with this Act and the rules made thereunder generally 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 term 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;<sup>104</sup>

(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.<sup>105</sup>

### **Rules and regulations to be laid before Parliament**

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** 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.

**Amendment of certain enactments** 33. The enactments specified in Parts I and II of the Schedule to this Act shall be amended in the manner specified therein and such amendments shall take effect on the date of establishment of the Board.

**Power to remove difficulties** 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.

**Repeal and saving** 35. (1) The Securities and Exchange Board of India Ordinance, 1992 (Ord. 5 of 1992), is hereby repealed.

(2) Notwithstanding the repeal, anything done or any action taken under the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of this Act.

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<sup>79.</sup> Substituted for the words 'this Act' by the Depositories Act, 1996, (w.e.f. 20-9-1995)

<sup>80.</sup> Ibid.

<sup>81.</sup> The word 'sixty' has been substituted by the word 'ninety' by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>82.</sup> Substituted by Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999 for the words "an order of the Board made"

<sup>83.</sup> Substituted by Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999 for the word "Board"

<sup>84.</sup> Substituted by Securities Laws (Second Amendment) Act, 1999 vide Gazette Notification dated December 16, 1999 for the word and figures "section 20"

<sup>85.</sup> supra n. 39

<sup>86.</sup> Ibid

<sup>87.</sup> Section 20A inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>88.</sup> The word 'Board' inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>89.</sup> Substituted for the word 'whoever' in sub-section (1) by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>90.</sup> Substituted for the words "one year, or with fine, or with both" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>91.</sup> Substituted for the words "three years or with fine which shall not be less than two thousand rupees, but which may extend to ten thousand rupees or with both" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>92.</sup> Inserted by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>93.</sup> The words 'with the previous sanction of the Central Government' deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>94.</sup> Substituted for the words "a Metropolitan Magistrate or a Judicial Magistrate of the first class" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>95.</sup> Section 28 which read as 'If the Central Government is of the opinion that it is necessary or expedient so to do in public interest, it may, by order published in the Official Gazette, exempt any person or class of persons buying or selling securities or otherwise, dealing with the securities market from the operation of the provisions of sub-section (1) of section 12' deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>96.</sup> Clause (c) which read as 'the conditions subject to which registration certificate is to be issued under sub-section (1) of section 12' deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>97.</sup> Inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>98.</sup> Substituted for the words "Presiding Officers" by the Securities and Exchange Board of India (Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>99.</sup> Inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>100.</sup> Substituted for the words "Presiding Officers" by the Securities and Exchange Board of India

(Amendment) Act, 2002 vide Gazette Notification dated 18<sup>th</sup> December 2002.

<sup>101</sup>. Inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>102</sup>. Ibid.

<sup>103</sup>. The words `with the previous approval of the Central Government' deleted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>104</sup>. The clause (c) `the amount of fee to be paid for registration certificate and manner of suspension or cancellation of registration certificate under sub-sections (2) and (3) of section 12' deleted and substituted by new clause (c) by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)

<sup>105</sup>. Clause (d) inserted by the Securities Laws (Amendment) Act, 1995 (9 of 1995) (w.e.f. 25.1.95)





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