

THE SECURITIES AND EXCHANGE BOARD

OF INDIA ACT, 1992

(Act No. 15 of 1992)

[4 April 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

1. Short title, extent and commencement

(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.

2. Definitions

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

1*[(2) Words and expressions used and not defined in this Act but defined in the Securities Contracts (Regulation) Act, 1956 (42 of 1956) shall have the meanings respectively assigned to them in that Act.]

CHAPTER II

Establishment of the Securities and Exchange Board of India

3. Establishment and incorporation of Board

(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.

4. Management of the Board

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

(a) a Chairman;

(b) two members from amongst the officials of the Ministries of the Central Government dealing with Finance and Law;

(c) one member from amongst the officials of the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934);

(d) two other members, to be appointed by the Central Government.

(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 Chairmen 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 that 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 of India respectively.

1 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for the following:

“§(2) Words and expressions used and not defined in this Act but defined in the Capital Issues (Control) Act, 1947 (29 of 1947) or the Securities Contracts (Regulation) Act, 1956 (42 of 1956) shall have the meanings respectively assigned to them in those Acts.”

2 Inserted by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.

(5) The Chairman and the other members referred to in clauses (a) and (d) of sub-section (1) shall be persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience

of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to the Board.

5. Term of office and conditions of service of Chairman and members of the Board

(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.

6. Removal of member from office

1[***] 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;

2[(d) ***]

(e) has, in the opinion of the Central Government, so abused his position as to render his continuation in office detrimental 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.

1 The brackets and figure "§(1)" omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1/1995.

2 Omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1/1995. Prior to omission, clause (d) read as under:

"§(d) is appointed as a director of a company."

7. Meetings

(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 a 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 votes of the members 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.

1[7A. Member not to participate in meetings in certain cases

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.]

8. Vacancies, etc., not to invalidate proceedings of Board

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 acting as a member of the Board; or

(c) any irregularity in the procedure of the Board not affecting the merits of the case.

9. Officers and employees of the Board

(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.

1 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

CHAPTER III

Transfer of assets, liabilities, etc., of the existing

Securities and Exchange Board to the Board

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

(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 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 so as an employee of the Board or until the expiry of the period of six months from that 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 (14 of 1947), 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.

CHAPTER IV

Powers and functions of the Board

11. Functions of Board

(1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the 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;
- 1[(ba) registering and regulating the working of the depositories, 2[participants] custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf;]
- (c) registering and regulating the working of 3[venture capital funds and collective investment schemes], including mutual funds;
- (d) promoting and regulating self-regulatory organisations;
- (e) prohibiting fraudulent and unfair trade practices relating to securities markets;

- (f) promoting investors' education and training of intermediaries of securities markets;
- (g) prohibiting insider trading in securities;
- (h) regulating substantial acquisition of shares and take-over of companies;
- (i) calling for information from, undertaking inspection, conducting inquiries and audits of the 4[stock exchanges, mutual funds, other persons associated with the securities market,] intermediaries and self-regulatory organisations in the securities market;
- (j) performing such functions and exercising such powers under the provisions of 5[***] the Securities Contracts (Regulation) Act, 1956 (42 of 1956), as may be delegated to it by the Central Government;

1 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 Inserted by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.

3 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for "collective investment schemes".

4 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for "stock exchanges and".

5 The words, brackets and figures "the Capital Issues (Control) Act, 1947 (29 of 1947) and" omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

- (k) levying fees or other charges for carrying out the purposes of this section;
- (l) conducting research for the above purposes;

1[(1a) calling from or furnishing to any such agencies, as may be specified by the Board, such information as may be considered necessary by it for the efficient discharge of its functions;]

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

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

(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.]

3[11A. Matters to be disclosed by the companies

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 matter incidental thereto; and

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

11B Power to issue directions

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

1 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1/1995.

3 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1/1995.

(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.]

CHAPTER V

Registration certificate

12. Registration of stock-brokers, sub-brokers, share transfer agents, etc.

(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 1[regulations] 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:

2[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.]

1 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for "rules".

2 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

1[(1A) No depository, 2[participant,] custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities 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, 3[participant,] custodian of securities, foreign institutional investor or credit rating agency immediately before the commencement of the Securities Laws (Amendment) Act, 1995 (9 of 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.

(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 scheme 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 scheme 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.]

(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.

1 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 Inserted by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.

3 Inserted by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.

CHAPTER VI

Finance, accounts and audit

13. Grants by the Central Government

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

14. Fund

(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; 1[***]

2[(aa) all sums realised by way of penalties under this Act; and]

(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 the 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. Accounts and audit

(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.

1 The word "and" omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

(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.

1[CHAPTER VIA]

Penalties and Adjudication

15A. Penalty for failure to furnish information return etc.

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 not exceeding one lakh and fifty thousand rupees for each such failure;

(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 not exceeding five thousand rupees for every day during which such failure continues;

(c) to maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

15B. Penalty for failure by any person to enter into agreement with clients

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 not exceeding five lakh rupees for every such failure.

1 Chapters VIA and VIB inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

15C. Penalty for failure to redress investors' grievances

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.

15D. Penalty for certain defaults in case of mutual funds

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 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;

(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 not exceeding ten thousand rupees for each day during which such failure continues or ten lakh rupees, whichever is higher;

(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 not exceeding five or five lakh rupees, whichever is higher;

(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 and exceeding one thousand rupees of each day during which such failure continues;

(e) registered as collective investment scheme, including mutual funds, fails to refund the application monies paid by the investors within the period specified in the regulations, he shall be liable to a penalty and exceeding one thousand rupees for each day during which such failure continues;

(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 not exceeding five lakh rupees for each such failure.

15E. Penalty for failure to observe rules and regulations by an asset management company

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 not exceeding five lakh rupees for each such failure.

15F. Penalty for default in case of stock brokers

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 broke;

(b) fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for each day during which such failure continues;

(c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty not exceeding five thousand rupees or five times the amount off brokerage charged in excess of the specified brokerage, whichever is higher.

15G. Penalty for insider trading

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 not exceeding five lakh rupees.

15H. Penalty for non-disclosure of acquisition of shares and takeovers

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

(i) disclose the aggregate of his share holding 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 not exceeding five lakh rupees.

15-I. Power to adjudicate

(1) For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G and 15H, the Board shall appoint any officers not below the rank of a Division Chief to be an adjudicating officers 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.

15J. Factors to be taken into account by the adjudicating officer

While adjudging the quantum of penalty under section 15-1, 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.

CHAPTER VIB

Establishment, Jurisdiction, Authority and Procedure of Appellate Tribunal

15K. Establishment of Securities Appellate Tribunals

(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.

(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.

15L. Composition of Securities Appellate Tribunal

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. Qualifications for appointment as Presiding Officer of the Securities Appellate Tribunal

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 at least three years; or

(c) has held office as the Presiding Officer of a Tribunal for at least three years.

15N. Term of Office

The Presiding Officer of a Securities Appellate Tribunal shall hold office 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.

15-O. Salary and allowances and other terms and conditions of services of Presiding Officers

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 of a Securities Appellate tribunal shall be such as may be prescribed:

Provided that neither the salary and allowances not the other terms and conditions of services of the said presiding Officers shall be varied to their disadvantage after appointment.

15P. Filling up of vacancies

If, for reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of a Securities Appellate Tribunal from the stage at which the vacancy is filled.

15Q. Resignation and removal

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

Provided that the said Presiding Officer 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 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 an inquiry made by a Judge of the Supreme court, in which the Presiding Officer 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 aforesaid Presiding Officer.

15R. Orders constitution Appellate Tribunal to be final and not to invalidate its proceedings

No order of the Central Government appointing any person as the Presiding Officer 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.

15S. Appeal to the Securities Appellate Tribunal

(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.

15U. Procedure and powers of the Securities Appellate Tribunal

(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 decisions;
- (f) dismissing an application for default or deciding it ex-parte;
- (g) setting aside any order of dismissal of any application for default or any order passed by it ex-parte;

(h) any other matter which may be prescribed.

(1) 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 (2 of 1974).

15V. Right to legal representation

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.

15W. Limitation

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

15X. Presiding Officer and staff of Securities Appellate tribunal to be public servants

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.

15Y. Civil court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudication 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.

15Z. Appeal to High Court

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.]

CHAPTER VII

Miscellaneous

16. Power of Central Government to issue directions

(1) Without prejudice to the foregoing provisions of this Act, the Board shall, in exercise of its powers or the performance of its functions under this Act ¹[or the Depositories Ordinance, 1996], 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.

1 Inserted by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.

17. Power of Central Government to supersede the Board

(1) If at any time the Central Government is of 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 a 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.

18. Returns and reports

(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 1[ninety days] after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.

(3) 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.

19. Delegation

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.

20. Appeals

(1) Any person aggrieved by an order of the Board made 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.

1 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for "sixty days".

(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.

1[20A. Bar of jurisdiction

No order passed by the Board under this Act shall be appealable except as provided in section 20 and no civil court shall have jurisdiction in respect of any matter which the Board 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 by, or under, this Act.]

21. Savings

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

22. Members, officers and employees of the Board to be public servants

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).

23. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the Central Government 2[or Board] or any officer of the Central Government or any member, officer or other employee of the Board for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

3*[24. Offences

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

1 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

3 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for the following:

§24. Penalty ¶ Whoever contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, shall be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.¶

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

25. Exemption from tax on wealth and income

Notwithstanding anything contained in the Wealth-tax Act, 1957 (27 of 1957), the Income-tax Act, 1961 (43 of 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.

26. Cognizance of offences by courts

(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 1[***].

(2) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

27. Offences by companies

(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 also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

1 The words "with the previous sanction of the Central Government;" omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

Explanation - For the purposes of this section, -

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

(b) "director", in relation to a firm, means a partner in the firm.

1[28. Power to exempt V Omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.]

29. Power to make rules

(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;

2[(c) ***]:

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

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

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

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

1 Prior to omission, it read as under:

“§28. Power to exempt V 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.”

2 Omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995. Prior to omission it read as under:

“(c) the conditions subject to which registration certificate is to be issued under sub-section (1) of section 12;”

3 Inserted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

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

(e) the form and the manner in which returns and report to be made to the Central Government under section 18;

(f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

30. Power to make regulations

(1) The Board may, [***] with the previous approval of the Central Government, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

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

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

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

2[(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;

(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.]

1 The words "with the previous approval of the Central Government;" omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for the following:

§(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.

31. Rules and regulations to be laid before Parliament

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 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.

32. Application of other laws not barred

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.

33. Amendment of certain enactments

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.

34. Power to remove difficulties

(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.

35. Repeal and saving

(1) The Securities and Exchange Board of India Ordinance, 1992 (Ordinance 5 of 1992), is hereby repealed.

(2) Notwithstanding such 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.

THE SCHEDULE

(See section 33)

Amendment of certain enactments

PART I

Amendments to the Capital Issues (Control) Act, 1947

(29 of 1947)

In section 10, for "to that Government" substitute "to that Government or the Securities and Exchange Board of India".

PART II

Amendments to the Securities Contracts (Regulation) Act, 1956

(42 of 1956)

1. Section 2, in clause (h), for sub-clause (ii), substitute the following: -

"(ii) Government securities;

(ia) such other instruments as may be declared by the Central Government to be securities; and".

2. Section 6, -

(i) in sub-section (1), for "Central Government", substitute "Securities and Exchange Board of India";

(ii) in sub-section (2), for "by the Central Government", substitute "by the Securities and Exchange Board of India";

(iii) in sub-section (3), for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

3. Section 9, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

4. Section 10, for "Central Government" wherever it occurs, substitute "Securities and Exchange Board of India";

5. Section 17, in sub-section (1), for "licence granted by the Central Government", substitute "licence granted by the Securities and Exchange Board of India";

1 The Act has since been repealed.

6. Section 21, for "Central Government", substitute "Securities and Exchange Board of India";

7. Section 22A, in sub-section (3), for clause (b), substitute the following: -

"(b) that the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreement laid down in pursuance of such laws or rules;

8. In sub-section (2) of section 23, for "Central Government under section 21 or section 22", substitute "Securities and Exchange Board of India under section 21 or the Central Government under section 22";

9. After section 29, insert the following: -

[29A. Power to delegate - The Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any as may be specified in the order, be exercisable also by the Securities and Exchange Board of India.]

THE SECURITIES CONTRACTS (REGULATION) ACT, 1956

(Act No. 42 of 1956)

An Act to prevent undesirable transactions in securities by regulating the business of dealing therein, 1[***] by providing for certain other matters connected therewith.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Securities Contracts (Regulation) Act, 1956.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.²

2. Definitions

In this Act, unless the context otherwise requires, -

(a) "contract" means a contract for or relating to the purchase or sale of securities;

(b) "Government security" means a security created and issued, whether before or after the commencement of this Act, by the Central Government or a State Government for the purpose of raising a public loan and having one of the forms specified in clause (2) of section 2 of the Public Debt Act, 1944 (18 of 1944);

(c) "member" means a member of a recognised stock exchange;

(d) "option in securities" means a contract for the purchase or sale of a right to buy or sell, or a right to buy and sell, securities in future, and includes a teji, a mandi, a teji mandi, a galli, a put, a call or a put and call in securities;

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

(f) "recognised stock exchange" means a stock exchange which is for the time being recognised by the Central Government under section 4;

1 The words "by prohibiting options and;" omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

2 The Act came into force on 20 February, 1957 vide Notification No. SRO 528, dated 6 February, 1957 published in Gazette of India, Extraordinary, Part II, section 3 page 549, dated 16 February, 1957.

(g) "rules", with reference to the rules relating in general to the constitution and management of a stock exchange, includes, in the case of a stock exchange which is an incorporated association, its memorandum and articles of association;

(h) "securities" include -

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

1[(ii) Government securities;

(ia) such other instruments as may be declared by the Central Government to be securities; and]

(iii) rights or interests in securities;

2[(i) "spot delivery contract" means a contract which provides for, -

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;]

(j) "stock exchange" means any body of individuals, whether incorporated or not, constituted for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

1 Substituted for "(ii) Government Securities; and" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

2 Substituted for the following:

(i) "spot delivery contract" means a contract which provides for the actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;"

by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.

Recognised stock exchanges

3. Application for recognition of stock exchanges

(1) Any stock exchange, which is desirous of being recognised for the purposes of this Act, may make an application in the prescribed manner to the Central Government.

(2) Every application under sub-section (1) shall contain such particulars as may be prescribed, and shall be accompanied by a copy of the bye-laws of the stock exchange for the regulation and control of contracts and also a copy of the rules relating in general to the constitution of the stock exchange, and in particular, to -

(a) the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;

(b) the powers and duties of the office bearers of the stock exchange;

(c) the admission into the stock exchange of various classes of members, the qualifications for membership, and the exclusion, suspension, expulsion and re-admission of members therefrom or thereinto;

(d) the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorized representatives and clerks.

4. Grant of recognition to stock exchanges

(1) If the Central Government is satisfied, after making such inquiry as may be necessary in this behalf and after obtaining such further information, if any, as it may require:

(a) that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;

(b) that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and

(c) that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

it may grant recognition to the stock exchange subject to the conditions imposed upon it as aforesaid and in such form as may be prescribed.

(2) The conditions which the Central Government may prescribe under clause (a) of subsection (1) for the grant of recognition to the stock exchanges may include, among other matters, conditions relating to -

(i) the qualifications for membership of stock exchanges;

(ii) the manner in which contracts shall be entered into and enforced as between members;

(iii) the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and

(iv) the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

(3) Every grant of recognition to a stock exchange under this section shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the stock exchange is situate, and such recognition shall have effect as from the date of its publication in the Gazette of India.

(4) No application for the grant of recognition shall be refused except after giving an opportunity to the stock exchange concerned to be heard in the matter; and the reasons for such refusal shall be communicated to the stock exchange in writing.

(5) No rules of a recognised stock exchange relating to any of the matters specified in sub-section (2) of section 3 shall be amended except with the approval of the Central Government.

5. Withdrawal of recognition

If the Central Government is of opinion that the recognition granted to a stock exchange under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice, and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange:

Provided that no such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Central Government may, after consultation with the stock exchange, make such provision as it deems fit in the notification of withdrawal or in any subsequent notification similarly published for the due performance of any contracts outstanding on that date.

6. Power of Central Government to call for periodical returns or direct inquiries to be made

(1) Every recognised stock exchange shall furnish to the 1[Securities and Exchange Board of India] such periodical returns relating to its affairs as may be prescribed.

(2) Every recognised stock exchange and every member thereof shall maintain and preserve for such periods not exceeding five years such books of account, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection at all reasonable times by the 2[Securities and Exchange Board of India].

(3) Without prejudice to the provisions contained in sub-sections (1) and (2), the 3[Securities and Exchange Board of India], if it is satisfied that it is in the interest of the trade or in the public interest so to do, may, by order in writing, -

(a) call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the 4[Securities and Exchange Board of India] may require; or

(b) appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affair of any of the members of

the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the 5[Securities and Exchange Board of India] within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the 6[Securities and Exchange Board of India].

1 Substituted for "Central Government" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

2 Ibid.

3 Ibid.

4 Ibid.

5 Substituted for "Central Government" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

6 Ibid.

(4) Where an inquiry in relation to the affairs of a recognised stock exchange or the affairs of any of its members in relation to the stock exchange has been undertaken under sub-section (3), -

(a) every director, manager, secretary or other officer of such stock exchange;

(b) every member of such stock exchange;

(c) if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and

(d) every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c), whether directly or indirectly;

shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or Power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

7. Annual reports to be furnished to Central Government by stock exchanges

Every recognised stock exchange shall furnish the Central Government with a copy of the annual report, and such annual report shall contain such particulars as may be prescribed.

7A. Power of recognised stock exchange to make rules restricting voting rights, etc

(1) A recognised stock exchange may make rules or amend any rules made by it to provide for all or any of the following matters, namely:

(a) the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;

(b) the regulation of voting rights in respect of any matter placed before the stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;

(c) the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange;

(d) such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a), (b) and (c).

(2) No rules of a recognised stock exchange made or amended in relation to any matter referred to in clauses (a) to (d) of sub-section (1) shall have effect until they have been approved by the Central Government and published by that Government in the Official Gazette and, in approving the rules so made or amended, the Central Government may make such modifications therein as it thinks fit, and on such publication, the rules as approved by the Central Government shall be deemed to have been validly made, notwithstanding anything to the contrary contained in the Companies Act, 1956. (1 of 1956.)

8. Power of Central Government to direct rules to be made or to make rules

(1) Where, after consultation with the governing bodies of stock exchanges generally or with the governing body of any stock exchange in particular, the Central Government is of opinion that it is necessary or expedient so to do, it may, by order in writing together with a statement of the reasons therefor, direct recognised stock exchanges generally or any recognised stock exchange in particular, as the case may be, to make any rules or to amend any rules already made in respect of all or any of the matters specified in sub-section (2) of section 3 within a period of 1[two months] from the date of the order.

(2) If any recognised stock exchange fails or neglects to comply with any order made under sub-section (1) within the period specified therein, the Central Government may make the rules for, or amend the rules made by, the recognised stock exchange, either in the form proposed in the order or with such modifications thereof as may be agreed to between the stock exchange and the Central Government.

(3) Where in pursuance of this section any rules have been made or amended, the rules so made or amended shall be published in the Gazette of India and also in the Official Gazette or Gazettes of the State or States in which the principal office or offices of the recognised stock exchange or exchanges is or are situate, and, on the publication thereof in the Gazette of India, the rules so made or amended shall, notwithstanding anything to the contrary contained in the Companies Act, 1956, (1 of 1956), or in any other law for the time being in force, have effect as if they had been made or amended by the recognised stock exchange or stock exchanges, as the case may be.

9. Power of recognised stock exchanges to make bye-laws

(1) Any recognised stock exchange may, subject to the previous approval of the 2[Securities and Exchange Board of India], make bye-laws for the regulation and control of contracts.

1 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for ;§six months;".

2 Substituted for ;§Central Government;" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

(2) In particular, and without prejudice to the generality foregoing power, such bye-laws may provide for:

(a) the opening and closing of markets and the regulation of the hours of trade;

(b) a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the submission to the 1[Securities and Exchange Board of India] by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the 2[Securities and Exchange Board of India] may, from time to time, require, namely:

(i) the total number of each category of security carried over from one settlement period to another;

(ii) the total number of each category of security, contracts in respect of which have been squared up during the course of each settlement period;

(iii) the total number of each category of security actually delivered at each clearing;

(d) the publication by the clearing house of all or any of the particulars submitted to the 3[Securities and Exchange Board of India] under clause (c) subject to the directions, if any, issued by the 4[Securities and Exchange Board of India] in this behalf;

(e) the regulation or prohibition of blank transfers;

(f) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(g) the regulation, or prohibition of budlas or carry-over facilities;

(h) the fixing, altering or postponing of days for settlements;

(i) the determination and declaration, of market rates, including the opening, closing, highest and lowest rates for securities;

1 Substituted for “Central Government” by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

2 Ibid.

3 Ibid.

4 Ibid.

(j) the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;

(k) the regulation of the entering into, making, performance, rescission and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;

(l) the regulation of taravani business including the placing of limitations thereon;

(m) the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;

(n) the method and procedure for the settlement of claims or disputes, including settlement by arbitration;

(o) the levy and recovery of fees, fines and penalties;

(p) the regulation of the course of business between parties to contracts in any capacity;

(q) the fixing of a scale of brokerage and other charges;

(r) the making, comparing, settling and closing of bargains;

(s) the emergencies in trade which may arise, whether as a result of pool or syndicated operations or cornering or otherwise, and the exercise of powers in such emergencies, including the power to fix maximum and minimum prices for securities;

(t) the regulation of dealings by members for their own account;

(u) the separation of the functions of jobbers and brokers;

(v) the limitations on the volume of trade done by any individual member in exceptional circumstances;

(w) the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

(3) The bye-laws made under this section may:

(a) specify the bye-laws the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;

(b) provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely:

(i) fine;

(ii) expulsion from membership;

(iii) suspension from membership for a specified period;

(iv) any other penalty of a like nature not involving the payment of money.

(4) Any bye-laws made under this section shall be subject to such conditions in regard to previous publication as may be prescribed and when approved by the 1[Securities and Exchange Board of India] shall be published in the Gazette of India and in which the principal office of the recognised stock exchange is situate, and shall have effect as from the date of its publication in the Gazette of India:

Provided that if the 2[Securities and Exchange Board of India] is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

10. Power of 3[Securities and Exchange Board of India] to make or amend bye-laws of recognised stock exchanges

(1) The 4[Securities and Exchange Board of India] may, either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion, if it is satisfied after consultation with the governing body of the stock exchange that it is necessary or expedient so to do and after recording its reasons for so doing, make bye-laws for all or any of the matters specified in section 9 or amend any bye-laws made by such stock exchange under that section.

(2) Where in pursuance of this section any bye-laws have been made or amended, the bye-laws so made or amended shall be published in the Gazette of India and also in the Official Gazette of the State in which the principal office of the recognised stock exchange is situate, and on the publication thereof in the Gazette of India, the bye-laws so made or amended shall have effect as if they had been made or amended by the recognised stock exchange concerned.

1 Substituted for "Central Government" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

2 Ibid.

3 Ibid.

4 Ibid.

(3) Notwithstanding anything contained in this section, where the governing body of a recognised stock exchange objects to any bye-laws made or amended under this section by the 1[Securities and Exchange Board of India] on its own motion, it may, within 2[two months] of the publication thereof in the Gazette of India under sub-section (2), apply to the 3[Securities and Exchange Board of India] for revision thereof and the 4[Securities and Exchange Board of India] after giving an opportunity to the governing body of the stock exchange to be heard in the matter, revise the bye-laws so made or amended, and where any bye-laws so made or amended are revised as a result of any action taken under this sub-section, the bye-laws so revised shall be published and shall become effective as provided in sub-section (2).

(4) The making or the amendment or revision of any bye-laws under this section shall in all cases be subject to the condition of previous publication:

Provided that if the 3[Securities and Exchange Board of India] is satisfied in any case that in the interest of the trade or in the public interest any bye-laws should be made, amended or revised immediately, it may, by order in writing specifying the reasons therefor, dispense with the condition of previous publication.

11. Power of Central Government to supersede governing body of a recognised stock exchange

(1) Without prejudice to any other powers vested in the Central Government under this Act, where the Central Government is of opinion that the governing body of any recognised stock exchange should be superseded, then, notwithstanding anything contained in any other law for the time being in force, the Central Government may serve on the governing body a written notice that the Central Government is considering the supersession of the governing body for the reasons specified in the notice and after giving an opportunity to the governing body to be heard in the matter it may, by notification in the Official Gazette, declare the governing body of such stock exchange to be superseded, and may appoint any person or persons to exercise and perform all the powers and duties of the governing body, and, where more persons than one are appointed, may appoint one of such persons to be the chairman and another to be the vice-chairman thereof.

1 Ibid.

2 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for "six months"

3 Substituted for "Central Government" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

4 Ibid.

5 Substituted for "Central Government" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

(2) On the publication of a notification in the Official Gazette under sub-section (1), the following consequences shall ensue, namely:

(a) the members of the governing body which has been superseded shall, as from the date of the notification of supersession, cease to hold office as such members;

(b) the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;

(c) all such property of the recognised stock exchange as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for

the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.

(3) Notwithstanding anything to the contrary contained in any law or the rules or bye-laws of the recognised stock exchange the governing body of which is Superseded under sub-section (1), the person or persons appointed under that sub-section shall hold office for such period as may be specified in the notification published under that sub-section, and the Central Government may from time to time by like notification, vary such period.

(4) The Central Government may at any time before the determination of the period of office of any person or persons appointed under this section call upon the recognised stock exchange to reconstitute the governing body in accordance with its rules and on such reconstitution all the property of the recognised stock exchange which has vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall re-vest or vest, as the case may be, in the governing body so reconstituted:

Provided that until a governing body is so re-constituted, the person or persons appointed under sub-section (1), shall continue to exercise and perform their powers and duties.

12. Power to suspend business of recognised Stock exchanges

If in the opinion of the Central Government an emergency has arisen and for the purpose of meeting the emergency the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised stock exchange to suspend such of its business for, such period not exceeding seven days and subject to such conditions as may be specified in the notification, and if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time:

Provided that where, the period of suspension is to be extended beyond the first period, no notification extending the period of suspension shall be issued unless the governing body of the recognised stock exchange has been given an opportunity of being heard in the matter.

Contracts and options in securities

13. Contracts in notified areas illegal in certain circumstances

If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or area, that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or area, and thereupon every contract in such State or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange in such State or area or through or with such member shall be illegal.

13A. Additional trading floor

A stock exchange may establish additional trading floor with the prior approval of the Securities and Exchange Board of India in accordance with the terms and conditions stipulated by the said Board.

Explanation - For the purposes of this section, 'additional trading floor' means a trading ring or trading facility offered by a recognised stock exchange outside its area of operation to

enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.]

14. Contracts in notified areas to be void in certain circumstances

(1) Any contract entered into in any State or area specified in the notification under section 13 which is in contravention of any of the bye-laws specified in that behalf under clause (a) of sub-section (3) of section 9 shall be void:

(i) as respects the rights of any member of the recognised stock exchange who has entered into such contract in contravention of any such bye-law, and also

(ii) as respects the right of any other person who has knowingly participated in the transaction entailing such contravention.

1 Substituted for "Central Government" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

(2) Nothing in sub-section (1) shall be construed to affect the right of any person other than a member of the recognised stock exchange to enforce any such contract or to recover any sum under or in respect of such contract if such person had no knowledge that the

transaction was in contravention of any of the bye-laws specified in clause (a) of sub-section (3) of section 9.

15. Members may not act as principals in certain circumstances

No member of a recognised stock exchange shall in respect of any securities enter into any contract as a principal with any person other than a member of a recognised stock exchange, unless he has secured the consent or authority of such person and discloses in the note, memorandum or agreement of sale or purchase that he is acting as a principal:

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure written confirmation by such person of such consent or authority within three days from the date of the contract:

Provided further that no such written consent or authority of such person shall be necessary for closing out any outstanding contract entered into by such person in accordance with the bye-laws, if the member discloses in the note, memorandum or agreement of sale or purchase in respect of such closing out that he is acting as a principal.

16. Power to prohibit contracts in certain cases

(1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of the notification issued thereunder shall be illegal.

17. Licensing of dealers in securities in certain areas

(1) Subject to the provisions of sub-section (3) and to the other provisions contained in this Act, no person shall carry on or purport to carry on, whether on his own behalf or on behalf of any other person, the business of dealing in securities in any State or area to which section 13 has not been declared to apply and to which the Central Government may, by notification in the Official Gazette, declare this section to apply, except under the authority of licence granted by the 1[Securities and Exchange Board of India] in this behalf.

1 Substituted for "Central Government" by the securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

(2) No notification under sub-section (1) shall be issued with respect to any State or area unless the Central Government is satisfied, having regard to the manner in which securities are being dealt with in such State or area, that it is desirable or expedient in the interest of the trade or in the public interest that such dealings should be regulated by a system of licensing.

(3) The restrictions imposed by sub-section (1) in relation to dealings in securities shall not apply to the doing of anything by or on behalf of a member of any recognised stock exchange.

18. Exclusion of spot delivery contracts from sections 13, 14, 15 and 17

(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

19. Stock exchanges other than recognised stock exchanges prohibited

(1) No person shall, except with the permission of the Central Government, organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.

(2) This section shall come into force in any State or area on such date, as the Central Government may, by notification in the Official Gazette, appoint.

1[20. Prohibition of options in securities ;V Omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.]

1 Prior to omission it read as under:

§20. Prohibition of options in securities (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, all options in securities entered into after the commencement of this Act shall be illegal.

(2) Any option in securities which has been entered into before such commencement and which remains to be performed, whether wholly or in part, after such commencement, shall to that extent, become void."

21. Conditions for listing

Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.]

22. Right of appeal against refusal by stock exchanges to list securities of public companies

Where a recognised stock exchange acting in pursuance of any power given to it by its bye-laws, refuses to list the securities of public company, the company shall be entitled to be furnished with reasons for such refusal, and may, -

(a) within fifteen days from the date on which the reasons for such refusal are furnished to it, or

(b) where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1) of section 73 of the Companies Act, 1956 (1 of 1956) (hereafter in this section referred to as the "specified time"), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry

of the specified time or within such further period, not exceeding one month, as the Central Government may, on sufficient cause being shown, allow,

appeal to the Central Government against such refusal, omission or failure, as the case may be, and thereupon the Central Government may, after giving the stock exchange an opportunity of being heard, -

(i) vary or set aside the decision of the stock exchange; or

(ii) where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission,

and where the Central Government sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Central Government.

1 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for the following:

§21. Power to compel listing of securities by public companies §V Notwithstanding anything contained in any other law for the time being in force, if the Securities and Exchange Board of India is of opinion, having regard to the nature of the securities issued by any public company as defined in the Companies Act, 1956 (1 of 1956), or to the dealings in them, that it is necessary or expedient in the interest of the trade or in the public interest so to do, it may require the company, after giving it an opportunity of being heard in the matter, to comply with such requirements as may be prescribed with respect to the listing of its securities on any recognised stock exchange. §

1[22A. Free transferability and registration of transfers of listed securities of companies ;V
Omitted by the Depositories Ordinance, 1996, w.e.f. 20-9-1995.]

1 Prior to omission, section 22A, as inserted by the Securities Contracts (Regulation) Act, 1985 and as amended by the Securities and Exchange Board of India Act, 1992 read as under:

§22A Free transferability and registration of transfers of listed securities of companies ;V

(1) In this section, unless the context otherwise requires, -

(a) “company” means a company whose securities are listed on a recognised stock exchange;

(b) “security” means security of a company, being a security listed on a recognised stock exchange but not being a security which is not fully paid-up or on which the company has a lien;

(c) all other words and expressions used in this section and not defined in this Act but defined in the Companies Act, 1956 (1 of 1956), shall have the same meanings as are assigned to them in that Act.

(2) Subject to the provisions of this section, securities of companies shall be freely transferable.

(3) Notwithstanding anything contained in its articles or in section 82 or section 111 of the Companies Act, 1956 (1 of 1956), but subject to the other provisions of this section, a company may refuse to register the transfer of any of its securities in the name of the transferee on any one or more of the following grounds and on no other ground, namely:

(a) that the instrument of transfer is not proper or has not been duly stamped and executed or that the certificate relating to the security has not been delivered to the company or that any other requirement under the law relating to registration of such transfer has not been complied with;

(b) that the transfer of the securities is in contravention of any law or rules made thereunder or any administrative instructions or conditions of listing agreement laid down in pursuance of such laws or rules;

(c) that the transfer of the security is likely to result in such change in the composition of the board of directors as would be prejudicial to the interests of the company or to the public interest; and

(d) that the transfer of the security is prohibited by any order of any court, tribunal or other authority under any law for the time being in force.

(4) A company shall, before the expiry of two months from the date on which the instrument of transfer of any of its securities is lodged with it for the purposes of registration of such transfer, not only form, in good faith, its opinion as to whether such registration ought not or ought to be refused on any of the grounds mentioned in sub-section (3) but also -

(a) if it has formed the opinion that such registration ought not to be so refused, effect such registration;

(b) if it has formed the opinion that such registration ought to be refused on the ground mentioned in clause (a) of sub-section (3), intimate the transferor and the transferee by notice in the prescribed form about the requirements under the law which has or which have to be complied with for securing such registration; and

(c) in any other case make a reference to the Company Law Board and forward copies of such reference to the transferor and the transferee.

(5) Every reference under clause (c) of sub-section (4) shall be in the prescribed form and contain the prescribed particulars and shall be accompanied by the instrument of transfer of the securities to which it relates, the documentary evidence, if any, furnished to the company along with the instrument of transfer, and such other nature and such fees as may be prescribed.

(6) On receipt of a reference under sub-section (4), the Company Law Board shall, after causing reasonable notice to be given to the company and also to the transferor and the transferee concerned and giving them a reasonable opportunity to make their representations, if any, in writing by order, direct either that the transfer shall be registered by the company or that it need not be registered by it.

(7) Where on a reference under sub-section (4), the Company Law Board directs that the transfer of the securities to which it relates -

(a) shall be registered by the company, the company shall give effect to the direction within ten days of the receipt of the order as if it were an order made on appeal by the Company Law Board in exercise of the powers under section 111 of the Companies Act 1956 (1 of 1956);

(b) need not be registered by the company, the company shall, within ten days from the date of such direction, intimate the transferor and the transferee accordingly.

(8) If default is made in complying with the provisions of this section, the company and every officer of the company who is in default shall be punishable with fine which may, extend to five thousand rupees.

(9) If in any reference made under clause (c) of sub-section (4) of this section, any person makes any statement -

(a) which is false in any material particular, knowing it to be false; or

(b) which omits any material fact knowing it to be material, he shall be punishable with imprisonment for a term which may extend to three years and shall also be liable to fine.

(10) For the removal of doubts, it is hereby provided that nothing in this section shall apply in relation to any securities the instrument of transfer in respect whereof has been lodged with the company before the commencement of the Securities Contracts (Regulation) Amendment Act 1985.]"

Penalties and Procedure

23. Penalties

(1) Any person who -

(a) without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or

(b) enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or

(c) contravenes the provisions contained in section 17, or section 19; or

1[(d) ***]

(e) owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or

(f) manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or

(g) not being a member of a recognised stock exchange or his agent authorized as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 wilfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or

(h) not being a member of a recognised stock exchange or his agent authorized as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or

on behalf of any other persons for any business connected with contracts in contravention of any of the provisions of this Act; or

(i) joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act;

shall, on conviction, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

1 Omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995. Prior to omission it read as under:

§(d) enters into any option in securities in contravention of the provisions contained in section 20; or

(2) Any person who enters into any contract in contravention of the provisions contained in section 1[2[15 or who fails to comply with the provisions of section 21 or with the orders of] the Central Government under section 22], shall, on conviction, be punishable with fine which may extend to one thousand rupees.

24. Offences by companies

(1) Where an offence has been committed by a company, every person who, at the time when 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 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 gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company, shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation - For the purpose of this section, -

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

(b) "director", in relation to a firm, means a partner in the firm.

3[(3) The provisions of this section shall be in addition to, and not in derogation of, the provisions of section 22A.]

1 Substituted for "§Central Government under section 21 or section 22" by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

2 Substituted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995 for "§or who fails to comply with the orders of the Securities and Exchange Board of India under section 21 or"

3 Inserted by the Securities Contracts (Regulation) Amendment Act, 1985.

25. Certain offences to be cognizable

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, (5 of 1898), any offence punishable under sub-section (1) of section 23, shall be deemed to be a cognizable offence within the meaning of that Code.

26. Jurisdiction to try offences under this Act

No Court inferior to that of a presidency magistrate or a magistrate of the first class shall take cognizance of or try any offence punishable under this Act.

Miscellaneous

27. Title to dividends

(1) It shall be lawful for the holder of any security whose name appears on the books of the company issuing the said security to receive and retain any dividend declared by the company in respect thereof for any year, notwithstanding that the said security has already been transferred by him for consideration, unless the transferee who claims the dividend from the transferor has lodged the security and all other documents relating to the transfer which may be required by the company with the company for being registered in his name within fifteen days of the date on which the dividend became due.

Explanation - The period specified in this section shall be extended -

(i) in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;

(ii) in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and

(iii) in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

(2) Nothing contained in sub-section (1) shall affect -

(a) the right of a company to pay any dividend which has become due to any person whose name is for the time being registered in the books of the company as the holder of the security in respect, of which the dividend has become due; or

1 Now Code of Criminal Procedure, 1973.

(b) the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.

28. Act not to be apply in certain cases

(1) The provisions of this Act shall not apply to -

(a) the Government, the Reserve Bank of India, any local authority or any corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause;

(b) any convertible bond or share warrant or any option or right in relation thereto, in so far as it entitles the person in whose favour any of the foregoing has been issued to obtain at his option from the company or other body corporate issuing the same or from any of its shareholders or duly appointed agents shares of the company or other body corporate whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.

(2) Without prejudice to the provisions contained in sub-section (1), if the Central Government is satisfied that in the interests of trade and commerce or the economic development of the country it is necessary or expedient so to do, it may, by notification in the Official Gazette, specify any class of contracts as contracts to which this Act or any provision contained therein shall not apply, and also the conditions, limitations or restrictions, if any, subject to which it shall not so apply.

29. Protection of action taken in good faith

No suit, prosecution or other legal proceeding whatsoever shall lie in any court against the governing body or any member, office bearer or servant of any recognised stock exchange or against any person or persons appointed under sub-section (1) of section 11 for anything which is in good faith done or intended to be done in pursuance of this Act or of any rules or bye-laws made thereunder.

1[29A. Power to delegate

The Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India.]

1 Inserted by the Securities and Exchange Board of India Act, 1992, w.e.f. 30-1-1992.

30. Power to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules for the purpose of carrying into effect the objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for,

(a) the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;

(b) the manner in which any inquiry for the purpose of recognizing any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;

(c) the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;

(d) the documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;

(e) the manner in which any inquiry by the governing body of a stock exchange shall be made under section 6;

(f) the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;

(g) the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;

(h) the requirements which shall be complied with the public companies for the purpose of getting their securities listed on any stock exchange; 1[***]

1 The word "and" omitted by the Securities Contracts (Regulation) Amendment Act, 1985.

1[(ha) the form in which a notice referred to in sub-clause (b) of sub-section (4) of section 22A shall be the particulars which such notice shall contain, the form in which a reference under clause (c) of the said sub-section (4) shall be the particulars which such reference shall contain, and the evidence and the fees which shall accompany such reference; and]

(i) any other matter which is to be or may be prescribed.

(3) Any rule made under this section 2[***] shall, as soon as may be, after their publication in the Official Gazette, be laid before each House of Parliament.

31. Repeal

Repealed by the Repealing and Amending Act, 1960 (58 of 1960), section 2 and Schedule 1.

1 Inserted by the Securities Contracts (Regulation) Amendment Act, 1985.

2 The words “shall be subject to the condition of previous publication and” omitted by the Securities Laws (Amendment) Act, 1995, w.e.f. 25-1-1995.

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