

SECTION B
SECURITIES LAWS

THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

SEBI (LODR) REGULATIONS, 2015,

SEBI (ICDR) REGULATIONS, 2018, SEBI (SAST) REGULATIONS, 2011, SEBI (PIT)

REGULATIONS, 2015



LEARNING OUTCOMES

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

- ❑ Describe the role, powers and functions of the Securities and Exchange Board of India
- ❑ Determine how the SEBI regulates the capital markets in India under a resolution of the Government of India
- ❑ Specify the prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control
- ❑ Lay down the penalties and adjudication and identify the establishment, jurisdiction, authority and procedure of Appellate Tribunal.
- ❑ Elucidate the significant regulations governed by the SEBI(Listing Obligations and Disclosure Requirement) Regulations, 2015, SEBI (Issue of Capital and Disclosure Requirements) Regulations,2018, SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011, SEBI (Prohibition of Insider Trading) Regulations, 2015

1. INTRODUCTION

The Securities and Exchange Board of India was established in 1988. It got legal character in 1992. SEBI was primarily set up to regulate the activities of the merchant banks, to control the operations of mutual funds, to work as a regulator of the stock exchange activities and to act as a regulatory authority of new issue activities of companies. The reason the SEBI was constituted was because before the SEBI the law relating to the securities market in India was contained in different enactments like Companies Act, 1956, Securities Contract (Regulation) Act, 1956, and the Capital Issues (Control) Act, 1947. Then, at times when the capital market witnessed tremendous growth, it was found, that the legislation was scattered in different laws and administrative agencies did not have proper manpower or expertise to deal with the investors. Even there was no monitoring or prosecuting machinery to check malpractices, insider trading, etc. Then, Government of India decided to set up an agency or regulatory body known as Securities Exchange Board of India (SEBI). SEBI was first established in 1988 as a non-statutory body for regulating the securities market. It became an autonomous body on 30 January 1992 and was accorded statutory powers with the passing of the SEBI Act 1992 by the Indian Parliament.

In the year of 1995, the SEBI was given additional statutory power by the Government of India through an amendment to the Securities and Exchange Board of India Act, 1992.

The prime objective of the SEBI Act, 1992 are:

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

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

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

2. IMPORTANT DEFINITIONS

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

Board means the Securities and Exchange Board of India established under section 3; [Section 2(1) (a)]

Collective investment scheme means any scheme or arrangement which satisfies the conditions specified in section 11AA [Section 2(1)(ba)]

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

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

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

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

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

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

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

3. ESTABLISHMENT OF THE SECURITIES AND EXCHANGE BOARD OF INDIA

Establishment and incorporation of Board [Section 3]

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

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

Management of the Board [Section 4]

The SEBI Board is managed by its members (appointed by the Central Government). The Board consists of the following members:



- Chairman (nominated by Central Government of India)
- 2 Members (Officers from Ministry of CG)
- 1 member (From RBI)
- 5 other members (nominated by Central Government of India), out of them at least 3 shall be whole-time members

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

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

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

The term of office and other conditions of service of Chairman and the Members appointed in section 4(1)(d) (i.e., the 5 members appointed by Central Government) shall be such as may be prescribed by rules made under the Act.

Right to termination: The Central Government will have the right to terminate the services of the Chairman or the Members appointed in section 4(1)(d) (i.e., the 5 members appointed by Central Government) at any time before the expiry of their tenure-

by giving not less than three months' notice in writing

OR

three months' salary and allowance in lieu thereof

The Chairman and all the other members (not just the 5 members appointed by CG) shall have the right to relinquish office at any time before the expiry of their tenure by giving a notice of three months in writing to the Central Government.

Term of office: As per the rules framed in this regard, the Chairman and Whole time Members shall hold office for such period, not exceeding 5 years, as many be specified in the order of his appointment; but he shall be eligible for reappointment;

Provided that no person shall hold office as the Chairman or a Member after he attains the age of sixty-five years.

Removal of Members of the Board [Section 6]

The Central Government shall remove a member from office if he:

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

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

Meetings of the Board [Section 7]

The Board shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at its meetings (including quorum at such meetings) as may be provided by regulations.

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

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

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

Any member-

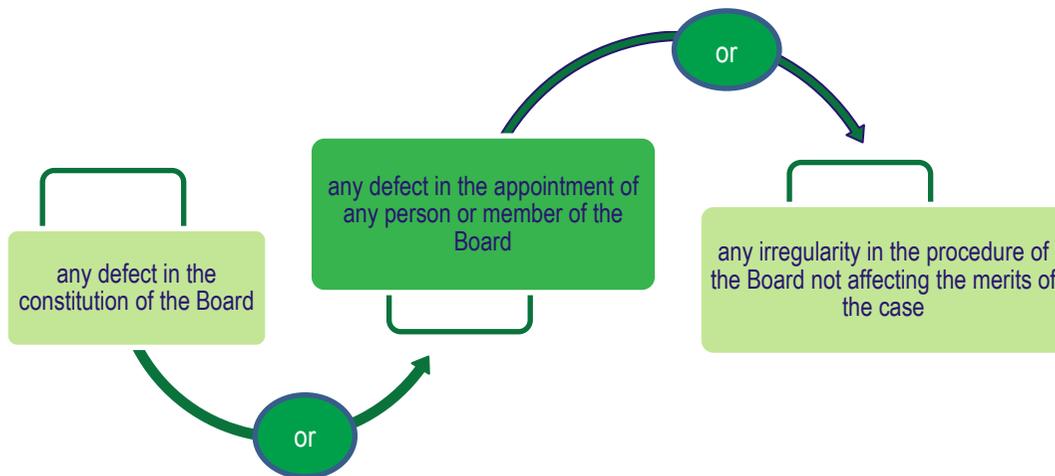
- who is a director of a company, and
- who as such director has any indirect pecuniary interest in any matter coming up for consideration at a meeting of the Board,

shall, disclose (as soon as possible after relevant circumstances have come to his knowledge) 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.

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

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



4. POWERS AND FUNCTIONS OF SEBI [SECTION 11]

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

The measures may provide for:

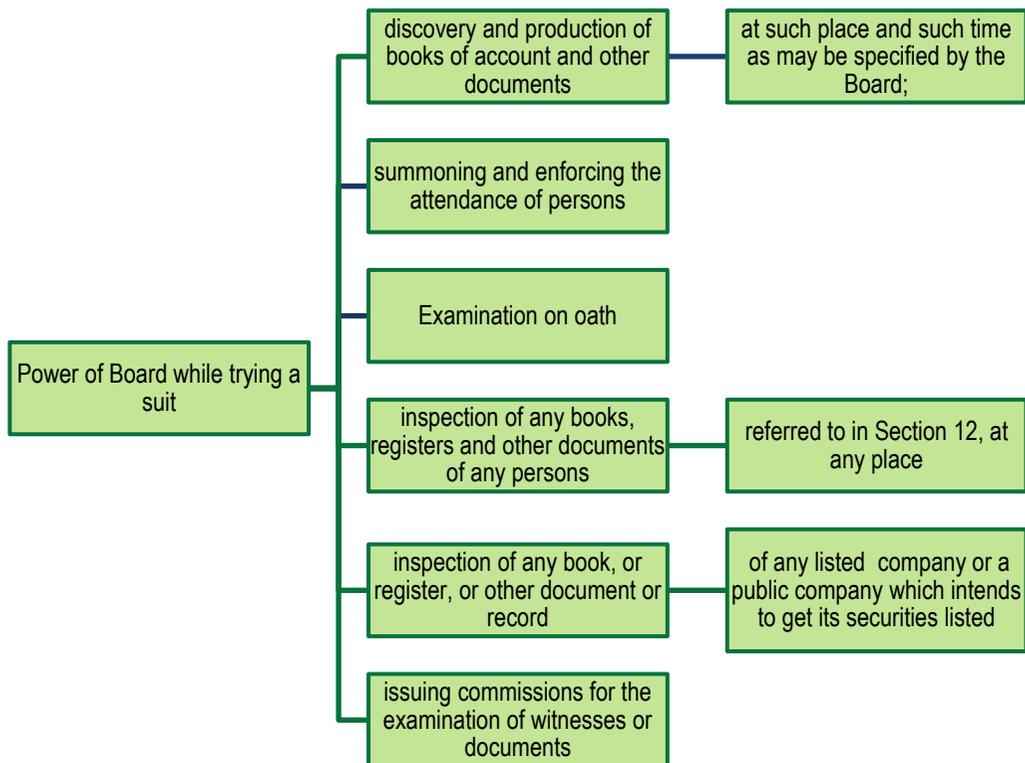
- (a) **regulating the business** in stock exchanges and any other securities markets;
- (b) **registering and regulating the working of stock brokers, sub - brokers**, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers and such other intermediaries who may be; associated with securities markets in any manner;
- (ba) **registering and regulating the working of the depositories, participants**, custodians of securities, foreign institutional investors, credit rating agencies and such other intermediaries as the Board may, by notification, specify in this behalf.
- (c) **registering and regulating the working of venture capital funds and collective investment schemes**, including mutual funds;
- (d) **promoting and regulating self-regulatory organisations**;

- (e) **prohibiting fraudulent and unfair trade practices** relating to securities markets;
- (f) **promoting investors' education and training** of intermediaries' of securities markets;
- (g) **prohibiting insider trading** in securities;
- (h) **regulating substantial acquisition of shares** and take-over of companies;
- (i) **calling for information from undertaking inspection**, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with securities market, intermediaries and self-regulatory organizations in the securities market
- (ia) **calling for information and records from any person** including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities;
- (ib) **calling for information from, or furnishing information to, other authorities**, whether in India or outside India, having functions similar to those of the Board, in the matters relating to the prevention or detection of violations in respect of securities laws, subject to the provisions of other laws for the time being in force in this regard:

Provided that the Board, for the purpose of furnishing any information to any authority outside India, may enter into an arrangement or agreement or understanding with such authority with the prior approval of the Central Government;
- (j) **performing such functions and exercising such powers under the provisions of the Securities Contracts (Regulation) Act, 1956**, as may be delegated to it by the Central Government.
- (k) **levying fees or other charges** for carrying out the purposes of this section.
- (l) **conducting research** for the above purposes;
- (la) **calling from or furnishing to any such agencies**, as may be specified by the Board, such **information** as may be considered necessary by it for the efficient discharge of its functions.
- (m) **performing such other functions** as may be prescribed.

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

Board are vested with same power as that of civil court: The Board shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:



Passing of an order by an Board: The Board may, by an order, for reasons to be recorded in writing, in the interests of investors or securities market, take any of the following measures, either pending investigation or inquiry or on completion of such investigation or inquiry, namely:—

- (a) **suspend the trading** of any security in a recognised stock exchange;
- (b) **restrain persons from accessing** the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
- (c) **suspend any office-bearer** of any stock exchange or self-regulatory organization from holding such position;
- (d) **impound and retain** the proceeds or securities in respect of any transaction which is under investigation;
- (e) **attach**, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

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

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

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

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

Provided that the Board may take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market:

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

Penalty: The Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

Consequences: The amount disgorged, pursuant to a direction issued, under various Acts i.e., section 11B of this Act or section 12A of the Securities Contracts (Regulation) Act, 1956 or section 19 of the Depositories Act, 1996 or under a settlement made under section 15JB or section 23JA of the Securities Contracts (Regulation) Act, 1956 or section 19-IA of the Depositories Act, 1996, as the case may be, shall be:

1. Credited to the Investor Protection and Education Fund established by the Board and
2. Such amount shall be utilized by the Board in accordance with the regulations made under this Act.

Example 1: The Securities and Exchange Board of India (SEBI) has received certain information and complaints which have led to it believe that DA Brokers Ltd, a registered Market Intermediary has violated multiple provisions of the SEBI regulations. In such a case, SEBI may, at any time by order in writing, direct any person (hereafter in this section referred to as the Investigating Authority) specified in the order to investigate the affairs of such intermediary or persons associated with the

securities market and to report thereon to the Board. Therefore, an order for an investigation into the affairs of the broker may be initiated.

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

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

Description of Powers	Powers of SEBI
Power to inspect	It shall be open to SEBI to inspect at all reasonable times books of accounts and other documents to be maintained by the Stock Exchanges for periods not exceeding five years as may be prescribed in the public interest and in the interest of trade by the Central Government.
Power of SEBI to call for information/explanation relating to affairs of the stock exchange	It shall also be open to SEBI to call upon recognised stock exchanges or any member thereof to furnish in writing such information or explanation relating to the affairs of the Stock Exchange or of the member in relation to the stock exchange as may be required by SEBI in the interest of trade or in the public interest.
SEBI to appoint persons to make an inquiry	It shall also be open to SEBI to appoint, by order in writing, one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such enquiry to SEBI within the time as, specified in the order. In the case of affairs of any of the members/ of a stock exchange, SEBI can direct the governing body of such stock exchange to make an inquiry and submit its report.
SEBI will bound the concerned persons to produce documents	Every director, manager, secretary or other officer of such stock exchange, every member of such stock

before himself /other enquiry officer	exchange and every constituent or agent of such member if it is a firm and every other person or body of persons having dealings with any of these persons whether directly or indirectly shall be bound to produce before SEBI or other enquiry officer, all books of accounts and other documents in his custody or power relating to the subject matter of the enquiry. This has to be done within the time specified and as may be required by the enquiry authority.
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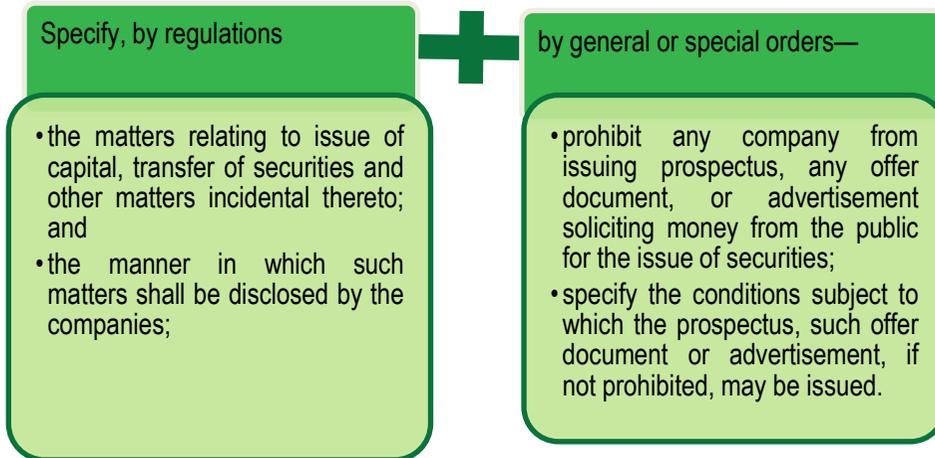
- (b) **Power to approve the bye-laws of stock exchanges:** Section 9 of SCRA provides that any recognised stock exchange may make bye-laws for the regulation and control of contracts with the previous approval of SEBI. Such bye-laws may provide for submission of periodical settlements carried out by clearing houses to SEBI or publication of such particulars by clearing houses subject to SEBI's directions. Such bye-laws have to be published for public comments and after approval by SEBI shall have to be published in the Gazette of India and also in the Official Gazette of the State unless SEBI, by written order with reasons dispense with the condition of previous publication.
- (c) **Power of SEBI to make or amend bye-laws of recognised stock exchanges (Section 10, SCRA):** SEBI may either on a request in writing received by it in this behalf from the governing body of a recognised stock exchange or on its own motion make bye-laws on matters specified in Section 9 of SCRA or amend any bye-laws made by such stock exchange. SEBI will have to be satisfied, after consultation with the governing body of the stock exchange, that it is necessary or expedient to make or amend the bye-laws and record its reasons also.
- (d) **Licensing of dealers in securities in certain areas (Section 17 SCRA):** SEBI has been empowered to grant a license to any person for the business of dealing in securities in any State or area to which Section 13 of SCRA has not been declared to apply. Section 13 of SCRA deals with contracts in notified areas to be illegal in certain circumstances.
- (e) **Public Issue and listing of securities referred to in section 2 (h) (ie) of SCRA:** As per section 17A, securities of the nature referred to in section 2 (h) (ie) shall be offered to the public or listed on any stock exchange unless the issuer fulfills eligibility criteria and complies with other requirements as may be specified by SEBI by regulations.
- (f) **Power to delegate:** Section 29A of SCRA provides that the Central Government may, by order published in the Official Gazette, direct that the powers exercisable by it under any provision of the SCRA shall, in relation to such matters and subject to such conditions, if any as may be specified in the order, be exercisable also by SEBI or the Reserve Bank of India.

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



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

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



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



6. COLLECTIVE INVESTMENT SCHEME [SECTION 11AA]

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

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

Requisite conditions [Section 11AA(2)]: Any scheme or arrangement made or offered by any person under which, -

- (i) the contributions, or payments made by the investors, by whatever name called, are **pooled and utilized** for the purposes of the scheme or arrangement;
- (ii) the contributions or payments are made to such scheme or arrangement by the investors with a view to receive **profits**, income, produce or property, whether movable or immovable, from such scheme or arrangement;
- (iii) the property, contribution or investment forming part of scheme or arrangement, whether

identifiable or not, is **managed on behalf of the investors**;

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

Section 11AA(2A): Any scheme or arrangement made or offered by any person satisfying the conditions as may be specified in accordance with the regulations made under this Act.

Exceptions [Section 11AA(3)]: Following scheme or arrangement shall not be a collective investment scheme-

- (i) made or offered by a **co-operative society** registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
- (ii) under which **deposits are accepted by non-banking financial companies** as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;
- (iii) being a **contract of insurance** to which the Insurance Act, 1938 applies;
- (iv) providing for **any Scheme**, Pension Scheme or the Insurance Scheme framed **under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952**;
- (v) under which **deposits are accepted under the Companies Act, 2013**
- (vi) under which **deposits are accepted by a company declared as a Nidhi or a mutual benefit society** under the Companies Act, 2013;
- (vii) falling within the meaning of **Chit business** as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
- (viii) under which **contributions made are in the nature of subscription** to a mutual fund;
- (ix) such other **scheme or arrangement which the Central Government may**, in consultation with the Board, **notify**,



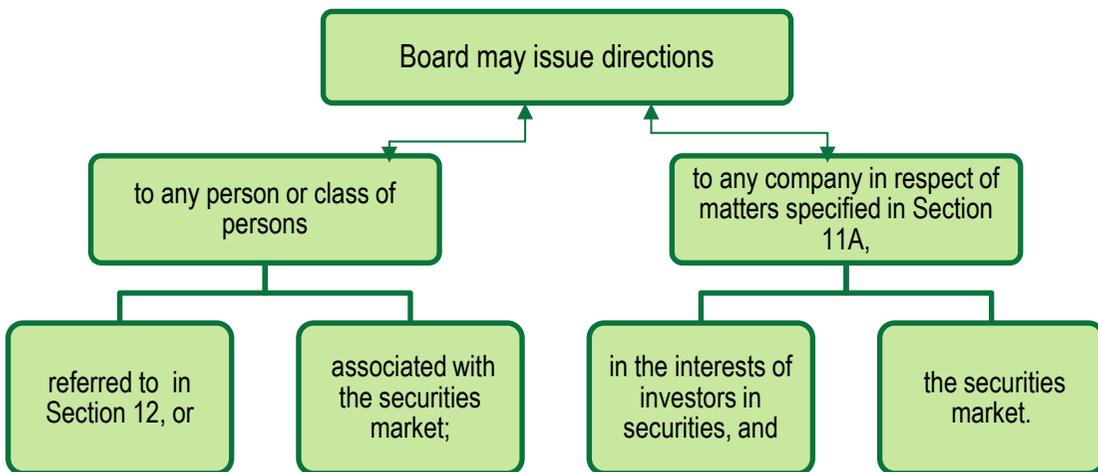
7. POWER TO ISSUE DIRECTIONS AND LEVY PENALTY [SECTION 11B]

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

in the interest of investors, or orderly development of securities market; or

to prevent the affairs of any intermediary or other persons referred to in Section 12 being conducted in a manner detrimental to interest of investors or securities market; or

to secure the proper management of any such intermediary or persons,



Levy of Penalty: The Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

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



8. INVESTIGATION [SECTION 11C]

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

- (a) the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or
- (b) any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board there under.

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

- (2) **Furnishing of relevant documents to the investigating authority:** It shall be the duty of-
- every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12, or
 - every person associated with the securities market,

to **preserve**, and to **produce** to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

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

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

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

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

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

Failure in compliance	Punishment
<p>(a) to produce to the Investigating Authority or any person authorised by it in this behalf any book, register, other document and record which is his duty to produce; or</p> <p>(b) to furnish any information which is his duty to furnish; or</p> <p>(c) to appear before the Investigating Authority personally or to answer any question which is put to him by the Investigating Authority in pursuance of that sub-section; or</p> <p>(d) to sign the notes of any examination,</p>	<p>Person shall be punishable with-</p> <ul style="list-style-type: none"> • imprisonment for a term which may extend to one year, or • with fine, which may extend to one crore rupees, or • with both, and • also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

- (6) **Notes of examination to be used as examination:** Notes of any examination shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.
- (7) **Impounding of documents :**Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Magistrate or Judge of such designated court in Mumbai, as may be notified by the Central Government for an order for the seizure of such books, registers, other documents and record.
- (8) **Demand of services of other officers:** The authorized officer may requisition the services of any police officer or any officer of the Central Government, or of both, to assist him for all or any of the purposes as specified above with respect to impounding of documents and it shall be the duty of every such officer to comply with such requisition.
- (9) **Order of court:** After considering the application and hearing the Investigating Authority, if necessary, the Magistrate or Judge of the Designated Court may, by order, authorise the Investigating Authority –

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

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

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

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

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

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

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

9. CEASE AND DESIST PROCEEDINGS [SECTION 11D]

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

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



10. REGISTRATION CERTIFICATE [SECTION 12]

Provision related to	Provides
Persons who are authorized to buy, sell or deal in securities	Stock broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities in accordance with, the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act
Board may by notification specify the persons who shall buy or sell or deal in securities	Depository, participant, custodian of securities, foreign institutional investor, credit rating agency, or any other intermediary associated with the securities market as the Board may by notification in this behalf specify, shall buy or sell or deal in securities in accordance with the conditions of a certificate of registration obtained from the Board in accordance with the regulations made under this Act;
Person who shall sponsor or cause to be sponsored or carry on or caused to be carried on any venture capital funds and collective investment scheme including mutual funds	Shall be, who obtains certificate of registration from the Board in accordance with the regulations.
Person who shall sponsor or cause to be sponsored or carry on or caused to be carried on the activity of an alternative investment fund or a business trust as defined in clause (13A) of section 2 of the Income-tax Act, 1961	Shall be, who obtains certificate of registration from the Board in accordance with the regulations.

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

Suspension /cancellation of a certificate of registration: The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations; Provided that no order under this sub-section shall be made unless the person concerned has been -given a reasonable opportunity of being heard.



11. PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL [SECTION 12A]

Prohibition on person	From performing following activities
No person shall directly or indirectly	<p>use or employ in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange,</p> <ul style="list-style-type: none"> • any manipulative or deceptive device or • contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
	<p>employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;</p>
	<p>engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;</p>
	<p>engage in insider trading;</p>
	<p>deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;</p>
	<p>acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.</p>



12. FINANCE, ACCOUNTS AND AUDIT

Grants by the Central Government [Section 13]

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

Fund [Section 14]

- (1) There shall be constituted a Fund to be called the Securities and Exchange Board of India General Fund and there shall be credited thereto-
 - all grants, fees and charges received by the Board under this Act;
 - all sums received by the Board from such other sources as may be decided upon by the Central Government.
- (2) The Fund shall be applied for meeting—
 - the salaries, allowances and other remuneration of the members, officers and other employees of the Board;
 - the expenses of the Board in the discharge of its functions under section 11;
 - the expenses on objects and for purposes authorised by this Act.

Accounts and audit [Section 15]

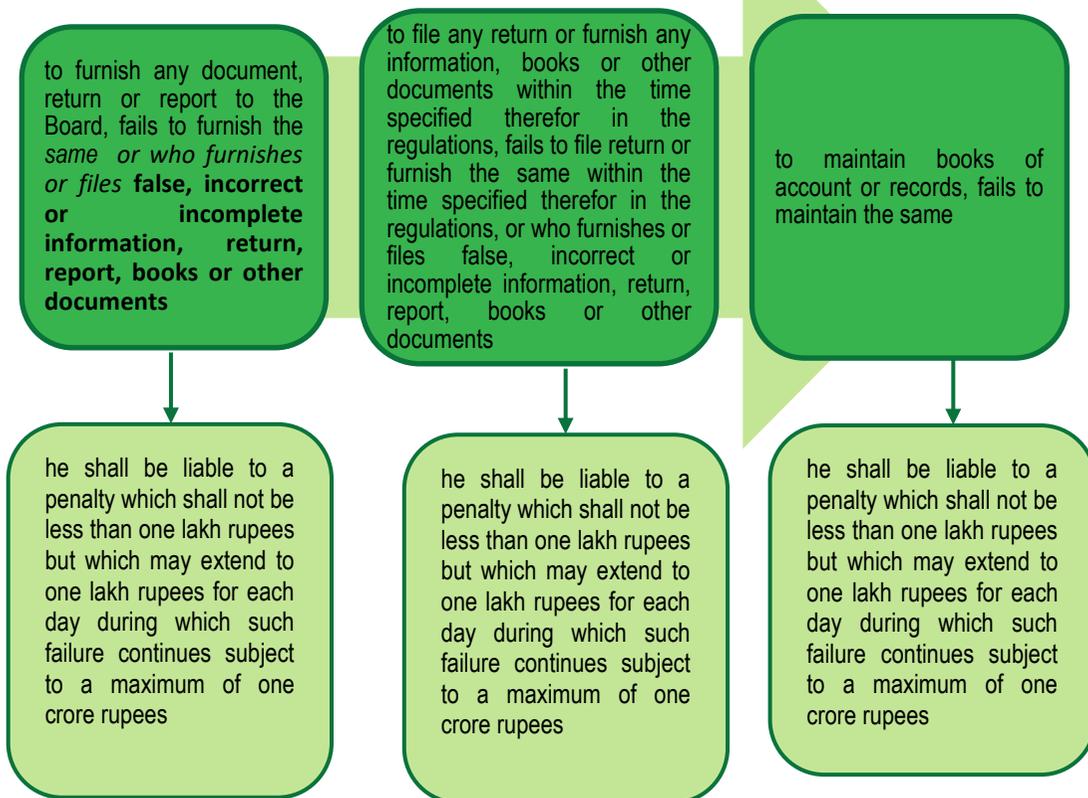
- (1) **Preparation of annual financial statement of Board in consultation with CAG of India:** The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.
- (2) **Audit of accounts of Board:** The accounts of the Board shall be audited by the Comptroller and Auditor-General of India at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.
- (3) **Right and Privileges:** The Comptroller and Auditor-General of India and any other person appointed by him in connection with the audit of the accounts of the Board shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of the Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.
- (4) **Certified Accounts and Audit reports to be forwarded to the Central Government:** The accounts of the Board as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded annually to the Central Government and that Government shall cause the same to be laid before each House of Parliament.



13. PENALTIES AND ADJUDICATION

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

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



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

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

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

Penalty for failure to redress investors' grievances [Section 15C]

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

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

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

Person liable	For defaults	Punishments levied
If any person, who is—	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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme including mutual funds subject to a maximum of one crore rupees;
	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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
	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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
	registered as a collective investment scheme, including	he shall be liable to a penalty which shall not be less than one lakh

	mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such dispatch	rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
	registered as a 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
	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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for failure to observe rules and regulations by an asset management company [Section 15E]

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

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

Penalty for default in case of alternative investment funds, infrastructure investment trusts and real estate investment trusts [Section 15 EA]

Where any person fails to comply with the regulations made by the Board in respect of:

- ✓ alternative investment funds,
- ✓ infrastructure investment trusts, and
- ✓ real estate investment trusts or
- ✓ fails to comply with the directions issued by the Board,
- such person shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a

maximum of one crore rupees or three times the amount of gains made out of such failure, whichever is higher.

Penalty for default in case of investment adviser and research analyst [Section 15EB]

Where an investment adviser or a research analyst fails to comply with the regulations made by the Board or directions issued by the Board,

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

Penalty for default in case of stock brokers [Section 15 F]

Person, registered as a stock broker	fails to issue	contract notes in the form and manner specified by the stock exchange of which such broker is a member,	he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees for which the contract note was required to be issued by that broker
	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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees
	charges	an amount of brokerage which is in excess of the brokerage specified in the regulations	he shall be liable for penalty which shall not be less than one lakh rupees but which may extend to five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher

Penalty for insider trading [Section 15G]

Any insider shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees / three times the amount of profits made out of insider trading, whichever is higher, who-

either on his own behalf or on behalf of any other person

communicates any unpublished price-sensitive information to any person, with or without his request for such information

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

deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

except as required in the ordinary course of business or under any law, or

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

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

disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

make a public announcement to acquire shares at a minimum price; or

make a public offer by sending letter of offer to the shareholders of the concerned company; or

make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,

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

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

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

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

Penalty for alteration destruction, etc., of records and failure to protect the electronic database of Board [15HAA]

Any person, who—

- (a) knowingly alters, destroys, mutilates, conceals, falsifies, or makes a false entry in any information, record, document (including electronic records), which is required under this Act or any rules or regulations made thereunder, so as to impede, obstruct, or influence the investigation, inquiry, audit, inspection or proper administration of any matter within the jurisdiction of the Board.

Explanation.— For the purposes of this clause, a person shall be deemed to have altered, concealed or destroyed such information, record or document, in case he knowingly fails to immediately report the matter to the Board or fails to preserve the same till such information continues to be relevant to any investigation, inquiry, audit, inspection or proceeding, which may be initiated by the Board and conclusion thereof;

- (b) without being authorised to do so, access or tries to access, or denies of access or modifies access parameters, to the regulatory data in the database;
- (c) without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database;
- (d) knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt;
- (e) without authorisation disrupts the functioning of system database;
- (f) knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or
- (g) knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f),

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

Explanation.—In this section, the expressions "computer contaminant", "computer virus" and "damage" shall have the meanings respectively assigned to them under section 43 of the Information Technology Act, 2000.

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

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

Summary of Section 15A to 15HB

Sec	Kind of Failure:	Penalty
15A	a. Fails to furnish any document, return or report to the Board or furnishes or files false, incorrect or incomplete information, return, report, books or other documents. b. Fails to file any return or furnish any information, books or other documents within time specified or who furnishes or files false, incorrect, or incomplete information, return, report, books or other documents. c. Fails to maintain books of account or records.	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore.
15B	If any person registered u/s 12 is required by the Act to enter into an agreement with his client , fails to enter into such agreement	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore.
15C	If any listed company or any person who is registered u/s 12, after having been called upon by the Board, to redress the grievances of investors , fails to redress such grievances within the time specified by the Board, such company or intermediary	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore.
15D	If any person, who is: <ol style="list-style-type: none"> required u/s 12 to obtain a CoR for sponsoring or carrying on any CIS, including MF, sponsors or carries on any such activity without obtaining such CoR registered as a CIS u/s 12 but fails to <ul style="list-style-type: none"> comply with the T&C of CoR to make an application for listing of its schemes as provided for in the regulations governing such listing dispatch unit certificates of any scheme in the manner provided in the regulation governing such dispatch refund the application monies paid by the investors within the period specified in the regulations 	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore

	<ul style="list-style-type: none"> • Invest money collected by such CIS as per regulations 	
15E	Where any AMC of a MF registered under this Act, fails to comply with any of the regulations providing for restrictions on the activities of the AMC, such AMC:	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore
15EA	Where any person fails to comply with the regulations in respect of, <ul style="list-style-type: none"> • alternative investment funds, • infrastructure investment trusts, and • real estate investment trusts or or fails to comply with the directions issued by the Board, shall be liable to	₹ 1 lakh + ₹ 1 lakh / day up to (Higher of ₹ 1 Crore or 3 times of the gain made out of such failure)
15EB	Where an investment adviser or a research analyst fails to comply with the regulations or directions issued by the Board, such investment adviser or research analyst	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore
15F	If any person, who is registered as a stockbroker under this Act: <p>(a) fails to issue contract notes in the form and manner specified by the stock exchange of which such broker is a member</p>	₹ 1 lakh up to ₹ 1 Crore
15F	(b) fails to deliver any security or fails to make payment of the amount due to the investor as per the regulations	₹ 1 lakh + ₹ 1 lakh / day up to ₹ 1 Crore
15F	(c) charges an amount of brokerage which is in excess of the brokerage specified in the regulations	₹ 1 lakh up to 5 times the amount of brokerage charged in excess of the specified brokerage
15G	If any insider who: <p>a. 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</p> <p>b. 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</p> <p>c. counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information</p>	₹ 10 lakhs up to (Higher of ₹ 25 Crores or 3X amount of profit made)

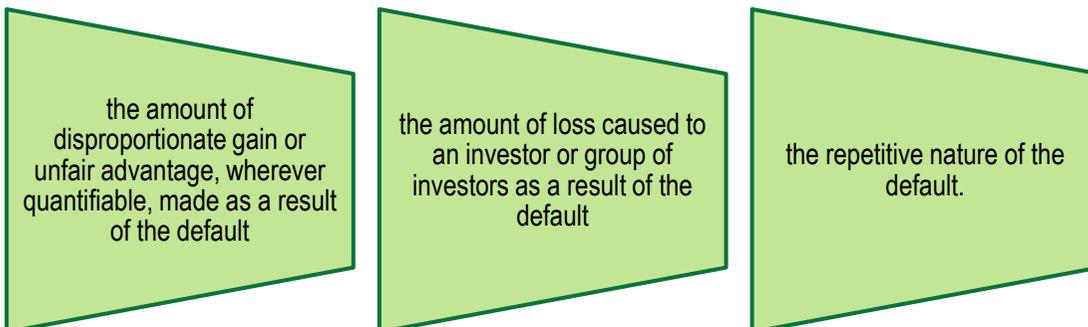
15H	<p>If any person, who is required under this Act/rules/regulations, fails to:</p> <ol style="list-style-type: none"> disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or make a public announcement to acquire shares at a minimum price; or make a public offer by sending letter of offer to the shareholders of the concerned company; or make payment of consideration to the shareholders who sold their shares pursuant to letter of offer 	₹ 10 lakhs up to (Higher of ₹ 25 Crores or 3X amount of profit made)
15HA	If any person indulges in fraudulent and unfair trade practices relating to securities	₹ 5 lakhs up to (Higher of ₹ 25 Crores or 3X amount of profit made)
15HAA	<p>Any person, who:</p> <ol style="list-style-type: none"> knowingly DAMFS any information, record, document (including e-records) required to be maintained as per the Act, so as to impede, obstruct, or influence the Ill, Audit, or proper administration of any matter within the jurisdiction of the Board. without being authorised to do so, access or tries to access, or denies or modifies access parameters, to the regulatory data in the database; without being authorised to do so, downloads, extracts, copies, or reproduces in any form the regulatory data maintained in the system database; knowingly introduces any computer virus or other computer contaminant into the system database and brings out a trading halt; without authorisation disrupts the functioning of system database; knowingly damages, destroys, deletes, alters, diminishes in value or utility, or affects by any means, the regulatory data in the system database; or knowingly provides any assistance to or causes any other person to do any of the acts specified in clauses (a) to (f) 	₹ 1 lakh up to (Higher of ₹ 10 Crores or 3X amount of profit made)
15HB	Person fails to comply with any provision of this Act/Rules/Regulations/directions issued by the Board for which no separate penalty has been provided	₹ 1 lakh up to ₹ 1 Crore

Power to adjudicate [Section 15-I]

On the matters related to	Power to adjudicate
For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB , 15F, 15G ,15H, 15HA and 15HB	Board may appoint any officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
On holding of an inquiry	<p>The adjudicating officer shall have power to:</p> <ul style="list-style-type: none"> • summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or • to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and • if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the sections specified in subsection (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.
Order passed by adjudicating officer is not justified	<p>The Board may call for and examine the record of any proceedings and if it considers that the order passed by the adjudicating officer is erroneous to the extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:</p> <p>Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:</p> <p>Limitation period: Provided further that nothing contained in this sub-section shall be applicable after an expiry of a period of three months from the date of the order passed by the adjudicating officer or disposal of the appeal under section 15T, whichever is earlier.</p>

Factors to be taken into account while adjudging quantum of penalty [Section 15J]

While adjudging quantum of penalty under section 15-I or section 11 or section 11B, the Board or the adjudicating officer, shall have due regard to the following factors, namely:—



It is clarified here that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of sections 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

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

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

Settlement of administrative and civil proceedings [Section 15 JB]

- (1) **Filing of an application:** Any person, against whom any proceedings have been initiated or may be initiated under section 11, section 11B, section 11D, sub-section (3) of section 12 or section 15-I, may file an application in writing to the Board proposing for settlement of the proceedings initiated or to be initiated for the alleged defaults.
- (2) **Board may consider for settlement of defaults:** The Board may, after taking into consideration the nature, gravity and impact of defaults, agree to the proposal for settlement, on payment of such sum by the defaulter or on such other terms as may be determined by the Board in accordance with the regulations made under this Act.
- (3) **Mode of settlement proceedings:** The settlement proceedings under this section shall be conducted in accordance with the procedure specified in the regulations made under this Act.
- (4) **Order not appealable:** No appeal shall lie under section 15T against any order passed by the Board or adjudicating officer, as the case may be, under this section.
- (5) **Settlement amount to be credited to consolidated fund of India:** All settlement amounts, excluding the disgorgement amount and legal costs, realised under this Act shall be credited to the Consolidated Fund of India.



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

Establishment of Securities Appellate Tribunals [Section 15K]

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

Composition of Securities Appellate Tribunal [Section 15L]

- (1) **Composition:** The Securities Appellate Tribunal shall consist of a Presiding Officer and such number of Judicial Members and Technical Members as the Central Government may determine, by notification, to exercise the powers and discharge the functions conferred on the Securities Appellate Tribunal under this Act or any other law for the time being in force.
- (2) Subject to the provisions of this Act,—
 - (a) the jurisdiction of the Securities Appellate Tribunal may be exercised by Benches thereof;
 - (b) a Bench may be constituted by the Presiding Officer of the Securities Appellate Tribunal with two or more Judicial or Technical Members as he may deem fit:
Provided that every Bench constituted shall include at least one Judicial Member and one Technical Member;
 - (c) the Benches of the Securities Appellate Tribunal shall ordinarily sit at Mumbai and may also sit at such other places as the Central Government may, in consultation with the Presiding Officer, notify.
- (3) **Transfer of members:** The Presiding Officer may transfer a Judicial Member or a Technical Member of the Securities Appellate Tribunal from one Bench to another Bench.

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

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

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

- (b) is, or has been, a Judge of High Court for at least five years, in the case of a Judicial Member; or
- (c) in the case of a Technical Member—
 - (i) is, or has been, a Secretary or an Additional Secretary in the Ministry or Department of the Central Government or any equivalent post in the Central Government or a State Government; or
 - (ii) is a person of proven ability, integrity and standing having special knowledge and professional experience, of not less than fifteen years, in financial sector including securities market or pension funds or commodity derivatives or insurance.

Appointment of judicial member [Section 15MA]

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

Appointment of technical member [Section 15MB]

- (1) The Technical Members of the Securities Appellate Tribunal shall be appointed by the Central Government on the recommendation of a Search-cum-Selection Committee consisting of the following, namely:—
 - (a) Presiding Officer, Securities Appellate Tribunal—Chairperson;
 - (b) Secretary, Department of Economic Affairs—Member;
 - (c) Secretary, Department of Financial Services—Member; and
 - (d) Secretary, Legislative Department or Secretary, Department of Legal Affairs—Member.
- (2) The Secretary, Department of Economic Affairs shall be the Convener of the Search-cum-Selection Committee.
- (3) The Search-cum-Selection Committee shall determine its procedure for recommending the names of persons to be appointed under sub-section (1).

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

- (1) No appointment of the Presiding Officer, a Judicial Member or a Technical Member of the Securities Appellate Tribunal shall be invalid merely by reason of any vacancy or any defect in the constitution of the Search cum- Selection Committee.
- (2) **Disqualification of members:** A member or part time member of the Board or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, or any person at senior management level equivalent to the Executive Director in the Board or in such Authorities, shall not be appointed as Presiding Officer or Member of the Securities Appellate Tribunal, during his service or tenure as such with the Board or with such

Authorities, as the case may be, or within two years from the date on which he ceases to hold office as such in the Board or in such Authorities.

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

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

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

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

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

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

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

Filling up of vacancies [Section 15P]

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

- then the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy, and
- the proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

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

Resignation and removal [section 15Q]

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

Provided that the Presiding Officer or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office-

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

- (a) is, or at any time has been adjudged as an **insolvent**;
- (b) has become physically or mentally **incapable** of acting as the Presiding Officer, Judicial or Technical Member;
- (c) has been **convicted** of any offence which, in the opinion of the Central Government, involves moral turpitude;
- (d) has, in the opinion of the Central Government, so **abused his position** as to render his continuation in office detrimental to the public interest; or
- (e) has **acquired** such financial **interest** or other interest as is likely to affect prejudicially his functions as the Presiding Officer or Judicial or Technical Member:

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

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

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

- (i) **Where the qualification, appointment etc. is after the commencement of Finance Act, 2017:** Notwithstanding anything contained in this Act, the qualifications, appointment, term of office, salaries and allowances, resignation, removal and the other terms and conditions of service of the Presiding Officer and other Members of the Appellate Tribunal appointed after

the commencement of Part XIV of Chapter VI of the Finance Act, 2017, shall be governed by the provisions of section 184 of that Act.

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

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

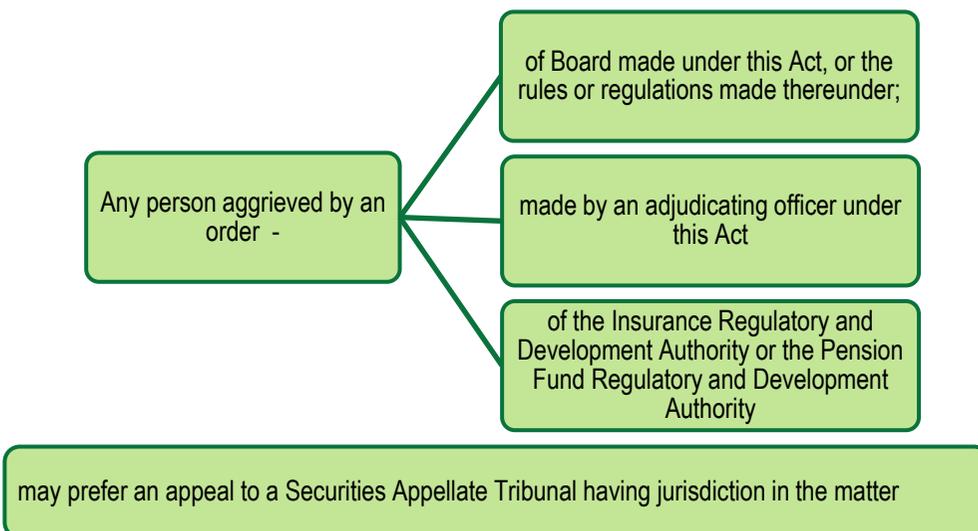
No order of the Central Government appointing any person as the Presiding Officer or a Member of a Securities Appellate Tribunal shall be called in question in any manner, and no act or proceeding before a Securities Appellate Tribunal shall be called in question in any manner on the ground merely of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

Staff of the Securities Appellate Tribunal [Section 15S]

- (1) The Central Government shall provide the Securities Appellate Tribunal with such officers and employees as that Government may think fit.
- (2) The officers and employees of the Securities Appellate Tribunal shall discharge their functions under general superintendence of the Presiding Officer.
- (3) The salaries and allowances and other conditions of service of the officers and employees of the Securities Appellate Tribunal shall be such as may be prescribed.

Appeal to the Securities Appellate Tribunal [Section 15T]

- (1) **Who may file an appeal**



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

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

- (3) **Order passed by SAT:** On receipt of an appeal, the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, **confirming, modifying or setting aside** the order appealed against.
- (4) **Forwarding of copies of order to the parties:** The Securities Appellate Tribunal shall send a copy of every order made by it to the Board, or the Insurance Regulatory and Development Authority or the Pension Fund Regulatory and Development Authority, as the case may be the parties to the appeal and to the concerned Adjudicating Officer.
- (5) **Time period for disposal of appeal:** The appeal filed before the Securities Appellate Tribunal shall be dealt with by it **as expeditiously as possible** and **endeavor** shall be made by it to dispose of the appeal finally **within six months** from the date of receipt of the appeal.

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

- (1) The Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, 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:—
- summoning and enforcing the attendance of any person and examining him on oath;
 - requiring the discovery and production of documents;
 - receiving evidence on affidavits;
 - issuing commissions for the examination of witnesses or documents;
 - reviewing its decisions;
 - dismissing an application for default or deciding it *ex parte*;
 - setting aside any order of dismissal of any application for default or any order passed by it *ex parte*;
 - any other matter which may be prescribed.

- (3) Every proceeding before the Securities Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).
- (4) Where Benches are constituted, the Presiding Officer of the Securities Appellate Tribunal may, from time to time make provisions as to the distribution of the business of the Securities Appellate Tribunal amongst the Benches and also provide for the matters which may be dealt with, by each Bench.
- (5) On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the Presiding Officer of the Securities Appellate Tribunal may transfer any case pending before one Bench, for disposal, to any other Bench.
- (6) If a Bench of the Securities Appellate Tribunal consisting of two members differ in opinion on any point, they shall state the point or points on which they differ, and make a reference to the Presiding Officer of the Securities Appellate Tribunal who shall either hear the point or points himself or refer the case for hearing only on such point or points by one or more of the other members of the Securities Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of the members of the Securities Appellate Tribunal who have heard the case, including those who first heard it.

Right to legal representation [Section 15V]

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

Limitation [Section 15W]

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

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

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

Civil Court not to have jurisdiction [Section 15Y]

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

court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

Appeal to Supreme Court [Section 15Z]

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

- file an appeal to the Supreme Court **within sixty days** from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of law arising out of such order:

Condonation for Delay: The Supreme Court may, if it is satisfied that the applicant was prevented by **sufficient cause** from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

15. MISCELLANEOUS

Power of Central Government to issue directions [Section 16]

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

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

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

Power of Central Government to supersede the Board [Section 17(1)]

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

Reasons to supersede the Board-

Central
government
may
supersede
the Board-

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

Effect of publication of notification of superseding the Board [Section 17(2)]:

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

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

Reconstitution of Board on the expiration of the period of supersession [Section 17(3)]:

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

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

Complete reports and action taken to be laid before the Parliament [Section 17(4)]:

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

Returns and reports [Section 18]

- (1) **Furnishing of returns and reports by the Board to the Central Government:** The Board shall furnish to the Central Government at such time and in such form and manner as may be prescribed or as the Central Government may direct, such returns and statements and such particulars in regard to any proposed or existing programme for the promotion and development of the securities market, as the Central Government may, from time to time, require.
- (2) **Report of previous financial year by the Board:** the Board shall, **within ninety days** after the end of each financial year, submit to the Central Government a report in such form, as may be prescribed, giving a true and full account of its activities, policy and programmes during the previous financial year.
- (3) **Report to be presented before Parliament:** A copy of the report received under sub-section (2) shall be laid, as soon as may be after it is received, before each House of Parliament.

Appeals [Section 20]

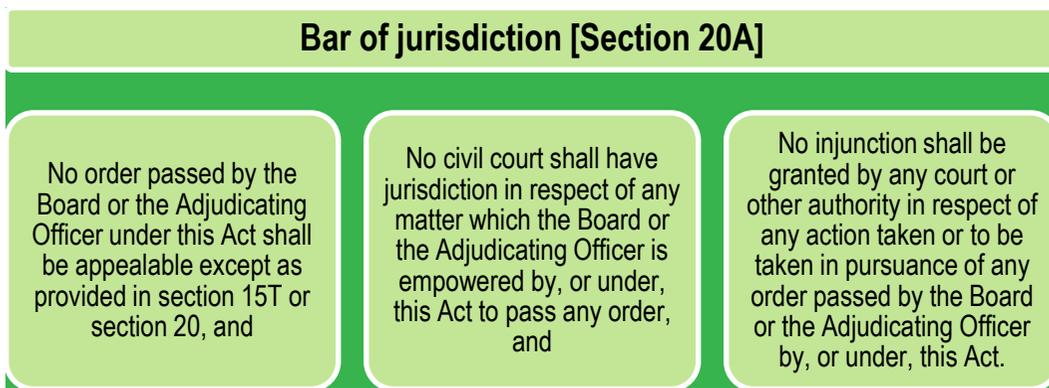
- (1) **Appeal to Central Government:** Any person aggrieved by an order of the Board made, **before** the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made thereunder may prefer an appeal to the Central Government within such time as may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

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

However, it is admitted after the expiry of the period prescribed if the appellant satisfies the Central Government that he had **sufficient cause** for not preferring the appeal within the prescribed period.

- (3) **Appeal shall be made in prescribed form with a copy of an order:** Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.
- (4) The procedure for disposing of an appeal shall be such as may be prescribed.

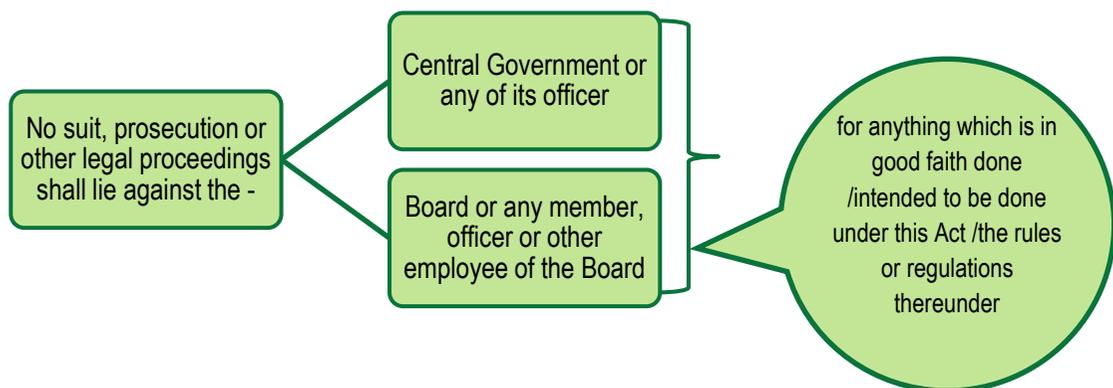
Provided that before disposing of an appeal, the appellant shall be given a **reasonable opportunity of being heard**.



Members, officers and employees of the Board to be public servants [Section 22]

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

Protection of action taken in good faith [Section 23]



Offences [Section 24]

- (1) Without prejudice to any award of penalty by the adjudicating officer or the Board under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations made thereunder, he shall be punishable with **imprisonment** for a term which may extend to **ten years**, or with **fine**, which may extend to **twenty-five crore rupees** or with **both**.
- (2) If any person fails to pay the penalty imposed by the adjudicating officer or the Board or fails to comply with any directions or orders, he shall be punishable with **imprisonment** for a term which shall **not be less than one month** but which may **extend to ten years**, or with **fine**, which may **extend to twenty-five crore rupees** or with **both**.

Composition of certain offences [Section 24A]

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any offence punishable under this Act, not being an offence punishable with:

- imprisonment only, or
- with imprisonment **and** also with fine,

may either **before or after** the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant immunity [Section 24B]

- (1) The **Central Government may**, on recommendation by the Board, if the Central Government is satisfied, that any person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of the alleged violation,
 - **grant** to such person, subject to such conditions as it may think fit to impose, **immunity from prosecution** for any offence under this Act, or the rules or the regulations made thereunder or **also from** the imposition of any **penalty** under this Act with respect to the alleged violation.

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

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

- (2) **Withdrawal of granted immunity by the Central Government:** An immunity granted to a person above may, at any time, be **withdrawn by the Central Government**, if it is satisfied that:

- such person had, in the course of the proceedings, **not complied** with the **condition** on which the **immunity was granted** or
- had given **false evidence**,

and **thereupon** such person may be **tried** for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention **and** shall **also** become liable to the **imposition** of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Explanation – In case where the immunity is withdrawn on account of non-compliance with the conditions or false evidence, the CG or Board shall proceed with the prosecution (against which immunity was given and withdrawn) and may also impose penalty as may be required.

Cognizance of offences by courts [Section 26]

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

Special Courts [Section 26A to Section 26D]

Establishment of Special Courts [Section 26A]

- (1) **Purpose:** The Central Government may, for the **purpose** of providing **speedy trial of offences** under this Act, by notification, establish or designate as many Special Courts as may be necessary.
- (2) **Composition:** A Special Court shall consist of a **single judge** who shall be **appointed by the Central Government with the concurrence** of the **Chief Justice of the High Court** within whose jurisdiction the judge to be appointed is working.
- (3) **Qualification:** A person shall not be qualified for appointment as a judge of a Special Court unless he is, immediately before such appointment, **holding the office** of a **Sessions Judge** or an **Additional Sessions Judge**, as the case may be.

Offences triable by Special Courts [Section 26 B]

All offences under this Act, shall be taken cognizance of and tried by:

- the Special Court **established** for the area in which the offence is committed or
- where there are **more Special Courts** than one for such area, by **such one** of them as may be **specified** in this behalf **by the High Court** concerned

Appeal and revision [Section 26C]

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

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

- (1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the person conducting prosecution before a Special Court shall be deemed to be a Public Prosecutor within the meaning of clause (u) of section 2 of the Code of Criminal Procedure, 1973.
- (2) The person conducting prosecution referred to in sub-section (1) should have been in practice as an advocate for not less than seven years or should have held a post, for a period of not less than seven years, under the Union or a State, requiring special knowledge of law.

Transitional provisions [Section 26E]

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

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

Contravention by companies [Section 27]

- (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made there under has been committed by a company -every person who at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly:

Exemption: This sub-section shall not render any such person liable to any punishment provided in this Act, if he proves that the contravention 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 contravention under this Act has been committed by a company and it is proved that the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly.

Explanation: For the purposes of this section,—

- (a) company means anybody corporate and includes a firm or other association of individuals; and

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

Recovery of amounts [Section 28A]

- (1) If a person **fails to pay the penalty** imposed under this Act **or fails to comply** with any **direction** of the Board **for refund of monies or fails to comply** with a direction of **disgorgement order** or fails to pay any fees due to the Board, the **Recovery Officer** may draw up under his signature a statement in the specified form specifying the amount due from the person (such statement being hereafter in this Chapter referred to as certificate) and shall proceed to recover from such person the amount specified in the certificate by one or more of the following modes, namely:—
- (a) attachment and sale of the person's **movable property**;
 - (b) attachment of the person's **bank accounts**;
 - (c) attachment and sale of the person's **immovable property**;
 - (d) of the person and his **detention** in prison;
 - (e) **appointing a receiver** for the management of the person's movable and immovable properties,

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

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

Explanation 2— Any reference under the provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962 to the assesses shall be construed as a reference to the person specified in the certificate.

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

Explanation 4—The interest referred to in section 220 of the Income-tax Act, 1961 shall commence from the date the amount became payable by the person.

- (2) The Recovery Officer shall be empowered to seek the assistance of the local district administration while exercising the powers under sub-section (1).
- (3) Notwithstanding anything contained in any other law for the time being in force, the **recovery of amounts** by a Recovery Officer under sub-section (1), pursuant to non-compliance with any direction issued by the Board under section 11B, shall have precedence over any other claim against such person.
- (4) For the purposes of sub-sections (1), (2) and (3), the expression “Recovery Officer” means any officer of the Board who may be authorised, by general or special order in writing, to exercise the powers of a Recovery Officer.

Continuance of proceedings [Section 28B]

(1) **Where a person dies**, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay, if he had not died, in the like manner and to the same extent as the deceased:

Provided that, in case of any penalty payable under this Act, a legal representative shall be liable only in case the penalty has been imposed before the death of the deceased person.

- (2) For the purposes of sub-section (1),--
 - (a) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, initiated against the deceased before his death shall be deemed to have been initiated against the legal representative, and may be continued against the legal representative from the stage at which it stood on the date of the death of the deceased and all the provisions of this Act shall apply accordingly;
 - (b) any proceeding for disgorgement, refund or an action for recovery before the Recovery Officer under this Act, except a proceeding for levy of penalty, which could have been initiated against the deceased if he had survived, may be initiated against the legal representative and all the provisions of this Act shall apply accordingly.
- (3) **Every legal representative shall be personally liable** for any sum payable by him in his capacity as legal representative if, while his liability for such sum remains undischarged, he creates a charge on or disposes of or parts with any assets of the estate of the deceased, which are in, or may come into, his possession, but such liability shall be limited to the value of the asset so charged, disposed of or parted with.
- (4) The liability of a legal representative under this section shall be **limited to the extent to which the estate of the deceased is capable of meeting the liability**.

Explanation.--For the purposes of this section "Legal representative" means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character, the person on whom the estate devolves on the death of the party so suing or sued.

Power to make rules [Section 29]

- (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the term of office and other conditions of service of the Chairman and the members under sub-section (1) of section 5;
 - (b) the additional functions that may be performed by the Board under section 11;
 - (c) Omitted
 - (d) the manner in which the accounts of the Board shall be maintained under section 15;
 - (da) the manner of inquiry under sub-section (1) of section 15-I;
 - (db) the salaries and allowances and other terms and conditions of service of the Presiding Officers, Members and other officers and employees of the Securities Appellate Tribunal under section 15-O and sub-section (3) of section 15S;
 - (dc) the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers, or other Members of the Securities Appellate Tribunal under sub-section (3) of section 15Q;
 - (dd) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 15T and the fees payable in respect of such appeal;
 - (e) the form and the manner in which returns and report to be made to the Central Government under section 18;
 - (f) any other matter which is to be, or may be, prescribed, or in respect of which provision is to be, or may be, made by rules.

Power to make regulations [Section 30]

- (1) The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the times and places of meetings of the Board and the procedure to be followed at such meetings under sub-section (1) of section 7 including quorum necessary for the transaction of business;
- (b) the terms and other conditions of service of officers and employees of the Board under sub-section (2) of section 9;
- (c) the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A;
- (ca) the utilisation of the amount credited under sub-section (5) of section 11;
- (cb) the fulfilment of other conditions relating to collective investment scheme under subsection (2A) of section 11AA;]
- (d) the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration under section 12.
- (da) the terms determined by the Board for settlement of proceedings under sub-section (2) and the procedure for conducting of settlement proceedings under sub-section (3) of section 15JB;
- (db) any other matter which is required to be, or may be, specified by regulations or in respect of which provision is to be made by regulations.

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

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

Application of other laws not barred [Section 32]

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

Power to remove difficulties [Section 34]

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

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

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

Validation of certain acts [Section 34A]

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

SEBI (LISTING OBLIGATIONS AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2015

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2	Common Obligations of Listed Entities
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1. SCOPE

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

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

2. INTRODUCTION

Securities and Exchange Board of India (SEBI), on September 2, 2015, issued SEBI (Listing and Disclosure) Regulations, 2015 on listing of different segments of the capital market and disclosure norms in relation thereto. The Regulation became effective from December 1, 2015.

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

The latest set of norms provides broad principles for periodic disclosures by listed entities, apart from incorporating corporate governance principles.

Applicability: These regulations shall apply to a listed entity which has listed any of the following designated securities on recognized stock exchange(s):

- Specified securities listed on main board or SME Exchange or Innovators Growth Platform;
- Non-convertible debt securities,
- Indian depository receipts;
- Securitized debt instruments;
- Security Receipts;
- Units issued by mutual funds;
- Any other securities as may be specified by the Board.

(2) The provisions of these regulations which become **applicable to listed entities on the basis of market capitalisation criteria** shall continue to apply to such entities even if they fall below such thresholds.

(3) The provisions of these regulations which become **applicable to listed entities on the basis of the criterion of the value of outstanding listed debt securities** shall continue to apply to such entities even if they fall below such thresholds as mentioned in sub-regulation (1A) of regulation 15.

3. REGULATIONS

The Listing Regulations have been sub-divided into two parts viz,:

- (a) **Substantive** provisions incorporated in the main body of Regulations,
- (b) **Procedural** requirements in the form of schedules to the Regulations

Board of Directors [Regulation 17]

(1) **Composition of Board:** The composition of board of directors (BOD) of the listed entity shall be as follows:

- a. BOD shall have an **optimum combination of executive and non-executive directors** with **at least one-woman director** and **not less than 50%** of the BOD shall comprise of **non-executive directors**.

Provided that the BOD of the **top 1000 listed entities** (determined on the basis of market capitalisation, as at the end of the immediate previous financial year) shall have **at least one independent woman director** by April 1, 2020

- b. where the **chairperson** of the BOD is a **non-executive director**, **at least one-third** of the BOD shall comprise of **independent directors** and where the **chairperson** of the BOD is not a regular non-executive chairperson, **at least half** of the BOD shall comprise of **independent directors**.

Provided that where the regular non-executive chairperson is a promoter of the listed entity or is "related to any promoter" or person occupying management positions at the level of BOD or at one level below the BOD - at least half of the BOD of the listed entity shall consist of independent directors.

For the purpose of this clause, "related to any promoter" means:

- (i) If the **promoter is a listed entity**, its directors **other than the independent directors**, its employees or its nominees shall be deemed to be related to it;
- (ii) If the **promoter is an unlisted entity**, its directors, its employees or its nominees shall be deemed to be related to it.

Provisions relating to independent directors are not applicable to section 8 (licensed i.e. non-profit) companies [MCA Notification dated 5-6-2015 issued under section 462 of Companies Act, 2013]

- c. The BOD of the top 2000 listed entities (with effect from April 1, 2020) shall **comprise of not less than six directors**.

Age limit: No listed entity shall appoint a person or continue the directorship of any person as a non-executive director who has attained the age of **seventy-five years** unless a special resolution is passed to that effect, in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such a person.

(2) **Board meetings and information to be given to Board:** The BOD shall meet **at least four times** in a year, with maximum time gap of 120 days between any two meetings.

The quorum for every meeting of the BOD of the **top 2000 listed entities** with effect from April 1, 2020 shall be **one-third** of its total strength **or three** directors, whichever is **higher, including at least one independent director.**

- (3) **Review of compliance report** – The Board will periodically review compliance reports of all laws applicable to company, prepared by company and steps taken by company to rectify instances of non-compliance.
- (4) The evaluation of independent directors shall be done by the **entire board of directors** which shall include:
 - a. performance of the directors; **and**
 - b. fulfillment of the independence criteria as specified in these regulations and their independence from the management:

Provided that in the above evaluation, the directors who are subject to evaluation shall not participate.

Maximum Number of Directorship [Regulation 17A]

The directors of listed entities shall comply with the following conditions with respect to the maximum number of directorships, **including any alternate directorships** that can be held by them at any point of time -

- (1) A person shall **not be a director in more than seven listed entities** w.e.f. April 1, 2020.
Provided that a person shall **not serve as an independent director in more than seven listed entities.**
- (2) Notwithstanding the above, any person who is serving as a whole time director / managing director in any listed entity shall serve as an **independent director** in not more than **three listed entities.**

Explanation: For the purpose of this Regulation, the count for the number of listed entities on which a person is a director / independent director shall be only those whose equity shares are listed on a stock exchange

Restriction on number of memberships [Regulation 26]

- (1) A director shall not be a **member** in more than **ten committees** or act as **chairperson** of more than **five committees** across **all listed entities** in which he/she is a director which shall be determined as follows:
 - a. the limit of the committees on which a director may serve in all **public limited companies**, whether listed or not, **shall be included** and all **other companies** including private limited companies, foreign companies, **high value debt listed entities** and companies under Section 8 of the Companies Act, 2013 **shall be excluded;**

- b. for the purpose of determination of limit, chairpersonship and membership of the **audit committee and the Stakeholders' Relationship Committee alone** shall be considered.
- (2) Every director shall **inform the listed entity** about the committee positions he or she occupies in other listed entities and notify changes as and when they take place.

Corporate Governance Requirement with respect to Subsidiary Companies of Listed Company [Regulation 24]

- (1) At least one independent director on the board of directors of the listed entity shall be a director on the board of directors of an unlisted **material subsidiary**, whether incorporated in India or not.

The term "material subsidiary" shall mean a subsidiary, whose income or net worth exceeds twenty percent of the consolidated income or net worth respectively, of the listed entity and its subsidiaries in the immediately preceding accounting year.

- (2) The Audit Committee of the listed company shall also **review the financial statements**, in particular the investments made by the subsidiary company.
- (3) The **minutes of the Board meetings** of the unlisted subsidiary shall be placed at the meeting of the BOD of the listed entity.
- (4) The Management of the unlisted subsidiary should bring to notice of Board of listed entity, a statement of all **significant transactions** and arrangements entered into by unlisted subsidiary.

Explanation.- For the purpose of this regulation, the term "significant transaction or arrangement" shall mean any individual **transaction** or arrangement **that exceeds** or is likely to exceed **10% of the total** revenues or total expenses or total assets or total liabilities, as the case may be, of the unlisted subsidiary for the immediately preceding accounting year.

- (5) A listed entity shall **not dispose of shares** in its **material subsidiary** resulting in reduction of its shareholding (either on its own or together with other subsidiaries) **to less than or equal to 50%** or cease the exercise of control over the subsidiary **without passing a special resolution** in its General Meeting.

However, no such special resolution would be required in cases where:

- such divestment is made under a scheme of arrangement duly approved by a Court/Tribunal or under a resolution plan duly approved under section 31 of the Insolvency Code **and**
- such an event is **disclosed** to the recognized stock exchanges **within one day** of the resolution plan being approved.

- (6) **Selling, disposing and leasing of assets** amounting to **more than 20%** of the assets of the **material subsidiary** on an aggregate basis during a financial year shall require **prior approval** of shareholders by way of **special resolution**

However, no such special resolution would be required in cases where:

- the sale/disposal/lease is made under a scheme of arrangement duly approved by a Court/Tribunal or under a resolution plan duly approved under section 31 of the Insolvency Code **and**
- such an event is disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

Where a listed entity has a listed subsidiary, which is itself a holding company, the provisions of this regulation shall apply to the listed subsidiary in so far as its subsidiaries are concerned.

I. Corporate Governance Report [Schedule V of the Regulation]

The annual report shall contain additional disclosures relating to Corporate Governance. The following disclosures shall be made in the section on the corporate governance of the annual report, inter-alia:

- (1) A brief statement on listed entity's **philosophy** on code of governance
- (2) **Board of Directors:** The following shall be disclosed, inter-alia,
 - a. Composition and category of directors (e.g., promoter, executive, non-executive, independent non-executive, nominee director - institution represented and whether as lender or as equity investor.
 - b. attendance of each director at the BOD meetings and the last AGM
 - c. number of other BOD or Committees in which director is a member or Chairperson
 - d. number of BOD meetings held and dates on which held
 - e. disclosures between directors inter-se
- (3) **Audit Committee:**
 - a. Brief description of terms of reference
 - b. composition, name of members and chairperson
 - c. meetings and attendance during the year.
- (4) **Nomination and Remuneration Committee:**
 - a. brief description of terms of reference
 - b. composition, name of members and chairperson

- c. meetings and attendance during the year
 - d. performance evaluation criteria for independent directors
- (5) **Stakeholders' relationship committee**
- a. name of the non-executive director heading the committee;
 - b. name and designation of the compliance officer;
 - c. number of shareholders' complaints received during the financial year;
 - d. number of complaints not solved to the satisfaction of shareholders;
 - e. number of pending complaints.
- (5A) **Risk management committee:**
- a. brief description of terms of reference;
 - b. composition, name of members and chairperson;
 - c. meetings and attendance during the year;"
- (6) **General Body meetings:**
- a. location and time, where last three AGMs held
 - b. whether any special resolutions passed in the previous 3 AGMs
 - c. whether any special resolution passed last year through postal ballot - details of voting pattern
 - d. person who conducted the postal ballot exercise
 - e. whether any special resolution is proposed to be conducted through postal ballot
 - f. procedure for postal ballot
- (7) **Other disclosures** shall include, inter-alia,:
- a. disclosures on materially significant related party transactions that may have potential conflict with the interests of company at large
 - b. details of non-compliance by the listed entity, penalties, strictures imposed on the entity by stock exchange or SEBI or any statutory authority, on any matter related to capital markets, during the last 3 years
 - c. details of establishment of whistle Blower policy and affirmation that no personnel has been denied access to the audit committee
 - d. details of compliance with mandatory requirements and adoption of non-mandatory requirements of clause 49.

II. Performance Evaluation of the Board and its directors:

Companies Act, 2013 and SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 make provisions relating to evaluation of performance of (i) Board (ii) Individual directors and Chairperson and (iii) Committees of Board (specially Nomination and Remuneration Committee).

Following provision of the Companies Act, 2013 talks about evaluation:

- a) Section 134(3) requires statement of annual evaluation by Board of its own performance and of committees.
- b) Section 178(2) requires Nomination and Remuneration Committee to identify persons to be directors
- c) Schedule IV talks about performance evaluation of independent directors

Similarly, SEBI (LODR) Regulations also covers provisions relating to functions of Board, performance evaluation of directors, role of Nomination and Remuneration Committee and Corporate Governance Report.



4. COMMON OBLIGATIONS OF LISTED ENTITIES

General Obligation of Compliance [Regulation 5]

The listed entity shall ensure that key managerial personnel (KMP), directors, and promoters or any other person dealing with the listed entity, complies with responsibilities or obligations, if any, assigned to them under these regulations.

Compliance officer and his/her obligation [Regulation 6]

- (1) A listed entity shall appoint a qualified company secretary as the compliance officer.
- (2) The Compliance officer so appointed shall be responsible for:
 - a. ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit,
 - b. co-ordination and reporting to the Board,
 - c. ensuring that correct procedures have been followed that would result in correctness of information filed by listed entity under the regulations and
 - d. monitoring email address of grievance redressal division.

Share Transfer Agent [Regulation 7]

The listed entity shall appoint a share transfer agent or manage the share transfer facility in house.

5. QUARTERLY COMPLIANCES

A listed entity shall, inter-alia, make the following filings with the Recognised Stock Exchange(s) on a quarterly basis:

A. Regulation 13(3): Grievance Redressal Mechanism

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

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

A listed entity shall submit quarterly compliance report on corporate governance in the format as specified by the Board from time to time to the recognized stock exchange(s) within **21 days** from **the end of each** the quarter.

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

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

- (a) **One day** prior to listing of its securities on the stock exchange(s);
- (b) On a quarterly basis, **within 21 days** from the end of each quarter; and,
- (c) Within **10 days** of any capital restructuring of the listed entity resulting in a change exceeding **2% per cent** of the total paid-up share capital.

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

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

- (a) **indicating deviations**, if any, in the use of proceeds from the objects stated in the offer document or explanatory statement to the notice for the general meeting, as applicable;
- (b) **indicating category wise variation** (capital expenditure, sales and marketing, working capital etc.) between projected utilization of funds made by it in its offer document or explanatory statement to the notice for the general meeting, as applicable and the actual utilization of funds.

E. Regulation 33(3): Financial Results

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

Summary of above quarterly compliances:

Within __ days from the end of each the quarter	Statement / Reports to be filed with RSE by Listed Entity
21 days	Report on Corporate Governance in format specified by BOD
21 days	Statement showing number of investor complaint : 1. Pending at the beginning of the quarter 2. Received during the quarter. 3. Disposed of during the quarter. 4. Remaining unresolved during the quarter
21 days	Statement showing holding of securities and shareholding pattern separately for each class of securities. (Also, to be disclosed one day prior to listing and within 10 days of any capital restructuring scheme of the listed entity resulting in change >2% of the total PUSC)
45 days (other than last quarter)	Quarterly and YTD standalone financial statement
For such period till which the issues proceeds are fully utilized or purpose achieved	Quarterly statement for public issue, right issues, preferential issues , etc. a. indicating deviations in the use of proceeds from the objects stated in offer documents or ES to the notice of GM b. indicating variations (category wise such as Capex, Sales and Marketing, working capital, etc.) between projected utilization of fund made in OD / ES to notice of GM vs actual utilization of fund



6. PRIOR INTIMATION OF BOARD MEETING

A. Prior Intimation of Board Meetings [Regulation 29(1) and 29(2)]

The listed entity shall give prior intimation to stock exchange about the meeting of the board of directors in following cases:

- a. At least **5 days** in advance (excluding date of meeting and date of intimation) in which the financial results viz. quarterly, half yearly, or annual, as the case may be, is due to be considered.
- b. At least **2 working days** in advance, excluding the date of the intimation and date of the meeting in case where any of the following proposal is due to be considered:

- proposal for **buyback** of securities;
- proposal for **voluntary delisting** by the listed entity from the stock exchange(s);
- **fund raising** by way of further public offer, rights issue, American Depository Receipts/Global Depository Receipts/Foreign Currency Convertible Bonds, qualified institutions placement, debt issue, preferential issue or any other method and for determination of issue price;
- **declaration/recommendation of dividend**, issue of convertible securities including convertible debentures or of debentures carrying a right to subscribe to equity shares or the passing over of dividend;
- the proposal for **declaration of bonus securities**;

B. **Prior Intimation for alteration of securities [Regulation 29(3)]**

The listed entity shall give intimation to the stock exchange(s) at least **11 working days** before any of the following proposal is placed before the board of directors:

- Any alteration in the **form or nature** of any of its securities that are listed on the stock exchange or in the rights or privileges of the holders thereof.
- Any alteration in the **date** on which, the interest on debentures or bonds, or the redemption amount of redeemable shares or of debentures or bonds, shall be payable.

C. **Record Date or Date of Closure of Transfer Books [Regulation 42(2)]**

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

The record date could be for any of the following event:

- a. declaration of dividend;
- b. issue of right or bonus shares;
- c. issue of shares for conversion of debentures or any other convertible security;
- d. shares arising out of rights attached to debentures or any other convertible security
- e. corporate actions like mergers, de-mergers, splits, etc;
- f. such other purposes as may be specified by the stock exchange(s).

D. **Regulation 42(3): Dividend**

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

E. Regulation 46(3):- Website

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

Summary of above prior intimations to RSEs:

Intimation to RSE at least ___ days before meeting (excluding date of intimation & date of meeting)	Where the following proposal is due to be covered in the BOD meeting:
2 working days	<ul style="list-style-type: none"> • Proposal for buyback of securities • Proposal for voluntary delisting • Fund raising by way of FPO, ADR, GDR, Convertible Bonds, Debt issue, preferential issues, etc. • Declaration / Recommendation to declare dividend • Issuance of convertible securities incl. convertible debentures. • Declaration of bonus securities where such proposal is communicated to the board of directors of the listed entity as part of the agenda papers;
5 days	Financial Results
7 working days prior to record date	Notice of Record date and the purpose of record date
11 working days	<ul style="list-style-type: none"> • Alteration in form of securities or rights of the holder thereof • Alteration in date on which the interest or redeemable amount of debenture will be payable

7. ANNUAL / YEARLY COMPLIANCES

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

- A. **Regulation 33(3): Financial Results:** The listed entity shall submit **annual audited standalone** financial results for the financial year, along with the audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion), **within 60 days** from the end of Financial Year.
- B. **Regulation 34: Annual Report:** The listed entity shall submit to the stock exchange and publish on its website:
 - (a) a copy of the annual report sent to the shareholders along with the notice of the annual general meeting **not later than the day of commencement of dispatch** to its shareholders;

- (b) in the event of any changes to the annual report, the **revised copy** along with the details of and explanation for the changes shall be sent **not later than 48 hours** after the annual general meeting.

Regulation 36(2): Documents & Information to Shareholders: A listed entity shall send annual report to the holders of securities not less than **21 days before** the Annual General Meeting.

Summary of above annual compliances:

Time Limit	Compliance with Stock Exchange
Within 60 days from end of FY	Entity to submitted AUDITED standalone financial results for the FY along with audit report and Statement on Impact of Audit Qualifications (applicable only for audit report with modified opinion)
Not later than the day of commencement of its dispatch to shareholder	Submit to stock exchange + Publish on website – A copy of annual report sent to shareholders along with notice for AGM
Within 48 hours of AGM	In the event of any changes to Annual Report , revised copy along with detailed explanation for such changes

8. CORPORATE GOVERNANCE

Approval for related party transactions through a resolution.

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

Compliance Report on Corporate Governance

The following reports are submitted to Stock Exchange:-

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

Related Party Transactions (Regulation 23)

As per Regulation 2(1) (zb) “**related party**” means a related party as defined under sub-section (76) of section 2 of the Companies Act, 2013 or under the applicable accounting standards.

Provided that:

- any person or entity forming a part of the promoter or promoter group of the listed entity; or
- any person or any entity, holding equity shares:

- I. of twenty per cent or more, or
- II. of ten per cent or more, with effect from April 1, 2023

in the listed entity either directly or on a beneficial interest basis as provided under section 89 of the Companies Act, 2013, at any time, during the immediate preceding financial year, shall be deemed to be a related party.

However, this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

As per Regulation 2(1)(zc), **related party transaction** means a transaction involving a transfer of resources, services or obligations between:

- (i) a listed entity or any of its subsidiaries on one hand and a related party of the listed entity or any of its subsidiaries on the other hand; or
- (ii) a listed entity or any of its subsidiaries on one hand, and any other person or entity on the other hand, the purpose and effect of which is to benefit a related party of the listed entity or any of its subsidiaries, with effect from April 1, 2023

regardless of whether a price is charged and a “transaction” with a related party shall be construed to include a single transaction or a group of transactions in a contract:

Following shall not be a related party transaction:

- (a) the issue of specified securities on a preferential basis, subject to compliance of the requirements under the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018;
- (b) the following corporate actions by the listed entity which are uniformly applicable/offered to all shareholders in proportion to their shareholding:
 - i. payment of dividend;
 - ii. subdivision or consolidation of securities;
 - iii. issuance of securities by way of a rights issue or a bonus issue; and
 - iv. buy-back of securities.
- (c) acceptance of fixed deposits by banks/Non-Banking Finance Companies at the terms uniformly applicable/offered to all shareholders/public, subject to disclosure of the same along with the disclosure of related party transactions every six months to the stock exchange(s), in the format as specified by the SEBI.

However, this definition shall not be applicable for the units issued by mutual funds which are listed on a recognised stock exchange(s).

Under the Companies Act, 2013

According to section 2 (76) “related party”, with reference to a company, means –

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;
- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds or holds along with his relatives, more than two per cent of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act;

However, nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;

- (viii) Any body corporate which is –
 - (A) a holding, subsidiary or an associate company of such company;
 - (B) a subsidiary of a holding company to which it is also a subsidiary; or
 - (C) an investing company or the venturer of the company;

Explanation. – For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate.

- (ix) a director other than an independent director or key managerial personnel of the holding company or his relative with reference to a company, shall be deemed to be a related party.

Material Related Party Transaction

A transaction with a related party shall be considered material, if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceeds rupees one thousand Crore or ten percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity whichever is lower.

A transaction involving payments made to a related party with respect to brand usage or royalty shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year, exceed five percent of the annual consolidated turnover of the listed entity as per the last audited financial statements of the listed entity.

Approval of Audit Committee

All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity.

However, only those members of the audit committee, who are independent directors, shall approve related party transactions.

Omnibus Approval: Audit committee may grant omnibus approval for related party transactions proposed to be entered into by the listed entity subject to the following conditions-

- (a) the audit committee shall lay down the criteria for granting the omnibus approval in line with the policy on related party transactions of the listed entity and such approval shall be applicable in respect of transactions which are repetitive in nature;
- (b) the audit committee shall satisfy itself regarding the need for such omnibus approval and that such approval is in the interest of the listed entity;
- (c) the omnibus approval shall specify:
 - (i) the name(s) of the related party, nature of transaction, period of transaction, maximum amount of transactions that shall be entered into;
 - (ii) the indicative base price / current contracted price and the formula for variation in the price if any; and
 - (iii) such other conditions as the audit committee may deem fit.

However, where the need for related party transaction cannot be foreseen and aforesaid details are not available, audit committee may grant omnibus approval for such transactions subject to their value not exceeding rupees one crore per transaction.

- (d) the audit committee shall review, at least on a quarterly basis, the details of related party transactions entered into by the listed entity pursuant to each of the omnibus approvals given.
- (e) Such omnibus approvals shall be valid for a period not exceeding one year and shall require fresh approvals after the expiry of one year.

Approval of the shareholders

All material related party transactions and subsequent material modifications as defined by the audit committee shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not.

However, the requirements specified above shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved.

Exceptions

The approval of Audit committee and shareholders shall not be required in the following cases:

- (a) transactions entered into between two government companies;
- (b) transactions entered into between a holding company and its wholly owned subsidiary whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval;
- (c) transactions entered into between two wholly-owned subsidiaries of the listed holding company, whose accounts are consolidated with such holding company and placed before the shareholders at the general meeting for approval.

Government Company(ies) means Government Company as defined in sub-section (45) of section 2 of the Companies Act, 2013.

Secretarial Audit and Secretarial Compliance Report [Regulation 24A]

- (a) Every listed entity and its material unlisted subsidiaries incorporated in India shall undertake secretarial audit and shall annex a secretarial audit report given by a company secretary in practice, in such form as specified, with the annual report of the listed entity.
- (b) Every listed entity shall submit a secretarial compliance report in such form as specified, to stock exchanges, within sixty days from end of each financial year.



9. TYPES OF COMMITTEES UNDER LODR REGULATIONS

A. Audit Committee [Regulation 18]:

Every listed entity shall constitute a qualified and independent audit committee in accordance with the term of reference which shall have:

- (a) The audit committee shall have minimum **three** directors as members.
- (b) Atleast **Two-thirds** of the members of audit committee shall be independent directors.
- (c) **All** members of audit committee shall be **financially literate** and **at least one member** shall have accounting or related financial management **expertise**.
- (d) The chairperson of the audit committee shall be an **Independent Director** and he/she shall be present at Annual general meeting to answer shareholder queries.
- (e) The Company Secretary shall act as the secretary to the audit committee.
- (f) The audit committee at its discretion shall invite the finance director or head of the finance function, head of internal audit and a representative of the statutory auditor and any other such executives to be present at the meetings of the committee.

Meetings of Audit Committee:

- (a) The audit committee **shall meet** at least **four** times in a year and not more than **120** days shall elapse between two meetings.
- (b) The **quorum** for audit committee meeting shall either be **two** members or **one third** of the members of the audit committee, whichever is greater, with at least **2** Independent directors.
- (c) The audit committee shall have **powers to investigate any activity** within its terms of reference, seek information from any employee, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Comparison of Audit Committee as per LODR vs Sec 177 of Companies Act, 2013

Particulars	As per LODR	As per Sec 177 of the Companies Act, 2013
Applicable to	All listed companies	<ul style="list-style-type: none"> • All Listed Companies • Unlisted Public Co. with: • Paid up share capital \geq 10 cr or • Outstanding loans, borrowings or debentures $>$ 50 crore or • Turnover \geq 100 crore *Limit once applicable to apply for 3 consecutive years
Min. no. of directors	3	3
Min. Independent directors	2/3 rd	Majority
Financial Literacy	All	Majority including chairperson
Chairperson	Chairperson shall be ID and has to be present at the AGM	To be financially literate
Secretary	CS of co. to be the secretary	No such provisions
Meetings	At least 4 times in a year with a maximum gap of 120 days	No such provisions

Quorum	2 or 1/3 rd . whichever is higher with minimum 2 ID to be present	No such provisions
Additional requirements	The committee may invite finance executives to the meeting.	No such provision

B. Nomination and Remuneration Committee [Regulation 19]:

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

- The committee shall comprise of **at least 3** directors;
- All directors of the committee shall be **Non-Executive Directors**; and
- At least **two-thirds** of the directors shall be independent directors.
- The **Chairperson** of this committee shall be an independent director:

Provided that the **chairperson of the listed entity**, whether executive or non-executive, may be **appointed as a member** of the Nomination and Remuneration Committee and shall not chair such Committee.

- The Chairperson of this committee may be present at the annual general meeting, to answer the shareholders' queries; however, it shall be up to the chairperson to decide who shall answer the queries

Meetings of Nomination and Remuneration Committee:

- (a) The nomination and remuneration committee shall meet at least once in a year.
- (b) The **quorum** for a meeting shall be either **two members** or **one third** of the members of the committee, whichever is greater, including at least **one** independent director in attendance.

C. Stakeholders Relationship Committee [Regulation 20]:

The listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders.

Features of this committee is as follows:

- The Chairperson of this committee shall be a **Non-Executive director**.
- **At least three directors**, with at least one being an independent director, shall be members of the Committee.

- The **Chairperson** of this Committee shall **be present at the annual general meetings** to answer queries of the security holders.
- The stakeholder's relationship committee shall meet **at least once in a year**.

D. Risk Management Committee

- The Board of directors shall constitute a Risk Management Committee.
- The Risk Management Committee shall have **minimum three members with majority of them being members of the board of directors**, including **at least one independent director** and in case of a listed entity having outstanding SR (Superior voting Rights) equity shares, at least two thirds of the Risk Management Committee shall comprise independent directors.
- The Chairperson of the Risk management committee shall be a member of the board of directors and senior executives of the listed entity may be members of the committee.
- The risk management committee shall **meet at least twice** in a year.
- The **quorum** for a meeting of the Risk Management Committee shall be **either two members or one third of the members of the committee, whichever is higher**, including at least one member of the board of directors in attendance.
- The meetings of the risk management committee shall be conducted in such a manner that **on a continuous basis not more than one hundred and eighty days shall elapse between any two consecutive meetings**.
- The **Board of directors shall define the role and responsibility** of the Risk Management Committee and may delegate monitoring and reviewing of the risk management plan to the committee and such other functions as it may deem fit such function shall specifically cover cyber security.

Provided that the role and responsibilities of the Risk Management Committee shall mandatorily include the performance of functions specified in Part D of Schedule II.

The provisions of this regulation shall be **applicable** to:

- i. the top 1000 listed entities, determined on the basis of market capitalization as at the end of the immediate preceding financial year; and,
 - ii. a 'high value debt listed entity'.
- The Risk Management Committee shall **have powers to seek information from any employee**, obtain outside legal or other professional advice and secure attendance of outsiders with relevant expertise, if it considers necessary.

Summary of all the committees

Particulars	Audit Committee	Nomination and Remuneration Committee	Stakeholder Committee	Risk Management Committee (Applicable to Top 1000 listed companies)
Number of members	Minimum 3 Directors	At least 3, All NED (Non-executive Director)	Minimum 3 Directors	Minimum 3 Directors
Number of ID	2/3 rd	At least 2/3 rd	At least 1	At least 1 (2/3 rd where listed entity having superior voting rights)
Chairperson	ID	ID	NED	Has to be member of BOD
Meeting	At least 4 Max gap 120 days	At least once in a year	At least once in a year	At least twice in a year
Quorum	Higher of 1/3 rd or 2 members At least 2 ID mandatory	Higher of 1/3 rd or 2 members At least 1 ID mandatory	Not mentioned in Regulation	Higher of 1/3 rd or 2 members
Additional Points	All Members – Financial Literate At least 1 member – Financial Mgt. expertise	Chairperson of co. may be appointed as member but not chair NRC	This committee looks into complaints of the investors	Senior Executives (Non-director) may be a members

Contravention of Regulations

The listed entity or any other person thereof who contravenes any of the provisions of these SEBI (LODR) regulations, shall, in addition to liability for action in terms of the securities laws, be liable for the following actions by the respective stock exchange(s), in the manner specified in circulars or guidelines issued by the SEBI:

- (a) imposition of fines;
- (b) suspension of trading;
- (c) freezing of promoter/promoter group holding of designated securities, as may be applicable, in coordination with depositories;
- (d) any other action as may be specified by the SEBI from time to time.

SECURITIES AND EXCHANGE BOARD OF INDIA (ISSUE OF CAPITAL AND DISCLOSURE REQUIREMENTS) REGULATIONS, 2018

INTRODUCTION

SEBI(ICDR) Regulations are meant to regulate the growth and development of the Indian capital markets and at the same time balancing the interests of investors and the issuer companies.

Classifications of issues: Primarily, issues made by an Indian company can be classified as Public, Rights, Bonus and Private Placement.

Public issue	<p>When an issue / offer of shares or convertible securities is made to new investors for becoming part of shareholders' family of the issuer (Entity making an issue is referred as "Issuer") it is called a public issue.</p> <p>Public issue means an initial public offer (IPO) or a further public offer (FPO):</p> <p>(i) Initial public offer (IPO): means an offer of specified securities by an unlisted issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in an unlisted issuer. In order to qualify as an Initial public offer, the issue shall be made to the public and not to the existing shareholders of the unlisted issuer company.</p> <p>(ii) Further public offer (FPO) or Follow on offer: means an offer of specified securities by a listed issuer to the public for subscription and includes an offer for sale of specified securities to the public by any existing holders of such specified securities in a listed issuer</p>
Rights issue	<p>Means an offer of specified securities by a listed issuer to the shareholders of the issuer as on the record date fixed for the said purpose, is called right issue.</p>
Composite issue	<p>When the issue of shares or convertible securities by a listed issuer on public cum-rights basis, wherein the allotment in both public issue and rights issue is proposed to be made simultaneously is called composite issue.</p>

¹ a company or a body corporate authorized to issue specified securities under the relevant laws and whose specified securities are being issued and/or offered for sale in accordance with these regulations;

Bonus issue	When an issuer makes an issue of shares to its existing shareholders without any consideration based on the number of shares already held by them as on a record date it is called a bonus issue. The shares are issued out of the Company's free reserve or share premium account in a particular ratio to the number of securities held on a record date.
Private placement	<p>When an issuer makes an issue of shares or convertible securities to a select group of persons not exceeding 50 or such higher number as may be prescribed which is 200 persons in the aggregate in a financial year. It is neither a rights issue nor a public issue, it is called a private placement. Private placement of shares or convertible securities by listed issuer can be of two types:</p> <p>(i) Preferential issue: means an issue of specified securities by a listed issuer to any select person or group of persons on a private placement basis in accordance with Chapter V of these regulations and does not include an offer of specified securities made through employee stock option scheme, employee stock purchase scheme or an issue of sweat equity shares or depository receipts issued in a country outside India or foreign securities;</p> <p>The issuer is required to comply with various provisions which inter-alia include pricing, disclosures in the notice, lock-in etc., in addition to the requirements specified in the Companies Act.</p> <p>(ii) Qualified Institutions placement (QIP): means issue of eligible securities by a listed issuer to qualified institutional buyers on a private placement basis and includes an offer for sale of specified securities by the promoters and/or promoter group on a private placement basis, in terms of these regulations.</p>

OTHER RELEVANT DEFINITIONS (REGULATION 2)

"Book building" means a process undertaken to elicit demand and to assess the price for determination of the quantum or value or coupon of specified securities or Indian Depository Receipts, as the case may be, in accordance with these regulations; [Regulation 2(1)(g)]

Basically, book building is the process by which an underwriter attempts to determine the price at which an public issue will be offered.

"Convertible debt instrument" means an instrument which creates or acknowledges indebtedness and is convertible into equity shares of the issuer at a later date at or without the option of the holder of the instrument, whether constituting a charge on the assets of the issuer or not; [Regulation 2(1)(j)]

"Convertible security" means a security which is convertible into or exchangeable with equity shares of the issuer at a later date, with or without the option of the holder of such security and includes convertible debt instrument and convertible preference shares; [Regulation 2(1)(k)]

"Designated stock exchange" means a recognised stock exchange having nationwide trading terminals chosen by the issuer on which securities of an issuer are listed or proposed to be listed for the purpose of a particular issue of specified securities under these regulations:

Provided that, the issuer may choose a different recognised stock exchange as a designated stock exchange for any subsequent issue of specified securities; [Regulation 2(1)(l)]

"Green shoe option" means an option of allotting equity shares in excess of the equity shares offered in the public issue as a post-listing price stabilizing mechanism; [Regulation 2(1)(s)]

It can be understood in layman language as an over-allotment option. It is a price stabilization mechanism which is used in case of listing of Initial Public offer (IPO) or further public offer within first 30 days from the day of listing. The intent is to provide price support in case prices falls below issue prices.

"Offer document" means a red herring prospectus, prospectus or shelf prospectus, as applicable, referred to under the Companies Act, 2013, in case of a public issue, and a letter of offer in case of a rights issue; [Regulation 2(1)(kk)]

APPLICABILITY OF THE REGULATIONS (REGULATION 3)

These regulations shall apply to the following:

(a) an initial public offer

- by an unlisted issuer;

(b) a rights issue

- by a listed issuer with aggregate value of the issue fifty crore rupees or more;

(c) a further public offer

- by a listed issuer;

(d) a preferential issue

- by a listed issuer;

(e) a qualified institutions placement

- by a listed issuer;

(f) an initial public offer

- of Indian depository receipts;

(g) a rights issue of

- Indian depository receipts;

(h) an initial public offer

- by a small and medium enterprise;

(i) a listing

- on the innovators growth platform through an issue or without an issue; and

(j) a bonus issue

- by a listed issuer;

However, in case of **rights issue of size less than fifty crore rupees**- the issuer shall prepare the letter of offer in accordance with requirements as specified in these regulations and file the same with the Board for information and dissemination on the Board's website.

Exception: These regulations shall not apply to issue of securities under clauses (b), (d) and (e) of sub-regulation (1) of regulation 9 of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

INITIAL PUBLIC OFFER ON MAIN BOARD

Eligibility Requirements [Regulation 4-8A]

1. Reference date (Regulation 4): An issuer making an initial public offer of specified securities shall satisfy the conditions of this Chapter as on the date of filing of the draft offer document with the Board and also as on the date of filing the offer document with the Registrar of Companies.

2. Entities not eligible to make an initial public offer (Regulation 5): Under following circumstances—

- (1) An issuer shall not be eligible to make an initial public offer—
 - (a) If the issuer, any of its promoters, promoter group or directors or selling shareholders are **debarred from accessing the capital market** by the Board.
 - (b) If any of the promoters or directors of the issuer **is a promoter or director of any other company which is debarred** from accessing the capital market by the Board.
 - (c) If the issuer or any of its promoters or directors is a **wilful defaulter or a fraudulent borrower**.
 - (d) If any of its promoters or directors is a **fugitive economic offender**.

Explanation—The restrictions under clauses (a) and (b) above, shall not apply to the persons or entities mentioned therein, **who were debarred in the past by the Board and the period of debarment is already over** as on the date of filing of the draft offer document with the Board.

- (2) An issuer shall not be eligible to make an initial public offer **if there are any outstanding convertible securities or any other right which would entitle any person with any option to receive equity shares of the issuer:**

Exception: the provisions of this sub-regulation (2) shall not apply to:

- (a) **outstanding options granted to employees:** Whether such an employee is currently an employee or not, pursuant to an employee stock option scheme in compliance with the Companies Act, 2013, the relevant Guidance Note or accounting standards, if any, issued by the Institute of Chartered Accountants of India or pursuant to the Companies Act, 2013, in this regard;
- (b) **fully paid-up outstanding convertible securities:** Such securities which are required to be converted on or before the date of filing of the red herring prospectus (in case of book-built issues) or the prospectus (in case of fixed price issues), as the case may be.

3. Eligibility requirements for an initial public offer (Regulation 6)

- (1) An issuer shall be eligible to make an initial public offer only if:

- (a) it has **net tangible assets of at least three crore rupees**, calculated on a restated and consolidated basis, in each of the preceding three full years (of twelve months each), of which not more than fifty per cent are held in monetary assets:
- Provided** that if more than fifty per cent of the net tangible assets are held in monetary assets, the issuer has utilised or made firm commitments to utilise such excess monetary assets in its business or project:
- Provided further** that the limit of fifty per cent on monetary assets shall not be applicable in case the initial public offer is made entirely through an offer for sale;
- (b) it has an **average operating profit of at least fifteen crore rupees**, calculated on a restated and consolidated basis, during the preceding three years (of twelve months each), with operating profit in each of these preceding three years;
- (c) it has a **net worth of at least one crore rupees** in each of the preceding three full years (of twelve months each), calculated on a restated and consolidated basis
- (d) if it has **changed its name** within the last one year, **at least fifty per cent of the revenue**, calculated on a restated and consolidated basis, for the preceding one full year has been earned by it from the activity indicated by its new name.
- (2) **Exception to the above in sub-regulation (1):** An issuer not satisfying the condition stipulated in sub-regulation (1) shall be eligible to make an initial public offer only if it fulfils the following conditions:
- the issue is made through the book-building process; and
 - the issuer undertakes to allot at least seventy five per cent of the net offer to qualified institutional buyers; and
 - to refund the full subscription money if it fails to do so.
- (3) **If an issuer has issued ²SR equity shares** to its promoters/founders, the said issuer shall be allowed to do an initial public offer of only ordinary shares for listing on the Main Board subject to compliance with the provisions of this Chapter and these clauses—
- (i) the **issuer shall be intensive in the use of technology, information technology, intellectual property, data analytics, bio-technology or nano-technology** to provide products, services or business platforms with substantial value addition;
- (ii) **the net worth** of the SR shareholder, as determined by a Registered Valuer, shall **not be more than rupees one thousand crore**.

² means the equity shares of an issuer having superior voting rights compared to all other equity shares issued by that issuer

Explanation—While determining the individual net worth of the SR shareholder, his investment/shareholding in other listed companies shall be considered but not that of his shareholding in the issuer company;

- (iii) the **SR shares were issued only to the promoters/founders** who hold an executive position in the issuer company;
- (iv) the **issue of SR equity shares had been authorized by a special resolution** passed at a general meeting of the shareholders of the issuer, where the notice calling for such general meeting specifically provided for—
 - (a) the size of issue of SR equity shares;
 - (b) ratio of voting rights of SR equity shares vis-à-vis the ordinary shares;
 - (c) rights as to differential dividends, if any;
 - (d) sunset provisions, which provide for a time frame for the validity of such SR equity shares;
 - (e) matters in respect of which the SR equity shares would have the same voting right as that of the ordinary shares;
- (v) the SR equity shares have been issued **prior to the filing of draft red herring prospectus** and held for a period of at least three months prior to the filing of the red herring prospectus;
- (vi) the SR equity shares shall have **voting rights** in the ratio of a minimum of 2:1 upto a maximum of 10:1 compared to ordinary shares and such ratio shall be in whole numbers only;
- (vii) the SR equity shares shall have the **same face value** as the ordinary shares;
- (viii) the issuer **shall only have one class** of SR equity shares;
- (ix) the SR equity shares **shall be equivalent to ordinary equity shares** in all respects, except for having superior voting rights.

4. General conditions (Regulation 7)

- (1) An issuer making an initial public offer shall ensure that:
 - (a) **It has made an application to one or more stock exchanges:** This is done with an intent to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange, in terms of Schedule XIX;
 - (b) **Entered into an agreement with a depository** for dematerialisation of the specified securities already issued and proposed to be issued;

- (c) All its **specified securities held by the promoters are in dematerialised form** prior to filing of the offer document;
 - (d) All its **existing partly paid-up equity shares have either been fully paid-up or have been forfeited**;
 - (e) It has **made firm arrangements of finance** through verifiable means towards seventy five per cent of the stated means of finance for a specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.
- (2) The **amount for general corporate purposes**, as mentioned in objects of the issue in the draft offer document and the offer document **shall not exceed twenty five per cent of the amount being raised by the issuer**.

Where an issuer had been a partnership firm or a limited liability partnership: As per explanation (II), the track record of operating profit of the partnership firm or the limited liability partnership shall be considered only if the financial statements of the partnership business for the period during which the issuer was a partnership firm or a limited liability partnership, conform to and are revised in the format prescribed for companies under the Companies Act, 2013 and also comply with the following:

- (a) **Adequate disclosures** are made in the financial statements as required to be made by the issuer as per Schedule III of the Companies Act, 2013;
- (b) the **financial statements are duly certified by the statutory auditor** stating that:
 - (i) the accounts and the disclosures made are in accordance with the provisions of Schedule III of the Companies Act, 2013;
 - (ii) the applicable accounting standards have been followed;
 - (iii) the financial statements present a true and fair view of the firm's accounts;

In case of an issuer formed out of a division of an existing company, Explanation (III) states that the track record of distributable profits of the division spun-off shall be considered only if the requirements regarding financial statements as provided for partnership firms or limited liability partnerships in Explanation (II) are complied with.

- (3) **Ceiling on the amount raised by the issuer:** The amount for:
- (i) general corporate purposes, and
 - (ii) such objects where the issuer company has not identified acquisition or investment target, as mentioned in objects of the issue in the draft offer document and the offer document, shall **not exceed thirty five per cent of the amount being raised by the issuer**.

Provided that the **amount raised for such objects where the issuer company has not identified acquisition or investment target**, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty five per cent of the amount being raised by the issuer:

Provided further that such limits shall not apply if the proposed acquisition or strategic investment object has been identified and suitable specific disclosures about such acquisitions or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

5. Additional conditions for an offer for sale: Only such **fully paid-up equity shares** may be offered for sale to the public, which have been **held by the sellers for a period of at least one year prior to the filing of the draft offer document**:

In case where shares received on conversion : **Provided** that in case the equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities, including depository receipts, as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation:

Provided further that such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.

Explanation—**If the equity shares arising out of the conversion or exchange of the fully paid-up compulsorily convertible securities are being offered for sale, the conversion or exchange should be completed prior to filing of the offer document (i.e. red herring prospectus in the case of a book built issue and prospectus in the case of a fixed price issue), provided full disclosures of the terms of conversion or exchange are made in the draft offer document:**

When requirement of holding equity shares for a period of one year shall not apply?

- (a) in case of **an offer for sale of a Government company or statutory authority or corporation or any special purpose vehicle** set up and controlled by any one or more of them, which is engaged in the infrastructure sector;
- (b) if the **equity shares offered for sale were acquired pursuant to any scheme approved by a High Court or approved by a Tribunal or the Central Government** under the sections 230 to 234 of Companies Act, 2013, as applicable, in lieu of business and invested capital which had been in existence for a period of more than one year prior to approval of such scheme;
- (c) if the **equity shares offered for sale were issued under a bonus issue** on securities held for a period of at least one year prior to the filing of the draft offer document with the Board and further subject to the following:

- (i) such **specified securities being issued out of free reserves and share premium** existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board; and
- (ii) such **equity shares not being issued by utilisation of revaluation reserves or unrealized profits** of the issuer.

6. Additional conditions for an offer for sale for issues under sub-regulation (2) of regulation 6 (Regulation 8A)

For issues where draft offer document is filed under sub-regulation (2) of regulation 6 of these regulations:

- (a) **shares offered for sale to the public by shareholder(s) holding**, individually or with persons acting in concert, **more than twenty per cent of pre-issue shareholding** of the issuer based on fully diluted basis, shall not exceed more than fifty per cent of their pre-issue shareholding on fully diluted basis;
- (b) **shares offered for sale to the public by shareholder(s) holding**, individually or with persons acting in concert, **less than twenty per cent of pre-issue shareholding** of the issuer based on fully diluted basis, shall not exceed more than ten per cent of pre-issue shareholding of the issuer on fully diluted basis;
- (c) **for shareholder(s) holding**, individually or with persons acting in concert, **more than twenty per cent of pre-issue shareholding of the issuer based on fully diluted basis**, provisions of **lock-in** as specified under regulation 17 of these regulations shall be applicable, and relaxation from lock-in as provided under clause (c) of regulation 17 of these regulations shall not be applicable

ISSUE OF CONVERTIBLE DEBT INSTRUMENTS AND WARRANTS

1. Eligibility requirements for issue of convertible debt instruments (Regulation 9)

An issuer shall be eligible to make an initial public offer of convertible debt instruments even without making a prior public issue of its equity shares and listing thereof.

Provided that it is not in default of payment of interest or repayment of principal amount in respect of debt instruments issued by it to the public, if any, for a period of more than six months.

2. Additional requirements for issue of convertible debt instruments (Regulation 10)

- (1) In addition to other requirements laid down in these regulations, an issuer making an initial public offer of convertible debt instruments shall also comply with the **following conditions**:
 - (a) it has **obtained credit rating** from at least one credit rating agency;
 - (b) it has **appointed at least one debenture trustee** in accordance with the provisions of the Companies Act, 2013 and the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;

- (c) it shall **create a debenture redemption reserve** in accordance with the provisions of the Companies Act, 2013 and rules made thereunder;
 - (d) if the issuer proposes **to create a charge or security on its assets** in respect of secured convertible debt instruments, it **shall ensure** that:
 - i **such assets are sufficient to discharge the principal amount** at all times;
 - ii **such assets are free from any encumbrance**;
 - iii where security is already created on such assets in favour of any existing lender or security trustee or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the **consent of such lender or security trustee or lessor for a second or pari passu charge has been obtained and submitted** to the debenture trustee before the opening of the issue;
 - iv the **security or asset cover shall be arrived at after reduction of the liabilities having a first or prior charge**, in case the convertible debt instruments are secured by a second or subsequent charge.
- (2) The issuer shall **redeem the convertible debt instruments in terms of the offer document.**

3. Conversion of optionally convertible debt instruments into equity shares (Regulation 11)

- (1) **Consent for conversion of any convertible debt instruments:** The issuer shall not convert its optionally convertible debt instruments into equity shares unless the holders of such convertible debt instruments have sent their positive consent to the issuer and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- (2) **When no option of not converting the convertible portion into equity shares is provided:** Where the value of the convertible portion of any listed convertible debt instruments issued by an issuer exceeds ten crore rupees and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares.

Provided that where the upper limit on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

- (3) **Right of redeem to the issuer:** Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders

do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.

- (4) The provision of **sub-regulation (2) shall not apply** if such redemption is as per the disclosures made in the offer document.

4. Issue of convertible debt instruments for financing (Regulation 12)

An issuer **shall not issue convertible debt instruments for financing or for providing loans** to or for acquiring shares of any person who is part of the promoter group or group companies:

Provided that an issuer shall be eligible to issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

5. Issue of warrants (Regulation 13)

An issuer shall be eligible to issue warrants in an initial public offer subject to the following:

- (a) the **tenure of such warrants shall not exceed eighteen months** from the date of their allotment in the initial public offer;
- (b) a **specified security** may have one or more warrants attached to it;
- (c) the **price or formula for determination of exercise price of the warrants shall be determined** upfront and disclosed in the offer document and at least twenty-five per cent. of the consideration amount based on the exercise price shall also be received upfront;

Provided that in case the exercise price of warrants is based on a formula, twenty-five per cent. consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront.

- (d) in case the **warrant holder does not exercise the option** to take equity shares against any of the warrants held by the warrant holder, **within three months** from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer.

PROMOTERS' CONTRIBUTION

1. Minimum promoters' contribution (Regulation 14)

- (1) The promoters of the issuer shall hold at least **twenty per cent of the post-issue capital**:

Provided that in case the post-issue shareholding of the promoters is less than twenty per cent, **alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies** registered with Insurance Regulatory and Development Authority of India, **may contribute to meet the**

shortfall in minimum contribution as specified for the promoters, **subject to a maximum of ten per cent of the post-issue capital without being identified as promoter(s):**

When requirement of minimum promoters' contribution shall not apply?

The requirement of minimum promoters' contribution shall not apply in case an issuer does not have any identifiable promoter.

- (2) The **minimum promoters' contribution** shall be as follows:
- (a) the **promoters shall contribute twenty per cent** as stipulated in sub-regulation (1), as the case may be, either by way of equity shares including SR equity shares held, if any, or by way of subscription to convertible securities:

Provided that if the **price of the equity shares allotted pursuant to conversion is not pre-determined and not disclosed** in the offer document- the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.
 - (b) in case of **any issue of convertible securities which are convertible or exchangeable on different dates** and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.
 - (c) subject to the provisions of clauses (a) and (b) above, **in case of an initial public offer of convertible debt instruments without a prior public issue of equity shares**, the promoters shall bring in a contribution of at least twenty per cent of the project cost in the form of equity shares, subject to contributing at least twenty per cent of the ³issue size from their own funds in the form of equity shares:

Provided that if the **project is to be implemented in stages**, the promoters' contribution shall be with respect to total equity participation till the respective stage *vis-à-vis* the debt raised or proposed to be raised through the public issue.
- (3) The **promoters shall satisfy the requirements of this regulation** at least one day prior to the date of opening of the issue.
- (4) In case the **promoters have to subscribe** to equity shares or convertible securities **towards minimum promoters' contribution**, the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank, which shall be released to the issuer along with the release of the issue proceeds:

³ "issue size" includes offer through offer document and promoters' contribution brought in as part of the issue;

Provided that where the promoters' contribution has already been brought in and utilised, the issuer shall give the cash flow statement disclosing the use of such funds in the offer document:

Where the minimum promoters' contribution is more than one hundred crore rupees and the initial public offer is for partly paid shares, there the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on a *pro rata* basis before the calls are made to the public.

Explanation—For the purpose of this regulation:

- (I) Promoters' contribution shall be computed on the basis of the post-issue expanded capital:
 - (a) assuming full proposed conversion of convertible securities into equity shares;
 - (b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of initial public offer in terms of proviso (a) to sub-regulation (2) of regulation 5.
- (II) For computation of "weighted average price":
 - (a) "weight" means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;
 - (b) "price" means the price of equity shares on conversion arrived at after taking into account the pre-determined conversion price at various stages.

LOCK-IN AND RESTRICTIONS ON TRANSFERABILITY

1. Lock-in of specified securities held by the promoters (Regulation 16)

- (1) **Specified securities are not transferable:** The specified securities held by the promoters shall not be transferable (hereinafter referred to as "lock-in") for the periods as stipulated hereunder:
 - (a) minimum promoters' contribution including contribution made by alternative investment funds or foreign venture capital investors or scheduled commercial banks or public financial institutions or insurance companies registered with Insurance Regulatory and Development Authority of India referred to in proviso to sub-regulation (1) of regulation 14- shall be locked-in for a period of **eighteen months from the date of allotment** in the initial public offer:

Provided that in case the **majority of the issue proceeds** excluding the portion of offer for sale **is proposed to be utilized for 'capital expenditure'**, then the lock-in period shall be three years from the date of allotment in the initial public offer;

- (b) **promoters' holding in excess of minimum promoters' contribution** shall be locked-in for a period of six months from the date of allotment in the initial public offer:

Provided that in case the **majority of the issue proceeds** excluding the portion of offer for sale **is proposed to be utilized for capital expenditure**, then the lock-in period shall be one year from the date of allotment in the initial public offer.

- (2) The **SR equity shares shall be under lock-in** until conversion into equity shares having voting rights same as that of ordinary shares or shall be locked-in for a period specified in sub-regulation (1), whichever is later.

2. **Lock-in of specified securities held by persons other than the promoters (Regulation 17)**

The **entire pre-issue capital** held by persons other than the promoters **shall be locked-in for a period of six months** from the date of allotment in the initial public offer.

However that nothing contained in this regulation shall apply to:

- (a) **equity shares allotted to employees.** Whether the person is currently an employee or not, under an employee stock option or employee stock purchase scheme of the issuer prior to the initial public offer, if the issuer has made full disclosures with respect to such options or scheme in accordance with Part A of Schedule VI;
- (b) **equity shares held by an employee stock option trust or transferred to the employees by an employee stock option trust** pursuant to exercise of options by the employees, whether currently employees or not, in accordance with the employee stock option plan or employee stock purchase scheme:

Provided that the equity shares allotted to the employees shall be subject to the provisions of lock-in as specified under the Securities and Exchange Board of India (Share Based Employee Benefits) Regulations, 2014.

- (c) **equity shares held by a venture capital fund or alternative investment fund of Category I or Category II or a foreign venture capital investor:**

Provided that such equity shares shall be locked in for a period of at least six months from the date of purchase by the venture capital fund or alternative investment fund of Category I or Category II or foreign venture capital investor.

⁴ "capital expenditure" shall include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc

Explanation (i)—For the purpose of clause (c), **in case such equity shares have resulted pursuant to conversion of fully paid-up compulsorily convertible securities**, the holding period of such convertible securities as well as that of resultant equity shares together shall be considered for the purpose of calculation of six months period and convertible securities shall be deemed to be fully paid-up, if the entire consideration payable thereon has been paid and no further consideration is payable at the time of their conversion.

(ii) For the purpose of clause (c), **in case such equity shares have resulted pursuant to a bonus issue**, then the holding period of such equity shares against which the bonus issue is made as well as holding period of resultant bonus equity shares together shall be considered for the purpose of calculation of six months period, subject to the following:

- (a) that the bonus shares being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board; and
- (b) that the bonus shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

3. Lock-in of specified securities lent to stabilising agent under the green shoe option (Regulation 18)

The lock-in provisions shall not apply with respect to the **specified securities lent to stabilising agent for the purpose of green shoe option**, during the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender in terms of sub-regulation (5) or (6) of regulation 57:

Provided that the specified securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

4. Lock-in of Partly-paid securities (Regulation 19)

If the **specified securities which are subject to lock-in are partly paid-up** and the amount called-up on such specified securities is less than the amount called-up on the specified securities issued to the public, the lock-in shall end only on the expiry of three years after such specified securities have become *pari passu* with the specified securities issued to the public.

5. Inscription or recording of non-transferability (Regulation 20)

The **certificates of specified securities which are subject to lock-in shall contain the inscription “non-transferable”** and specify the lock-in period and in case such specified securities are dematerialised, the issuer shall ensure that the lock-in is recorded by the depository.

6. Pledge of locked-in specified securities (Regulation 21)

Specified securities, except SR equity shares, **held by the promoters and locked-in may be pledged as a collateral security for a loan**. It is granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company, subject to the following:

- **if the specified securities are locked-in in terms of clause (a) of regulation 16**, in that case it is considered that the loan has been granted to the issuer company or its subsidiary(ies) for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan;
- **if the specified securities are locked-in in terms of clause (b) of regulation 16 then it may be** the pledge of specified securities which is one of the terms of sanction of the loan.

Provided that such lock-in shall continue pursuant to the invocation of the pledge and such transferee shall not be eligible to transfer the specified securities till the lock-in period stipulated in these regulations has expired.

Transferability of locked-in specified securities (Regulation 22)

Subject to the provisions of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, **the specified securities**, except SR equity shares, **held by**

- (i) **the promoters and locked-in** as per regulation 16, **may be transferred** to another promoter or any person of the promoter group or a new promoter, and
- (ii) **the specified securities held by persons other than the promoters and locked-in** as per regulation 17, **may be transferred** to any other person holding the specified securities which are locked-in along with the securities proposed to be transferred:

Provided that the lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.

DISCLOSURES IN AND FILING OF OFFER DOCUMENTS

1. Disclosures in the draft offer document and offer document (Regulation 24)

- (1) The ⁵draft offer document and ⁶offer document shall **contain all material disclosures** which are true and adequate to enable the applicants to take an informed investment decision.
- (2) the **red-herring prospectus, and prospectus** shall contain:
 - (a) disclosures specified in the Companies Act, 2013 and;
 - (b) disclosures specified in Part A of Schedule VI

⁵ draft offer document” means the draft offer document filed with the Board in relation to a public issue under these regulations;

⁶ offer document” means a red herring prospectus, prospectus or shelf prospectus, as applicable, referred to under the Companies Act, 2013, in case of a public issue, and a letter of offer in case of a rights issue

- (3) The lead manager(s) shall **exercise due diligence and satisfy themselves** about all aspects of the issue including the veracity and adequacy of disclosure in the draft offer document and the offer document.
- (4) The lead manager(s) shall **call upon the issuer, its promoters and its directors or in case of an offer for sale, also the selling shareholders, to fulfil their obligations as disclosed by them** in the draft offer document and the offer document and as required in terms of these regulations.
- (5) The lead manager(s) shall ensure that the **information contained** in the draft offer document and offer document and the particulars as per restated audited financial statements in the offer document **are not more than six months old** from the issue opening date.

2. Filing of the draft offer document and offer document (Regulation 25)

- (1) Prior to making an initial public offer, the **issuer shall file three copies of the draft offer document with the Board**, in accordance with Schedule IV, along with fees as specified in Schedule III, through the lead manager(s).
- (2) The lead manager(s) shall submit the following certifications to the Board along with the draft offer document:
 - (a) a certificate, confirming that an agreement has been entered into between the issuer and the lead manager(s);
 - (b) a due diligence certificate as per Form A of Schedule V;
 - (c) in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per Form B of Schedule V;
- (3) The **issuer shall also file the draft offer document with the stock exchange(s) where the specified securities are proposed to be listed**, and submit to the stock exchange(s), the Permanent Account Number, bank account number and passport number of its promoters where they are individuals, and Permanent Account Number, bank account number, company registration number or equivalent and the address of the Registrar of Companies with which the promoter is registered, where the promoter is a body corporate.
- (4) The **Board may specify changes or issue observations**, if any, on the draft offer document within thirty days from the later of the following dates:
- (5) If the Board specifies any changes or issues observations on the draft offer document, **the issuer and lead manager(s) shall carry out such changes** in the draft offer document and shall submit to the Board an updated draft offer document complying with the observations issued by the Board and highlighting all changes made in the draft offer document and before filing the offer documents with the Registrar of Companies or an appropriate authority, as applicable.
 - (a) the date of **receipt of the draft offer document** under sub-regulation (1); or

- (b) the date of **receipt of satisfactory reply from the lead manager(s)**, where the Board has sought any clarification or additional information from them; or
 - (c) the date of **receipt of clarification or information from any regulator or agency**, where the Board has sought any clarification or information from such regulator or agency; or
 - (d) the date of receipt of a copy of in-principle approval letter issued by the stock exchange(s).
- (6) If there are any changes in the draft offer document in relation to the matters specified in Schedule XVI, **an updated offer document or a fresh draft offer document**, as the case may be, **shall be filed** with the Board along with fees specified in Schedule III.
- (7) **Copy of the offer documents shall also be filed** with the Board and the stock exchange(s) through the lead manager(s) promptly after filing the offer documents with Registrar of Companies.
- (8) The draft offer document and the offer document shall also be furnished to the Board in a **soft copy**.
- (9) The **lead manager(s) shall submit the following documents to the Board after issuance of observations** by the Board or after expiry of the period stipulated in sub-regulation (4) of regulation 25 if the Board has not issued observations:
- (a) a **statement certifying that all changes, suggestions and observations** made by the Board have been **incorporated** in the offer document;
 - (b) a **due diligence certificate as per Form C** of Schedule V, at the time of filing of the offer document;
 - (c) a **copy of the resolution passed** by the Board of directors of the issuer for allotting specified securities to promoter(s) towards amount received against promoters' contribution, before opening of the issue;
 - (d) a **certificate from a statutory auditor**, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid and credited to the issuer's bank account by each of them towards such contribution;
 - (e) a **due diligence certificate as per Form D** of Schedule V, in the event the issuer has made a disclosure of any material development by issuing a public notice pursuant to para 4 of Schedule IX.

3. **Draft offer document and offer document to be available to the public(Regulation 26)**

- (1) The draft offer document filed with the Board shall be made public for comments, if any, for a period of at least twenty one days from the date of filing, by hosting it on the websites of the Board,

stock exchanges where specified securities are proposed to be listed and lead manager(s) associated with the issue.

- (2) The issuer shall, within two days of filing the draft offer document with the Board, make a public announcement in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing the fact of filing of the draft offer document with the Board and inviting the public to provide their comments to the Board, the issuer or the lead manager(s) in respect of the disclosures made in the draft offer document.
- (3) The lead manager(s) shall, after expiry of the period stipulated in sub-regulation (1), file with the Board, details of the comments received by them or the issuer from the public, on the draft offer document, during that period and the consequential changes, if any, that are required to be made in the draft offer document.
- (4) The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites as required under these regulations and its contents are the same as the versions as filed with the Registrar of Companies, Board and the stock exchanges, as applicable.
- (5) The lead manager(s) and the stock exchanges shall provide copies of the offer document to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

PRICING

Pricing: The issuer may determine the price of equity shares, and in case of convertible securities, the coupon rate and the conversion price, in consultation with the lead manager(s)/through the book building process as the case may be.

Price and Price Band:

- (1) **The issuer may mention a price or a price band in the offer document** (in case of a fixed price issue) and **a floor price or a price band in the red herring prospectus** (in case of a book built issue) and determine the price at a later date before filing the prospectus with the Registrar of Companies:

Provided that the prospectus filed with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.

- (2) The **cap on the price band**, and the coupon rate in case of convertible debt instruments, shall be less than or equal to one hundred and twenty per cent of the floor price:

Provided that the cap of the price band shall be at least one hundred and five per cent of the floor price.

- (3) The **floor price or the final price shall not be less than the face value of the specified securities.**

- (4) Where the **issuer opts not to make the disclosure of the floor price or price band** in the red herring prospectus, the issuer shall announce the floor price or the price band at least two working days before the opening of the issue in the same newspapers in which the pre-issue advertisement was released or together with the pre-issue advertisement in the format prescribed under Part A of Schedule X.
- (5) The announcement referred to in sub-regulation (4) shall contain **relevant financial ratios computed for both upper and lower end of the price band** and also a statement drawing attention of the investors to the section titled "basis of issue price" of the offer document.
- (6) The **announcement** referred to in sub-regulation (4) **and the relevant financial ratios** referred to in sub-regulation (5) shall **be disclosed on the websites of the stock exchange(s)** and shall also be pre-filled in the application forms to be made available on the websites of the stock exchange(s).

Differential pricing (Regulation 30):

- (1) The **issuer may offer its specified securities at different prices**, subject to the following:
 - (a) retail individual investors or retail individual shareholders or employees entitled for reservation made under regulation 33 may be offered specified securities at a price not lower than by more than ten per cent. of the price at which net offer is made to other categories of applicants, excluding anchor investors;
 - (b) in case of a book built issue, the price of the specified securities offered to the anchor investors shall not be lower than the price offered to other applicants;
 - (c) In case the issuer opts for the alternate method of book building in terms of Part D of Schedule XIII, the issuer may offer the specified securities to its employees at a price not lower than by more than ten per cent. of the floor price.
- (2) **Discount**, if any, shall be expressed in rupee terms in the offer document.

ISSUANCE CONDITIONS AND PROCEDURE

Opening of the issue (Regulation 44)

- (1) **Time period for opening of public issue:** Subject to the compliance with the provisions of the Companies Act, 2013, a public issue may be opened **within twelve months** from the date of issuance of the observations by the Board under regulation 25;
- (2) **In case of prospectus and red hearing prospectus:** An issue shall be opened after at least three working days from the date of filing, the red herring prospectus, in case of a book built issue and the prospectus, in case of a fixed price issue, with the Registrar of Companies.

Minimum subscription (Regulation 45)

- (1) The **minimum subscription** to be received in the issue shall be at least **ninety per cent of the offer** through the offer document, except in case of an offer for sale of specified securities:

Provided that the minimum subscription to be received shall be subject to the allotment of minimum number of specified securities, as prescribed under the Securities Contracts (Regulation) Rules, 1957.

- (2) In the event of **non-receipt of minimum subscription**, all **application monies received shall be refunded** to the applicants forthwith, but not later than four days from the closure of the issue.

Period of subscription (Regulation 46)

- (1) An **initial public offer shall be kept open for at least three working days and not more than ten working days**.
- (2) In case of a **revision in the price band**: The issuer shall extend the bidding (issue) period disclosed in the red herring prospectus, for a **minimum period of three working days**, subject to the provisions of sub-regulation (1).
- (3) In case of **force majeure, banking strike or similar circumstances**: The issuer may, for reasons to be recorded in writing, extend the bidding (issue) period disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed price issue), for a minimum period of three working days, subject to the provisions of sub-regulation (1).

Application and minimum application value (Regulation 47)

- The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of ⁷minimum application value of ten thousand rupees to fifteen thousand rupees.
- The issuer shall invite applications in multiples of the minimum application value.
- The minimum sum payable on application per specified security shall be at least twenty five per cent. of the issue price:
- Provided that in case of an offer for sale, the full issue price for each specified security shall be payable at the time of application.

Manner of calls (Regulation 48)

If the issuer **proposes to receive subscription monies in calls**, it shall ensure that the outstanding subscription money is called within twelve months from the date of allotment in the issue.

If any applicant fails to pay the call money within the said twelve months, the equity shares on which there are calls in arrears along with the subscription money already paid on such shares, shall be forfeited:

⁷ minimum application value” shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

Exemption: it shall not be necessary to call the outstanding subscription money within twelve months, if the issuer has appointed a monitoring agency in terms of regulation 41.

Allotment procedure and basis of allotment (Regulation 49)

- (1) **When no allotment shall be made:** The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (2) **Limit on allotment of the specified securities:** the issuer shall not make any allotment in excess of the specified securities offered through the offer document except in case of oversubscription for the purpose of rounding off to make allotment, in consultation with the designated stock exchange:

Provided that in case of oversubscription, an allotment of not more than one per cent of the net offer to public may be made for the purpose of making allotment in minimum lots.

- (3) **Allotment to applicants:** The allotment of specified securities to applicants (other than to the retail individual investors non-institutional investors and anchor investors) shall be on a proportionate basis within the respective investor categories and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed in the offer document:

Provided that the value of specified securities allotted to any person, except in case of employees, in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub-regulation (2) of regulation 33, shall not exceed two lakhs rupees for retail investors or up to five lakhs rupees for eligible employees.

- (4) **Limit on allotment:** The allotment of specified securities to each retail individual investor shall not be less than the minimum bid lot, subject to the availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.
- (4A) **Allotment to non-institutional investor:** The allotment of specified securities to each non-institutional investor shall not be less than the minimum application size, subject to the availability of shares in non-institutional investors' category, and the remaining shares, if any, shall be allotted on a proportionate basis in accordance with the conditions specified in this regard in Schedule XIII of these regulations.
- (5) **The authorised employees of the designated stock exchange,** along with the lead manager(s) and registrars to the issue, **ensure that the basis of allotment is finalised in a fair and proper manner** in accordance with the procedure as shall specified in Part A of Schedule XIV.

Allotment, refund and payment of interest (Regulation 50)

- (1) The issuer and lead manager(s) shall ensure that the specified securities are allotted and/or application monies are refunded or unblocked within such period as may be specified by the Board.

- (2) The lead manager(s) shall ensure that the allotment, credit of dematerialised securities and refund or unblocking of application monies, as may be applicable, are done electronically.
- (3) Where the **specified securities are not allotted** and/or application monies are not refunded or unblocked within the period stipulated in sub-regulation (1) above, **the issuer shall undertake to pay interest at the rate of fifteen per cent per annum to the investors** and within such time as disclosed in the offer document and the lead manager(s) shall ensure the same.

Post-issue advertisements (Regulation 51)

- (1) The lead manager(s) shall **ensure that an advertisement giving details** relating to subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders, as applicable, or instructions to self-certified syndicate banks by the registrar, date of credit of specified securities and date of filing of listing application, etc. **is released within ten days from the date of completion of the various activities** in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.
- (2) Details specified in sub regulation (1) shall also be placed on the websites of the stock exchange(s).

Release of subscription money (Regulation 53)

- (1) **The lead manager(s) shall confirm to the bankers** to the issue by way of copies of listing and trading approvals that all formalities in connection with the issue have been completed and that the banker is free to release the money to the issuer or release the money for refund in case of failure of the issue.
- (2) In case the **issuer fails to obtain listing or trading permission** from the stock exchanges where the specified securities were to be listed, **it shall refund through verifiable means the entire monies received within four days** of receipt of intimation from stock exchanges rejecting the application for listing of specified securities, and if any such money is not repaid within four days after the issuer becomes liable to repay it, the issuer and every director of the company who is an officer in default shall, on and from the expiry of the fourth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.
- (3) The lead manager(s) shall ensure that the monies received in respect of the issue are released to the issuer in compliance with the provisions of Section 40(3) of the Companies Act, 2013, as applicable.

Reporting of transactions of the promoters and promoter group (Regulation 54)

The issuer shall ensure that all transactions in securities by the promoter and promoter group between the date of filing of the draft offer document or offer document, as the case may be, and the date of

closure of the issue shall be reported to the stock exchange(s), within twenty four hours of such transactions.

Post-issue reports (Regulation 54)

The lead manager(s) shall submit a final post-issue report as specified in **Part A of Schedule XVII**, along with a due diligence certificate as per the format specified in **Form F of Schedule V**, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.

MISCELLANEOUS

Restriction on further capital issues (Regulation 56)

An issuer shall not make any further issue of specified securities in any manner whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise, **except pursuant to an employee stock option scheme**, during the period between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies, unless full disclosures regarding the total number of specified securities or amount proposed to be raised from such further issue are made in such draft offer document or offer document, as the case may be.

Price stabilisation through green shoe option (Regulation 57)

- (1) An issuer may provide a **green shoe option for stabilising the post listing price** of its specified securities, subject to the following:
 - (a) the issuer has been authorized, **by a resolution passed in the general meeting** of shareholders approving the public issue, to allot specified securities to the stabilising agent, if required, on the expiry of the stabilisation period;
 - (b) the issuer has appointed a lead manager as a **stabilising agent**, who shall be responsible for the price stabilisation process;
 - (c) prior to filing the draft offer document, **the issuer and the stabilising agent have entered into an agreement**, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilising agent for discharging its responsibilities;
 - (d) prior to filing the offer document, **the stabilising agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified securities** from them in accordance with clause (g) of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (hereinafter referred to as the "over- allotment"), which shall not be in excess of fifteen per cent. of the issue size;

- (e) subject to clause (d), the lead manager, **in consultation with the stabilising agent, shall determine the amount of specified securities to be over-allotted** in the public issue;
 - (f) the **draft offer document and offer document shall contain all material disclosures** about the green shoe option specified in this regard in Part A of **Schedule VI**;
 - (g) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders **holding more than five per cent. specified securities and promoters, may lend specified securities** to the extent of the proposed over-allotment;
 - (h) the **specified securities borrowed shall be in dematerialised form** and allocation of these securities shall be made pro-rata to all successful applicants.
- (2) For the purpose of **stabilisation of post-listing price** of the specified securities, **the stabilising agent shall determine the relevant aspects** including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
 - (3) **The stabilisation process shall be available for a period not exceeding thirty days** from the date on which trading permission is given by the stock exchanges in respect of the specified securities allotted in the public issue.
 - (4) The **stabilising agent shall open a special account**, distinct from the issue account, with a bank for crediting the monies received from the applicants against the over-allotment and a special account with a depository participant for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
 - (5) The **specified securities bought from the market and credited in the special account** with the depository participant **shall be returned** to the promoters or pre-issue shareholders immediately, in any case not later than two working days after the end of the stabilization period.
 - (6) On expiry of the stabilisation period, **if the stabilising agent has not been able to buy specified securities** from the market to the extent of such securities over-allotted, **the issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special account with the depository participant**, within five days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the stabilising agent in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.

- (7) The **issuer shall make a listing application** in respect of the further specified securities allotted under sub-regulation (6), **to all the stock exchanges** where the specified securities allotted in the public issue are listed and the provisions of Chapter V of these regulations shall not be applicable to such allotment.
- (8) The **stabilising agent shall remit the monies** with respect to the specified securities allotted under sub-regulation (6) to the issuer from the special bank account.
- (9) Any **monies left in the special bank account after remittance of monies** to the issuer under sub-regulation (8) and deduction of expenses incurred by the stabilising agent for the stabilisation process shall be transferred to the Investor Protection and Education Fund established by the Board and the special bank account shall be closed soon thereafter.
- (10) The stabilising agent shall **submit a report** to the stock exchange on a daily basis during the stabilisation period and a final report to the Board in the format specified in **Schedule XV**.
- (11) The **stabilising agent shall maintain a register** for a period of at least three years from the date of the end of the stabilisation period and such register shall contain the following particulars:
 - (a) The names of the promoters or pre-issue shareholders from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
 - (b) The price, date and time in respect of each transaction effected in the course of the stabilisation process; and
 - (c) The details of allotment made by the issuer on expiry of the stabilisation process.

Alteration of rights of holders of specified securities (Regulation 58)

The issuer **shall not alter the terms** including the terms of issue of specified securities which may adversely affect the interests of the holders of that specified securities, **except with the consent in writing of the holders** of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class.

Post-listing exit opportunity for dissenting shareholders (Regulation 59)

The promoters, or shareholders in control of an issuer, **shall provide an exit offer to dissenting shareholders** as provided for in the Companies Act, 2013, **in case of change in objects or variation in the terms of contract** related to objects referred to in the offer document as per conditions and manner is provided in Schedule XX.

Provided that the exit offer shall not apply where there are neither any identifiable promoters nor any shareholders in control of the issuer.

FURTHER PUBLIC OFFER

Eligibility Requirements (Regulation 101-105)

1. Reference date (Regulation 101)

An issuer making a further public offer of specified securities shall satisfy the conditions of this Chapter as on the date of filing:

- of the draft offer document with the Board, and also
- the offer document with the Registrar of Companies.

2. Entities not eligible to make a further public offer (Regulation 102)

An issuer **shall not be eligible** to make a further public offer:

- (a) if the issuer, any of its promoters, promoter group or directors, selling shareholders are **debarred from accessing the capital market** by the Board;
- (b) if any of **the promoters or directors of the issuer is a promoter or director of any other company which is debarred** from accessing the capital market by the Board;
- (c) if the **issuer or any of its promoters or directors is a wilful defaulter or a fraudulent borrower**;
- (d) if any of its **promoters or directors is a fugitive economic offender**.

Explanation—The restrictions under (a) and (b) above shall not apply to the persons or entities mentioned therein, who were debarred in the past by the Board and the period of debarment is already over as on the date of filing of the draft offer document with the Board.

3. Eligibility requirements for further public offer (Regulation 103)

- (1) **When an issuer shall be eligible?** An issuer shall be eligible to make a further public offer, **if it has not changed its name in the last one year** period immediately preceding the date of filing the relevant offer document:

Where if, an issuer has changed its name in the last one year period immediately preceding the date of filing the relevant offer document, **such an issuer shall make further public offer if at least fifty per cent of the revenue for the preceding one full year has been earned by it from the activity** indicated by its new name.

- (2) **Where an issuer fails to satisfy the stipulated condition-** In such case, an issuer, shall make a further public offer only if:
 - the issue is made through the book building process, and
 - the issuer undertakes to allot at least seventy five per cent of the net offer to qualified institutional buyers, and

- to refund full subscription money if it fails to make the said minimum allotment to qualified institutional buyers.

4. General conditions (Regulation 104)

- (1) An issuer making a further public offer **shall ensure** that—
- it has **made an application** to one or more stock exchanges to seek an in-principle approval for listing of its specified securities on such stock exchanges and has chosen one of them as the designated stock exchange, in terms of Schedule XIX;
 - it has **entered into an agreement with a depository** for dematerialisation of specified securities already issued and proposed to be issued;
 - all its **existing partly paid-up equity shares have either been fully paid-up** or have been forfeited;
 - it has made **firm arrangements of finance** through verifiable means towards seventy five per cent of the stated means of finance for the specific project proposed to be funded from the issue proceeds, excluding the amount to be raised through the proposed public issue or through existing identifiable internal accruals.

Explanation—For the purposes of this regulation "finance for the specific project" shall mean finance for capital expenditures only

- (2) The **amount for general corporate purposes**, as mentioned in objects of the issue in the draft offer document and the offer document, **shall not exceed twenty five per cent of the amount** being raised by the issuer.

Explanation—For the purposes of this regulation, "project" means the object for which monies are proposed to be raised to cover the objects of the issue.

- (3) The **amount** for:
- general corporate purposes, and
 - such objects where the issuer company has not identified acquisition/investment target, as mentioned in objects of the issue in the draft offer document and the offer document,

shall not exceed thirty five per cent of the amount being raised by the issuer:

Provided that the amount raised for such objects where the issuer **company has not identified acquisition or investment target**, as mentioned in objects of the issue in the draft offer document and the offer document, shall not exceed twenty five per cent of the amount being raised by the issuer:

Provided further that such limits shall not apply **if the proposed acquisition or strategic investment object has been identified** and suitable specific disclosures about such acquisitions

or investments are made in the draft offer document and the offer document at the time of filing of offer documents.

5. Additional conditions for an offer for sale (Regulation 105)

Only such fully paid-up equity shares may be offered for sale to public **which have been held by the selling shareholder(s) for a period of at least one year** prior to the filing of the draft offer document:

Provided that in case the equity shares received on conversion or exchange of fully paid-up compulsorily convertible securities including depository receipts are being offered for sale, the holding period of such convertible securities, including depository receipts, as well as that of resultant equity shares together shall be considered for the purpose of calculation of one year period referred in this sub-regulation:

Provided further that such holding period of one year shall be required to be complied with at the time of filing of the draft offer document.

Explanation—If the equity shares arising out of the conversion or exchange of the fully paid-up compulsorily convertible securities are being offered for sale, the conversion or exchange should be completed prior to filing of the offer document (*i.e.* red herring prospectus in the case of a book built issue and prospectus in the case of a fixed price issue), provided full disclosures of the terms of conversion or exchange are made in the draft offer document:

Provided further that the requirement of holding the equity shares for a period of one year shall not apply:

- (a) in case of **an offer for sale of a Government company or statutory authority or corporation or any special purpose vehicle set up** and controlled by any one or more of them, which is engaged in the infrastructure sector;
- (b) if the **equity shares offered for sale were acquired pursuant to any scheme approved by a High Court or approved by a tribunal or the Central Government** under sections 230 to 234 of the Companies Act, 2013, as applicable, in lieu of business and invested capital which had been in existence for a period of more than one year prior to approval of such scheme;
- (c) if the **equity shares offered for sale were issued under a bonus issue** on securities held for a period of at least one year prior to the filing of the draft offer document with the Board and further subject to the following:
 - (i) such specified securities being issued out of free reserves and share premium existing in the books of account as at the end of the financial year preceding the financial year in which the draft offer document is filed with the Board; and
 - (ii) such equity shares not being issued by utilisation of revaluation reserves or unrealized profits of the issuer.

ISSUE OF CONVERTIBLE DEBT INSTRUMENTS AND WARRANTS

1. Eligibility of issuer to make FPO of convertible debt instruments

An issuer shall be eligible to make a further public offer of convertible debt instruments **if its equity shares are already listed;**

Provided that it is **not in default in payment of interest or repayment of principal amount** in respect of debt instruments issued by it to the public, if any, **for a period of more than six months.**

2. Additional requirements for issue of convertible debt instruments (Regulation 107)

- (1) In addition to other requirements laid down in these regulations, an issuer making a public issue of convertible debt instruments **shall also comply with the following conditions:**
 - (a) it has **obtained credit rating** for such convertible debt instrument from one or more credit rating agencies;
 - (b) it has **appointed at least one debenture trustee** in accordance with the provisions of the Companies Act, 2013 and the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993;
 - (c) it **shall create a debenture redemption reserve** in accordance with the provisions of the Companies Act, 2013 and rules made thereunder;
 - (d) if the **issuer proposes to create a charge or security on its assets** in respect of secured convertible debt instruments, it shall ensure that:
 - (i) such assets are sufficient to discharge the principal amount at all times;
 - (ii) such assets are free from any encumbrance;
 - (iii) where security is already created on such assets in favour of public financial institutions or scheduled commercial banks or the issue of convertible debt instruments is proposed to be secured by creation of security on a leasehold land, the consent of such public financial institution, scheduled commercial bank or lessor for a second or pari passu charge has been obtained and submitted to the debenture trustee before the opening of the issue;
 - (iv) the security or asset cover shall be arrived at after reduction of the liabilities having a first or prior charge, in case the convertible debt instruments are secured by a second or subsequent charge.
- (2) The issuer shall **redeem the convertible debt instruments** in terms of the offer document.

3. Roll over of non-convertible portion of partly convertible debt instruments (Regulation 108)

- (1) The non-convertible portion of partly convertible debt instruments issued by a listed issuer, the value of which exceeds ten crore rupees, may be rolled over, subject to compliance with the provisions of the Companies Act, 2013 and the following conditions:
 - (a) seventy-five per cent. of the holders (in value) of the convertible debt instruments of the issuer have, through a resolution, approved the rollover through postal ballot;
 - (b) the issuer has, along with the notice for passing the resolution, sent to all holders of the convertible debt instruments, an auditors' certificate on the cash flow of the issuer and with comments on the liquidity position of the issuer;
 - (c) the issuer has undertaken to redeem the non-convertible portion of the partly convertible debt instruments of all the holders of the convertible debt instruments who have not agreed to the resolution;
 - (d) credit rating has been obtained from at least one credit rating agency registered with the Board within a period of one month prior to the due date of redemption and has been communicated to the holders of the convertible debt instruments, before the roll over.
- (2) The creation of fresh security and execution of fresh trust deed shall not be mandatory if the existing trust deed or the security documents provide for continuance of the security till redemption of secured convertible debt instruments:

Provided that the debenture trustee shall decide if the issuer is required to create fresh security and to execute fresh trust deed.

4. Conversion of optionally convertible debt instruments into equity share capital (Regulation 109)

- (1) The issuer shall not convert its optionally convertible debt instruments into equity shares unless the **holders of such convertible debt instruments have sent their positive consent to the issuer** and non-receipt of reply to any notice sent by the issuer for this purpose shall not be construed as consent for conversion of any convertible debt instruments.
- (2) Where the **value of the convertible portion** of any listed convertible debt instruments issued by an issuer **exceeds ten crore rupees** and the issuer has not determined the conversion price of such convertible debt instruments at the time of making the issue, **the holders of such convertible debt instruments shall be given the option of not converting the convertible portion into equity shares:**

Provided that where the upper limit or conversion formula on the price of such convertible debt instruments and justification thereon is determined and disclosed to the investors at the time of making the issue, it shall not be necessary to give such option to the holders of the convertible debt instruments for converting the convertible portion into equity share capital within the said upper limit.

- (3) Where an option is to be given to the holders of the convertible debt instruments in terms of sub-regulation (2) and if one or more of such holders do not exercise the option to convert the instruments into equity share capital at a price determined in the general meeting of the shareholders, the issuer shall redeem that part of the instruments within one month from the last date by which option is to be exercised, at a price which shall not be less than its face value.
- (4) The provisions of sub-regulation (3) shall not apply if such redemption is in terms of the disclosures made in the offer document.

5. Issue of convertible debt instruments for financing (Regulation 110)

An issuer shall not issue convertible debt instruments for financing or for providing loans to or for acquiring shares of any person who is part of the promoter group or group companies:

Exception : Provided that an issuer shall be eligible to issue fully convertible debt instruments for these purposes if the period of conversion of such debt instruments is less than eighteen months from the date of issue of such debt instruments.

6. Issue of warrants (Regulation 111)

An issuer shall be eligible to issue warrants in a further public offer subject to the following conditions:

- (a) the tenure of such warrants shall not exceed eighteen months from the date of their allotment in the public issue;
- (b) a specified security may have one or more warrants attached to it;
- (c) the price or formula for determination of exercise price of the warrants shall be determined upfront and at least twenty-five per cent. of the consideration amount based on the exercise price shall also be received upfront;

Provided that in case the exercise price of warrants is based on a formula, twenty-five per cent. consideration amount based on the cap price of the price band determined for the linked equity shares or convertible securities shall be received upfront.

- (d) in case the warrant holder does not exercise the option to take equity shares against any of the warrants held by the warrant holder, within three months from the date of payment of consideration, such consideration made in respect of such warrants shall be forfeited by the issuer.

PROMOTERS' CONTRIBUTION

1. Requirement of minimum promoters' contribution not applicable in certain cases (Regulation 112)

1. The requirements of minimum promoters' contribution shall not apply in case of:
 - (a) an issuer which does not have any identifiable promoter;

- (b) where the equity shares of the issuer are **frequently traded on a stock exchange for a period of at least three years** immediately preceding the reference date, and:
- i) the issuer has **redressed at least ninety five per cent of the complaints** received from the investors till the end of the quarter immediately preceding the month of the reference date, and;
 - ii) **the issuer has been in compliance with the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for a minimum period of three years** immediately preceding the reference date:

However, if the issuer has not complied with the provisions of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, relating to composition of board of directors, for any quarter during the last three years immediately preceding the date of filing of draft offer document/offer document, but is compliant with such provisions at the time of filing of draft offer document/offer document, and adequate disclosures are made in the offer document about such non-compliances during the three years immediately preceding the date of filing the draft offer document/offer document, it shall be deemed as compliance with the condition:

Provided further that where the promoters propose to subscribe to the specified securities offered to the extent greater than higher of the two options available in clause (a) of subregulation (1) of regulation 113, the subscription in excess of such percentage shall be made at a price determined in terms of the provisions of regulation 164 or the issue price, whichever is higher.

Explanation: The reference date for the purpose of computing the annualised trading turnover referred to in the said Explanation shall be the date of filing the draft offer document with the Board and in case of a fast-track issue, the date of filing the offer document with the Registrar of Companies, and before opening of the issue.

2. **Minimum promoters' contribution (Regulation 113)**

- (1) The promoters shall contribute in the public issue as follows:
- a) either to the extent of **twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;**
 - b) in **case of a composite issue** (i.e. further public offer cum rights issue), either to the extent of **twenty per cent. of the proposed issue size or to the extent of twenty per cent. of the post issue capital excluding the rights issue component.**
- (2) **In case of a public issue or composite issue of convertible securities**, the minimum promoters' contribution shall be as follows:

- a) the promoters shall contribute **twenty per cent.** as stipulated in clause (a) or (b) of sub regulation (1), as the case may be, either by way of equity shares or by way of subscription to the convertible securities:

Provided that if the price of the equity shares allotted pursuant to conversion is not predetermined and not disclosed in the offer document, the promoters shall contribute only by way of subscription to the convertible securities being issued in the public issue and shall undertake in writing to subscribe to the equity shares pursuant to conversion of such securities.

- b) in **case of any issue of convertible securities which are convertible or exchangeable on different dates** and if the promoters' contribution is by way of equity shares (conversion price being pre-determined), such contribution shall not be at a price lower than the weighted average price of the equity share capital arising out of conversion of such securities.
- (3) In case of a **further public offer or composite issue where the promoters contribute more than the stipulated minimum promoters' contribution**, the allotment with respect to excess contribution shall be made at a price determined in terms of the provisions of regulation 164 or the issue price, whichever is higher.
- (4) In case **the promoters have to subscribe to equity shares or convertible securities towards promoters' contribution**, the promoters shall satisfy the requirements of this regulation at least one day prior to the date of opening of the issue and the amount of promoters' contribution shall be kept in an escrow account with a scheduled commercial bank and shall be released to the issuer along with the release of the issue proceeds:
- Provided further that where the minimum promoters' contribution is more than one hundred crore rupees and the further public offer is for partly paid shares, the promoters shall bring in at least one hundred crore rupees before the date of opening of the issue and the remaining amount may be brought on a pro-rata basis before the calls are made to the public.
- (5) The SR equity shares of promoters, if any, shall be eligible towards computation of minimum promoters' contribution.

Explanation:

- (I) For the purpose of this regulation, **promoters' contribution shall be computed on the basis of the post-issue expanded capital:**
- (a) assuming full proposed conversion of convertible securities into equity shares;
- (b) assuming exercise of all vested options, where any employee stock options are outstanding at the time of further public offer.
- (II) For computation of "**weighted average price**":

- (a) “weight” means the number of equity shares arising out of conversion of such specified securities into equity shares at various stages;
- (b) “price” means the price of equity shares on conversion arrived at after taking into account predetermined conversion price at various stages.

6. Securities ineligible for minimum promoters’ contribution (Regulation 114)

- (1) For the computation of minimum promoters’ contribution, the **following specified securities shall not be eligible**:
 - (a) **specified securities acquired during the preceding three years**, if these are:
 - i) acquired for consideration other than cash and revaluation of assets or capitalisation of intangible assets is involved in such transaction; or
 - ii) resulting from a bonus issue by utilisation of revaluation reserves or unrealised profits of the issuer or from bonus issue against equity shares which are ineligible for minimum promoters’ contribution;
 - (b) **specified securities pledged with any creditor** other than those for borrowings by the issuer or its subsidiaries.
- (2) **Specified securities referred to in clauses (a) of sub-regulation (1) shall be eligible for the computation of promoters’ contribution**, if such securities are acquired pursuant to a scheme which has been approved by the High Court or approved by a tribunal or the Central Government under section 230 to 234 of the Companies Act, 2013.

LOCK-IN AND RESTRICTIONS ON TRANSFERABILITY

1. Lock-in of specified securities held by the promoters (Regulation 115)

The specified securities held by the promoters shall not be transferable (hereinafter referred to as “locked-in”) for the periods as stipulated hereunder:

- (a) **minimum promoters’ contribution** including contribution made by alternative investment funds, or foreign venture capital investors, as applicable, shall be locked-in for a period of eighteen months from the date of allotment of the further public offer:

Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be three years from the date of allotment in the initial public offer.

- (b) **promoters’ holding in excess of minimum promoters’ contribution shall be locked-in for a period of six months**:

Provided that in case the majority of the issue proceeds excluding the portion of offer for sale is proposed to be utilized for capital expenditure, then the lock-in period shall be one year from the date of allotment in the initial public offer.

- (c) **The SR equity shares** shall be under lock-in until their conversion to equity shares having voting rights same as that of ordinary shares, provided they are in compliance with the other provisions of these regulations.

Explanation: For the purpose of this regulation, “capital expenditure” shall include civil work, miscellaneous fixed assets, purchase of land, building and plant and machinery, etc.

2. Lock-in of specified securities lent to stabilising agent under green shoe option (Regulation 116)

The lock-in provisions of this part **shall not apply with respect to the specified securities lent to stabilising agent for the purpose of green shoe option**, during the period starting from the date of lending of such specified securities and ending on the date on which they are returned to the lender in terms of sub-regulation (5) or (6) of regulation 153:

Provided that the specified securities shall be locked-in for the remaining period from the date on which they are returned to the lender.

3. Lock-in of party-paid securities (Regulation 117)

Where the specified securities which are subject to lock-in **are partly paid-up and the amount called-up on such specified securities is less than the amount called-up on the specified securities** issued to the public, the lock-in shall end only on the expiry of eighteen months after such specified securities have become pari passu with the specified securities issued to the public.

4. Inscription or recording of non-transferability (Regulation 118)

The **certificates of specified securities** which are subject to lock-in **shall contain the inscription “non-transferable”** and **specify the lock-in period** and in case such specified securities are dematerialised, the issuer shall ensure that the lock-in is recorded by the depository.

5. Pledge of locked-in specified securities (Regulation 119)

Specified securities (except SR equity shares) held by the promoters and locked in, **may be pledged as collateral security for a loan** granted by a scheduled commercial bank or a public financial institution or a systemically important non-banking finance company or a housing finance company, subject to the following:

- a) if the specified securities are locked-in in terms of clause (a) of regulation 115, the loan has been granted to the issuer company or its subsidiary/subsidiaries for the purpose of financing one or more of the objects of the issue and pledge of specified securities is one of the terms of sanction of the loan
- b) if the specified securities are locked-in in terms of clause (b) of regulation 115 and the pledge of specified securities is one of the terms of sanction of the loan.

6. Transferability of locked-in specified securities (Regulation 120)

Subject to the provisions of the Securities and Exchange Board of India (Substantial Acquisition of shares and Takeovers) Regulations, 2011, the specified securities except SR equity shares, held by the promoters and locked-in as per regulation 115 may be transferred to another promoter or any person of the promoter group or a new promoter or a person in control of the issuer:

Provided that lock-in on such specified securities shall continue for the remaining period with the transferee and such transferee shall not be eligible to transfer them till the lock-in period stipulated in these regulations has expired.

DISCLOSURES IN AND FILING OF OFFER DOCUMENTS

1. Disclosures in the draft offer document and the offer document

- (1) The draft offer document and the offer document shall contain **all material disclosures** which are true and adequate **to enable the applicants to take an informed investment decision**.
- (2) Without prejudice to the generality of sub-regulation (1), **the red-herring prospectus, shelf prospectus and prospectus shall contain:**
 - (i) disclosures specified in the Companies Act, 2013; and
 - (ii) disclosures specified in **Part A of Schedule VI**, subject to the provisions of **Parts C and D** thereof.
- (3) The **lead manager(s) shall exercise due diligence** and satisfy themselves about all aspects of the issue including the **veracity and adequacy of disclosures** made in the draft offer document and the offer document.
- (4) The **lead manager(s) shall call upon the issuer, its promoters and its directors** or in case of an offer for sale, the selling shareholders, to fulfil their obligations as disclosed by them in the draft offer document and the offer document and as required in terms of these Regulations.
- (5) The lead manager(s) shall ensure that the **information contained** in the offer document and the particulars as per audited financial statements in the offer document **are not more than six months old** from the issue opening date.

2. Filing of the draft offer document and offer documents (Regulation 123)

- (1) Prior to making a further public offer, the **issuer shall file three copies of the draft offer document with the Board**, in accordance with **Schedule IV**, along with fees as specified in **Schedule III**, through the lead manager(s).
- (2) The lead manager(s) shall submit the following to the Board along with the draft offer document:
 - a) a certificate, confirming that an agreement has been entered into between the issuer and the lead manager(s)
 - b) a due diligence certificate as per **Form A of Schedule V**;

- c) in case of an issue of convertible debt instruments, a due diligence certificate from the debenture trustee as per **Form B of Schedule V**;
 - d) a certificate confirming compliance of the conditions specified in **Part C of Schedule VI**.
- (3) The **issuer shall also file the draft offer document** with the stock exchange(s) where the specified securities are proposed to be listed, and shall submit to the stock exchange(s), the Permanent Account Number, bank account number and passport number of its promoters where they are individuals, and Permanent Account Number, bank account number, company registration number or equivalent and the address of the Registrar of Companies with which the promoter is registered, where the promoter is a body corporate.
- (4) The **Board may specify changes or issue observations on the draft offer document** within a period of thirty days from the later of the following dates:
- a) the date of receipt of the draft offer document under sub-regulation (1); or
 - b) the date of receipt of satisfactory reply from the lead manager(s), where the Board has sought any clarification or additional information from them; or
 - c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or
 - d) the date of receipt of a copy of in principle approval letter issued by the stock exchange(s).
- (5) If the Board **specifies changes or issues observations on the draft offer document**, the issuer and the lead manager(s) shall carry out such changes in the draft offer document and shall submit to the Board an updated draft offer document complying with the observations issued by the Board and highlighting all changes made in the draft offer document before filing the offer documents with the Registrar of Companies or the appropriate authority, as applicable.
- (6) If there are any changes in the draft offer document in relation to the matters specified in **Schedule XVI**, the updated offer document or a fresh draft offer document, as the case may be, shall be filed with the Board along with fees specified in **Schedule III**.
- (7) Copy of the offer documents shall also be filed with the Board and the stock exchanges through the lead manager(s) simultaneously while filing the offer documents with Registrar of Companies.
- (8) The **draft offer document and the offer document** shall also be furnished to the Board in a soft copy in the manner as may be specified.
- (9) The lead manager(s) **shall submit the following documents to the Board after issuance of observations by the Board or after expiry of the period** stipulated in sub-regulation (4) of regulation 123 if the Board has not issued observations:
- (a) a statement certifying that all changes, suggestions and observations made by the Board have been incorporated in the offer document;

- (b) a due diligence certificate as per **Form C of Schedule V**, at the time of ⁸[filing] of the offer document;
- (c) a copy of the resolution passed by the board of directors of the issuer for allotting specified securities to promoters towards amount received against promoters' contribution, before opening of the issue;
- (d) a certificate from a Chartered Accountant, before opening of the issue, certifying that promoters' contribution has been received in accordance with these regulations, accompanying therewith the names and addresses of the promoters who have contributed to the promoters' contribution and the amount paid and credited to the bank account of the issuer by each of them towards such contribution;
- (e) a due diligence certificate as per **Form D of Schedule V**, in the event the issuer has made a disclosure of any material development by issuing a public notice.

3. Draft offer document and offer document to be available to the public (Regulation 124)

- (1) **Filing:** The draft offer document filed with the Board shall be made public for comments, if any, for a period of **at least twenty one days from the date of filing**, by hosting it on the websites of the Board, stock exchanges where specified securities are proposed to be listed and lead manager(s) associated with the issue.
- (2) **Public announcement:** The issuer shall, within two days of filing the draft offer document with the Board, **make a public announcement** in one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated, disclosing to the public the fact of filing of the draft offer document with the Board and inviting the public to provide their comments to the Board, the issuer or the lead manager(s) in respect of the disclosures made in the draft offer document.
- (3) **Filing of details of the comments:** The lead manager(s) shall, after expiry of the period stipulated in sub-regulation (1), file with the Board, details of the comments received by them or the issuer from the public, on the draft offer document, during that period and the consequential changes, if any, that are required to be made in the draft offer document.
- (4) **Documents to be hosted on website:** The issuer and the lead manager(s) shall ensure that the offer documents are hosted on the websites as required under these regulations and its contents are the same as the versions as filed with the Registrar of Companies, the Board and the stock exchanges, as applicable.

⁸ Substituted by the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Seventh Amendment) Regulations, 2019, w-e-f 01.01.2020 for the word "registering".

- (5) **Circulation of copies to public:** The lead manager(s) and the stock exchanges shall provide copies of the offer documents, to the public as and when requested and may charge a reasonable sum for providing a copy of the same.

PRICING

1. Face value of equity shares (Regulation 125)

The **disclosure about the face value of equity shares** shall be made in the draft offer document, offer document, advertisements and application forms, along with the price band or the issue price in identical font size.

2. Pricing (Regulation 126)

- (1) The issuer may **determine the price of equity shares**, and in case of convertible securities, the coupon rate and the conversion price, in consultation with the lead manager(s) or through the book building process, as the case may be.
- (2) The issuer **shall undertake the book building process** in the manner specified in **Schedule XIII**.

3. Price and price band (Regulation 127)

- (1) The issuer may **mention a price or a price band** in the offer document (in case of a fixed price issue) **and a floor price or a price band** in the red herring prospectus (in case of a book built issue) and determine the price at a later date before filing the prospectus with the Registrar of Companies:

Provided that the prospectus filed with the Registrar of Companies shall contain only one price or the specific coupon rate, as the case may be.

- (2) **The cap on the price band**, and the coupon rate in case of convertible debt instruments, shall be less than or equal to one hundred and twenty per cent. of the floor price.

Provided that the cap of the price band shall be at least one hundred and five percent of the floor price.

- (3) **The floor price or the final price** shall not be less than the face value of the specified securities.
- (4) Where the **issuer opts not to make the disclosure of the floor price or price band** in the red herring prospectus, the issuer shall announce the floor price or the price band at least one working day before the opening of the bid in the same newspapers in which the pre-issue advertisement was released or together with the pre-issue advertisement in the format prescribed under Part A of **Schedule X**.
- (5) The **announcement** referred to in sub-regulation (4) **shall contain relevant financial ratios** computed for both upper and lower end of the price band and also a statement drawing attention of the investors to the section title "basis of issue price" of the offer document.

- (6) The **announcement** referred to in sub-regulation (4) and the **relevant financial ratios** referred to in sub-regulation (5) **shall be disclosed on the websites** of the stock exchange(s) and shall also be pre-filled in the application forms to be made available on the websites of the stock exchange(s).

4. Differential pricing (Regulation 128)

- (1) The issuer may offer its specified securities at different prices, subject to the following:
- retail individual investors or retail individual shareholders or employees entitled for reservation** made under regulation 130 **may be offered specified securities** at a price not lower than by more than ten per cent. of the price at which net offer is made to other categories of applicants, excluding anchor investors;
 - in **case of a book built issue**, the price of the specified securities offered to the anchor investors shall not be lower than the price offered to other applicants;
 - in **case of a composite issue**, the price of the specified securities offered in the public issue may be different from the price offered in rights issue and justification for such price difference shall be given in the offer document.
 - in case the **issuer opts for the alternate method of book building** in terms of **Part D of Schedule XIII**, the issuer may offer the specified securities to its employees at a price not lower by more than ten per cent. of the floor price.
- (2) Discount, if any, shall be expressed in rupee terms in the offer document.

ISSUANCE CONDITIONS AND PROCEDURE

1. Allocation in the net offer (Regulation 129)

- (1) In an issue made through the book building process under sub-regulation (1) of regulation 103, the allocation in the net offer category shall be as follows:
- not less than thirty five per cent. to retail individual investors;
 - not less than fifteen per cent. to non-institutional investors;
 - not more than fifty per cent. to qualified institutional buyers, five per cent. of which shall be allocated to mutual funds:

Provided that the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in any other category:

Provided further that in addition to five per cent. allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

- (2) In an issue made through the book building process under sub-regulation (2) of regulation 103, the allocation in the net offer category shall be as follows:

- (a) not more than ten per cent. to retail individual investors;
- (b) not more than fifteen per cent. to non-institutional investors;
- (c) not less than seventy five per cent. to qualified institutional buyers, five per cent. of which shall be allocated to mutual funds:

Provided that the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in the other category:

Provided further that in addition to five per cent. allocation available in terms of clause (c), mutual funds shall be eligible for allocation under the balance available for qualified institutional buyers.

- (3) In an issue made through the book building process, the issuer may allocate up to sixty per cent. of the portion available for allocation to qualified institutional buyers to anchor investors in accordance with the conditions specified in this regard in **Schedule XIII**.
- (3A) In **an issue made through book building process**, the allocation in the non-institutional investors' category shall be as follows:

- (a) **one third** of the portion available to non-institutional investors shall be reserved for applicants **with application size of more than two lakh rupees and up to ten lakh rupees**;
- (b) **two third** of the portion available to non-institutional investors shall be reserved for applicants **with application size of more than ten lakh rupees**:

Provided that the unsubscribed portion in either of the sub-categories specified in clauses (a) or (b) may be allocated to applicants in the other sub-category of non-institutional investors.

- (4) In **an issue made other than through the book building process**, allocation in the net offer category shall be made as follows:
 - (a) **minimum fifty per cent. to retail individual investors**; and
 - (b) **remaining to**:
 - (i) **individual applicants** other than retail individual investors; and
 - (ii) **other investors** including corporate bodies or institutions, irrespective of the number of specified securities applied for;

Provided that the unsubscribed portion in either of the categories specified in clauses (a) or (b) may be allocated to applicants in the other category.

Explanation: For the purpose of sub-regulation (4), if the retail individual investor category is entitled to more than fifty per cent. of the issue size on a proportionate basis, the retail individual investors shall be allocated that higher percentage.

2. Reservation on a competitive basis (Regulation 130)

(1) The issuer may make reservations on a competitive basis out of the issue size excluding promoters' contribution in favour of the following categories of persons:

- (a) employees;
- (b) shareholders (other than promoters and promoter group) of listed subsidiaries or listed promoter companies:

However, it is provided that the issuer shall not make any reservation for the lead manager(s), registrar, syndicate member(s), their promoters, directors and employees and for the group or associate companies (as defined under the Companies Act, 2013) of the lead manager(s), registrar and syndicate member(s) and their promoters, directors and employees.

(2) **In a further public offer**, other than in a composite issue, the issuer may make a reservation on a competitive basis out of the issue size excluding promoters' contribution **for the existing retail individual shareholders of the issuer**.

(3) **Required Conditions:** The reservations on competitive basis shall be subject to following conditions:

- (a) **Limit on reservation for employees:** the aggregate of reservation for employees shall not exceed five per cent. of the post-issue capital of the issuer and the value of allotment to any employee shall not exceed two lakhs rupees:

Provided that in the event of under-subscription in the employee reservation portion, the unsubscribed portion may be allotted on a proportionate basis, for a value in excess of two lakhs rupees, subject to the total allotment to an employee not exceeding five lakhs rupees.

- (b) **Limit on reservation for shareholders:** reservation for shareholders shall not exceed ten per cent. of the issue size;
- (c) **When no further application can be made:** no further application for subscription in the net offer can be made by persons (except an employee and retail individual shareholder of the listed issuer and retail individual shareholders of listed subsidiaries of listed promoter companies) in favour of whom reservation on a competitive basis is made;
- (d) **Addition of unreserved portion to other reserved category :** any unsubscribed portion in any reserved category may be added to any other reserved category/categories and the unsubscribed portion, if any, after such inter-se adjustments amongst the reserved categories shall be added to the net offer category;
- (e) **Undersubscription to spill over in net public offer:** in case of under-subscription in the net offer category, spill-over to the extent of undersubscription shall be permitted from the reserved category to the net public offer.

- (4) An applicant in any reserved category may make an application for any number of specified securities, but not exceeding the reserved portion for that category.

Abridged prospectus (Regulation 131)

- (1) The abridged prospectus shall **contain the disclosures** as specified in **Part E of Schedule VI** and shall not contain any matter extraneous to the contents of the offer document.
- (2) **Every application** form distributed by the issuer or any other person in relation to an issue **shall be accompanied by a copy of the abridged prospectus.**

Availability of issue material (Regulation 133)

The lead manager(s) shall ensure availability of the offer document and other issue material including application forms to stock exchanges, syndicate members, registrar to issue, registrar and share transfer agents, depository participants, stock brokers, underwriters, bankers to the issue, investors' associations and self-certified syndicate banks before the opening of the issue.

Prohibition on payment of incentives (Regulation 134)

Any person connected with the issue, shall not offer any incentive, whether direct or indirect, in any manner, whether in cash or kind or services or otherwise to any person for making an application in the initial public offer, except for fees or commission for services rendered in relation to the issue.

Security deposit (Regulation 135)

- (1) **Deposit of security amount:** The issuer shall, before the opening of the subscription list, deposit with the designated stock exchange, an amount calculated at the rate of one per cent. of the issue size available for subscription to the public in the manner specified by the Board and/or the stock exchange(s).
- (2) The amount specified above shall be **refundable or forfeitable** in the manner specified by the Board.

Underwriting (Regulation 136)

- (1) **Appointment of underwriters:** If the issuer making a further public offer, other than through the book building process, desires to have the issue underwritten, it shall appoint merchant bankers or stock brokers, registered with the Board, to act as underwriters.
- (2) If the **issuer makes a public issue through the book building process,**
 - (a) the issue shall be underwritten by lead manager(s) and syndicate member(s):

Provided that at least seventy five per cent. of the net offer proposed to be compulsorily allotted to qualified institutional buyers for the purpose of compliance of the eligibility conditions specified in sub-regulation (2) of regulation 103, shall not be underwritten.
 - (b) the issuer shall, prior to filing the prospectus, enter into underwriting agreement with the lead manager(s), and syndicate member(s), indicating therein the number of specified

securities which they shall subscribe to at the predetermined price in the event of undersubscription in the issue.

- (c) if the syndicate member(s) fail to fulfil their underwriting obligations, the lead manager(s) shall fulfil the underwriting obligations.
- (d) the lead manager(s) and syndicate member(s) shall not subscribe to the issue in any manner except for fulfilling their underwriting obligations.
- (e) in case of every underwritten issue, the lead manager(s) shall undertake minimum underwriting obligations as specified in the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992.
- (f) where the issue is required to be underwritten, the underwriting obligations should at least be to the extent of minimum subscription.

Monitoring agency (Regulation 137)

- (1) If the issue size, excluding the size of offer for sale by selling shareholders, exceeds one hundred crore rupees, the issuer shall make arrangements for the use of proceeds of the issue to be monitored by a credit rating agency registered with the Board:

Provided that nothing contained in this clause shall apply to an issue of specified securities made by a bank or public financial institution or an insurance company.

- (2) The monitoring agency shall submit its report to the issuer in the format specified in **Schedule XI** on a quarterly basis, till hundred per cent of the proceeds of the issue have been utilised.
- (3) The board of directors and the management of the issuer shall provide their comments on the findings of the monitoring agency as specified in **Schedule XI**.
- (4) The issuer shall, within forty five days from the end of each quarter, publicly disseminate the report of the monitoring agency by uploading the same on its website as well as submitting the same to the stock exchange(s) on which its equity shares are listed.

Issue-related advertisements (Regulation 139)

- (1) Subject to the provisions of the Companies Act, 2013, the issuer shall, after filing the red herring prospectus (in case of a book built issue) or prospectus (in case of fixed price issue) with the Registrar of Companies, make a pre-issue advertisement in one English national daily newspaper with wide circulation, Hindi national daily newspaper with wide circulation and one regional language newspaper with wide circulation at the place where the registered office of the issuer is situated.
- (2) The pre-issue advertisement shall be in the format and shall contain the disclosures specified in **Part A of Schedule X**.

Provided that the disclosures in relation to price band or floor price and financial ratios contained therein shall be applicable only where the issuer opts to announce the price band or floor price along with the pre-issue advertisement pursuant to sub-regulation (4) of regulation 127.

- (3) The issuer may release advertisements for issue opening and issue closing, which shall be in the formats specified in **Parts B and C of Schedule X**.
- (4) During the period the issue is open for subscription, no advertisement shall be released giving an impression that the issue has been fully subscribed or oversubscribed or indicating investors' response to the issue.

Opening of the issue (Regulation 140)

- (1) Subject to the compliance with the provisions of the Companies Act, 2013, a public issue may be opened within twelve months from the date of issuance of the observations by the Board under sub-regulation (4) of regulation 123; or

Provided that in case of a fast track issue, the issue shall open within the period specifically stipulated under the Companies Act, 2013.

- (2) In case of **shelf prospectus**, the first issue may be opened within three months of issuance of observations by the Board.
- (3) **The issue shall be opened** after at least three working days from the date of filing the red herring prospectus with the Registrar of Companies in case of book built issues and prospectus with the Registrar of Companies in case of fixed price issues.

Minimum subscription (Regulation 141)

- (1) The minimum subscription to be received in the issue shall be **at least ninety per cent. of the offer** through the offer document, except in case of an offer for sale of specified securities.
- (2) In the **event of non-receipt of minimum subscription** referred to in sub-regulation (1), all application monies received shall be refunded to the applicants forthwith, but not later than four days from the closure of the issue.

Period of subscription (Regulation 142)

- (1) A further public issue shall be kept open for **at least three working days** and not more than ten working days.
- (2) **In case of a revision in the price band-** the issuer shall extend the bidding (issue) period disclosed in the red herring prospectus, for a **minimum period of three working days**, subject to the provisions of sub-regulation (1).
- (3) In case of force majeure, banking strike or similar circumstances, the issuer may, for reasons to be recorded in writing, **extend the bidding (issue) period** disclosed in the red herring prospectus (in case of a book built issue) or the issue period disclosed in the prospectus (in case of a fixed

price issue), for a minimum period of three working days, subject to the provisions of sub-regulation (1).

Application and minimum application value (Regulation 143)

- (1) A person shall not make an application in the net offer category for a number of specified securities that exceeds the total number of specified securities offered to public.

Provided that the maximum application by non-institutional investors shall not exceed total number of specified securities offered in the issue less total number of specified securities offered in the issue to qualified institutional buyers.

- (2) The issuer shall stipulate in the offer document the minimum application size in terms of number of specified securities which shall fall within the range of minimum application value of ten thousand rupees to fifteen thousand rupees.
- (3) The issuer shall invite applications in multiples of the minimum application value, an illustration whereof is given in **Part B of Schedule XIV**.
- (4) The minimum sum payable on application per specified security shall be at least twenty five per cent. of the issue price:

Provided that in case of an offer for sale, the full issue price for each specified security shall be payable at the time of application.

Explanation: For the purpose of this regulation, “minimum application value” shall be with reference to the issue price of the specified securities and not with reference to the amount payable on application.

Manner of calls (Regulation 144)

If the issuer proposes to receive subscription monies in calls, it shall ensure that the **outstanding subscription money is called within twelve months from the date of allotment in the issue**.

If any **applicant fails** to pay the call money within the said twelve months, the equity shares on which there are calls in arrear along with the subscription money already paid on such shares shall be **forfeited**:

Exception when it shall not be necessary to call the outstanding subscription money within twelve months, **if the issuer has appointed a monitoring agency** in terms of regulation 137.

Allotment procedure and basis of allotment (Regulation 145)

- (1) **Allotment of public issue:** The issuer shall not make an allotment pursuant to a public issue if the number of prospective allottees is less than one thousand.
- (2) **When no allotment shall be made:** The issuer shall not make any allotment in excess of the specified securities offered through the offer document except in case of oversubscription for the purpose of rounding off to make allotment, in consultation with the designated stock exchange.

Provided that in case of oversubscription, an allotment of not more than one per cent. of the net offer to public may be made for the purpose of making allotment in minimum lots.

- (3) **Allotment of securities:** The allotment of specified securities to applicants other than retail individual investors non-institutional investors and anchor investors **shall be on proportionate basis within the specified investor categories** and the number of securities allotted shall be rounded off to the nearest integer, subject to minimum allotment being equal to the minimum application size as determined and disclosed by the issuer:

Provided that value of specified securities allotted to any person, except in case of employees, in pursuance of reservation made under clause (a) of sub-regulation (1) or clause (a) of sub regulation (2) of regulation 130, shall not exceed two lakhs rupees.

- (4) **The allotment of specified securities to each retail individual investor** shall not be less than the minimum bid lot, subject to availability of shares in retail individual investor category, and the remaining available shares, if any, shall be allotted on a proportionate basis.
- (4A) **The allotment of specified securities to each non-institutional investor** shall not be less than the minimum application size, subject to the availability of shares in non-institutional investors' category, and the remaining shares, if any, shall be allotted on a proportionate basis in accordance with the conditions specified in this regard in Schedule XIII of these regulations.
- (5) **Finalised basis of allotment :** The authorised employees of the designated stock exchange along with the lead manager(s) and registrars to the issue shall ensure that the basis of allotment is finalised in a fair and proper manner in accordance with the allotment procedure as specified in **Part A of Schedule XIV**.

Allotment, refund and payment of interest (Regulation 146)

- (1) The issuer and lead manager(s) shall ensure that specified securities are allotted and/or application monies are refunded or unblocked within such period as may be specified by the Board.
- (2) The lead manager(s) shall ensure that the allotment, credit of dematerialised securities, refunding or unblocking of application monies, as may be applicable, are done electronically.
- (3) Where specified securities are not allotted and/or application monies are not refunded or unblocked within the period stipulated in sub-regulation (1) above, the issuer shall undertake to pay interest at the rate of fifteen per cent. per annum to the investors and within such time as disclosed in the offer document and the lead manager(s) shall ensure the same.

Post-issue Advertisements (Regulation 147)

- (1) **Issue of advertisements with details:** The lead manager(s) shall ensure that advertisement giving details relating to subscription, basis of allotment, number, value and percentage of all applications including ASBA, number, value and percentage of successful allottees for all applications including ASBA, date of completion of despatch of refund orders, as applicable, or

instructions to self-certified syndicate banks by the registrar, date of credit of specified securities and date of filing of listing application, etc. is released within ten days from the date of completion of the various activities in at least one English national daily newspaper with wide circulation, one Hindi national daily newspaper with wide circulation and one regional language daily newspaper with wide circulation at the place where registered office of the issuer is situated.

- (2) **Placing on website of stock exchange:** Details specified in sub regulation (1) shall also be placed on the websites of the stock exchanges.

Post-issue responsibilities of the lead manager(s) (Regulation 148)

- The lead manager(s) shall regularly monitor redressal of investor grievances arising from any issue related activities. He shall continue to be responsible for post-issue activities till the applicants have received the securities certificates, credit to their demat account or refund of application monies and the listing agreement is entered into by the issuer with the stock exchange and listing or trading permission is obtained.
- The lead manager(s) shall be responsible and co-ordinate with the registrars to the issue and with various intermediaries at regular intervals after the closure of the issue to monitor the flow of applications from syndicate member(s) or collecting bank branches and or self-certified syndicate banks, processing of the applications including application form for ASBA and other matters till the basis of allotment is finalised, credit of the specified securities to the demat accounts of the allottees and unblocking of ASBA accounts/ despatch of refund orders are completed and securities are listed, as applicable.
- Any act of omission or commission on the part of any of the intermediaries noticed by the lead manager(s) shall be duly reported by them to the Board.
- In case there is a devolvement on underwriters, the lead manager(s) shall ensure that the notice for devolvement containing the obligation of the underwriters is issued within a period of ten days from the date of closure of the issue.
- In case of undersubscribed issues that are underwritten, the lead manager(s) shall furnish information to the Board in respect of underwriters who have failed to meet their underwriting devolvement in the format specified in **Schedule XVIII**.

Release of subscription money (Regulation 149)

- (1) The lead manager(s) shall confirm to the bankers to the issue by way of copies of listing and trading approvals that all **formalities in connection with the issue have been completed** and that the **banker is free to release the money to the issuer or release the money for refund** in case of failure of the issue.
- (2) In case the **issuer fails to obtain listing or trading permission** from the stock exchanges where the specified securities were listed, **it shall refund**, through verifiable means, the entire monies received within four days of receipt of intimation from stock exchanges rejecting the application

for listing of specified securities and if monies are not repaid within the specified period, the issuer and every director of the company who is an officer in default shall, on and from the expiry of the fourth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent. per annum.

- (3) The lead manager(s) shall ensure that the **monies received in respect of the issue are released to the issuer** in compliance with the provisions of the Section 40 (3) of the Companies Act, 2013, as applicable.

Post- issue reports (Regulation 150)

The lead manager(s) shall submit a final post-issue report as specified in **Part A of Schedule XVII**, along with a due diligence certificate as per the format specified in **Form F of Schedule V**, within seven days of the date of finalization of basis of allotment or within seven days of refund of money in case of failure of issue.

MISCELLANEOUS

Restriction on further capital issues (Regulation 151)

An issuer shall not make any further issue of specified securities in any manner whether by way of public issue, rights issue, preferential issue, qualified institutions placement, issue of bonus shares or otherwise, except pursuant to an employee stock option scheme:

- a) **in case of a fast track issue**, during the period between the date of filing the offer document (in case of a book built issue) or prospectus (in case of a fixed price issue) with the Registrar of Companies and the listing of the specified securities offered through the offer document or refund of application monies; or
- b) **in case of other issues**, during the period between the date of filing the draft offer document and the listing of the specified securities offered through the offer document or refund of application monies; unless full disclosures regarding the total number of specified securities or amount proposed to be raised from such further issue are made in such draft offer document or offer document, as the case may be.

Price stabilisation through green shoe option (Regulation 153)

- (1) An issuer may provide green shoe option for stabilising the post listing price of its specified securities, **subject to the following**:
 - a) the issuer has been authorized, by a resolution passed in the general meeting of shareholders approving the public issue, to allot specified securities to the stabilising agent, if required, on the expiry of the stabilisation period;
 - b) the issuer has appointed a lead manager as a stabilising agent, who shall be responsible for the price stabilisation process;

- c) prior to filing the draft offer document, the issuer and the stabilising agent have entered into an agreement, stating all the terms and conditions relating to the green shoe option including fees charged and expenses to be incurred by the stabilising agent for discharging its responsibilities;
 - d) prior to filing the offer document, the stabilising agent has entered into an agreement with the promoters or pre-issue shareholders or both for borrowing specified securities from them in accordance with clause (g) of this sub-regulation, specifying therein the maximum number of specified securities that may be borrowed for the purpose of allotment or allocation of specified securities in excess of the issue size (hereinafter referred to as the "over- allotment"), which shall not be in excess of fifteen per cent. of the issue size;
 - e) subject to clause (d), the lead manager, in consultation with the stabilising agent, shall determine the amount of specified securities to be over-allotted in the public issue;
 - f) the draft offer document and offer document shall contain all material disclosures about the green shoe option specified in this regard in **Part A of Schedule VI**;
 - g) in case of an initial public offer pre-issue shareholders and promoters and in case of a further public offer pre-issue shareholders holding more than five per cent. specified securities and promoters, may lend specified securities to the extent of the proposed over-allotment;
 - h) the specified securities borrowed shall be in dematerialised form and allocation of these securities shall be made pro-rata to all successful applicants.
- (2) For the purpose of stabilisation of post-listing price of the specified securities, the **stabilising agent shall determine the relevant aspects** including the timing of buying such securities, quantity to be bought and the price at which such securities are to be bought from the market.
- (3) The **stabilisation process shall be available for a period not exceeding thirty days** from the date on which trading permission is given by the stock exchanges in respect of the specified securities allotted in the public issue.
- (4) The stabilising agent shall **open a special account**, distinct from the issue account, with a bank for crediting the monies received from the applicants against the over-allotment and a special account with a depository participant for crediting specified securities to be bought from the market during the stabilisation period out of the monies credited in the special bank account.
- (5) The specified securities bought from the market and credited in the special account with the depository participant **shall be returned to the promoters or pre-issue shareholders immediately**, in any case not later than two working days after the end of the stabilization period.
- (6) **On expiry of the stabilisation period**, if the stabilising agent has not been able to buy specified securities from the market to the extent of such securities over-allotted, the issuer shall allot specified securities at issue price in dematerialised form to the extent of the shortfall to the special

account with the depository participant, within five days of the closure of the stabilisation period and such specified securities shall be returned to the promoters or pre-issue shareholders by the stabilising agent in lieu of the specified securities borrowed from them and the account with the depository participant shall be closed thereafter.

- (7) The **issuer shall make a listing application** in respect of the further specified securities allotted under sub-regulation (6), **to all the stock exchanges** where the specified securities allotted in the public issue are listed and the provisions of Chapter VII shall not be applicable to such allotment.
- (8) The stabilising agent shall **remit the monies with respect to the specified securities allotted** under sub-regulation (6) to the issuer from the special bank account.
- (9) Any **monies left** in the special bank account after remittance of monies to the issuer under subregulation (8) and deduction of expenses incurred by the stabilising agent for the stabilisation process **shall be transferred to the Investor Protection and Education Fund** established by the Board and the special bank account shall be closed soon thereafter.
- (10) The stabilising agent shall **submit a report to the stock exchange** on a daily basis during the stabilisation period and a final report to the Board in the format specified in **Schedule XV**.
- (11) The stabilising agent shall **maintain a register for a period of at least three years** from the date of the end of the stabilisation period and such register shall contain the following particulars:
 - a) The names of the promoters or pre-issue shareholders from whom the specified securities were borrowed and the number of specified securities borrowed from each of them;
 - b) The price, date and time in respect of each transaction effected in the course of the stabilisation process; and
 - c) The details of allotment made by the issuer on expiry of the stabilisation process.

THE SECURITIES AND EXCHANGE BOARD OF INDIA (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011

INTRODUCTION

Due to the growth of Mergers & Acquisitions activity in India as the preferred mode of restructuring, the increasing intricacy of takeover market, the decade long regulatory experience and various judicial pronouncements, it felt necessary to periodically review the Takeover Regulations, 1997.

Accordingly, SEBI established a Takeover Regulations Advisory Committee (TRAC) in September 2009 under the Chairmanship of (Late) Shri. C. Achuthan, Former Presiding Officer, Securities Appellate Tribunal (SAT) for this purpose. After public consultation on the report submitted by TRAC, SEBI came out with the SAST Regulations, 2011 which were notified on September 23, 2011. Thereby, Takeover

Regulations, 1997 stand repealed from October 22, 2011, i.e. the date on which SAST Regulations, 2011 come into force.

Vide the notification F. No. LAD-NRO/GN/2011-12/24/30181 dated September 23, 2011, the SAST Regulations, 2011 were notified with effect from October 22, 2011.

Meaning of Takeovers & Substantial acquisition of shares: When an “**acquirer**” takes over the control of the “**Target Company**”, it is termed as Takeover. When an acquirer acquires “**substantial quantity of shares or voting rights**” of the Target Company, it results into substantial acquisition of shares.

Applicability: These regulations shall apply to direct and indirect acquisition of shares or voting rights in, or control over Target Company:

Provided that these regulations shall not apply to direct and indirect acquisition of shares or voting rights in, or control over a company listed without making a public issue, on the Innovators Growth Platform of a recognised stock exchange.

RELEVANT TERMINOLOGIES [Regulation 2(1)]

“**acquirer**” means any person who, directly or indirectly, **acquires or agrees to acquire** whether by himself, or through, or with persons acting in concert with him, **shares or voting rights in, or control over a target company**;

“**acquisition**” means, directly or indirectly, **acquiring or agreeing to acquire shares or voting rights in, or control over**, a target company;

“**control**” includes the **right to appoint majority of the directors or to control the management or policy decisions** exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:

Provided that a director or officer of a target company shall not be considered to be in control over such target company, merely by virtue of holding such position;

“**disinvestment**” means the direct or indirect **sale by the Central Government or any State Government or by a government company**, as the case may be, **of shares or voting rights in, or control over, a target company**, which is a public sector undertaking;

“**offer period**” means the **period between the date of entering into an agreement**, formal or informal, **to acquire shares, voting rights in, or control over a target company** requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be;

“**persons acting in concert**” (**PAC**) means,—

- (1) **persons who**, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly **co-operate for acquisition of shares or voting rights in, or exercise of control over the target company**.
- (2) Without prejudice to the generality of the foregoing, the **persons falling within the following categories** shall be deemed to be persons acting in concert with other persons within the same category—
 - (i) a company, its holding company, subsidiary company and any company under the same management or control;
 - (ii) a company, its directors, and any person entrusted with the management of the company;
 - (iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;
 - (iv) promoters and members of the promoter group;
 - (v) immediate relatives;
 - (vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;
 - (vii) a collective investment scheme and its collective investment management company, trustees and trustee company;
 - (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;
 - (viii a) an alternative investment fund and its sponsor, trustees, trustee company and manager;
 - (ix) Omitted
 - (x) a merchant banker and its client, who is an acquirer;
 - (xi) a portfolio manager and its client, who is an acquirer;
 - (xii) banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:

Provided that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;
 - (xiii) an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other

investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:

Provided that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

Explanation.— For the purposes of this clause “associate” of a person means,—

- (a) any immediate relative of such person;
- (b) trusts of which such person or his immediate relative is a trustee;
- (c) partnership firm in which such person or his immediate relative is a partner; and
- (d) members of Hindu undivided families of which such person is a coparcener;

“public sector undertaking” means a target company in which, directly or indirectly, majority of shares or voting rights or control is held by the Central Government or any State Government or Governments, or partly by the Central Government and partly by one or more State Governments;

“shares” means shares in the equity share capital of a target company carrying voting rights, and includes any security which entitles the holder thereof to exercise voting rights.

Explanation— For the purpose of this clause shares will include all depository receipts carrying an entitlement to exercise voting rights in the target company.

“target company” means a **company** and includes a body corporate or corporation established under a Central legislation, State legislation or Provincial legislation for the time being in force, **whose shares are listed on a stock exchange.**

SUBSTANTIAL ACQUISITION OF SHARES, VOTING RIGHTS OR CONTROL

Substantial acquisition of shares or voting rights (Section 3)

Threshold limits for acquisition of shares/voting rights:

- (1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Thus, accordingly, an acquirer, who (along with PACs, if any) **holds less than 25% shares or voting rights in a target company** and agrees to acquire shares or acquires shares which along with his/ PAC's existing shareholding **would entitle him to exercise 25% or more shares or voting rights** in a target company, will need to make an open offer before acquiring such additional shares.

- (2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to

exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that the acquisition **beyond five per cent but upto ten per cent of the voting rights** in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.]

Explanation— For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

- (i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.
- (ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

According to this clause, an acquirer who (along with PACs, if any) **holds 25% or more but less than the maximum permissible non-public shareholding in a target company**, can acquire additional shares in the target company as would entitle him to exercise more than 5% of the voting rights in any financial year ending March 31, only after making an open offer.

- (3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the **individual shareholding of such person acquiring shares exceeds the stipulated thresholds**, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.
- (4) Nothing contained in this regulation shall apply to acquisition of shares or voting rights of a company by the promoters or shareholders in control, in terms of the provisions of Chapter VI-A of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009.

- (5) For the purpose of this regulation, any reference to “**twenty-five per cent**” in case of listed entity which has **listed its specified securities on Innovators Growth Platform shall be read as “forty-nine per cent”**.

Acquisition of control (Regulation 4)

Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the **acquirer makes a public announcement of an open offer** for acquiring shares of such target company in accordance with these regulations.

An **Open Offer** is an offer made by the acquirer to the shareholders of the target company inviting them to tender their shares in the target company at a particular price. The primary purpose of an open offer is to provide an exit option to the shareholders of the target company on account of the change in control or substantial acquisition of shares, occurring in the target company.

If an acquirer has agreed to acquire or acquired control over a target company or shares or voting rights in a target company which would be in excess of the threshold limits, then the acquirer is required to make an open offer to shareholders of the target company.

A **Voluntary Open** offer under Regulation 6, is an offer made by a person who himself or through Persons acting in concert ,if any, **holds 25% or more shares or voting rights in the target company but less than the maximum permissible non-public shareholding limit**.

Offer Price is the price at which the acquirer announces to acquire shares from the public shareholders under the open offer. The offer price shall not be less than the price as calculated under regulation 8 of the SAST Regulations, 2011 for frequently or infrequently traded shares. Acquirer can make an upward revision to the offer price at any time up to 3 working days prior to the opening of the offer.

OBLIGATIONS:

Following are the obligations of the Directors, Acquirers and of the Target company:

(i) **Directors of the target company (Regulation 24)**

- (1) **Person representing the acquirer or PAC shall be appointed as Director:** During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board of directors of the target company, whether as an additional director or in a casual vacancy.

Provided that after an initial period of fifteen working days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, the entire consideration payable under the open offer.

Provided further that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period

unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

- (2) **In case of ⁹conditional open offer, the acquirer and PAC shall not be entitled to appoint any director representing them on the BoD:** Where an open offer is made conditional upon minimum level of acceptances, the acquirer and persons acting in concert shall, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to regulation 17, not be entitled to appoint any director representing the acquirer or any person acting in concert with him on the board of directors of the target company during the offer period.

'Minimum level of acceptance' implies minimum number of shares which the acquirer desires under the said conditional offer. If the number of shares validly tendered in the conditional offer, are less than the minimum level of acceptance stipulated by the acquirer, then the acquirer is not bound to accept any shares under the offer.

- (3) **No new director to be introduced during pendency of competing offers:** During the pendency of ¹⁰competing offers, notwithstanding anything contained in these regulations, and regardless of the size of the cash deposited in the escrow account referred to in regulation 17, by any acquirer or person acting in concert with him, there shall be no induction of any new director to the board of directors of the target company:

In case of vacancy: that in the event of death or incapacitation of any director, the vacancy arising therefrom may be filled by any person subject to approval of such appointment by shareholders of the target company by way of a postal ballot.

- (4) **No participation in any deliberations of the BoD:** In the event the acquirer or any person acting in concert is already represented by a director on the board of the target company, such director shall not participate in any deliberations of the board of directors of the target company or vote on any matter in relation to the open offer.

(ii) **Obligations of the acquirer (Regulation 25)**

- (1) **Financial arrangements for fulfilling the payment obligations:** Prior to making the public announcement of an open offer for acquiring shares under these regulations, the acquirer shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that the acquirer is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary.

- (2) **In case of failure to declare alienation of assets:** In the event the acquirer has not declared an intention in the detailed public statement and the letter of offer to alienate any material assets of the target company or of any of its subsidiaries whether by way of sale, lease, encumbrance or

⁹ An offer in which the acquirer has stipulated a minimum level of acceptance is known as a 'conditional offer'.

¹⁰ Competitive offer is an offer made by a person, other than the acquirer who has made the first public announcement.

otherwise outside the ordinary course of business, the acquirer, where he has acquired control over the target company, shall be debarred from causing such alienation for a period of two years after the offer period:

Provided that in the event the target company or any of its subsidiaries is required to so alienate assets despite the intention to alienate not having been expressed by the acquirer, such alienation shall require a special resolution passed by shareholders of the target company, by way of a postal ballot and the notice for such postal ballot shall *inter alia* contain reasons as to why such alienation is necessary.

- (3) **Assurance of true and fair particulars of requisite sources:** The acquirer shall ensure that the contents of the public announcement, the detailed public statement, the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects and not misleading in any material particular, and are based on reliable sources, and state the source wherever necessary.
- (4) **Not entitled to sell shares during offer period:** The acquirer and persons acting in concert with him shall not sell shares of the target company held by them, during the offer period.
- (5) **Jointly and severally responsible for their obligations:** The acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfillment of applicable obligations under these regulations.

(iii) Obligations of the target company(Regulation 26)

- (1) **Conduct of business consistent with past practice:** Upon a public announcement of an open offer for acquiring shares of a target company being made, the board of directors of such target company shall ensure that during the offer period, the business of the target company is conducted in the ordinary course consistent with past practice.
- (2) During the offer period, unless the approval of shareholders of the target company by way of a special resolution by postal ballot is obtained, the board of directors of either the target company or any of its subsidiaries shall not,—
 - (a) **alienate** any material assets whether by way of sale, lease, encumbrance or otherwise or enter into any agreement therefor outside the ordinary course of business;
 - (b) **effect any material borrowings** outside the ordinary course of business;
 - (c) **issue or allot** any authorised but unissued securities **entitling the holder to voting rights:**

Provided that the target company or its subsidiaries may,—

- (i) **issue or allot shares upon conversion of convertible securities** issued prior to the public announcement of the open offer, in accordance with pre-determined terms of such conversion;

- (ii) **issue or allot shares pursuant to any public issue** in respect of which the red herring prospectus has been filed with the Registrar of Companies prior to the public announcement of the open offer; or
 - (iii) **issue or allot shares pursuant to any rights issue** in respect of which the record date has been announced prior to the public announcement of the open offer;
 - (d) **implement any buy-back of shares** or effect **any other change to the capital structure** of the target company;
 - (e) **enter into, amend or terminate any material contracts** to which the target company or any of its subsidiaries is a party, outside the ordinary course of business, whether such contract is with a related party, within the meaning of the term under applicable accounting principles, or with any other person; and
 - (f) **accelerate any contingent vesting of a right of any person** to whom the target company or any of its subsidiaries may have an obligation, whether such obligation is to acquire shares of the target company by way of employee stock options or otherwise.
- (3) **Voting by target and its subsidiaries:** In any general meeting of a subsidiary of the target company in respect of the matters referred to in sub-regulation (2), the target company and its subsidiaries, if any, shall vote in a manner consistent with the special resolution passed by the shareholders of the target company.
- (4) **Prohibition from fixing record date:** The target company shall be prohibited from fixing any record date for a corporate action on or after the third working day prior to the commencement of the ¹¹tendering period and until the expiry of the tendering period.
- (5) **Furnishing of list of shareholders:** The target company shall furnish to the acquirer within two working days from the ¹²identified date, a list of shareholders as per the register of members of the target company containing names, addresses, shareholding and folio number, in electronic form, wherever available, and a list of persons whose applications, if any, for registration of transfer of shares are pending with the target company:
- Provided** that the acquirer shall reimburse reasonable costs payable by the target company to external agencies in order to furnish such information.
- (6) **Constitution of a committee of independent directors:** Upon receipt of the detailed public statement, the board of directors of the target company shall constitute a committee of

¹¹ The term 'tendering period' refers to the 10 working days period falling within the offer period, during which the eligible shareholders who wish to accept the open offer can tender their shares in the open offer.

¹² Identified date means the date 10 working days prior to the commencement of the tendering period, for the purposes of determining the shareholders of the target company to whom the letter of offer along with the form of acceptance shall be sent.

independent directors to provide reasoned recommendations on such open offer, and the target company shall publish such recommendations:

Provided that such committee shall be entitled to seek external professional advice at the expense of the target company.

Provided further that while providing reasoned recommendations on the open offer proposal, the committee shall disclose the voting pattern of the meeting in which the open offer proposal was discussed.

- (7) **Duties of committee of independent directors:** The committee of independent directors shall provide its written reasoned recommendations on the open offer to the shareholders of the target company and such recommendations shall be published in such form as may be specified, at least two working days before the commencement of the tendering period, in the same newspapers where the public announcement of the open offer was published, and simultaneously, a copy of the same shall be sent to,—

the Board;

all the stock exchanges-

- on which the shares of the target company are listed, and
- the stock exchanges shall forthwith disseminate such information to the public; and

to the manager to the open offer, and

where there are competing offers, to the manager to the open offer for every competing offer.

- (8) **Verification of shares:** The board of directors of the target company shall facilitate the acquirer in verification of shares tendered in acceptance of the open offer.
- (9) **Providing of information and cooperation to acquirers:** The board of directors of the target company shall make available to all acquirers making competing offers, any information and co-operation provided to any acquirer who has made a competing offer.
- (10) **Register of transfer of shares:** Upon fulfillment by the acquirer, of the conditions required under these regulations, the board of directors of the target company shall without any delay register the transfer of shares acquired by the acquirer in physical form, whether under the agreement or from open market purchases, or pursuant to the open offer.

(iv) Obligations of the manager to the open offer (Regulation 27)

- (1) Prior to public announcement being made, **the manager to the open offer** shall ensure that,—
 - (a) the acquirer **is able to implement** the open offer; and
 - (b) **firm arrangements for funds** through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.
- (2) The manager to the open offer **shall ensure that the contents** of the public announcement, the detailed public statement and the letter of offer and the post offer advertisement **are true, fair and adequate in all material aspects**, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.
- (3) The manager to the open offer shall **furnish to the Board a due diligence certificate** along with the draft letter of offer filed under regulation 16.
- (4) The manager to the open offer shall **ensure that market intermediaries** engaged for the purposes of the open offer **are registered** with the Board.
- (5) The manager to the open offer **shall exercise diligence, care and professional judgment** to ensure compliance with these regulations.
- (6) The manager to the open offer **shall not deal on his own account** in the shares of the target company during the offer period.
- (7) The manager to the open offer **shall file a report with the Board** within fifteen working days from the expiry of the tendering period, in such form as may be specified, confirming status of completion of various open offer requirements.

DISCLOSURES OF SHAREHOLDING AND CONTROL**Disclosure-related provisions (Regulation 28)**

What all to be included under the disclosures? The disclosures shall be of the aggregated shareholding and voting rights of the acquirer or promoter of the target company or every person acting in concert with him. The acquisition and holding of any convertible security shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly. Upon receipt of the disclosures, the stock exchange shall forthwith disseminate the information so received.

For the purposes of this Chapter, the term “**encumbrance**” shall include,-

- (a) any restriction on the free and marketable title to shares, by whatever name called, whether executed directly or indirectly;
- (b) pledge, lien, negative lien, non-disposal undertaking; or
- (c) any covenant, transaction, condition or arrangement in the nature of encumbrance, by whatever name called, whether executed directly or indirectly.

Disclosure of acquisition and disposal (Regulation 29)

- (1) **Threshold for disclosures:** Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which taken together aggregates to **five per cent or more of the shares of such target company**, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified

Provided that in case of **listed entity** which has listed its specified securities on Innovators Growth Platform, any reference to “**five per cent**” shall be read as “**ten per cent**”.

- (2) **In case of change in shareholding and voting rights:** Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and **change in shareholding or voting rights**, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made as above or as given here, and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Provided that in case of **listed entity** which has listed its specified securities on Innovators Growth Platform, any reference to “five per cent” shall be read as “ten per cent” and any reference to “two per cent” shall be read as “five per cent”.

- (3) **Period of disclosures:** The disclosures required shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

- (4) **Shares taken by way of encumbrance** shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Exempted: Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution or a housing finance company or a systemically important non-banking financial company as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

Explanation - For the purpose of this sub-regulation -

- A.** a “**housing finance company**” means a housing finance company registered with the National Housing Bank for carrying on the business of housing finance and is either deposit taking or having asset size worth rupees five hundred crores or more; and
- B.** a “**systemically important non-banking financial company**” shall have the same meaning as assigned to it in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2018.

Disclosure of encumbered shares (Regulation 31)

- (1) **Disclosure of share's details by promoter:** The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified:

Provided that the aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository.

- (2) **Details of invocation:** The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified:

Provided that the aforesaid disclosure requirement shall not be applicable where such encumbrance is undertaken in a depository.

- (3) **Time period of disclosure:** The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.

- (4) **Declaration of not made any encumbrance:** The promoter of every target company shall declare on a yearly basis that he, along with persons acting in concert, has not made any encumbrance, directly or indirectly, other than those already disclosed during the financial year.

- (5) **Time period of declaration:** The declaration required under sub-regulation (4) shall be made within seven working days from the end of each financial year to —

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the audit committee of the target company.

Accordingly as per the regulation, the promoter (along with PACs) of the target company shall disclose details of shares encumbered by them or any invocation or release of encumbrance of shares held by them to the target company at its registered office and every stock exchange where shares of the target company are listed, within 7 working days of such event. Further, promoter also has to declare on a yearly basis that he along with persons acting in concert has not made any encumbrance other than those already disclosed during the financial year.

An **illustrative example** is as follows:

- i. If the promoter has encumbered shares on January 01, 2020 and as a result the encumbrance of promoter along with PACs increases from NIL to 60% of their shareholding, the promoter has to disclose detailed reasons for encumbrance.

- ii. Subsequently, if the promoter once again encumbers additional shares on February 01, 2020 and as a result the encumbrance of promoter along with PACs increases from 60% to 65% of their shareholding, the promoter has to again disclose detailed reasons for encumbrance

SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF INSIDER TRADING) REGULATIONS, 2015

Insider trading essentially denotes dealing in a company's securities on the basis of confidential information, relating to the company, which is not published or not known to the public (known as 'unpublished price sensitive information'), used to make personal profits or avoid loss.

In exercise of the powers conferred by section 30 read with clause (g) of sub-section (2) of section 11 and clause (d) and clause (e) of section 12A of the Securities and Exchange Board of India Act, 1992, SEBI vide Gazette notification no. LADNRO/GN/2014-15/21/85 dated 15th January 2015 had notified the SEBI (Prohibition of Insider Trading) Regulations, 2015 to put in place a framework for prohibition of insider trading in securities and to strengthen the legal framework thereof. The regulations came into effect from May 15th, 2015 and has been amended from time to time.

DEFINITIONS [Regulation 2(1)]

Insider: Regulation 2(1) (g) of SEBI (PIT) Regulations, 2015 defines 'insider' as any person who is:

- (i) a connected person; or
- (ii) in possession of or having access to unpublished price sensitive information.

Whereas "**connected person**" means,-

- (i) **any person-**
 - who is or has during the **six months prior to the concerned act been associated with a company**, directly or indirectly,
 - **in any capacity** including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent,
 - that **allows such person**, directly or indirectly, **access to unpublished price sensitive information** or is reasonably expected to **allow such access**.
- (ii) the persons falling within the **following categories** shall be deemed to be connected persons, -
 - (a) an ¹³**immediate relative of connected persons** specified in clause (i); or

¹³ means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

- (b) a **holding company or associate company or subsidiary company**; or
- (c) an **intermediary** as specified in section 12 of the Act or an **employee or director** thereof; or
- (d) an **investment company, trustee company, asset management company** or an **employee or director** thereof; or
- (e) an **official of a stock exchange or of clearing house or corporation**; or
- (f) a **member of board of trustees** of a mutual fund or a **member of the board of directors** of the asset management company of a mutual fund or is an **employee** thereof; or
- (g) a **member of the board of directors** or an **employee, of a public financial institution** as defined in section 2 (72) of the Companies Act, 2013; or
- (h) an **official or an employee of a self-regulatory organization** recognised or authorized by the Board; or
- (i) a **banker of the company**; or
- (j) a **concern, firm, trust, Hindu undivided family, company or association of persons** wherein a director of a company or his immediate relative or banker of the company, has more than **ten per cent. of the holding or interest**;

It is to be noted that the above definition intends to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations.

According to Regulation 2(1) clause (e) "**generally available information**" is defined as information that is accessible to the public on a non-discriminatory basis. It is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information.

Any information published on the website of a stock exchange, would ordinarily be considered generally available.

"Unpublished price sensitive information (UPSII)" as per Regulation 2(1) (n) of SEBI (PIT) Regulations, 2015, means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- i) financial results;
- ii) dividends;
- iii) change in capital structure;

- iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- v) changes in key managerial personnel.

Law intended that information relating to a company or securities that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

"Trading- Regulation 2(1) (l) of SEBI (PIT) Regulations, 2015, means and includes subscribing, redeeming, switching, buying, selling, dealing, or agreeing to subscribe, redeem, switch, buy, sell, deal in any securities, and "trade" shall be construed accordingly.

"Trading day" means a day on which the recognized stock exchanges are open for trading [Regulation 2(1)(m)]

RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS

Communication or procurement of unpublished price sensitive information (UPSI) (Regulation 3)

- (1) No insider shall **communicate, provide, or allow access** to any unpublished price sensitive information, **relating to a company or securities** listed or proposed to be listed, **to any person** including other insiders, **except** where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis.

- (2) No person shall **procure from or cause the communication by any insider** of unpublished price sensitive information, **relating to a company or securities** listed or proposed to be listed, **except** in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

This provision is intended to impose a prohibition on unlawfully acquiring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

- (2A) The **board of directors** of a listed company **shall make a policy for determination of "legitimate purposes"** as a part of "Codes of Fair Disclosure and Conduct" formulated under regulation 8.

Explanation – For the purpose of illustration, the term **"legitimate purpose"** shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors,

insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

- (2B) Any **person in receipt of unpublished price sensitive information** pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.
- (3) **Communication of UPSI:** An unpublished price sensitive information may be communicated, provided, allowed access to or procured, in connection with a transaction that would:–

- (i) **entail an obligation to make an open offer** under the takeover regulations where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company;

Law intends to acknowledge the necessity of communicating, providing, allowing access to or procuring UPSI for substantial transactions such as takeovers, mergers and acquisitions involving trading in securities and change of control to assess a potential investment. In an open offer under the takeover regulations, not only would the same price be made available to all shareholders of the company but also all information necessary to enable an informed divestment or retention decision by the public shareholders is required to be made available to all shareholders in the letter of offer under those regulations.

- (ii) **not attract the obligation to make an open offer** under the takeover regulations but where the board of directors of the listed company is of informed opinion that sharing of such information is in the best interests of the company and the information that constitute unpublished price sensitive information is disseminated to be made generally available at least two trading days prior to the proposed transaction being effected in such form as the board of directors may determine to be adequate and fair to cover all relevant and material facts.

Said provision is intended to permit communicating, providing, allowing access to or procuring UPSI also in transactions that do not entail an open offer obligation under the takeover regulations when authorised by the board of directors if sharing of such information is in the best interests of the company. The board of directors, however, would cause public disclosures of such unpublished price sensitive information well before the proposed transaction to rule out any information asymmetry in the market.

- (4) For Communication of UPSI, the board of directors shall require the parties **to execute agreements** to contract confidentiality and non-disclosure obligations on the part of such parties and such parties shall keep information so received confidential, except for the purpose of sub-

regulation (3), and shall not otherwise trade in securities of the company when in possession of unpublished price sensitive information.

- (5) The Board of Directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that a **structured digital database is maintained** containing the nature of unpublished price sensitive information and the names of such persons who have shared the information and also the names of such persons with whom information is shared under this regulation along with the Permanent Account Number or any other identifier authorized by law where Permanent Account Number is not available. Such database shall not be outsourced and shall be maintained internally with adequate internal controls and checks such as time stamping and audit trails to ensure non-tampering of the database.

Structured Digital Database:

- The requirement to maintain Structured Digital Database is applicable to **Listed Companies, and Intermediaries and Fiduciaries** who handle UPSI of a Listed Company in the course of business operations.
 - The Listed Company in its database **shall record nature of UPSI shared, details of the Sender and Receiver** (both Individual and Entity recipient) along with their PAN or other unique identifier (in case PAN is not available).
 - The **Intermediary / Fiduciary** in its database shall record nature of UPSI received/shared, details of the Company whose UPSI is received/shared, details of individual Sender and Receiver along with their PAN or other unique identifier (in case PAN is not available).
 - **Databases/servers provided by third party vendors** whether within India or outside India will be considered as outsourced.
 - **Records shall be updated in Structured Digital Database as and when the information gets transmitted** (irrespective of the fact that information is shared within or outside the Company).
- (6) The board of directors or head(s) of the organisation of every person required to handle unpublished price sensitive information shall ensure that the **structured digital database is preserved for a period of not less than eight years after completion of the relevant transactions** and in the event of receipt of any information from the Board regarding any investigation or enforcement proceedings, the relevant information in the structured digital database shall be preserved till the completion of such proceedings.

Trading when in possession of unpublished price sensitive information (Regulation 4)

- (1) **No insider shall trade in securities** that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Provided that the **insider may prove his innocence** by demonstrating the circumstances including the following: –

- (i) the **transaction is an off-market *inter-se* transfer** between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Exception: Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Reporting of off-market trades: Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.

- (ii) the **transaction was carried out through the block deal window mechanism** between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

- (iii) the transaction in question was **carried out pursuant to a statutory or regulatory obligation** to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken **pursuant to the exercise of stock options in respect of which the exercise price was pre-determined** in compliance with applicable regulations.
- (v) in the case of **non-individual insiders:** –
 - (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and
 - (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the **trades were pursuant to a trading plan** set up in accordance with regulation 5.

When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

- (2) **Onus of possessing UPSI:** In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.
- (3) The **Board may specify such standards and requirements**, from time to time, as it may deem necessary for the purpose of these regulations.

Trading Plans (Regulation 5)

- (1) **Formulation of trade plan:** An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

This provision intends to give an option to persons who may be perpetually in possession of unpublished price sensitive information and enabling them to trade in securities in a compliant manner. This provision would enable the formulation of a trading plan by an insider to enable him to plan for trades to be executed in future. By doing so, the possession of unpublished price sensitive information when a trade under a trading plan is actually executed would not prohibit the execution of such trades that he had pre-decided even before the unpublished price sensitive information came into being.

Trading as per Trading Plan can be done if in any case UPSI which was in existence at the time of formulation of such Plan has been made generally available. In case the UPSI is not generally available, then no trading shall be done.

If at the time of formulation of trading plan, there was no UPSI or later on a new UPSI was generated, then the trading can be carried out as per the trading plan, even if the new UPSI has not been made generally available.

- (2) Such **trading plan** shall:—
 - (i) **not entail commencement of trading** on behalf of the insider earlier than six months from the public disclosure of the plan;

It is intended that to get the benefit of a trading plan, a cool-off period of six months is necessary. Such a period is considered reasonably long for unpublished price sensitive

information that is in possession of the insider when formulating the trading plan, to become generally available. It is also considered to be a reasonable period for a time lag in which new unpublished price sensitive information may come into being without adversely affecting the trading plan formulated earlier. In any case, it should be remembered that this is only a statutory cool-off period and would not grant immunity from action if the insider were to be in possession of the same unpublished price sensitive information both at the time of formulation of the plan and implementation of the same.

- (ii) **not entail trading for the period between the twentieth trading day prior to the last day of any financial period** for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;

Since the trading plan is envisaged to be an exception to the general rule prohibiting trading by insiders when in possession of unpublished price sensitive information, it is important that the trading plan does not entail trading for a reasonable period around the declaration of financial results as that would generate unpublished price sensitive information.

- (iii) **entail trading for a period of not less than twelve months;**

It is intended that it would be undesirable to have frequent announcements of trading plans for short periods of time rendering meaningless the defence of a reasonable time gap between the decision to trade and the actual trade. Hence it is felt that a reasonable time would be twelve months.

- (iv) **not entail overlap of any period** for which another trading plan is already in existence;

It is intended that it would be undesirable to have multiple trading plans operating during the same time period. Since it would be possible for an insider to time the publication of the unpublished price sensitive information to make it generally available instead of timing the trades, it is important not to have the ability to initiate more than one plan covering the same time period.

- (v) **set out either the value of trades** to be effected or the **number of securities** to be traded along with the nature of the trade and the intervals at, or dates on which such trades shall be effected; and

It is intended that while regulations should not be too prescriptive and rigid about what a trading plan should entail, they should stipulate certain basic parameters that a trading plan should conform to and within which, the plan may be formulated with full flexibility. The nature of the trades entailed in the trading plan i.e. acquisition or disposal should be set out. The trading plan may set out the value of securities or the number of securities to be invested or divested. Specific dates or specific time intervals may be set out in the plan.

- (vi) **not entail trading in securities** for market abuse.

Trading on the basis of such a trading plan would not grant absolute immunity from bringing proceedings for market abuse. For instance, in the event of manipulative timing of the release of unpublished price sensitive information to ensure that trading under a trading plan becomes lucrative in circumvention of regulation 4 being detected, it would be open to initiate proceedings for alleged breach of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to the Securities Market) Regulations, 2003.

- (3) The compliance officer shall **review the trading plan** to assess whether the plan would have any potential for violation of these regulations and shall be entitled to seek such express undertakings as may be necessary to enable such assessment and to approve and monitor the implementation of the plan.

Provided that pre-clearance of trades shall not be required for a trade executed as per an approved trading plan.

Provided further that trading window norms and restrictions on contra trade shall not be applicable for trades carried out in accordance with an approved trading plan.

It is intended that the compliance officer would have to review and approve the plan. For doing so, he may need the insider to declare that he is not in possession of unpublished price sensitive information or that he would ensure that any unpublished price sensitive information in his possession becomes generally available before he commences executing his trades. Once satisfied, he may approve the trading plan, which would then have to be implemented in accordance with these regulations.

- (4) The **trading plan once approved shall be irrevocable** and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

It is intended that since the trading plan is an exception to the general rule that an insider should not trade when in possession of unpublished price sensitive information, changing the plan or trading outside the same would negate the intent behind the exception. Other investors in the market, too, would factor the impact of the trading plan on their own trading decisions and in price discovery. Therefore, it is not fair or desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities.

The proviso is intended to address the prospect that despite the six-month gap between the formulation of the trading plan and its commencement, the unpublished price sensitive

information in possession of the insider is still not generally available. In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information. If the very same unpublished price sensitive information is still in the insider's possession, the commencement of execution of the trading plan ought to be deferred.

- (5) **Upon approval of the trading plan**, the compliance officer shall notify the plan to the stock exchanges on which the securities are listed.

It is intended that given the material exception to the prohibitory rule in regulation 4, a trading plan is required to be publicly disseminated. Investors in the market at large would also factor the potential pointers in the trading plan in their own assessment of the securities and price discovery for them on the premise of how the insiders perceive the prospects or approach the securities in their trading plan.

DISCLOSURES OF TRADING BY INSIDERS

General provisions (Regulation 6)

- (1) How disclosure shall be made? Every public disclosure under this Chapter shall be made in such form as may be specified.
- (2) Who can make disclosure? The disclosures to be made **by any person** under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.

It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the **immediate relatives** and **of other persons** for whom the person concerned takes trading decisions. These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.

- (3) The disclosures of trading in securities shall also **include trading in derivatives of securities and the traded value of the derivatives** shall be taken into account for purposes of this Chapter:

Provided that trading in derivatives of securities is permitted by any law for the time being in force.

The disclosures made under this Chapter shall be **maintained by the company, for a minimum period of five years**, in such form as may be specified.

Disclosures by certain persons (Regulation 7)

- (1) **Initial Disclosures**

Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group- shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

(2) Continual Disclosures

- (a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;
- (b) Every **company shall notify the particulars of such trading to the stock exchange** on which the Securities are listed **within two trading days** of receipt of the disclosure or from becoming aware of such information.

Explanation — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

- (c) **Time for disclosures:** The above disclosures shall be made in such form and such manner as may be specified by the Board from time to time.
- Upon filing of a disclosure under Regulation 7(2)(b) of SEBI Regulations, the disclosure of the incremental transactions after any disclosure shall be made when the transactions effected after the prior disclosure cross the threshold specified in Clause (a) of Sub-Regulation (2) of Regulation 7. Hence, the next disclosure will be due when the next Rs. 10 lacs limit is breached.
 - For filing of disclosures, the market rate of the trades shall be considered for calculating the threshold limit. The market price shall not be subtracted by subtracting Brokerage, Commission etc. i.e.net of taxes and all transaction charges.
 - The disclosure shall be filed irrespective of what the mode of acquisition is except for the shares acquired via bonus issue or received pursuant to a Scheme

Disclosures by other connected persons

Any company whose securities are listed on a stock exchange may, at its discretion require any other connected person or class of connected persons to make disclosures of holdings and trading in securities of the company in such form and at such frequency as may be determined by the company in order to monitor compliance with these regulations.

This is an enabling provision for listed companies to seek information from those to whom it has to provide unpublished price sensitive information. This provision confers discretion on any company to seek such information. For example, a listed company may ask that a management consultant who would advise it on corporate strategy and would need to review unpublished price sensitive information, should make disclosures of his trades to the company.

Chapter IIIA has been added to SEBI (Prohibition of Insider Trading) Regulations 2015 vide SEBI (Prohibition of Insider Trading (Third Amendment) Regulations, 2019 w.e.f December 26, 2019, prescribing for incentive and reward for the informants who submits to the SEBI a Voluntary Information Disclosure relating to any alleged violation of insider trading laws that has occurred, in occurring or has a reasonable belief that it is about to occur. The new provisions prescribe the manner of submitting information, various forms and procedure for determination of rewards and confidentiality of informants.

Brief process flow of submission to the SEBI [Regulation 7 (B)]

An Informant shall submit **Original Information in Voluntary Information Disclosure Form to the Office of Informant Protection** of the SEBI.

The format and manner of the Form shall be as set out in **Schedule D** and may be submitted by a **legal representative** of the Informant.

If the Informant does not submit the Form through a legal representative SEBI may require the **informant to appear in person to** ascertain his/her identity & veracity of the information.

The Informant while submitting the Voluntary Information Disclosure Form shall **expunge the information** in the Form which could reasonably be expected to reveal his/her identity.

If expunging the information is not possible the Informant may **identify such information /document** that he believes could reasonably be expected to reveal his/her identity.

CODES

Chapter IV of SEBI (Prohibition of Insider Trading) Regulations 2015 deals with codes to be documented and followed by listed companies/market intermediaries

Code of Fair Disclosure

Regulation 8 (1) states that the board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.

To notify the code of fair disclosure/amendment thereof to the stock exchanges.

Regulation 8(2) states that every such code of practices and procedures for fair disclosure of unpublished price sensitive information and every amendment thereto shall be promptly intimated to the stock exchanges where the securities are listed.

The board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8.

The term “legitimate purpose” shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

Code of Conduct

Regulation 9 (1) states that the board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary) to these regulations, without diluting the provisions of these regulations in any manner.

Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

Regulation 9 (2) states the board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.

Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

The board of directors or such other analogous authority shall in consultation with the compliance officer specify the **designated persons** to be covered by the code of conduct on the basis of their

role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and **shall include:-**

- (i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;
- (ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;
- (iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;

Penalty for insider trading under section 15G of the SEBI Act, 1992

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 which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

TEST YOUR KNOWLEDGE**Multiple Choice Questions**

1. *Aayush, Bipin, Carroll & Co., a firm of Chartered Accountants, was appointed as statutory auditor of Ruchika Flavours Limited, a listed company, for the financial year 2019-20. Mr. Bipin is the engaging partner of the said audit with a team of fifteen members. While conducting audit of the financial statements of Ruchika Flavours Limited, two members of Mr. Bipin's team, who are Chartered Accountants, passed the information to their friends and relatives disclosing that the profits of Ruchika Flavours Limited for this year are increasing by 25% in comparison to the previous audited financial year. At the time of passing the information, it was not available in the public domain through the company. Certain persons who were in possession of this information, purchased the shares of Ruchika Flavours Limited at a low price. After the audited financial statements came into public domain, the market price of the shares increased sharply and they made profit by selling the shares, earlier purchased at low price, at the enhanced market price. You are required to select the correct option which indicates whether it is a case of insider trading or not and if it is a case of insider trading then the quantum of penalty that can be levied under the Securities and Exchange Board of India, Act, 1992.*
 - (a) *It is not a case of insider trading since both the Chartered Accountants are part of statutory audit team and therefore, are not restricted to use any information relating to Ruchika Flavours Limited.*
 - (b) *It is not a case of insider trading since the information disclosed by both the Chartered Accountants of statutory audit team is not a price-sensitive information.*
 - (c) *It is a case of insider trading and therefore, the penalty leviable would be not less than ₹ 10 lacs but which may extend to ₹ 25 crores or three times of profits made out of insider trading, whichever is higher.*
 - (d) *It is a case of insider trading and therefore, the penalty leviable would be not less than ₹ 25 crores or three times of profits made out of insider trading, whichever is lower.*

2. *Akshara Builders and Developers Ltd., a company listed on BSE Limited, is contemplating upper revision in the rate of interest of its existing 12% bonds by 1% so as to make them 13% bonds with effect from August 14, 2021. The said proposal is to be laid before the Board of Directors at a Board Meeting to be held on July 14, 2021. From the following*

options, choose the one which correctly indicates the latest date by which Akshara Builders and Developers Ltd. is required to intimate the BSE Limited about the Board Meeting where increase in rate of interest is being considered, keeping in view the Regulation 29 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015:

- (a) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 1, 2021.
 - (b) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 3, 2021.
 - (c) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 5, 2021.
 - (d) Akshara Builders and Developers Ltd. is required to intimate BSE Limited about the Board Meeting, where increase in rate of interest is being considered, latest by July 7, 2021.
3. W Ltd. made the following compliances for the June 2022 quarter, as required by SEBI(LODR) Regulations, 2015 :-
- 1) It submitted its unaudited quarterly financial statements to the recognised stock exchange on 31st July, 2022.
 - 2) It submitted its quarterly compliance report on corporate governance on 10th July, 2022.

What shall be the last date of submission of quarterly financial statements to the stock exchange for W Ltd., in case W Ltd. was not able to submit the same on 31st July, 2022, and whether it can be submitted in unaudited form also?

- (a) 15th August, 2022 and no, it needs to be submitted in audited form.
- (b) 31st August, 2022 and yes, it can be submitted in unaudited form.
- (c) 31st July, 2022 and no, it needs to be submitted in audited form.
- (d) 15th August, 2022 and yes, it can be submitted in unaudited form.

4. Mr. Amar is holding the post of directorship in following Listed entities- LE 1, LE 2, LE 3, LE 4, LE 5 LE 6, and LE 7 as on January 2020. He received an offer of directorship from LE 8 in April 2020. Whether Amar can join the LE 8?
- (a) Yes, as per the SEBI(LODR)Regulation, directorship is restricted to 8 listed entities. Hence Mr. Amar can.
 - (b) Yes, as per the SEBI(LODR)Regulation read with the companies Act, 2013, Mr. Amar can accept directorship in 10 listed companies.
 - (c) No, as per the SEBI(LODR)Regulation, directorship cannot be in more than seven listed entities with effect from April 1, 2020, Mr. Amar cannot.
 - (d) Yes, as no restriction is marked on holding of directorship in the Listed companies.
5. As per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, no acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise ____ of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company:
- (a) Ten percent or more
 - (b) Twenty per cent or more
 - (c) Twenty-five per cent or more
 - (d) Fifty per cent or more

Descriptive Questions

1. A group of complainants have alleged that Mr. Z, a Member of the Securities and Exchange Board of India (SEBI) has pecuniary interest in some of the cases that came up before the Board and that he misused his position and therefore, he should be removed from his office. The complainants seek your advice. Advise.
2. SEBI received complaints from some investors alleging that ABC Ltd. and some brokers are indulging in price manipulation in the shares of ABC Ltd. Explain the powers that can be exercised by SEBI under the Securities and Exchange Board of India Act, 1992 in case the allegations are found to be correct.
3. Clever who is registered as an Intermediary fails to enter into an agreement with his client and hence penalised by SEBI under section 15B of the SEBI Act. Advise Mr. Clever as to what remedies are available to him against the order of SEBI.

4. *A group of investors are upset with the functioning of two leading stock brokers of Calcutta Stock Exchange and want to make a complaint to SEBI for intervention and redressal of their grievances. Explain briefly the purpose of establishing SEBI and what type of defaults by the stock brokers come within the purview of SEBI Act, 1992.*
5. *Mr. Raman, an investor is not satisfied with the dealings of his stock broker who is registered with Delhi Stock Exchange. Mr. Raman approaches you to guide him regarding the avenues available to him for making a complaint against the stock broker under Securities and Exchange Board of India Act, 1992 and also the grounds on which such complaint can be made. You are required to briefly explain the answer to his queries.*
6. *On the complaint of Mr. Kamlesh Gupta, after enquiry SEBI finds that Mr. P. Mehta, a Chief Executive Officer of the Company, on the basis of unpublished price sensitive information, has indulged in the trading of the securities of that company. Explain, on the basis of the said finding, what action SEBI can take against Mr. P. Mehta under the Securities and Exchange Board of India Act, 1992.*
7. *Securities and Exchange Board of India (SEBI) has undertaken inspection of books of accounts and records of LR Ltd., a listed public company. Specify the measures which may be taken by SEBI under the Securities and Exchange Board of India Act, 1992 to protect the interest of investors and securities market, on completion of such inquiry.*
8. *Mr. S, a member of MN Ltd., obtained an order from the Securities and Exchange Board of India (SEBI) against the company. But the company failed to redress the grievance of Mr. S within the time fixed. Consequently, SEBI imposed penalty on the company. The company, however, did not pay the penalty also. State how the penalty can be recovered from the company?*
9. *The composition of Audit Committee of M/s MKBTC Limited, an unlisted Public Company, as on 31-3-2019 comprised of 7 Directors including 4 Independent Directors. The majority of the members of the Audit Committee has the ability to read and understand the financial statements but none of them has accounting or related financial management expertise. The Company listed its Securities in a recognized Stock Exchange in the month of August 2019. Referring to the regulations of Securities and Exchange Board of India [Listing Obligations and Disclosure Requirements] Regulations 2015, decide whether the existing Audit Committee can continue after listing of its Securities?*
10. *Mr. Zubin (Member of SEBI) was adjudged as an insolvent by the Adjudicating authority. As of that, a group of complainants have alleged that Mr. Zubin while rendering of his services in office may be biased in the performance of his duties. Working in such a state of position by him, may be detrimental to the public interest and so should be removed from his office. Advise in the given situation, the tenability of maintenance of complaint against Mr. Zubin.*

ANSWERS

Answer to Multiple Choice Questions

1.	c	2.	b	3.	d	4.	c	5.	c
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Answer to Descriptive Answers

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

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

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

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

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

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

2. Price manipulation in the shares of ABC Ltd. can be considered as fraudulent and unfair trade practices relating to securities market. In this case SEBI may exercise the following powers under section 11(4) of securities and Exchange Board of India Act, 1992.

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

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

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

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

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

- (i) **Appeal to the Securities Appellate Tribunal:** Section 15T of the SEBI Act, (1) any person aggrieved,—
 - (a) by an order of the Board made, on and after the commencement of the Securities Laws (Second Amendment) Act, 1999, under this Act, or the rules or regulations made there under; or
 - (b) by an order made by an adjudicating officer under this Act; or

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

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

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

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

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

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

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

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

1. to protect the interests of investors in securities

2. to promote the development of securities market
3. to regulate the securities market and
4. For matters connected therewith and incidental thereto.

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

- (a) Any failure on the part of the stock broker to issue contract notes in the form and in the manner specified by the Stock Exchange.
 - (b) Any failure on the part of the broker to deliver any security or to make payment of the amount due to the investor in the manner or within the period specified in the regulations.
 - (c) Any collection of charges by way of brokerage in excess of the brokerage as specified in the regulations. (Section 15 F, SEBI Act, 1992)
5. Securities and Exchange Board of India (SEBI) was established for regulating the various aspects of stock market. One of its functions is to register and regulate the stock brokers. In the light of this, Mr. Raman is advised that the complaint against the erring stock broker may be submitted to SEBI.

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

- (a) Any failure on the part of the stock broker to issue contract notes in the form and manner specified by the stock exchange of which the stock broker is a member.
 - (b) Any failure to deliver any security or any failure to make payment of the amount due to the investor in the manner within the period specified in the regulations.
 - (c) Any collection of charges by way of brokerage which is in excess of the brokerage specified in the regulations.
6. Section 15G of the Securities and Exchange Board of India (SEBI) Act, 1992 deals with penalty for Insider Trading. According to this, if any insider
- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate on any stock exchange on the basis of any unpublished price sensitive information; or

- (ii) communicates any unpublished price sensitive information to any person, with or without his request for such information except as required in the ordinary 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 of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher. As such SEBI can, after following the prescribed procedure, impose a penalty on Mr. P. Mehta. The maximum penalty that SEBI can impose is Rupees twenty-five crores or three times the amount of profits made out of insider trading, whichever is higher.

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

1. suspend the trading of any security in a recognised stock exchange;
2. restrain persons from accessing the securities market and prohibit any person associated with securities market to buy, sell or deal in securities;
3. suspend any office-bearer of any stock exchange or self-regulatory organization from holding such position;
4. impound and retain the proceeds or securities in respect of any transaction which is under investigation;
5. attach, for a period not exceeding ninety days, bank accounts or other property of any intermediary or any person associated with the securities market in any manner involved in violation of any of the provisions of this Act, or the rules or the regulations made thereunder:

Provided that the Board shall, within ninety days of the said attachment, obtain confirmation of the said attachment from the Special Court, established under section 26A, having jurisdiction and on such confirmation, such attachment shall continue during the pendency of the aforesaid proceedings and on conclusion of the said proceedings, the provisions of section 28A shall apply:

Provided further that only property, bank account or accounts or any transaction entered therein, so far as it relates to the proceeds actually involved in violation of any

of the provisions of this Act, or the rules or the regulations made thereunder shall be allowed to be attached.

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

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

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

Provided that the Board may take any of the measures specified in clause (d) or clause (e) or clause (f), in respect of any listed public company or a public company (not being intermediaries referred to in section 12) which intends to get its securities listed on any recognised stock exchange where the Board has reasonable grounds to believe that such company has been indulging in insider trading or fraudulent and unfair trade practices relating to securities market :

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

Penalty: The Board may, by an order, for reasons to be recorded in writing, levy penalty under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15H, 15HA and 15HB after holding an inquiry in the prescribed manner.

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

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

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

9. **Audit Committee:** According to Regulation 18 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity shall constitute a qualified and independent audit committee which shall have:

- (a) Minimum three directors as members.
- (b) At least Two-thirds of the members of audit committee shall be independent directors.
- (c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

As per the facts of the question, M/s MKBTC Limited, listed its securities in a recognised stock exchange in the month of August, 2019. In order to comply with the requirements of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the company requires to do the following:

- (i) The audit committee of M/s MKBTC Limited already has 7 directors as members, which is in compliance.
- (ii) The audit committee has 4 directors as independent directors. However, once the company gets listed, at least 5 [$7 \times (2/3)$] directors shall be independent directors. Thus, they need to change the composition of audit committee once the company gets listed on stock exchange.
- (iii) In the existing audit committee though majority of the members have the ability to read and understand the financial statement but none of them has accounting or related financial management expertise. However, once the company gets listed it is required that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise. Hence, it is

required that the company should appoint at least one member in the audit committee who shall have accounting or related financial management expertise.

In view of above, the existing audit committee cannot continue after listing of its securities.

10. According to section 6 of the Securities and Exchange Board of India Act, 1992, the Central Government shall have the power to remove a member appointed to the Board, if he/she:
- (i) is, or at any time has been adjudicated as insolvent;
 - (ii) is of unsound mind and stands so declared by a competent court;
 - (iii) has been convicted of an offence which, in the opinion of the Central Government, involves a moral turpitude.
 - (iv) has, in the opinion of the Central Government so abused his position as to render his continuance in office detrimental to the public interest.

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

In the present case, a group of complainants have alleged that Mr. Zubin, a member of the SEBI is being adjudicated as an insolvent. His state of position may effect on rendering of his services in a biased manner. This may be unfavorable to the public interest and so should be removed from his office.

Here, above complainants may approach the Central Government for removal of Mr. Zubin, and if the Central Government is of the opinion that Mr. Zubin was not competent in rendering of his services/duties in a office as a member of the Board. The Central Government may remove Mr. Zubin from his office in compliance with the said provision.