

Ch-4 Securities and Exchange Board of India.

Objectives

To protect the int. of Investors in Securities.

To Promote the development in Securities market.

To Regulate the sec. market & matters incidental thereto

SEBI Act 1992

- a Body corporate.
- Having Perpetual Succession and a common seal.
- with power to acquire, hold and dispose of prop. (movable + immovable).
- To contract, and shall by the said name, sue or to be sued.
- H.O of Board shall be at Mumbai
- Board may establish offices at other places in India.

Management of SEBI

- ① chairman
- ② members from among ministry of central Govt. dealing with Finance & administⁿ of companies Act 2013
- ③ member from among the officials of RBI
- ⑤ other members out of whom at least ③ shall be appointed by CG.

Functions of the SEBI :-

① → Registering and regulating

- Broker, sub-broker, underwriter, M.B etc
- Depository, Depository Participants etc.
- venture capital Fund, collective Investment scheme, Mutual Fund etc

② → Promote :-

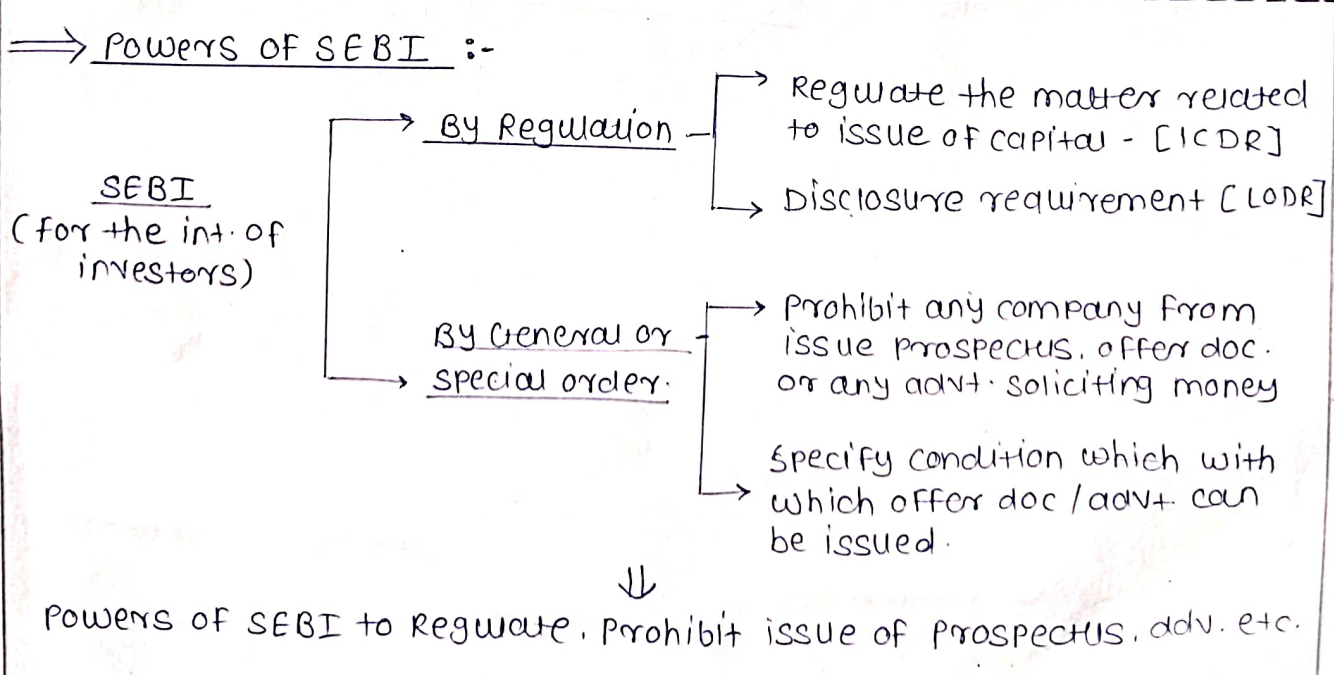
- self regulated organisation.
- Investor education.

③ → Prohibit :-

- unfair trade practices
- Insider trading

- Ⓜ → regulate -
 - Business of Stock Exchange
 - Substantial acquisition of shares and takeover.
- Ⓢ → calling
 - Information / inquiry / audit → intermediaries
 - Info. from → entity / authority under any act.
 - any agency
 - any authority.

- ⇒ orders by SEBI :-
- 1- attachment
 - 2- suspend
 - 1- prohibit
 - 2- investign
- ① suspend from trading of any securities.
 - ② suspend office bearers of SE or SRD's
 - ③ Prohibit any person from trading.
 - ④ Impound and retain Proceeds / securities if under investigation
 - ⑤ Direct not to dispose any property under investigation.
 - ⑥ attach (for not more than 90 days) bank A/c security who is involved in violation of rules / Regulations / or Act.



⇒ cease and Desist order :-

SEBI is of the opinion

→ any person who has violated or likely to violate R/R/A

→

SEBI can order such person to cease and desist.

⇒ prohibition of manipulative and deceptive device, insider trading etc.

• A person shall not

→ use or employ only manipulative or deceptive device for issue, purchase or sell any securities in violation of RRA

→ employ any device / scheme / artifice to defraud.

→ engaged in any fraud or deceit

→ engaged in insider trading

→ violating insider trading Regulation

→ violate take over code.

⇒ SEBI vested with the same power as that of civil court.

→ Summoning and enforcing the attendance of person and examining them on oath.

→ The discovery and production of books of account & other document at a such place and such time indicated by SEBI

→ Inspection of any books, register and other document of any person listed company or public company which intends to get its securities listed

→ Issuing commission for the examination of witnesses or doc.

Adjudication

SEBI may appoint any of its officers not below the rank of division chief to be an adjudicating officer for holding an inquiry

A.O. has power to summon & enforce the attendance of person or to produce any document which is useful for inquiry.

SEBI may call for & examine the record for of any proceeding under this sec. & if it considers that the order passed by A.O. is not in the int. of sec. market it may pass order enhancing quantum of

No such order shall be passed unless OOBH is given to person
↓
Nothing contain in this sec. shall be appli
↓ after
3m from date of order pass by A.O. or disposal order
→ earlier

⇒ power to regulate CIS (collective Investment Scheme)

- CIS :-
- any scheme / arrangement which satisfies the condition under subsection 2 or 2A of sec 11AA.
 - any scheme / arrangement not registered with SEBI and having a corpus of 100 cr or more.

⇓
SEBI has a power to regulate them.

⇒ Power to order Investigation.

1. Grounds of investigation.

- transaction
↓
detrimental to the investors
Sec. market.
- intermediary / person.
↓
has violated Act / rule / reg.
SEBI is of the opinion

SEBI

order investigⁿ

Magistrate / Judge

↑ application for seizure
[Doc / Book will be
mutilated, forfeited
destroyed]

can make a note and
get it signed.

→ may keep the BOA
doc etc. for 6m.

→ may ask again for
document

→ may ask for cert. fled
copies.

appeal

enter,
search,
seize,

- ① Investigate
- ② Produce Book / doc
- ③ Provide any info
examined on oath

• Failure in compliance

imprison. - up to 1 yr.

or

Fine - ex. to 1 cr.

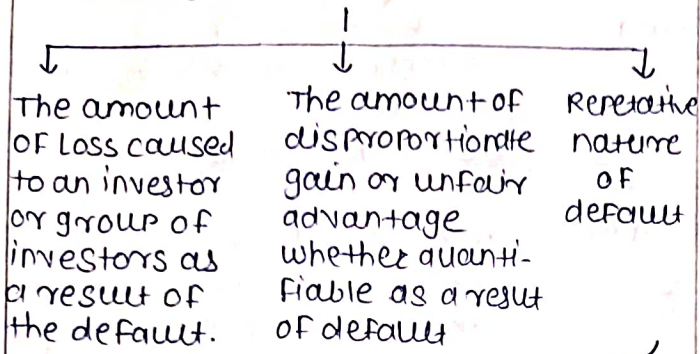
or

Both.

• Failure or Refusal continues.

Fine - ex. to SL / day
after first during
which Failure continues

⇒ Factors to be taken into account while adjudicating quantum of Penalty. :-

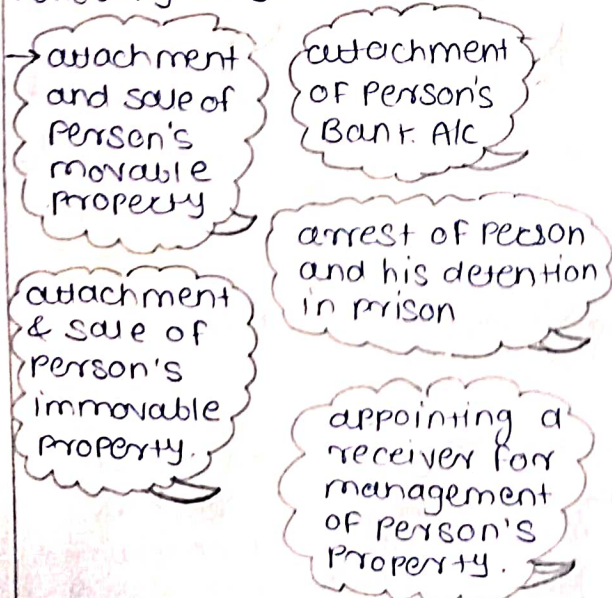


All sums realised by way of penalties shall be credited to consolidated Fund of India.

⇒ Recovery of Amounts :-

- If a person →
 - Fails to pay the penalty imposed under this Act.
 - Fails to comply with any direction of the SEBI for refund of monies
 - Fails to comply with a direction of disgorgement order issued
 - Fails to pay any fees due to the SEBI.

The Recovery officer shall proceed to recover amount specified in the certificate by one or more of the following ways.



⇒ Continuance of proceedings.

where a person dies, his legal representative shall be liable to pay any sum which the deceased would have liable to pay

Legal representative shall be liable only in case the penalty has been imposed before the death of deceased person.

continuation of Proceeding

proceedings for disgorgement, refund or an action for recovery before the recovery officer except the proceeding for levy of penalty initiated against the deceased before his death

shall be deemed to have been initiated against the legal repr.

New proceeding

proceeding for disgorgement, refund or action for recovery before recovery officer except proceeding of levy of penalty which could have been initiated against deceased if he had survive

may be initiated against legal representative

The liability of legal representative under this act shall be limited to the extent of to which the estate of the deceased is capable of meeting the liability.

Securities Appellate Tribunal (CSAT)

Establishment.

Established by
central Govt.

Right to Legal Representation

- The appellant may either appear in person.
- authorise one or more CA/CS/CMA or legal Practitioner. to present its case.

Procedure of SAT

- The SAT shall have a power to regulate their own procedure
- shall not be bound by the procedure laid down by the CPC, 1908

	Procedure	power
AS per CPC 1908	X	✓

Civil Court Not to have Jurisdiction.

- No civil court can -
- entertain any suit or
 - pass any injunction or
 - accept any appeal.

where Adj officer / SEBI SAT has been empowered.

Composition.

one presiding officer

Such number of judicial and technical member as CG may determined.

→ Subject to the Provision of this Act:

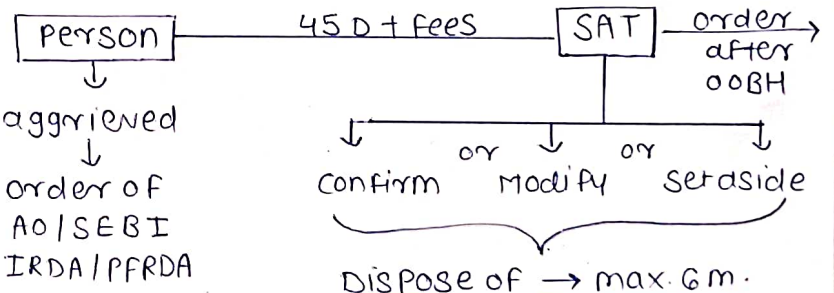
Jurisdiction of SAT may exercise

Benches thereof

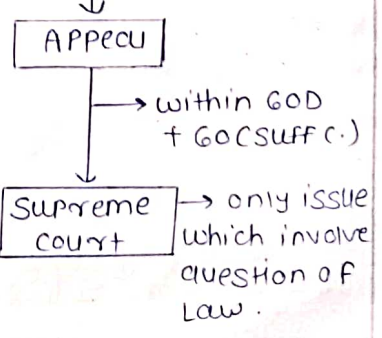
Benches of SAT shall ordinarily sit at Mumbai and may also sit at any other place CG may notify.

- Presiding officer of SAT
- 2 or more technical members as may be determined.
- every bench constituted shall include at least 1 judicial & tech. member.

Appeal



If a person is aggrieved with the decision of SAT



⇒ Offence :-

- If any person contravenes the provisions of this Act or any rules or regulation made thereunder
- If any person fails to pay the penalty imposed by A.O or SEBI or fails to comply with direction or order

punishable with:

- Imprisonment → ex. to 10 yrs
 or
 Fine → ex to 25 cr.
 or
 Both
- Imprisonment → 1m - 10 yrs
 or
 Fine → 25 cr. (ex. to)
 or
 Both

Special courts.

Procedure of CRPC is followed.

For providing speedy trial of offences the CG may established or designate special courts by notification

shall consist of.

- Single Judge - who shall be appointed by CG with the concurrence of chief Justice of high court within whose jurisdiction judge to be appointed is working.

A person shall not be qualified for appointment as a judge of a special court unless he is holding a office of a session judge or an additional session judge immediately before such appointment

Penalties and Adjudication.

⇒ contravention

- Failure to furnish info, return
- Failure to enter into agreement with client
- Failure to redress investor's grievances
- certain defaults in case of MF.
- Failure to observe rules & Reg. by an asset management co.

⇒ Penalty

Minimum - ₹ 1 Lakh
Maximum - ₹ 1 Lakh (Per day) max 1 cr.

- Failure to comply with Regulation or direction of SEBI by AIF, Infra. investment trusts and Real estate investment trust

Minimum - 1 Lakh
maximum - 1 Lakh/day (max 1 cr)
 or
 3 Times of Profit

<ul style="list-style-type: none"> Failure to comply with regulations or directions of SEBI by <u>investment advisor and research analyst</u>. 	<p><u>Minimum</u> - ₹ 1 Lakh <u>maximum</u> - ₹ 1 Lakh/day (max 1cr)</p>
<ul style="list-style-type: none"> Default in case of <u>stock broker</u>. <p>→ Fails to issue contract notes in such form and manner specified by SEBI.</p>	<p><u>minimum</u> - ₹ 1 Lakh <u>maximum</u> - ₹ 1 cr.</p>
<p>→ Fails to deliver any security or fails to make the payment of amount due to the investor within specified time.</p>	<p><u>minimum</u> - ₹ 1 Lakh <u>maximum</u> - ₹ 1 Lakh/day (max-1cr)</p>
<p>→ charges → excess of the brokerage specified in Regulation.</p>	<p><u>Minimum</u> - ₹ 1 Lakh <u>maximum</u> - 5x amount of brokerage charge in excess of specified Brokerage ↓ <u>whichever is ↑</u></p>
<ul style="list-style-type: none"> <u>Insider trading</u>: IF any insider: <ul style="list-style-type: none"> deals in securities of body corporate listed on any RSE on the basis of UPSI communicate any UPSI to any person. Non-disclosure of acquisition of shares and takeovers 	<p>Minimum - 10 Lakh. Maximum - 3x Profit or 25 cr. } ↑</p>
<ul style="list-style-type: none"> Fraudulent and unfair trade pr. 	<p>Minimum - 5 Lakh Maximum - 3x Profit or 25 cr. } ↑</p>
<ul style="list-style-type: none"> Alteration, destruction etc of record Failure to protect the electronic database of <u>Board</u> → SEBI 	<p>Minimum - 1 Lakh Maximum - 3x Profit or 10 cr. } ↑</p>
<ul style="list-style-type: none"> convention where no separate penalty has been provided. 	<p>Minimum - 1 Lakh maximum - 1 cr.</p>

⇒ offence punishable by :-

- | | |
|--------------------------|--------------------|
| • only fine | - compoundable (✓) |
| • fine or impri. or both | - compoundable (✓) |
| • only imprisonment | - compoundable (✗) |
| • fine and imprisonment | - compoundable (✗) |

⇒ contravention by company :-

para-1

person in charge or responsible for conduct of business of the co.



punished



Exemption

[No knowledge or exercise due dilig.]

para-2

Director, manager Secretary or officer of the company.



punished

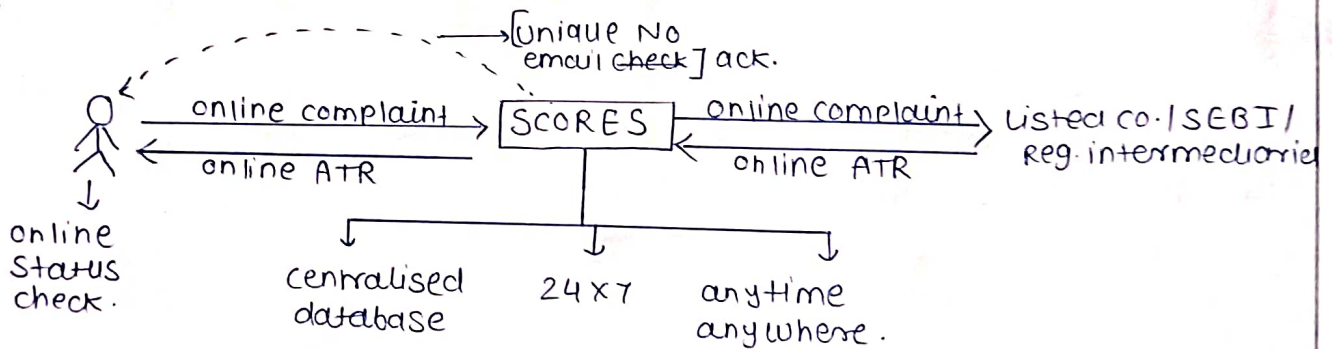


only if - offence was with their consent, neglect

SCORES

SEBI complaints Redress System

Features of SCORES

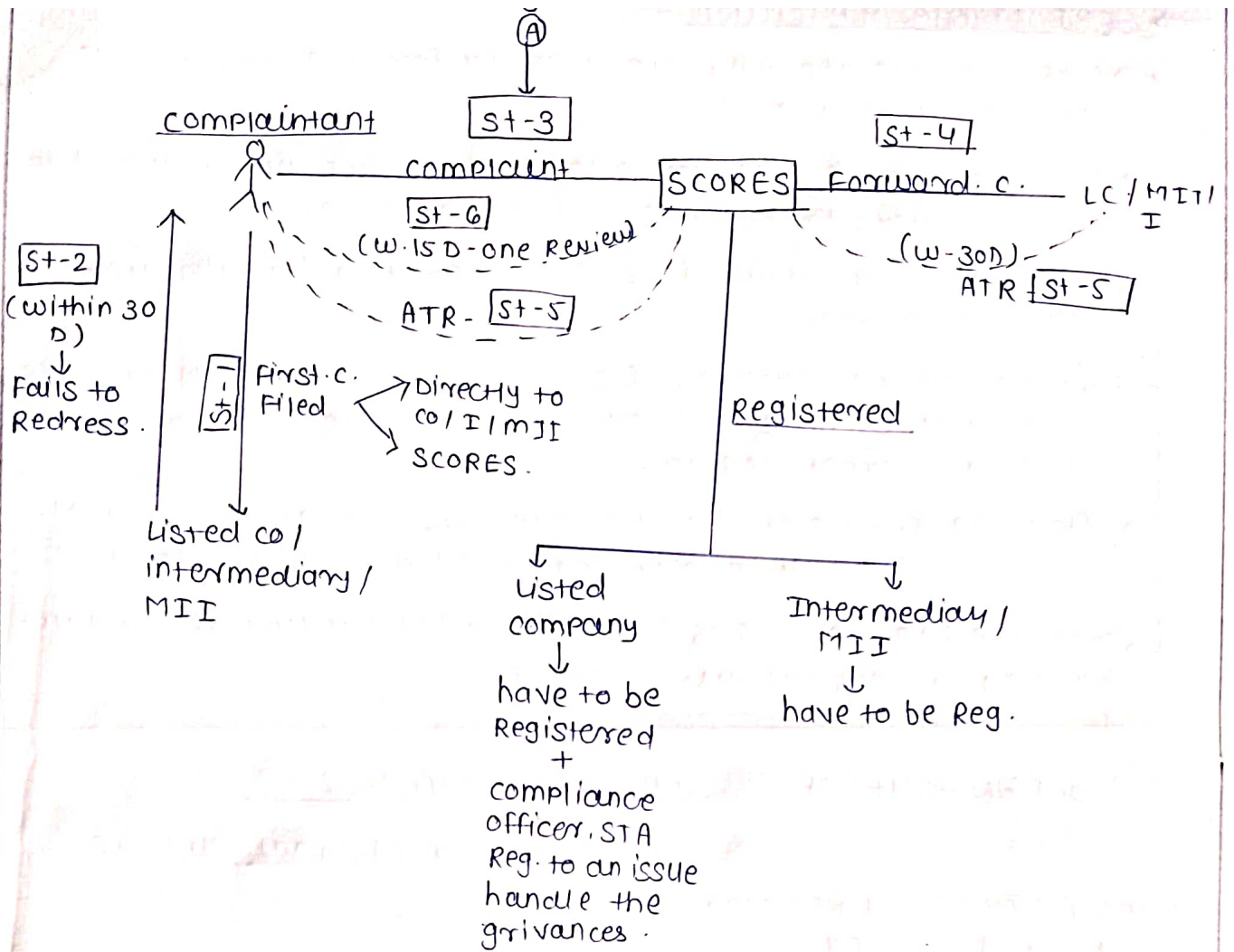


⇒ How to file the complaint ?

- www.SCORES.GOV
- ↓
- Investor corner
- ↓
- "Register Here"
- Fill the Reg. Form with all the details.
- on Registration
- unique user ID & password is generated and ack. is received on mail.

⇒ within 1 year from comp. filed with co.

- Direct complaint was filed to the Listed co / I / M / II (✓) within 30 days
- replied, the complaint is (✓) not satisfied with the reply
- reject the complaint

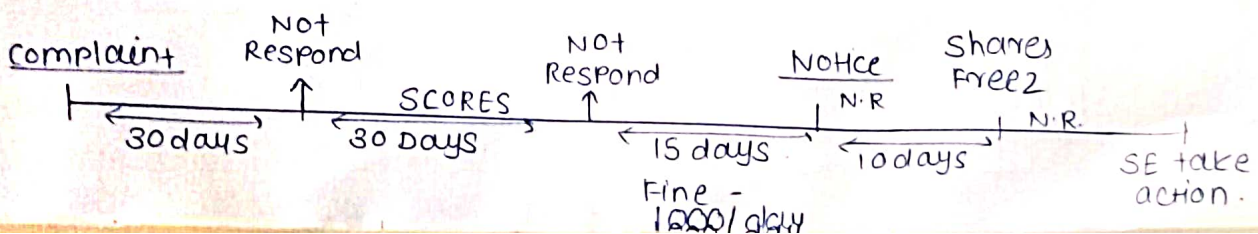


⇒ Types of complaints shall not be dealt through SCORES.

- complaints against companies which are unlisted / delisted and companies on dissemination board
- complaints relating to cases pending in a court
- complaint falling under the purview of other regulatory bodies such as RBI / IRDA / PFRDA / CCI
- complaint against the companies where the name of the company is struck off from Register of company
- Liquidated companies or companies under liquidation.

⇒ Timeline for handling complaints :-

N.R. - Not Respond



⇒ SEBI Mobile Application -

- SCORES mobile app will make it easier for investors to lodge their grievances with SEBI.
- It will encourage investor to lodge their complaint rather than sending letters to the SEBI in physical mode.
- This is another effort of SEBI in improving digitalization in securities market.
- APP has all the features of SCORES which is presently available electronically where investors have to lodge their complaints by using internet medium.
- After registration on the app, investors will get an acknowledged via SMS and e-mail on their registered mobile no. & email ID.
- Tool like FAQs on SCORES for better understanding of complaint handling process can also accessed.

⇒ SEBI (Informal Guidance Scheme), 2003

• Following person may make a request for informal guidance.

- any intermediary registered with SEBI
- any listed company.
- any co. which intend to get any of its securities listed
- any MF, trustee co, AMC
- any acquirer or prospective acquirer under the SEBI (Substantial Acquisition and Takeovers) Regulation, 1997.

• The informal guidance may sought for and given in 2 forms.

No-action Letters

- SEBI indicate that dept. would or would not recommend any action under any act, rules, Regulation guidelines, circulars, or other legal provision administered by SEBI to the board if proposed transaction described in a request

Interpretive Letters.

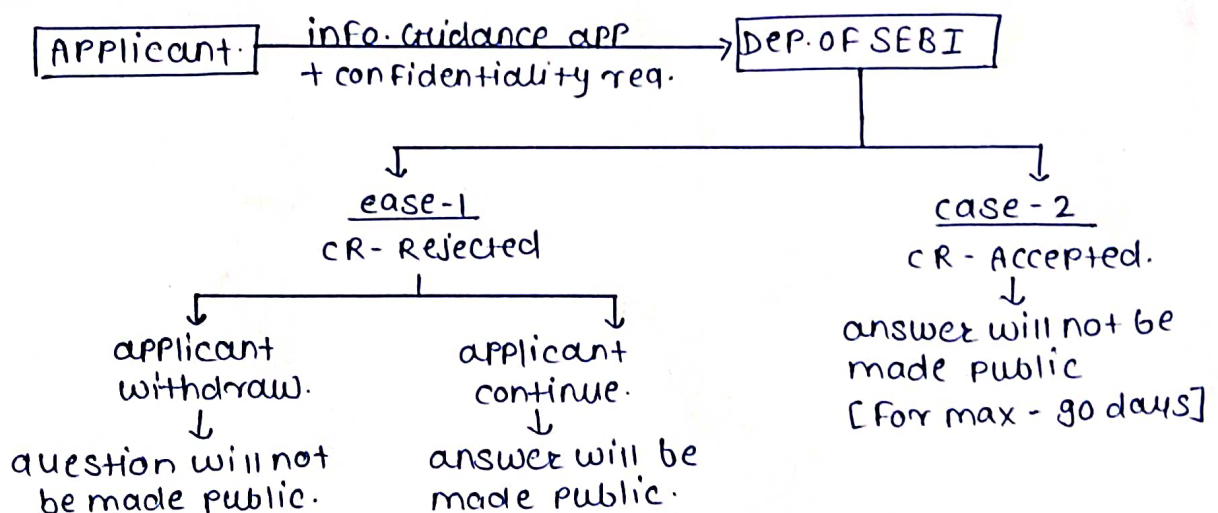
- SEBI provides an interpretation of a specific provision of any act, rules, Regulation guideline, circular, or other legal provision being administered by SEBI to the board if in the prop context of proposed transaction in securities or specific factual situation.

- The SEBI may dispose off the request as early as possible and in any case not later than 60 days after the receipt of the request.

⇒ The SEBI may not respond following types of requests :

- Those which are general and those which do not completely and sufficiently describe the Factual situation.
- Those which involve hypothetical situation.
- Those requests in which requestor has no direct or proximate int.
- where the applicable legal provisions are not cited.
- Those cases in which investigation, enquiry or other enforcement action has already been initiated.
- Those cases where connected issues are pending before any tribunal or court and on issues which are subjudice ; and
- Those cases where policy concerns require that the department does not respond.

⇒ Confidentiality of Request.



⇒ Some imp. points :-

