

SECURITIES LAWS AND COMPLIANCES

PART A — SECURITIES LAWS

STUDY I - GENESIS AND DEVELOPMENT OF REGULATORY FRAMEWORK

LEARNING OBJECTIVES

The study will enable the students to understand

- Concept & Organisational structure of financial system
- Securities Market & Economic Growth
- Legislations governing securities market
- Powers, functions of Securities and Exchange Board of India
- Securities Appellate Tribunal and Securities Appellate Tribunal (Procedure) Rules, 2000

INTRODUCTION

Every modern economy is based on a sound financial system which helps in production, capital and economic growth by encouraging savings habits, mobilising savings from households and other segments and allocating savings into productive usage such as trade, commerce, manufacture etc.

Financial system covers both credit and cash transactions. All financial transactions are dealt with by cash payment or issue of negotiable instruments like cheque, bills of exchanges, hundies etc. Thus a financial system is a set of institutional arrangements through which financial surpluses are mobilised from the units generating surplus income and transferring them to the others in need of them. The activities include production, distribution, exchange and holding of financial assets/instruments of different kinds by financial institutions, banks and other intermediaries of the market. In a nutshell, financial market, financial assets, financial services and financial institutions constitute the financial system.

Various factors influence the capital market and its growth. These include level of savings in the household sector, taxation levels, health of economy, corporate performance, industrial trends and common patterns of living.

The strength of the economy is calibrated by different economic

indicators like growth in GDP (Gross Domestic Product), Agricultural production, quantum and spread of rain fall, interest rates, inflation, position on balance of payments and balance of trade, levels of foreign exchange reserves and investments and growth in capital formation. The traditional form of financing companies projects consist of internal resources and debt financing, particularly from financial institutions for modernisation, expansion and diversification. The upsurge in performance of certain large companies and the astounding increase of their share prices boost the market sentiment to divert the savings more and more into equity investments in companies. This lead to the growth of equity cult among investors to contribute resources not only for companies but even for financial institutions and banks.

The functions of a good financial system are manifold. They are:

- a. regulation of currency
- b. banking functions
- c. performance of agency services and custody of cash reserves
- d. management of national reserves of international currency
- e. credit control
- f. administering national, fiscal and monetary policy to ensure stability of the economy
- g. supply and deployment of funds for productive use
- h. maintaining liquidity.

Long term growth of financial system is ensured through:

- a. education of investors
- b. giving autonomy to FIs to become efficient under competition
- c. consolidation through mergers
- d. facilitating entry of new institutions to add depth to the market
- e. minimising regulatory measures and market segmentation.

I. ORGANISATIONAL STRUCTURE OF FINANCIAL SYSTEM

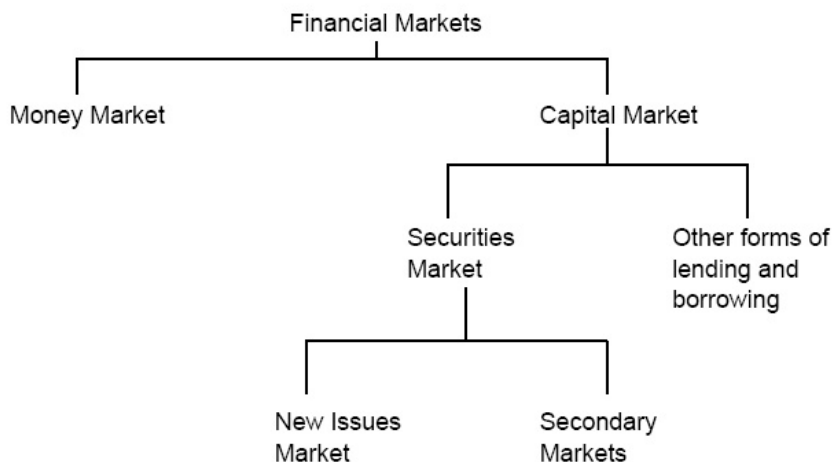
Broadly, organisational structure of financial system includes various components i.e., Financial Markets, Products and Market Participants.

Financial Markets

Efficient transfer of resources from those having idle resources to others who have a pressing need for them is achieved through financial markets. Stated formally, financial markets provide channels for allocation of savings to investment. These provide a variety of assets to savers as well as various forms in which the investors can raise funds and thereby decouple the acts of saving and investment. The savers and investors are constrained not by their individual abilities, but by the economy's ability, to invest and save respectively. The financial markets, thus, contribute to

economic development to the extent that the latter depends on the rates of savings and investment.

The financial markets have two major components; the money market and the capital market. Financial Markets



Money Market

The money market refers to the market where borrowers and lenders exchange short-term funds to solve their liquidity needs. Money market instruments are generally financial claims that have low default risk, maturities under one year and high marketability.

Capital Market

The Capital Market is a market for financial investments that are direct or indirect claims to capital (Gart, 1988)¹. It is wider than the Securities Market and embraces all forms of lending and borrowing, whether or not evidenced by the creation of a negotiable financial instrument (Drake, 1980)². The Capital Market comprises the complex of institutions and mechanisms through which intermediate term funds and long term funds are pooled and made available to business, government and individuals. The Capital Market also encompasses the process by which securities already outstanding are transferred (Dougall, 1986)³.

The capital market and in particular the stock exchange is referred to as the barometer of the economy. Government's policy is so moulded that creation of wealth through products and services is facilitated and surpluses and profits are channelised into productive uses through capital market operations. Reasonable opportunities and protection are afforded by the Government through special measures in the capital market to get new investments from the public and the Institutions and to ensure their liquidity.

Securities Market

The Securities Market, however, refers to the markets for those financial instruments/claims/obligations that are commonly and

readily transferable by sale. The Securities Market has two inter-dependent and inseparable segments, the new issues (primary) market and the stock (secondary) market.

Primary Market

The primary market provides the channel for sale of new securities, while the secondary market deals in securities previously issued. The issuer of securities sells the securities in the primary market to raise funds for investment and/or to discharge some obligation. In other words, the market wherein resources are mobilised by companies through issue of new securities is called the primary market. These resources are required for new projects as well as for existing projects with a view to expansion, modernisation, diversification and upgradation.

The issue of securities by companies can take place in any of the following methods:

1. Initial public offer (securities issued for the first time to the public by the company);
2. Further issue of capital;
3. Rights issue to the existing shareholders. (On their renunciation, the shares can be sold by the company to others also);
4. Offer of securities under reservation/firm allotment basis to:
 - i. foreign partners and collaborators,
 - ii. mutual funds,
 - iii. merchant bankers,
 - iv. banks and institutions,
 - v. non resident Indians and overseas corporate bodies,
 - vi. employees;
5. Offer to public;
6. Bonus Issue.

The Primary Market (New Issues) is of great significance to the economy of a country. It is through the primary market that funds flow for productive purposes from investors to entrepreneurs. The latter use the funds for creating new products and rendering services to customers in India and abroad. The strength of the economy of a country is gauged by the activities of the Stock Exchanges. The primary market creates and offers the merchandise for the secondary market.

Secondary Market

The secondary market enables those who hold securities to adjust their holdings in response to changes in their assessment of risk and return. They also sell securities for cash to meet their liquidity needs. The price signals, which subsume all information about the

issuer and his business including, associated risk, generated in the secondary market, help the primary market in allocation of funds. Secondary market essentially comprises of stock exchanges which provide platform for purchase and sale of securities by investors. The trading platform of stock exchanges are accessible only through brokers and trading of securities is confined only to stock exchanges.

The corporate securities market dates back to the 18th century when the securities of the East India company were traded in Mumbai & Kolkata. The brokers used to gather under a banyan tree in Mumbai and under a neem tree in Kolkata for the purpose. However, the real beginning came in the 1850s with the introduction of joint stock companies with limited liability. The 1860s witnessed feverish dealings in securities and securities speculation. This brought brokers to Bombay together in July 1875 to form the first organised stock exchange in the country, viz. The Stock Exchange, Mumbai, Ahmedabad Stock Exchange in 1894 and 22 others followed with 20th century.

The stock exchanges are the exclusive centres for trading in securities and the trading platform of an exchange is accessible only to brokers. The regulatory framework heavily favours the recognised stock exchanges by almost banning trading activity outside the stock exchanges.

The stock market or secondary market ensures free marketability, negotiability and price discharge. For these reasons the stock market is referred to as the nerve centre of the capital market, reflecting the economic trend as well as the hopes, aspirations and apprehensions of the investors.

This secondary market has further two components, First, the spot market where securities are traded for immediate delivery and payment, The other is futures market where the securities are traded for future delivery and payment. Another variant is the options market where securities are traded for conditional future delivery. Generally, two types of options are traded in the options market. A put option permits the owner to sell a security to the writer of the option at a pre-determined price before a certain date, while a call option permits the buyer to purchase a security from the writer of the option at a particular price before a certain date.

Products and Market Participants

Savings are linked to investments by a variety of intermediaries through a range of complex financial products called “securities” which is defined in the Securities Contracts (Regulation) Act, 1956

to include shares, scrips, stocks, bonds, debentures, debenture stock, or other marketable securities of like nature in or of any incorporate company or body corporate, government securities, derivatives of securities, units of collective investment scheme, security receipts, interest and rights in securities, or any other instruments so declared by the central government. There are a set of economic units who demand securities in lieu of funds and others who supply securities for funds. These demand for and supply of securities and funds determine, under competitive market conditions in goods and securities market, the prices of securities. It is not that the suppliers of funds and suppliers of securities meet each other and exchange funds for securities. It is difficult to accomplish such double coincidence of wants. The amount of funds supplied by the supplier of funds may not be the amount needed by the supplier of securities. Similarly, the risk, liquidity and maturity characteristics of the securities may not match preference of the supplier of funds. In such cases, they incur substantial search costs to find each other. Search costs are minimised by the intermediaries who match and bring these suppliers together. They may act as agents to match the needs of the suppliers of funds / securities, help them in creation and sale of securities or buy the securities issued by supplier of securities and in turn, sell their own securities to suppliers of funds. It is, thus, a misnomer that securities market disintermediates by establishing a direct relationship between the suppliers of funds and suppliers of securities. The market does not work in a vacuum; it requires services of a large variety of intermediaries like merchant bankers, brokers, etc to bring the suppliers of funds and suppliers of securities together for a variety of transactions. The disintermediation in the securities market is in fact an intermediation with a difference; it is a risk-less intermediation, where the ultimate risks are borne by the suppliers of funds/securities (issuers of securities and investors in securities), and not the intermediaries.

The securities market, thus, has essentially three categories of participants, namely the issuers of securities, investors in securities and the intermediaries. The issuers and investors are the consumers of services rendered by the intermediaries while the investors are consumers of securities issued by issuers. Those who receive funds in exchange for securities and those who receive securities in exchange for funds often need the reassurance that it is safe to do so. This reassurance is provided by the law and custom, often enforced by the regulator. The regulator develops fair

market practices and regulates the conduct of issuers of securities and the intermediaries so as to protect the interests of investors in securities. The regulator ensures a high standard of service from intermediaries and supply of quality securities and non-manipulated demand for them in the market.

II. FUNCTIONS OF SECURITIES MARKET

The Securities Market allows people to do more with their savings than they would otherwise could. It also provides financing that enables people to do more with their ideas and talents than would otherwise be possible. The people's savings are matched with the best ideas and talents in the economy. Stated formally, the Securities Market provides a linkage between the savings and the investment across the entities, time and space. It mobilises savings and channelises them through securities into preferred enterprises. The Securities Market also provides a market place for purchase and sale of securities and thereby ensures transferability of securities, which is the basis for the joint stock enterprise system. The existence of the Securities Market makes it possible to satisfy simultaneously the needs of the enterprises for capital and the need of investors for liquidity.

The liquidity the market confers and the yield promised or anticipated on security ownership may be sufficiently great to attract net savings of income which would otherwise have been consumed. Net savings may also occur because of other attractive features of security ownership, e.g. the possibility of capital gain or protection of savings against inflation.

A developed Securities Market enables all individuals, no matter how limited their means, to share the increased wealth provided by competitive private enterprises (Jenkins, 1991)^{1a}. The Securities Market allows individuals who can not carry an activity in its entirety within their resources to invest whatever is individually possible and preferred in that activity carried on by an enterprise. Conversely, individuals who can not begin an enterprise, they can attract enough investment from others to make a start. In both cases individuals who contribute to the investment made in the enterprise share the fruits.

The Securities Market, by allowing an individual to diversify risk among many ventures to offset gains and losses, increases the likelihood of long-term, overall success.

III. SECURITIES MARKET AND ECONOMIC GROWTH

A well functioning securities market is conducive to sustained economic growth. There have been a number of studies, starting

from World Bank and IMF to various scholars, which have established robust relationship not only one way, but also the both ways, between the development in the securities market and the economic growth. The securities market fosters economic growth to the extent that it-(a) augments the quantities of real savings and capital formation from any given level of national income, (b) increases net capital inflow from abroad, (c) raises the productivity of investment by improving allocation of investible funds, and (d) reduces the cost of capital.

It is reasonable to expect savings and capital accumulation and formation to respond favourably to developments in securities market. The provision of even simple securities decouples individual acts of saving from those of investment over both time and space and thus allows savings to occur without the need for a concomitant act of investment. If economic units rely entirely on self-finance, investment is constrained in two ways: by the ability and willingness of any unit to save, and by its ability and willingness to invest. The unequal distribution of entrepreneurial talents and risk taking proclivities in any economy means that at one extreme there are some whose investment plans may be frustrated for want of enough savings, while at the other end, there are those who do not need to consume all their incomes but who are too inert to save or too cautious to invest the surplus productively. For the economy as a whole, productive investment may thus fall short of its potential level. In these circumstances, the securities market provides a bridge between ultimate savers and ultimate investors and creates the opportunity to put the savings of the cautious at the disposal of the enterprising, thus promising to raise the total level of investment and hence of growth. The indivisibility or lumpiness of many potentially profitable but large investments reinforces this argument. These are commonly beyond the financing capacity of any single economic unit but may be supported if the investor can gather and combine the savings of many. Moreover, the availability of yield bearing securities makes present consumption more expensive relative to future consumption and, therefore, people might be induced to consume less today. The composition of savings may also change with fewer saving being held in the form of idle money or unproductive durable assets, simply because more divisible and liquid assets are available.

International Linkage

The securities market facilitates the internationalisation of an economy by linking it with the rest of the world. This linkage assists

through the inflow of capital in the form of portfolio investment. Moreover, a strong domestic stock market performance forms the basis for well performing domestic corporate to raise capital in the international market. This implies that the domestic economy is opened up to international competitive pressures, which help to raise efficiency. It is also very likely that existence of a domestic securities market will deter capital outflow by providing attractive investment opportunities within domestic economy.

Improved Investment Allocation

Any financial development produces allocational improvement over a system of segregated investment opportunities. The benefits of improved investment allocation is such that Mc Kinnon defines economic development as reduction of the great dispersion in social rate of return to existing and new investments under domestic entrepreneurial control. Instead of emphasising scarcity of capital, he focuses on the extra-ordinary distortions commonly found in the domestic securities markets of the developing countries. In the face of great discrepancies in rate of return, the accumulation of capital does not contribute much to development. A developed securities market successfully monitors the efficiency with which the existing capital stock is deployed.

Standardised products and reduction in costs

In as much as the securities market enlarges the financial sector, promoting additional and more sophisticated financing, it increases opportunities for specialisation, division of labour and reductions in costs in financial activities. The securities market and its institutions help the user in many ways to reduce the cost of capital. They provide a convenient market place to which investors and issuers of securities go and thereby avoid the need to search a suitable counterpart. The market provides standardised products and thereby cuts the information costs associated with individual instruments. The market institutions specialise and operate on large scale which cuts costs through the use of tested procedures and routines.

Developmental benefits

There are also other developmental benefits associated with the existence of a securities market.

1. The securities market provides a fast-rate breeding ground for the skills and judgement needed for entrepreneurship, risk bearing, portfolio selection and management.
2. An active securities market serves as an 'engine' of general financial development and may, in particular, accelerate the

integration of informal financial systems with the institutional financial sector. Securities directly displace traditional assets such as gold and stocks of produce or, indirectly, may provide portfolio assets for unit trusts, pension funds and similar FIs that raise savings from the traditional sector.

3. The existence of securities market enhances the scope, and provides institutional mechanisms, for the operation of monetary and financial policy.

IV. EVOLUTION, GROWTH AND FUNCTIONS OF FINANCIAL SYSTEM IN INDIA

Indian financial system was characterised by:

1. Absence of organised capital market
2. Dependence of industries and other users on internal sources
3. Rare cases of public issue of capital for expansion and modernisation
4. Restricted and underdeveloped state of capital market
5. Cumbersome and stringent conditions for loan assistance to companies
6. Few financial institutions and players in the market

Nationalisation of banks in 1969 was a major step to ensure that timely and adequate credit support was available for all viable productive endeavour in the country. Growth of banking facilities, better regional balance of economic activity and the diffusion of economic power were the other objectives of bank nationalisation. This policy extended large support to individuals and small traders in the rural and semi-urban areas earlier neglected by the banking system. Agriculture and small industry received a new fillip. Grant of credit to agriculture and small industry by expansion of rural banking proved to be a boon offered by the new policy. The wider network of branches promoted growth in deposits and grant of loan assistance. The expansion of priority sector lending and the emphasis on the area approach led to a degree of evening out of regional disparities in banks.

The last few decades have also witnessed a significant expansion of the activities of term lending or development financial institutions (DFIs) with commercial banks confining themselves to the traditional form of providing working capital to trade and industry. The role of specialised financial institutions such as DFIs consisted in meeting the needs of medium and long term finance for industry. The DFIs now account for a major share of corporate financing and also have their nominees on the boards of assisted companies with covenants relating to aspects of management and deployment of

financial resources.

The Indian financial system has made commendable progress in extending its geographic spread and functional reach. The spurt of banking system has been a major factor in promoting financial intermediation in the economy and growth of financial savings. The credit reach of banking system has been so extensive that it now caters to several million borrowers and customers.

Indian money market consists of formal and informal segments. The formal market comprises of RBI, various commercial banks, cooperative banks, UTI etc. Informal market consists of chitfunds, nidhis, indigenous bankers etc. Money market instruments include treasury bills, commercial bills, certificate of deposit.

Money market has gained greater strength with the recent liberalisation of monetary and trade policies the world over. With the arrival of World Trade Organisation and removal of artificial barriers among Countries impeding free flow of goods and services, capital markets have grown multifold and the potential for the future is even more larger. With the increasing industrial and trade activities following liberalisation, the demand for capital mobilisation from the market has surpassed all estimates giving rise to many innovations and reforms.

The market players in the Indian capital market essentially consist of a variety of investors from different walks of life including small investors, mutual funds, banks, companies, financial institutions and so on. As stated earlier, these players drew upon the services of various intermediaries such as merchant bankers, brokers, market makers, stock exchanges, portfolio managers, mutual funds, underwriters, registrars and share transfer agents, loan syndicates etc. Many of them operate as individuals, partnerships and even incorporated companies and are subject to rules and regulations imposed by the regulatory authorities as well as model practices which have evolved over time. These intermediaries have a great role in investor servicing.

The investors are expected to inquire and inform themselves about the strengths and weaknesses of the different instruments and the institutions in which they invest by reference to the terms and conditions of investment and the past record of working results of such institutions. They are also expected to have a knowledge of the basic law of the Country applicable to such investments and institutions. The concept of safety, liquidity and profitability of the investments should weigh with the investors when they decide on their plans of investment.

V. A PROFILE OF SECURITIES MARKET

The stock markets worldwide have grown in size as well as depth over last one decade. The turnover on all markets taken together though have grown from US\$ 29.70 trillion in 2003 to \$47.32 trillion in 2005. It is significant to note that US alone accounted for about 45.46% of worldwide turnover in 2005. Despite having a large number of companies listed on its exchanges, India accounted for a meager 0.94% in total world turnover in 2005. The market capitalization of all listed companies taken together on all markets stood at US\$ 43.64 trillion in 2005 (\$38.90 trillion in 2004). The share of US in worldwide market capitalization decreased from 41.96% as at end-2004 to 38.95% in end-2005, while Indian listed companies accounted for 1.27% of total market capitalization in 2005.

There has also been an increase in market capitalization as per cent of GDP in some of the major country groups. The increase, however, has not been uniform across countries. The market capitalization as a percent of GDP was the highest at 108.9% for the high income countries as at end-2004 and lowest for middle income countries at 43.7%. Market capitalization as percent for GDP in India stood at 56.1% as at end-2004. The turnover ratio, which is a measure of liquidity, however was approximately same for both the high-income countries and low-income countries 114% and 107.6%, respectively. The total number of listed companies stood at 28,001 for high-income countries, 14,117 for middle-income countries and 6,756 for low-income countries as at end-2005.

Share holding pattern

In the interest of transparency, the issuers are required to disclose share holding pattern on a quarterly basis. Though the non-promoters holding is about 48%, the public held only 15.26% and the institutional holdings by (FIIs, MFs, FIs) accounted for 20.67%. There is not much significant difference in the shareholding pattern of companies in different sectors. About 80% of shares in companies in Infrastructure sector are held by Indian Promoters.

Households

According to the RBI data, household sector accounted for 85.4% of gross domestic savings during 2004-05. However, this has decreased to 83.9% in 2005-06. In the last fiscal 2005-06, they have invested 47.4% of financial savings in deposits, 24.2% in insurance/provident funds, 12.3% on small savings, and 7.2% in securities (out of which the investment in Gilts has been 24%),

including government securities and units of mutual funds. Thus the fixed income bearing instruments are the most preferred assets of the household sector.

Primary Market

An aggregate of Rs. 3,164,130 million were raised by the government and corporate sector during 2005-06 as against Rs. 2,548,990 million during the preceding year. Government raised about three fifths of the total resources, with central government alone raising nearly Rs. 1,600,180 million.

Corporate Securities

The average annual capital mobilization from the primary market has grown manifold since the last two-three decades. There is a high preference for raising resources in the primary market through private placement route. Private placement accounted for 71.6% of total resources mobilized through domestic issues by corporate sector during 2005-06.

Indian market is getting integrated with the global market, though in a limited way through Euro Issues. Since they were permitted access in 1992, Indian companies have raised about Rs. 113,580 million through American Depository Receipts (ADRs)/Global Depository Receipts (GDRs).

FII's have invested heavily in Indian market in 2005-06. They had net cumulative investments of US\$ 45.26 billion as at end of March 2006. There were 882 FII's registered with SEBI as of end March 2006.

It appears that more and more people prefer mutual funds (MFs) as their investment vehicle. This change in investor behavior is induced by the evolution of a regulatory framework for MFs, tax concessions offered by government and preference of investors for passive investing. Starting with an asset base of Rs. 250 million in 1964, the total assets under management at the end of March 2006 has risen to Rs. 2,318,620 million. During the last one decade, the resources mobilized by the MFs are increased from Rs. 112,440 million in 1993-94 to Rs. 527,800 million in 2005-06.

Government Securities

The primary issues of the Central Government have increased manifold during the decade of 1990s from Rs. 89,890 million in 1990-91 to Rs. 1,600,180 million in 2005-06, however it witnessed a slight dip in the year 2004-05 to Rs. 1,065,010 million. The issues by state governments have also increased from Rs. 25,690 million in 1990-91 to Rs. 505,210 million in 2003-04. However for the last two years it has been witnessing a slight dip to Rs. 391,010 million

in 2004-05 and Rs. 217,290 million in 2005-06. The central government mobilized Rs. 1,310,000 million through the issue of dated securities and Rs. 290,180 million through the issue of T-bills. After meeting repayment liabilities of Rs. 356,300 million for dated securities and redemption of T-bills of Rs. 26,510 million, net market borrowing of Central Government amounted to Rs. 982,370 million for the year 2005-06. The state government collectively raised Rs. 217,290 million during 2005-06 as against Rs. 391,010 million in the preceding year. The net borrowings of State Governments in 2005-06 amounted to Rs. 154,550 million.

Along with growth of the market, the investor base has also widened. In addition to banks and insurance companies, corporates and individual investors are also investing in government securities. The weighted average cost of borrowing has increased to 7.34% in 2005-06. The maturity structure of government debt is also changing. About 74% of primary issues were raised through securities with maturities above 5 years and up to 10 years. As a result the weighted average maturity of dated securities increased to 16.9 years in 2005-06

Secondary Market

Corporate Securities

Exchanges in the country, which offer screen, based trading system. The trading system is connected using the VSAT technology from over 281 cities. There were 9,335 trading members registered with SEBI as at end March 2006.

The market capitalization has grown over the period indicating more companies using the trading platform of the stock exchange. The all India market capitalization is estimated at Rs. 30,257,720 million at the end of March 2006. The market capitalization ratio defined as the value of stocks divided by GDP is used as a measure of stock market size. It is of economic significance since market is positively correlated with the ability to mobilize capital and diversify risk. It increased sharply to 85.6% in 2005-06 against 54.41% in the previous year.

The trading volumes on exchanges have been witnessing phenomenal growth over the past decade. The trading volume, which peaked at Rs. 28,809,900 million in 2000-01, fell substantially to Rs. 9,689,098 million in 2002-03, started rising again and finally stood at Rs. 23,901,030 million in 2005-06. The turnover ratio, which reflects the volume of trading in relation to the size of the market, stood at 79.1% for the year 2005-06.

The relative importance of various stock exchanges in the market

has undergone dramatic change during this decade. The increase in turnover took place mostly at the big exchanges. The NSE yet again registered as the market leader with more than 89% of total turnover (volumes on all segments) in 2005-06. Top 2 stock exchanges accounted for 99.9% of turnover, while the rest 21 exchanges had negligible volumes during 2005-06.

S&P CNX (Nifty) index movement has been responding to changes in the government's economic policies, the increase in FIIs inflows, etc. However, the year 2005-06 witnessed a favorable movement in the Nifty, wherein it registered its all time high on March 30, 2006 of 3418.95. The point-to-point return of Nifty was 67.15% for 2005-06.

Government Securities

The trading in non-repo government securities declined considerably in the year 2005-06 as compared to the previous year. The aggregate trading volumes in central and state government dated securities on SGL declined from Rs. 12,608,667 million in 2004-05 to Rs. 7,080,147 million in 2005-06. The share of WDM segment of NSE in the total of Non-repo government securities decreased marginally from 67.36% in 2004-05 to 63.67% in 2005-06.

Derivatives Market

The number of instruments available in derivatives has been expanded. To begin with, SEBI only approved trading in index futures contracts based on S&P CNX Nifty Index and BSE-30 (Sensex) Index. This was followed by approval for trading in options based on these indices and options on individual securities and also futures on interest rates derivatives instruments (*90-day national T-bills and 10-year Notional 6% coupon bearing as well as zero coupon bonds*). Now, there are futures and options based on benchmark index S&P CNX Nifty, CNX IT Index and Bank Nifty Index as well as options and futures on single stocks (122 stocks). The total exchange traded derivatives witnessed a value of Rs. 48,242,592 million during 2005-06 as against Rs. 25,641,269 million during the preceding year.

IV. REGULATORY FRAMEWORK

The four main legislations governing the securities market are: (a) the SEBI Act, 1992 which establishes SEBI to protect investors and develop and regulate securities market; (b) the Companies Act, 1956, which sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues; (c) the Securities Contracts (Regulation) Act, 1956, which provides for regulation of transactions

in securities through control over stock exchanges; and (d) the Depositories Act, 1996 which provides for electronic maintenance and transfer of ownership of demat securities.

Legislations

SEBI Act, 1992: The SEBI Act, 1992 establishes SEBI with statutory powers for (a) protecting the interests of investors in securities, (b) promoting the development of the securities market, and (c) regulating the securities market. Its regulatory jurisdiction extends over corporates in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. It can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act. It has powers to register and regulate all market intermediaries and also to penalise them in case of violations of the provisions of the Act, Rules and Regulations made there under. SEBI has full autonomy and authority to regulate and develop an orderly securities market. The details have been covered ahead in the chapter.

Securities Contracts (Regulation) Act, 1956: It provides for direct and indirect control of virtually all aspects of securities trading and the running of stock exchanges and aims to prevent undesirable transactions in securities. It gives central government/SEBI regulatory jurisdiction over (a) stock exchanges through a process of recognition and continued supervision, (b) contracts in securities, and (c) listing of securities on stock exchanges. As a condition of recognition, a stock exchange complies with prescribed conditions of Central Government. Organised trading activity in securities takes place on a specified recognised stock exchange. The stock exchanges determine their own listing regulations which have to conform to the minimum listing criteria set out in the Rules. The details have been discussed in the Chapter on Stock Exchanges.

Depositories Act, 1996: The Depositories Act, 1996 provides for the establishment of depositories in securities with the objective of ensuring free transferability of securities with speed, accuracy and security by (a) making securities of public limited companies freely transferable subject to certain exceptions; (b) dematerialising the securities in the depository mode; and (c) providing for maintenance of ownership records in a book entry form. In order to streamline the settlement process, the Act envisages transfer of ownership of securities electronically by book entry without making the securities move from person to person. The Act has made the securities of all public limited companies freely transferable, restricting the company's right to use discretion in effecting the transfer of

securities, and the transfer deed and other procedural requirements under the Companies Act have been dispensed with. The details have been dealt in the chapter on Depositories.

Companies Act, 1956: It deals with issue, allotment and transfer of securities and various aspects relating to company management. It provides for standard of disclosure in public issues of capital, particularly in the fields of company management and projects, information about other listed companies under the same management, and management perception of risk factors. It also regulates underwriting, the use of premium and discounts on issues, rights and bonus issues, payment of interest and dividends, supply of annual report and other information.

Rules and Regulations

The Government has framed rules under the SCRA, SEBI Act and the Depositories Act. SEBI has framed regulations under the SEBI Act and the Depositories Act for registration and regulation of all market intermediaries, and for prevention of unfair trade practices, insider trading, etc. Under these Acts, Government and SEBI issue notifications, guidelines, and circulars which need to be complied with by market participants.

Regulators

The responsibility for regulating the securities market is shared by Department of Economic Affairs (DEA), Ministry of Corporate Affairs, Reserve Bank of India (RBI) and SEBI. The activities of these agencies are coordinated by a High Level Committee on Capital Markets. The orders of SEBI under the securities laws are appellable before a Securities Appellate Tribunal.

Most of the powers under the SCRA are exercisable by DEA while a few others by SEBI. The powers of the DEA under the SCRA are also con-currently exercised by SEBI. The powers in respect of the contracts for sale and purchase of securities, gold related securities, money market securities and securities derived from these securities and carry forward contracts in debt securities are exercised concurrently by RBI. The SEBI Act and the Depositories Act are mostly administered by SEBI. The powers under the Companies Act relating to issue and transfer of securities and non-payment of dividend are administered by SEBI in case of listed public companies.

SECURITIES AND EXCHANGE BOARD OF INDIA

Before 1992, the three principal Acts governing the securities markets were: (a) the Capital Issues (Control) Act, 1947, which restricted issuer's access to the securities market and controlled the pricing of

issues; (b) the Companies Act, 1956, which sets out the code of conduct for the corporate sector in relation to issue, allotment and transfer of securities, and disclosures to be made in public issues; and (c) the Securities Contracts (Regulation) Act, 1956, which provides for regulation of transactions in securities through control over stock exchanges. The Capital Issues (Control) Act, 1947 had its origin during the war in 1943 when the objective was to channel resources to support the war effort. The Act was retained with some modifications as a means of controlling the raising of capital by companies and to ensure that national resources were channelled into proper lines, i.e., for desirable purposes to serve goals and priorities of the government, and to protect the interests of investors. Under the Act, any firm wishing to issue securities had to obtain approval from the Central Government, which also determined the amount, type and price of the issue.

Major part of the liberalisation process was the repeal of the Capital Issues (Control) Act, 1947 in May 1992. With this, Government's control over issue of capital, pricing of the issues, fixing of premia and rates of interest on debentures etc. ceased. The office which administered the Act was abolished and the market was allowed to allocate resources to competing uses. However to ensure effective regulation of the market, SEBI Act, 1992 was enacted to empower SEBI with statutory powers for (a) protecting the interests of investors in securities, (b) promoting the development of the securities market, and (c) regulating the securities market. Its regulatory jurisdiction extends over corporates in the issuance of capital and transfer of securities, in addition to all intermediaries and persons associated with securities market. SEBI can specify the matters to be disclosed and the standards of disclosure required for the protection of investors in respect of issues; can issue directions to all intermediaries and other persons associated with the securities market in the interest of investors or of orderly development for securities market; and can conduct enquiries, audits and inspection of all concerned and adjudicate offences under the Act. In short, it has been given necessary autonomy and authority to regulate and develop an orderly securities market.

I. SEBI ACT, 1992

While some of the essential provisions of the Act are discussed below, the student is expected to refer to the bare Act for getting a general appreciation of the sum and substance of the enactment. Chapter I of the Act covers the definitions of various terms under the Act, while Chapter II deals with establishment of SEBI and its

management. In terms of section 3 of the Act, SEBI is a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable and to contract, sue and be sued in its own name. SEBI has its Head Office at Mumbai and has powers to establish its offices at other places in India. SEBI presently has offices also in Kolkata, New Delhi and Chennai.

Section 4(1) of SEBI Act provides that the SEBI Board shall consist of the following members, namely:

- a. a Chairman;
- b. two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act, 1956;
- c. one member from amongst the officials of the Reserve Bank;
- d. five other members of whom at least three shall be the whole time members, to be appointed by the Central Government.

The Chairman and the other members are from amongst the persons of ability, integrity and standing who have shown capacity in dealing with problems relating to securities market or have special knowledge or experience of law, finance, economics, accountancy, administration or in any other discipline which, in the opinion of the Central Government, shall be useful to SEBI.

The terms and conditions of service of Chairman and members are determined in the rules framed by Government in this regard.

The general superintendence, direction and management of the affairs of SEBI vests in a Board of members, which exercises all powers and do all acts and things which may be exercised or done by SEBI. Unless determined otherwise through regulations, the Chairman shall also have all these powers.

Powers and Functions of SEBI

Chapter IV of SEBI Act, 1992 deals with the powers and functions of the Board. Section 11 of the Act lays down that it shall be the duty of the Board to protect the interests of the investors in securities and to promote the development of, and to regulate the securities markets by such measures as it thinks fit. These measures would include:

- 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;

- c. 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;
- d. registering and regulating the working of venture capital funds and collective investment schemes, including mutual funds;
- e. promoting and regulating self-regulatory organisations;
- f. prohibiting fraudulent and unfair trade practices relating to securities markets;
- g. promoting investors' education and training of intermediaries of securities markets;
- h. prohibiting insider trading in securities;
- i. regulating substantial acquisition of shares and takeover of companies;
- j. calling for information from, undertaking inspection, conducting inquiries and audits of the stock exchanges, mutual funds, other persons associated with the securities market, intermediaries and self-regulatory organisations in the securities market;
- k. calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any central, state or provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board;
- l. 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;
- m. levying fees or other charges for carrying out the purposes of this section;
- n. conducting research for the above purposes;
- o. 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;
- p. performing such other functions as may be prescribed.

For carrying out the duties assigned to it under the Act, SEBI has been vested with the same powers as are available to a Civil Court under the Code of Civil Procedure, 1908 for trying a suit in respect of the following matters:

- i. the discovery and production of books of account and other documents at the place and time indicated by SEBI.
- ii. summoning and enforcing the attendance of persons and

- examining them on oath.
- iii. inspection of any books, registers and other documents of any person listed in section 12 of the Act, namely stock brokers, sub brokers, share transfer agents, bankers to an issue, trustee of trust deed, registrar to an issue, merchant bankers, underwriters, portfolio managers, investment advisors and other such intermediaries associated with securities markets.
 - iv. inspection of any book or register or other document or record of the company referred to in sub-section (2A);
 - v. issuing commissions for the examination of witnesses or documents.

Power to Issue Directions

Section 11B of the Act provides that if SEBI is satisfied after making due enquiries, that it is necessary:

- i. in the interest of investors, or orderly development of securities market; or
- ii. to prevent the affairs of any intermediary or other persons referred to in section 12 being conducted in a manner detrimental to the interests of investors or securities market; or
- iii. to secure the proper management of any such intermediary or person, it may issue such directions, -
 - a. to any person or class of persons referred to in section 12, or associated with the securities market; or
 - b. to any company in respect of matters specified in section 11A, as may be appropriate in the interests of investors in securities and the securities market.

As per Section 11(4) SEBI, may, by an order or for reasons to be recorded in writing take any of the following measures either pending investigation or inquiry or on completion of such investigation or enquiry:

- 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 organisation 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 one month, with prior approval of a magistrate, one or more bank accounts of any intermediary or any person associated with the securities market in any of the

Act or rules or regulations made thereunder.

- 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.

Section 11A of SEBI Act provides that SEBI may prohibit for the protection of the investors, any company from issuing any offer document including a prospectus or advertisement soliciting money from the public for the issue of securities, and specify the conditions subject to which such offer documents can be issued. The Board may specify the matters relating to issue of capital, transfer of securities and other matters shall be disclosed by the companies. It may also by issuing prospectus, any offer document or advertisement soliciting money from public for issue of securities. SEBI may also specify the conditions subject to which the prospectus, such offer document or advertisement, if not prohibited, may be issued.

Collective Investment Scheme

Collective Investment Scheme is defined in sub-clause (2) of Section 11AA to mean any scheme or arrangement made or offered by any company under which:

- i. the contributions, or payments made by the investors, by whatever name called, are pooled and utilized 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.

The Collective Investment Scheme however, does not include any scheme or arrangement:

- i. made or offered by a co-operative society registered under the Co-operative Societies Act, 1912 or a society being a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State;
- ii. under which deposits are accepted by non-banking financial companies as defined in clause (f) of section 45-I of the Reserve Bank of India Act, 1934;

- iii. being a contract of insurance to which the Insurance Act, 1938, applies;
- iv. providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952;
- v. under which deposits are accepted under section 58A of the Companies Act, 1956;
- vi. under which deposits are accepted by a company declared as a Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956;
- vii. falling within the meaning of Chit business as defined in clause (d) of section 2 of the Chit Fund Act, 1982;
- viii. under which contributions made are in the nature of subscription to a mutual fund.

Investigations

Section 11C of the Act provides that where the Board has reasonable ground to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market; or any intermediary or any person associated with the securities market has violated any of the provisions of this Act or the rules or the regulations made or directions issued by the Board thereunder. It may, at any time by order in writing, direct any person 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.

It is the duty of every manager, managing director, officer and other employee of the company and every intermediary 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.

The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before it or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation. 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, or 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.

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.

If any person fails without reasonable cause or refuses 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 to furnish any information which it is his duty to furnish; or to appear before the Investigating Authority personally when required to do so or to answer any question which is put to him by the Investigating Authority; or to sign the notes of any examination referred in sub-section (7), he shall be punishable with imprisonment for a term which may extend to one year, or with fine, which may extend to one crore rupees, or with both, and also with a further fine which may extend to five lakh rupees for every day after the first during which the failure or refusal continues.

Notes of any examination under sub-section (5) shall be taken down in writing and shall be read over to, or by, and signed by, the person examined, and may thereafter be used in evidence against him.

Where in the course of investigation, the Investigating Authority has reasonable ground to believe that the books, registers, other documents and record of, or relating to, any intermediary or any person associated with securities market in any manner, may be destroyed, mutilated, altered, falsified or secreted, the Investigating Authority may make an application to the Judicial Magistrate of the first class having jurisdiction for an order for the seizure of such books, registers, other documents and record. After considering the

application and hearing the Investigating Authority, if necessary, the Magistrate may, by order, authorize 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.

It is provided that the Magistrate shall not authorize seizure of books, registers, other documents and record, of any listed public company or a public company which intends to get its securities listed on any recognised stock exchange unless such company indulges in insider trading or market manipulation.

The Investigating Authority shall keep in its custody the books, registers, other documents and record seized under this section for such period not later than the conclusion of the investigation as it considers necessary and thereafter shall return the same to the company or the other body corporate, or, as the case may be, to the managing director or the manager or any other person, from whose custody or power they were seized and inform the Magistrate of such return. The Investigating Authority may, before returning such books, registers, other documents and record as aforesaid, place identification marks on them or any part thereof. Every search or seizure made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

Cease and desist proceedings

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. SEBI shall not pass such order in respect of any listed public company or a public company which intends to get its securities listed on any recognized stock exchange unless SEBI has reasonable grounds to believe that such company has indulged in insider trading or market manipulation.

Consent Orders

SEBI has brought the concept of consent order/compounding of offence into force for resolving the disputes in more smooth manner through negotiations and discussions instead of lengthy litigation. SEBI vide its Circular No. EFD/ED/Cir-1/2007 dated 20th April 2007 has issued Guidelines for (i) Consent Orders and (ii) For considering requests for composition of offences, under SEBI Act,

SC(R) Act and Depositories Act.

Consent Order means an order settling administrative or civil proceedings between the regulator and a person (Party) who may prima facie be found to have violated securities laws. Here, Administrative/Civil enforcement actions include issuing directions, suspension or cancellation of certificate of registration, imposition of monetary penalty, pursuing suits and appeals in Courts and Securities Appellate Tribunal (SAT). It may settle all issues or reserve an issue or claim, but it must precisely state what issues or claims are being reserved. Consent Order provides flexibility of wider array of enforcement and remedial actions which will achieve the twin goals of an appropriate sanction, remedy and deterrence without resorting to litigation, lengthy proceedings and consequent delays.

Compounding of offence can take place after filing criminal complaint by SEBI. Compounding is a process whereby an accused pays compounding charges in lieu of undergoing consequences of prosecution. Prosecution includes Filing of criminal complaints before various criminal courts by SEBI for violation of provisions of securities laws which may lead to imprisonment and/ or fine.

Compounding of offence allows the accused to avoid a lengthy process of criminal prosecution, which would save cost, time, mental agony, etc in return for payment of compounding charges.

In the matter of M/s Aditya Securities

SEBI conducted an inspection of M/s Aditya Securities (hereinafter referred to as "noticee"). Pursuant to the inspection, it was found that the noticee acted as an unregistered sub-broker, furnished false information to the inspecting officials and extended margin trading facility to clients in contravention of Section 12 of SEBI Act, 1992, Rule 3 of SEBI (Stock Brokers and Sub Brokers) Rules 1992, Clause D(3) of Code of Conduct for sub brokers and Regulations 15, 21, 26(xiv) and 26(xx) of SEBI (Stock Brokers and Sub brokers) Regulations 1992, Rule 3 of SEBI (Stock Brokers and Sub-brokers) Rules, 1992. Adjudication proceedings were initiated against the noticee to inquire and adjudge under Chapter VI A of the SEBI Act, 1992 and a Show Cause Notice was issued under Rule 4 of SEBI (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 1995. The noticee made an application and an affidavit of "undertakings and waivers" for Consent Order in respect of the aforesaid pending adjudication proceedings.

Subsequently, the noticee proposed consent terms submitting that they were willing to pay a financial penalty limited to Rs.50,000/-

and in no way exceeding Rs.1,00,000. The terms as proposed by the noticee was placed before the High Powered Advisory Committee (HPAC). The HPAC considered the facts and circumstances of the case, consent terms offered by the notice and the material brought before the committee by SEBI and recommended that the case may be settled on payment of Rs.1,00,000/- The recommendations of the committee were placed before the two whole time members of the Board who have agreed to the terms of consent as recommended by the committee. In pursuance of the aforesaid consent terms, the noticee has remitted a sum of Rs.1,00,000/-, towards the terms of consent in the matter. In view of above consent order disposes of the said proceedings pending against the noticee under SEBI Act, 1992.

Registration of Intermediaries

Chapter V of the Act provides for registration of various intermediaries such as stock broker, sub-broker, share transfer agents etc.

Section 12(1) of the Act provides that no stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market shall buy, sell or deal in securities except under, and in accordance with, the conditions of a certificate of registration obtained from SEBI in accordance with the regulations made under this Act.

A person buying or selling securities or otherwise dealing with the securities market as a stock-broker, sub-broker, share transfer agent, banker to an issue, trustee of trust deed, registrar to an issue, merchant banker, underwriter, portfolio manager, investment adviser and such other intermediary who may be associated with securities market immediately before the establishment of the Board for which no registration certificate was necessary prior to such establishment, may continue to do so for a period of three months from such establishment or, if he has made an application for such registration within the said period of three months, till the disposal of such application.

Also no depository, participant, custodian of securities, foreign institutional investor, credit rating agency or any other intermediary associated with the securities market as SEBI may by notification in this behalf specify, shall buy or sell or deal in securities except under and in accordance with the conditions of a certificate of registration obtained from SEBI in accordance with the regulations

made under this Act.

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

Every application for registration would in such manner and on payment of such fees as may be determined by regulations. The Board may, by order, suspend or cancel a certificate of registration in such manner as may be determined by regulations. However no such order shall be made unless the person concerned has been given a reasonable opportunity of being heard.

Chapter VA of the Act deals with prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities and control.

Section 12A of the Act provides that no person shall directly or indirectly:

- a. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- b. employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognized stock exchange;
- c. engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognized stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- d. engage in insider trading;
- e. deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- f. acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognized

stock exchange in contravention of the regulations made under this Act.

Finance, Accounts and Audit of SEBI

Chapter VI of the Act provides for Finance, Accounts and Audit of SEBI.

The Central Government may, after due appropriation made by Parliament by law in this behalf, make to SEBI grants of such sums of money as the Central Government may think fit for being utilised for the purposes of this Act. 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 SEBI under this Act; all sums received by SEBI from such other sources as may be decided upon by the Central Government. The Fund shall be applied for meeting the salaries, allowances and other remuneration of members, officers and other employees of SEBI, the expenses of SEBI in the discharge of its functions under Section 11 and the expenses on objects and for purposes authorised by this Act.

SEBI 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. The accounts of SEBI 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 SEBI to the Comptroller and Auditor General of India. 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 SEBI. The accounts of SEBI 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.

Penalties for Failures

Chapter VIA of SEBI Act, 1992, contains Section 15A to 15J which deals with penalties which can be imposed under the Act for various

failures, defaults, non-disclosure and other offences.

It may be recalled that Section 11(2)(i) empowers SEBI to call for information and conduct enquiries and audits of the stock exchanges, mutual funds, other persons associated with securities markets, intermediaries and self regulatory organisations in the security market. Also Section 11(ia) of the Act requires calling for information and record from any bank or any other authority or board or corporation established or constituted by or under any central, state or provincial Act in respect of any transaction in securities which is under investigation or inquiry by the Board.

Section 15A lays down that if any person who is required under SEBI Act or any rules or regulations made thereunder:

- a. to furnish any document, return or report to the Board, fails to furnish the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.
- b. to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.
- c. to maintain books of accounts or records, fails to maintain the same, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Section 15B lays down that 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 pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Section 15C lays down that if any listed company or any person who is registered as an Intermediary, after having been called upon by SEBI in writing to redress the grievances of Investor, fails to redress such grievances within the time specified by the Board, such company or intermediary shall be liable to pay a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less.

Penalties for Default

Section 15D and 15F provide for penalties for default.

Section 15D lays down that in case of mutual funds, if any person

who is:

- a. required under this Act or any rules or regulations made thereunder to obtain a certificate of registration from the Board for sponsoring or carrying on any collective investment scheme, including mutual funds, sponsors or carries on any collective investment scheme, including mutual funds, without obtaining such certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which he sponsors or carries on any such collective investment scheme, including mutual funds, or one crore rupees, whichever is less;
- b. registered with the Board as a collective investment scheme, including mutual funds, for sponsoring or carrying on any investment scheme, fails to comply with the terms and conditions of certificate of registration, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
- c. registered with the Board as a collective investment scheme, including mutual funds, fails to make an application for listing of its schemes as provided for in the regulations governing such listing, he shall be liable to penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
- d. registered as a collective investment scheme, including mutual funds, fails to dispatch unit certificates of any scheme in the manner provided in the regulation governing such despatch, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
- e. 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
- f. registered as a collective investment scheme, including mutual funds, fails to invest money collected by such collective investment schemes in the manner or within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Section 15E lays down that where any asset management company of a mutual fund registered under SEBI Act fails to comply with any of the regulation providing for restrictions on the activities of such

company, it 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.

Section 15F provides penalties for default in case of stock brokers. As per the Section, if any person registered as a stock broker under SEBI Act -

- a. fails to issue contract notes in the form and in the manner specified by the stock exchange of which such broker is a member, he shall be liable to a penalty not exceeding five times the amount for which the contract note was required to be issued by that broker;
- b. fails to deliver any security or fails to make payment of the amount due to the investor in the manner within the period specified in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;
- c. charges an amount of brokerage which is in excess of the brokerage specified in the regulations, he shall be liable to a penalty of one lakh rupees or five times the amount of brokerage charged in excess of the specified brokerage, whichever is higher.

Penalty for Insider Trading

Section 15G lays down that if any insider:

- 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,

he 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.

Penalty for Non-Disclosure of Acquisition of Shares and Takeovers

Section 15H lays down that if any person fails to:

- i. disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
- ii. make such a public announcement to acquire shares at a minimum price, he shall be liable to a penalty not exceeding five

lakh rupees;

- iii. make a public offer by sending letter of offer to the shareholders who sold their shares pursuant to letter of offer, he 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.

Section 15H provides that if a person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

Penalty for contravention

Whoever fails to comply with any provision of this Act, the rules or regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Adjudications

Section 15-I & J deal with SEBI's power to adjudicate and factors to be taken into account by the adjudicating officer.

1. For the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, SEBI appoints any of its officers not below the rank of Division Chief to be an adjudicating officer for holding an inquiry in the prescribed manner after giving any person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.
2. While holding an inquiry, the adjudicating officer has powers to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer, may be useful for or relevant to the subject matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions, he may impose such penalty as he thinks fit in accordance with the provisions of any of those sections.

Section 15J lays down that while adjudging the amount of penalty, the adjudicating officer shall have due regard to the following factors viz.,

- a. the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b. the amount of loss caused to an investor or group of investors as a result of the default;
- c. the repetitive nature of the default.

Section 15JA provides that all sums realised by way of penalties under this Act shall be credited to the consolidated fund of India.

Securities Appellate Tribunal

In order to afford proper appellate remedies, Chapter VIB of SEBI Act provides for the establishment of the Securities Appellate Tribunals to consider appeals against SEBI's orders, of penalties. As per Section 15K, the Central Government is empowered to establish by notifications one or more Appellate Tribunals, to be known as the Securities Appellate Tribunals to exercise the jurisdiction, power and authorities conferred on such Tribunal by SEBI Act or under the Act or any other law for the time being in force. The Central Government has set up a tribunal at Mumbai. According to Section 15L, which deals with the composition of the Tribunal, the Securities Appellate Tribunals shall consist of a Presiding Officer and two other members to be appointed by the Central Government by notification.

Section 15M prescribes that a person shall not be qualified for appointment as the Presiding Officer of Securities Appellate Tribunals unless he is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court. It has also been prescribed that the presiding officer of the Securities Appellate Tribunal shall be appointed by the Central Government in consultation with chief justice of India or his nominee. A person shall not be qualified for appointment as a member of Securities Appellate Tribunal unless he is a person of ability, integrity and standing who has shown capacity in dealing with problems relating to securities market and has qualification and experience of corporate law, securities laws, finance, economics or accountancy. A member of SEBI or any person holding a post at senior management level at SEBI cannot be appointed as presiding officer or member of Securities Appellate Tribunal during his service or tenure as such with the Board or within two years from the date on which he ceases to hold office as such in the Board.

Section 15N lays down that the Presiding Officer and every other member of Securities Appellate Tribunal shall hold office for a term of five years from the date he enters upon his office and is eligible for reappointment.

It has also been provided that the person attaining the age of sixty eight years cannot hold office as the presiding officer of Securities Appellate Tribunal. Also a person who has attained the age of sixty two years cannot hold office as member of Securities Appellate Tribunal.

Section 15-O lays down that 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 are such as may be prescribed. It has also been provided that neither the salary and allowances nor the other terms and conditions of service of the said Presiding Officer and other members of the Securities Appellate Tribunal shall be varied to their disadvantage after appointment.

Filling up of Vacancies

Any vacancy, for reasons other than temporary absence, any vacancy occurs in the office of the presiding officer or any other member of a Securities Appellate Tribunal, shall be filled by the Central Government in accordance with the provisions of the Act. The proceedings may be continued before the Securities Appellate Tribunal from the stage at which the vacancy is filled.

Resignation and Removal

The presiding officer or any other member may resign his office, by notice in writing under his hand addressed to the Central Government. The presiding officer or the member would continue to hold office until:

- a. the expiry of three months from the date of receipt of such notice, or
 - b. a person duly appointed as his successor enters upon his office, or
 - c. the expiry of his term of office,
- whichever is earliest, unless the Central Government has permitted him to relinquish his office sooner.

The Presiding Officer or a member of a Securities Appellate Tribunal shall not be removed from his office except by an order by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court, in which the Presiding Officer or member of Securities Appellate Tribunal concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges. The Central Government by rules regulate the procedure for the investigation of misbehaviour or incapacity of the presiding officer or the member.

Section 15R makes it clear that no order of the Central Government appointing any person as the Presiding Officer of a Securities Appellate Tribunal shall be called in question in any manner, and no Act or proceeding before a Securities Appellate Tribunals 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 Securities Appellate Tribunal

Central Government shall provide the Securities Appellate Tribunal with such officers and employees as Government may think fit.

Officers and employees shall discharge their functions under general superintendence of the presiding officer. The salaries and allowances and other conditions of service of the officers and employees of Securities Appellate Tribunal would be prescribed.

Requirements for Appeal to the Tribunal

Section 15T and 15U deal with the appeal procedure and power of Securities Appellate Tribunals. Section 15T lays down that any person aggrieved:

1. (a) by an order of SEBI made, under this Act, or the rules or regulations made thereunder; or
(b) by an order made by an adjudicating officer under this Act may prefer an appeal to a Securities Appellate Tribunal having jurisdiction in the matter.
2. No appeal shall lie to the Securities Appellate Tribunals from an order made
 - a. by SEBI;
 - b. by an adjudicating officer, with the consent of the parties.
3. Every appeal under sub-section (1) shall be filed within a period of 45 days from the date on which a copy of the order made by SEBI or the Adjudicating Officer, is received by him and it shall be in such form and be accompanied by such fee as may be prescribed. This details have been prescribed in the Rules. Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of 45 days if it is satisfied that there was sufficient cause for not filing it within that period.
4. 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.
5. The Securities Appellate Tribunal shall send a copy of every order made by it to SEBI and the parties to the appeal and to the concerned Adjudicating Officer.
6. The appeal filed before the Securities Appellate Tribunal shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of receipt of the appeal.

Procedure of Securities Appellate Tribunal

As regards the procedure and powers of Securities Appellate Tribunal, Section 15U lays down that 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.

Powers of Securities Appellate Tribunal

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

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

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

Legal Representation

Section 15V permits the Appellant either to appear in person or authorise one or more of practising Company Secretaries, Chartered Accountants, Cost Accountants or Legal practitioners or any of its officers to present his or its case before the Securities Appellate Tribunal.

Limitation

As per the section 15W, the provisions of the Limitations Act, 1963 shall apply to an appeal made to Securities Appellate Tribunal.

Public Servants

As per section 15X, the Presiding Officer and other officers and

employees of Securities Appellate Tribunal shall be deemed to be public servants under the Indian Penal Code.

Jurisdiction of Civil Court

Section 15Y lays down that no civil court has 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 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 lays down 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 of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order;

It has been provided that the Supreme Court may, if it is satisfied that the applicant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding 60 days.

Powers of Central Government

a. To issue directions

Section 16 empowers Central Government to issue directions in writing to SEBI on questions of policy as it may deem fit from time to time. However the Central Government shall as far as practicable, give an opportunity to SEBI to express its views before any such directions is given by the Central Government. The decision of the Central Government as to whether a question is one of policy or not shall be final.

b. To Supercede the Board

Section 17 lays down that if at any time the Central Government is of opinion that:

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

interest so to do,
it may, by notification, supersede SEBI for such period, not exceeding six months, as may be specified in the notification. Upon the publication of the notification, it will have the following effects:

- a. all the members shall, as from the date of supersession, vacate their offices as such;
- b. all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board, shall until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and
- c. all property owned or controlled by SEBI shall, until the Board is reconstituted, vest in the Central Government.

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 because of supersession shall not be deemed disqualified for appointment.

Returns and Reports

As per Section 18, SEBI is required to 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.

SEBI 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 and a copy of the report, as soon as may be after it is received, shall be laid down before each House of Parliament.

Delegation of Powers

In accordance with Section 19 of SEBI Act, SEBI may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any as may be specified in the order, such of its powers and functions under the Act as it may deem necessary.

Appeal to the Central Government

Section 20 of the Act provides that any person aggrieved by an order of the Board made, may prefer an appeal to the Central

Government within such time as may be prescribed. The appeal shall not be admitted if it is preferred after the expiry of the period prescribed therefor. However if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

Every appeal made under this section shall be made in prescribed form and shall be accompanied by a copy of the order appealed against by such fees as may be prescribed.

The procedure for disposing of an appeal shall be such as may be prescribed and the appellant shall be given a reasonable opportunity of being heard.

Bar of Jurisdiction

Section 20A lays down that no order passed by SEBI or the adjudicating officer under this Act shall be appealable except as provided in section 15T or section 20 and no civil court shall have jurisdiction in respect of any matter which the Board (or the adjudicating officer) is empowered by, or under, this Act to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by SEBI or the adjudicating officer by, or under, this Act.

Public Servants

Section 22 of the Act provides that all members, officers and other employees of SEBI while acting or purporting to act in pursuance of any of the provisions of the Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Section 23 provides that no suit, prosecution or other legal proceedings shall lie against the Central Government or SEBI or any officer of the Central Government or any member, officer or other employee of SEBI for anything which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

Offences and Punishments

Section 24, 26 and 27 deal with offences.

Section 24 lays down that:

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

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

Composition of certain offences

Section 24A provides any offence punishable under this Act, not being an offence punishable with imprisonment only or with imprisonment and also with fine, may before or after the institutions of any proceeding, be compounded by a Securities Appellate Tribunal or a Court before which such proceedings are pending.

Power to grant immunity

As per Section 24B of the Act, the Central Government may on the recommendations by the board, if satisfied that any person who is alleged to have violated any of the provisions of this Act or the rules or regulations made thereunder has made a full and true disclosures in respect of alleged violations, grant to such persons, subject to conditions as it may think fit, immunity from prosecution for any offence under this Act with respect to the alleged violation. However 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. It has also been provided that recommendations of SEBI shall not be binding upon the Central Government. However, an immunity granted to a person can be withdrawn by the Central Government, if it is satisfied 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. 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. He 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.

Section 26 lays down that:

1. No court shall take cognizance of any offence punishable under this Act or any rules or regulations made thereunder, save on a complaint made by SEBI.
2. No court inferior to that of a Court of Session shall try any offence punishable under this Act.

Section 27 on offences by company lays down that:

1. Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;
Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.
2. Notwithstanding anything contained in above, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Here 'Company' means any body corporate and includes a firm or other association of individuals; and 'director', in relation to a firm, means a partner in the firm.

Power to make Rules

Section 29 empowers the Central Government to make rules for carrying out the purposes of this Act. 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 of SEBI;
- b. the additional functions that may be performed by SEBI under section 11 of the Act;
- c. the manner in which the accounts of SEBI shall be maintained under section 15;
- d. the manner of inquiry by adjudicating officer;
- e. 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;
- f. the procedure for the investigation of misbehaviour or incapacity of the Presiding Officers or other members of the Securities Appellate Tribunal;
- g. the form in which an appeal may be filed before the Securities Appellate Tribunal and the fees payable in respect of such

- appeal;
- h. the form and the manner in which returns and report to be made to the Central Government under section 18;
 - i. 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 empowers SEBI by notification to make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act.

Such regulations may provide for all or any of the following matters, namely:

- a. the times and places of meetings of SEBI and the procedure to be followed at such meetings including quorum necessary for the transaction of business;
- b. the terms and other conditions of service of officers and employees of SEBI;
- c. the matters relating to issue of capital, transfer of securities and other matters incidental thereto and the manner in which such matters shall be disclosed by the companies under section 11A.
- d. the conditions subject to which certificate of registration is to be issued, the amount of fee to be paid for certificate of registration and the manner of suspension or cancellation of certificate of registration.

Rules, Regulations to be laid before the Parliament

Section 31 lays down that 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 rules or regulation.

Section 32 lays down that 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.

II. SEBI ANNUAL REPORT

The Central Government notified SEBI (Annual Report) Rules 1994,

on 7th April, 1994 in exercise of its powers under section 18(2) read with section 29 of SEBI Act, 1992.

Rule 3 lays down that SEBI shall submit to the Central Government an annual report giving a true and full account of its activities, policies and programmes during the previous financial year in the prescribed form appended to these rules. Such annual report shall be submitted to the Central Government within 90 days after the end of each financial year. Section 18(3) of SEBI Act lays down that a copy of the annual report submitted by SEBI to Central Government shall be laid before each House of Parliament, as soon as may be after it is received by Central Government. The students are advised to look at latest SEBI Annual Report, which is available on SEBI's website: www.sebi.gov.in

The form of the annual report is divided into four parts. Part I deals with policies and programmes to be reviewed in respect of the general, economic, environmental and the investment climate, primary and secondary markets, mutual funds, intermediaries, foreign institutional investment, other activities and programmes having a bearing on the working of the Securities Market and finally an assessment and prospects of the times ahead.

Part II deals with a review of the working and operation of SEBI in respect of different segments of the market as detailed under part I. Part III contains details of the functions of SEBI under 13 sub-headings, namely:

- a. Regulation of business in Stock Exchanges including trading and settlement practices;
- b. Registration and regulation of various intermediaries in the securities market including suspension, cancellation of registrations etc.
- c. Registration and regulation of working of collective investment schemes and mutual funds including suspension and cancellation of registrations etc.
- d. Promotion and regulation of self regulatory organisations (SROs);
- e. Fraudulent and unfair trade practices and steps taken by SEBI to prevent recurrences;
- f. Investors education and training of intermediaries;
- g. Prohibition of insider trading and steps initiated to curb such practices;
- h. Substantial acquisition of shares and takeovers;
- i. Information obtained, inspection undertaken, inquiries conducted and results of audits of stock exchanges, intermediaries and

SROs by SEBI;

- j. Delegated powers and functions under the SCR Act, 1956;
- k. Fees and other charges collected by SEBI;
- l. Research and studies conducted by SEBI;
- m. Other functions carried out by SEBI on Securities Market.

Part IV of the annual report contains detail of the organisational matter of SEBI.

III. SEBI'S ANNUAL ACCOUNTS

SEBI (Form of Annual Statement of Accounts and Records) Rules, 1994 were notified by the Central Government on 20th May, 1994 in consultation with Comptroller and Auditor General of India, in exercise of the powers conferred by Section 15(1) read with Section 29 of SEBI Act, 1992. Rule 3 prescribes that at the expiration of a period of 12 months ending with 31st March every year, SEBI shall prepare with reference to that period, a balance sheet, income and expenditure account and receipts and payments account as on the last working day of that period respectively in the forms - Form A, Form B and Form C respectively.

Rules 4 and 5 prescribe that SEBI shall preserve these statements for a minimum period of five years and that they shall be signed by the Chairman and an officer authorised by SEBI.

The accounts of SEBI shall be audited by the Comptroller & Auditor General of India (C&AG) and SEBI shall pay the C&AG for the services rendered. The C&AG or his authorised persons shall have the same rights, privileges and authority in connection with such audit as the C&AG has in connection with audit of government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and documents and papers and to inspect any of the offices of SEBI. The accounts of SEBI as certified by the C&AG together with the audit report shall be forwarded annually to the Central Government who shall cause the same to be laid before each House of Parliament.

IV. SECURITIES APPELLATE TRIBUNAL (PROCEDURE) RULES, 2000

In exercise of the powers conferred by section 29 read with section 15T and 15U of the Securities and Exchange Board of India Act, 1992 the Central Government notified Securities Appellate Tribunal (Procedure) Rules, 2000 and amended the same in the year 2003. The important expressions as defined under the Rules are given below :

- i. "Adjudicating officer" means an officer appointed under sub-section (1) of section 15-I of the Act;

- ii. "Appeal" means an appeal preferred under sub-section (1) of section 15T of the Act or section 22A of SCRA or Rule 19(5) or 20(5) of SCR Rules;
- iii. "Appellate Tribunal" means the Securities Appellate Tribunal established under section 15K of the Act;
- iv. "Member" means the member of the Securities Appellate Tribunal appointed under section 15L of the Act
- v. "Party" means a person who prefers an appeal before the Appellate Tribunal and includes respondent;
- vi. "Presiding Officer" means the Presiding Officer of the Securities Appellate Tribunal appointed under section 15L of the Act;
- vii. "Registrar" means the Registrar of the Appellate Tribunal and includes an officer of such Appellate Tribunal who is authorized by the Presiding Officer to function as Registrar.

Procedure for Filing Appeal

Rule 3 dealing with Limitation for filing appeal requires every appeal to be filed within a period of forty five days from the date on which a copy of the order against which the appeal is filed, is received by the appellant. However, Appellate Tribunal has been empowered to 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.

Limitation for Filing Appeal

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

- a. within 15 days from the date on which the reasons for such refusal are furnished to it, or
- b. where the stock exchange had omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956, the application for permission for the shares or debentures to be dealt with on the stock exchange, within 15 days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Appellate Tribunal may, on sufficient cause being shown, allow, appeal to the Securities Appellate Tribunal having jurisdiction in the matter against such refusal, omission or failure, as the case may be.

Every appeal shall be filed within a period of forty five days from the date on which a copy of the order, against which the appeal is filed, of a recognized stock exchange withdrawing admission to dealings

or suspending admission to dealings which continues for a period exceeding three months in any security/units or other instruments of a "collective instrument scheme", as defined under SEBI Act, 1992 is received by the appellant.

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

Rule 4 requires a memorandum of appeal to be presented in the prescribed Form by any aggrieved person in the registry of the Appellate Tribunal within whose jurisdiction his case falls or be sent by registered post addressed to the Registrar. A memorandum of appeal sent by post shall be deemed to have been presented in the registry on the day it was received in the registry.

Every memorandum of appeal to be accompanied with a fee and such fee may be remitted in the form of crossed demand draft drawn on any nationalised bank in favour of "the Registrar, Securities Appellate Tribunal" payable at the station where the registry is located.

The amount of fee payable in respect of appeal against adjudication orders made under Chapter VI A of the Act has been prescribed as given below :

<i>Amount of penalty imposed</i>	<i>Amount of fees payable</i>
1. Less than rupees ten thousand	Rs. 500
2. Rupees ten thousand or more but less than one lakh	Rs. 1,200
3. Rupees one lakh or more	Rs. 1,200 plus Rs. 500 for every additional one lakh of penalty or fraction thereof, subject to a maximum of Rs. 1,50,000

Amount of fee payable in respect of any other appeal against an order of the Board under the Act shall be rupees five thousand only.

Rule 12 requires every memorandum of appeal filed to set forth concisely under distinct heads, the grounds of such appeal without any argument or narrative, and such ground shall be numbered consecutively. Separate memorandum of appeal is not required to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

Rule 11 provides that every memorandum of appeal shall be in triplicate and shall be accompanied with copies of the order, at least one of which shall be certified copy, against which the appeal is filed. Where a party is represented by authorised representative, a copy of the authorisation to act as the authorised representative and the written consent thereto by such authorised representative, shall be appended to the appeal. Rule 12 makes it clear that a memorandum of appeal shall not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

Sittings of Appellate Tribunal

Rule 5 dealing with settings of Appellate Tribunal requires the Tribunal to hold its sitting either at a place where its office is situated or at such other place falling within its jurisdiction, as it may deem fit by the Appellate Tribunal. In the case of temporary absence of the Presiding Officer, Government may authorize one of the two other Members to preside over the sitting of the Tribunal either at a place where its office is situated or at such other place falling within its jurisdiction as it may deem fit by the Appellate Tribunal.

Appeal to be in writing

Rule 7 requires every appeal, application, reply, representation or any document filed before the Appellate Tribunal to be typewritten, cyclostyled or printed neatly and legibly on one side of the good quality paper of foolscap size in double space and separate sheets to be stitched together and every page to be consecutively numbered and filed in five sets in a paper book along with an empty file size envelope bearing full address of the respondent and in case the respondents are more than one, then sufficient number of extra paper books together with empty file size envelope bearing full addresses of each respondent shall be furnished by the appellant.

Presentation and scrutiny of memorandum of appeal

Rule 8 which deals with presentation and Scrutiny of memorandum of appeal requires the Registrar to endorse on every appeal the date on which it is presented or deemed to have been presented and to sign endorsement. If, on scrutiny, the appeal is found to be in order, it shall be duly registered and given a serial number. If an appeal on scrutiny is found to be defective and the defect noticed is formal in nature, the Registrar may allow the appellant to rectify the same in his presence and if the said defect is not formal in nature, the Registrar may allow the appellant such time to rectify the defect as he may deem fit. If the appeal has been sent by post and found

to be defective, the Registrar may communicate the defects to the appellant and allow the appellant such time to rectify the defect as he may deem fit. In case the appellant fails to rectify the defect within the time allowed in sub-rule (3), the Registrar may by order and for reasons to be recorded in writing, decline to register such memorandum of appeal and communicate the order to the appellant within seven days thereof. An appeal against the order of the Registrar is required to be made within fifteen days of receiving of such order to the Presiding Officer or in his temporary absence, to the Member authorized whose decision thereon shall be final

Notice of appeal to the respondent and Filing of Reply

Rule 13 requires the Registrar to serve on the respondent a copy of the memorandum of appeal and paper book as soon as they are registered in the registry, by hand delivery, or by Registered Post or Speed Post. The respondent may file five complete sets containing the reply to the appeal along with documents in a paper book form with the registry within one month of the service of the notice on him of the filing of the memorandum of appeal. The Appellate Tribunal may, in its discretion, on application by the respondent allow the filing of reply after the expiry of the period of one month. Every reply, application or written representation filed before the Appellate Tribunal should be verified in the prescribed manner. A copy of every application, reply, document or written material filed by the respondent before the Appellate Tribunal shall be forthwith served on the appellant, by the respondent.

Hearing of Appeal

The Appellate Tribunal to notify the parties the date of hearing of the appeal in such manner as the Presiding Officer may by general or special order direct. On the day fixed or on any other day to which the hearing may be adjourned, the appellant shall be heard in support of the appeal. The Securities Appellate Tribunal shall, then, if necessary, hear the Board or its authorised representative against the appeal, and in such case the appellant shall be entitled to reply. During the course of the hearing of appeal the written arguments could be supplemented by time-bound oral arguments. However, in the case of temporary absence of the Presiding Officer or of the Member authorized by the Government under sub-rule (2) of rule 5, the Presiding Officer can authorize the other Member present on that day to hear the Board or authorized representative against the appeal.

In case the appellant does not appear in person or through an authorised representative when the appeal is called for hearing, the

Securities Appellate Tribunal may dispose of the appeal on merits. However, where an appeal has been disposed of as aforesaid and the appellant appears afterwards and satisfies the Securities Appellate Tribunal that there was sufficient cause for his not appearance, when the appeal was called for hearing, the Securities Appellate Tribunal shall make an order setting aside the ex-parte order and restore the appeal.

Dress Code

Rule 17 dealing with dress regulations for Presiding Officer, Members and the representatives of the parties provides that the dress for the Presiding Officer shall be white or striped or black pant with blackcoat over white shirt and band or buttoned up black cut and band. The dress for two other Members shall be white or striped or black pant with black coat over white shirt and black tie or a buttoned-up black coat. In the case of female Presiding Officer, the dress shall be black coat over white saree.

Every authorised representative, other than a relative or regular employee of the party shall appear before the Appellate Tribunal in his professional dress if any, and if there is no such dress, a male, in a suit or buttoned-up coat over a pant or national dress that is a long buttoned up coat on dhoti or churidar pyjama, and a female, in a coat over white or any other sober coloured saree or in any other sober dress. All other persons appearing before the Appellate Tribunal are required to be properly dressed.

Order of the Appellate Tribunal

Every order of the Appellate Tribunal shall be pronounced in the sitting of the Appellate Tribunal by the Presiding Officer or in case of the temporary absence of the Presiding Officer, by the authorized Member and powers be signed and dated by the Presiding Officer. The Presiding Officer has to pass interim orders or injunctions, subject to reasons to be recorded in writing, which it considers necessary in the interest of justice.

In terms of Rule 19 the orders of the Appellate Tribunal, as are deemed fit for publication in any authoritative report or the press may be released for such publication on such terms and conditions as the Presiding Officer may lay down. Under Rule 20, a certified copy of every order passed by the Appellate Tribunal shall be communicated to SEBI, the Adjudicating Officer and to the parties, as the case may be. Students are advised to refer to SAT cases which are available on SEBI website www.sebi.gov.in.

Inspection of Records and Copies Thereof

Rule 22 which deals with fee for inspection of records and copies

thereof prescribes a fee of rupees twenty, for every hour or part thereof of inspection subject to a minimum of rupees one hundred for inspecting the records of a pending appeal by a party thereto. Similarly a fee of rupees five for a folio or part thereof not involving typing and a fee of rupees ten for a folio or part thereof involving typing of statement and figures has been prescribed for providing copies of the records of an appeal, to a party thereto.

Working hours of the Appellate Tribunal

Rule 23 prescribes that the office of the Appellate Tribunal shall observe such public and other holidays as observed by the offices of the Central Government in the locality where the office of the Appellate Tribunal is situated. The Appellate Tribunal shall, subject to any other order made by the Presiding Officer, remain open on the working days from 10.00 AM to 6.00 PM. But no work, unless of an urgent nature, shall be admitted after 4.30 PM on any working day. The sitting hours of the Appellate Tribunal shall ordinarily be from 10.30 AM to 1.00 PM and 2.00 PM to 5.00 PM, subject to any order made by the Presiding Officer.

Functions and Duties of the Registrar

Rule 25 and 26 deals with functions of Registrar. Rule 25 provides for general functions and Rule 26 provides for additional functions and duties of Registrars. Rule 25 provides that the Registrar shall discharge his functions under general superintendence of the Presiding Officer or in the temporary absence of the Presiding Officer, the authorized member. He shall discharge such other functions as are assigned to him under these rules by the Presiding Officer or in the temporary absence of the Presiding Officer, by the Member authorized by a separate order in writing. He shall have the custody of the records of the Appellate Tribunal. The official seal of the Appellate Tribunal shall be kept in the custody of the Registrar. However, subject to any general or special direction by the Presiding Officer, or in the temporary absence of the Presiding Officer, authorized member, the official seal of the Appellate Tribunal shall not be affixed to any order, summons or other process save under the authority in writing from the Registrar. The official seal of the Appellate Tribunal shall not be affixed to any certified copy issued by the Appellate Tribunal, save under the authority in writing of the Registrar.

Rule 26 provides that in Additional functions and duties of Registrar. In addition to the functions and duties assigned in the rules, the Registrar shall have the following functions and duties subject to any general or special orders of the Presiding Officer namely:

1. to receive all appeals, replies and other documents;
2. to decide all questions arising out of the scrutiny of the appeals before they are registered;
3. to require any appeal presented to the Appellate Tribunal to be amended in accordance with the rules;
4. subject to the directions of the Presiding Officer to fix date of hearing of the appeals or other proceedings and issue notices thereof;
5. direct any formal amendment of records;
6. to order grant of copies of documents to parties to proceedings;
7. to grant leave to inspect the record of the Appellate Tribunal;
8. dispose of all matters relating to the service of notices or other processes, application for the issue of fresh notice or for extending the time for or ordering a particular method of service on a respondent including a substituted service by publication of the notice by way of advertisement in the newspapers;
9. to requisition records from the custody of any court or other authority.

LESSON ROUND-UP

- The Securities Market refers to the markets for those financial instruments/ claims/obligations that are commonly and readily transferable by sale.
- The Securities Market has two inter-dependent and inseparable segments, the new issues (primary) market and the stock (secondary) market.
- The primary market provides the channel for sale of new securities, while the secondary market deals in securities previously issued.
- The four main legislations governing the securities market are: the SEBI Act, 1992; the Companies Act, 1956; the Securities Contracts (Regulation) Act, 1956; the Depositories Act, 1996
- SEBI has twin objectives of protecting the interests of the investors in securities and to promote the development of, and to regulate the securities markets by such measures as it thinks fit.

FOOTNOTES

1 Gart, A; Handbook of the Money and Capital Markets, Quorum Books, New York, 1988.

2 Drake, P J; Money, Finance and Development, Martin

Robertson, Oxford, 1980.

3 Dougall, He and Jace E. Gaumnitz; Capital Markets and Institutions, Prentice Hall, New Jersey, 1986

1a Jenkins Jessey, "Capital Markets and Development: Essential and Irrelevant", in Steve Henke and Alan Walters, eds., Capital Market and Devepopment, ICS Press, san Francisco, 1991.