

SECURITIES LAWS AND COMPLIANCES

PART A — SECURITIES LAWS

STUDY XI - COLLECTIVE INVESTMENT SCHEMES

LEARNING OBJECTIVES

The study will enable the students to understand

- Concept of Collective Investment Scheme
- Overview of SEBI(Collective Investment Scheme)Regulations 1999
- Restriction on business activities of Collective Investment Management Company
- Rights/Obligations of Collective Investment Management Company

INTRODUCTION

In order to strengthen the hands of SEBI to protect interests of investors in plantation companies, the Securities Laws (Amendment) Act, 1999 amended the definition of “securities” in the SCRA so as to include within its ambit the units or any other instruments issued by any CIS to the investors in such schemes. The Act also inserted a definition of the CIS in the Securities and Exchange Board of India Act, 1992. The CIS has been defined to mean any scheme or arrangement made or offered by any company under which (a) the contributions, or payments made by the investors, by whatever name called, are pooled and utilised solely for the purposes of the scheme or arrangement; (b) 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; (c) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and (d) the investors do not have day to day control over the management and operation of the scheme or arrangement.

The CIS, however, does not include any scheme or arrangement (a) made or offered by a co-operative society, (b) under which deposits are accepted by non banking financial companies, (c) being a contract of insurance, (d) providing for any Scheme, Pension Scheme or the Insurance Scheme framed under the Employees Provident Fund and Miscellaneous Provision Act, 1952, (e) under which deposits are accepted under section 58A of the Companies Act, 1956, (f) under which deposits are accepted by a company declared as Nidhi or a mutual benefit society under section 620A of the Companies Act, 1956, (g) falling within the meaning of Chit business as defined in clause (d) of section 2 of Chit Fund Act, 1982 and (h) under which contributions made are in the nature of subscription to a mutual fund. The Act empowers the Central Government to make rules to provide for the requirements, which shall be complied with by CIS for the purpose of getting their units listed on any stock exchange.

- I. SEBI (Collective Investment Scheme) Regulations, 1999 – An Overview**
SEBI (Collective Investment Scheme) Regulations, 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 1956 and registered with SEBI under these regulations, whose object is to organise, operate and manage a collective investment

scheme.

No person other than a Collective Investment Management Company which has obtained a certificate under the regulations should carry on or sponsor or launch a collective investment scheme. Any person proposing to carry any activity as a Collective Investment Management Company on or after the commencement of the regulations should make an application to SEBI for the grant of registration in the specified form. Any person who immediately prior to the commencement of the regulations was operating a scheme, should subject to the provisions of the regulations make an application to SEBI for the grant of a certificate within a period of two months from such date.

Application fee to accompany the application

Every application for registration should be accompanied by a non-refundable application fee as specified. An application, which is not complete in all respects or does not conform to the requirements should be rejected by SEBI. However before rejecting any such application, the applicant is given an opportunity to remove within one month such objections as indicated by SEBI. The regulation further provides that SEBI can extend the time where sufficient reason being shown in order to enable the applicant to remove such objections.

Furnishing of information

SEBI can direct the applicant to furnish such further information or clarification as may be required by it, for the purpose of processing the application. SEBI, if it so desires can also ask the applicant or its authorised representative to appear before SEBI for personal representation in connection with the grant of a certificate.

Conditions for eligibility

The applicant should satisfy the following eligibility criteria:

- a. the applicant is set up and registered as a company under the Companies Act, 1956;
- b. the applicant has, in its Memorandum of Association specified the managing of collective investment scheme as one of its main objects;
- c. the applicant has a net worth of not less than rupees five crores. However at the time of making the application the applicant shall have a minimum net worth of rupees three crores which has to be increased to rupees five crores within three years from the date of grant of registration;
- d. the applicant is a fit and proper person for the grant of such certificate;
- e. the applicant has adequate infrastructure to enable it to operate collective investment scheme in accordance with the provision of these regulations;
- f. the directors or key personnel of the applicant should consist of persons of honesty and integrity having adequate professional experience in related field and have not been convicted for an offence involving moral turpitude or for any economic offence or for the violation of any securities laws;
- g. at least fifty per cent of the directors of such Collective Investment Management Company shall consist of persons who are independent and are not directly or indirectly associated with the persons who have control over the Collective Investment Management Company;
- h. no person, directly or indirectly connected with the applicant has in the past

been refused registration by SEBI under the Act;

- i. at least one of the directors on the board of the Collective Investment Management Company, who is not subject to retirement, is a representative of the trustee;
- j. the Collective Investment Management Company is not a trustee of any collective investment scheme.
- k. in case the applicant is an existing collective investment scheme, it complies with the regulations.

Grant of certificate

SEBI on receipt of an application and on being satisfied that the applicant complies with the requirements specified can call upon the applicant to pay registration fee as specified. SEBI grants a certificate on receipt of registration fee on such terms and conditions as are in the interest of investors and as specified.

Terms and conditions

The certificate granted should be subject to following conditions:-

- a. any director of the Collective Investment Management Company should not be a director in any other Collective Investment Management Company unless such person is an independent director and approval of SEBI of Collective Investment Management Companies of which such person is an independent director, has been obtained;
- b. the Collective Investment Management Company should forthwith inform SEBI of any material change in the information or particulars previously furnished, which have a bearing on the certificate granted by it;
- c. appointment of a director of a Collective Investment Management Company should be made with the prior approval of the trustee;
- d. the Collective Investment Management Company should comply with provisions of the Act and these regulations;
- e. no change in the controlling interest of the Collective Investment Management Company shall be made without obtaining prior approval of SEBI, the trustee and the unit holders holding at-least one-half of the nominal value of the unit capital of the scheme.
- f. The Collective Investment Management Company should take adequate steps to redress the grievances of the investors within one month from the date of receipt of the complaint from the aggrieved investor.

Procedure where registration is not granted

SEBI may reject the application if it does not satisfy the conditions specified in regulation. It also gives a reasonable opportunity to an applicant of being heard and inform the applicant of the same. The decision should be communicated to the applicant by SEBI within 30 days of such decision stating therein the grounds on which the application has been rejected.

Restrictions on business activities

The Collective Investment Management Company should not:

- i. undertake any activity other than that of managing the scheme;
- ii. act as a trustee of any scheme;
- iii. launch any scheme for the purpose of investing in securities;
- iv. invest in any schemes floated by it.

However it has been provided that a Collective Investment Management Company may invest in its own scheme if it makes a disclosure of its intention to invest in the offer document of the scheme, and does not charge any fees on its investment in that scheme.

Obligations of Collective Investment Management Company

Every Collective Investment Management Company should:

- i. be responsible for managing the funds or properties of the scheme on behalf of the unit holders and take all reasonable steps and exercise due diligence to ensure that the scheme is managed in accordance with the provisions of the regulations, offer document and the trust deed;
- ii. exercise due diligence and care in managing assets and funds of the scheme and also responsible for the acts of commissions and omissions by its employees or the persons whose services have been availed by it;
- iii. remain liable to the unit holders for its acts of commission or omissions, notwithstanding anything contained in any contract or agreement and be incompetent to enter into any transaction with or through its associates, or their relatives relating to the scheme. However in case the Collective Investment Management Company enters into any transactions relating to the scheme with any of its associates, a report to that effect should be immediately sent to the trustee and to SEBI;
- iv. appoint registrar and share transfer agents and should also abide by the Code of Conduct as specified;
- v. give receipts for all monies received by it and also give a report to SEBI every month, particularly of receipts and payments;
- vi. hold a meeting of board of Directors to consider the affairs of scheme atleast twice in every three months and also ensures that its officers or employees do not make improper use of their position or information to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the scheme;
- vii. obtain adequate insurance against the property of the scheme and comply with such guidelines, directives, circulars and instructions as may be issued by SEBI from time to time, on the subject of collective investment schemes.

Submission of information and documents

The Collective Investment Management Company should prepare quarterly reports on its activities and the position regarding compliance with these regulations and submit the same to the trustees within one month of the expiry of each quarter. The Collective Investment Management Company should file with the trustee and SEBI particulars of all its directors alongwith their interest in other companies within fifteen days of their appointment. It should furnish a copy of the Balance Sheet, Profit and Loss Account and a copy of the summary of the yearly appraisal report to the unit holders within two months from the closure of financial year and should also furnish to SEBI and the trustee such information and documents to SEBI and the trustee as may be required by them concerning the affairs of the scheme.

Trustees and their obligations

A scheme should be constituted in the form of a trust and the instrument of

trust should be in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 executed by the Collective Investment Management Company in favour of the trustees named in such an instrument. It can appoint a trustee to hold the assets of the scheme for the benefit of unit holders.

Contents of trust deed

The trust deed should contain such clauses as are specified and other clauses as are necessary for safeguarding the interests of the unit holders. No trust deed should contain a clause which has the effect of limiting or extinguishing the obligations and liabilities of the Collective Investment Management Company in relation to any scheme or the unit holders; or indemnifying the trustee or the Collective Investment Management Company for loss or damage caused to the unit holders by their acts of negligence or acts of commissions or omissions.

Eligibility for appointment as trustee

The persons registered with SEBI as Debenture Trustee under SEBI (Debenture Trustee) Regulations, 1993 are only eligible to be appointed as trustees of collective investment scheme. However no person is eligible to be appointed as trustee, if he is directly or indirectly associated with the persons who have control over the collective investment management company. No person should be appointed as trustee of a scheme if he has been found guilty of an offence under the securities laws or SEBI or any authority to which SEBI has delegated its power has passed against such person, an order under the Act for violation of any provision of the Act or of regulations made hereunder.

The trustee and the Collective Investment Management Company should enter into an agreement for managing the scheme property. The agreement for managing the scheme property should contain clauses as specified and such other clauses as are necessary for the purpose of fulfilling the objectives of the scheme.

Rights and obligations of the trustee

The trustee have a right to obtain from the Collective Investment Management Company such information as is considered necessary by the trustee and to inspect the books of accounts and other records relating to the scheme. The trustee should ensure that the Collective Investment Management Company has;

- i. the necessary office infrastructure;
- ii. appointed all key personnel including managers for the schemes and submitted their bio-data which shall contain the educational qualifications and past experience in the areas relevant for fulfilling the objectives of the schemes;
- iii. appointed auditors to audit the accounts of the scheme from the list of auditors approved by SEBI;
- iv. appointed a compliance officer to comply with the provisions of the Act and these regulations and to redress investor grievances;
- v. appointed registrars to an issue and share transfer agent;
- vi. prepared a compliance manual and designed internal control mechanisms

- including internal audit systems;
- vii. taken adequate insurance for the assets of the scheme;
 - viii. not given any undue or unfair advantage to any associates of the company or dealt with any of the associates in any manner detrimental to the interest of the unit holders;
 - ix. operated the scheme in accordance with the provisions of the trust deed, these regulations and the offer document of the scheme(s);
 - x. undertaken the activity of managing schemes only;
 - xi. taken adequate steps to ensure that the interest of investors of one scheme are not compromised with the object of promoting the interest of investors of any other scheme;
 - xii. minimum networth on a continuous basis and shall inform SEBI immediately of any shortfall;
 - xiii. been diligent in empanelling the marketing agents and in monitoring their activities.

The trustee should forthwith take such remedial steps as are necessary and immediately inform SEBI of the action taken where the trustee believes that the conduct of business of the scheme is not in accordance with the regulations. The trustee should be accountable for, and be the custodian of, the funds and property of the respective schemes and should hold the same in trust for the benefit of the unit holders in accordance with these regulations and the provisions of trust deed. The trustee should be responsible for the calculation of any income due to be paid to the scheme and also for any income received in the scheme to the unit holders. The trustee is required to convene a meeting of the unit holders whenever required to do so by SEBI in the interest of the unit-holders or whenever required to do so on the requisition made by unit holders holding at least one-tenth of nominal value of the unit capital of any scheme or when any change in the fundamental attributes of any scheme which affects the interest of the unit holders is proposed to be carried out. However no such change should be carried out unless the consent of unit holders holding at least three-fourths of nominal value of the unit capital of the scheme is obtained.

The expression "fundamental attributes" means the investment objective and terms of a scheme.

The trustee should review on a quarterly basis every year all activities carried out by the Collective Investment Management Company, periodically all service contracts relating to registrars to an issue and share transfer agents and satisfy itself that such contracts are fair and reasonable in the interest of the unit holders and investor complaints received and the redressal of the same by the Collective Investment Management Company.

The trustee should ensure that net worth of Collective Investment Management Company is not deployed in a manner which is detrimental to interest of unitholders and also that the property of each scheme is clearly identifiable as scheme property and held separately from property of the Collective Investment Management Company and property of any other scheme. Clearances or no objection certificate should be obtained, in respect of transactions relating to property of the scheme from such authority as is

competent to grant such clearance or no objection certificate. The trustee should abide by the Code of Conduct as specified. The trustee is required to furnish to SEBI on a quarterly basis every year a report on the activities of the scheme and a certificate stating that the trustee has satisfied himself that affairs of the Collective Investment Management Company and of the various schemes are conducted in accordance with these regulations and investment objective of each scheme.

The trustee should cause:

- a. the profit and loss accounts and balance sheet of the schemes to be audited at the end of each financial year by an auditor empanelled with SEBI.
- b. each scheme to be appraised at the end of each financial year by an appraising agency.
- c. scheme rated by a credit rating agency.

A meeting of the trustees to discuss the affairs of the scheme should be held at least twice in every three months in a financial year. The trustee should also report to SEBI any breach of these regulations and has had, or is likely to have, a materially adverse effect on the interests of unit holders as soon as they become aware of the breach. The trustee should ensure that the fees and expenses of the scheme are within the limits as specified and the accounts of the schemes are drawn up in accordance with the accounting norms as specified and should comply with accounts of the scheme and the format of the balance sheet and the profit and loss account as specified.

Termination of trusteeship

The trusteeship of a trustee should come to an end—

- a. If the trustee ceases to be trustee under SEBI (Debentures Trustees) Regulations, 1993; or
- b. if the trustee is in the course of being wound up; or
- c. if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for removing the trustee and SEBI approves such resolution; or
- d. if in the interest of the unit holders, SEBI, for reasons to be recorded in writing decides to remove the trustee for any violation of the Act or these regulations committed by them. However the trustee should be afforded reasonable opportunity of hearing before action is taken under this clause;
- e. if the trustee serves on the Collective Investment Management Company a notice of not less than three months expressing its intention not to continue as trustee.

Another trustee should be appointed by the Collective Investment Management Company on the termination of the trusteeship. The appointment of the new trustee should be completed within three months from the date the previous trusteeship came to an end. SEBI can appoint any person as a trustee if the Collective Investment Management Company fails to appoint a trustee. The trustee appointed under should stand substituted as a trustee in all the documents to which the trustee so removed was a party. The person appointed by SEBI should apply to the Court for an order directing the Collective Investment Management Company to wind up the scheme.

Termination of the Agreement with the Collective Investment Management Company

The agreement entered into by the trustee with the Collective Investment Management Company may be terminated—

- a. if the Collective Investment Management Company is in the course of being wound up as per the provisions of the Companies Act, 1956 or;
- b. if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for terminating the agreement with the Collective Investment Management Company and the prior approval of SEBI has been obtained, or
- c. if in the interest of the unit holders SEBI or the trustee, after obtaining prior approval of SEBI, and after giving an opportunity of being heard to the Collective Investment Management Company, decide to terminate the agreement with the Collective Investment Management Company.

Another Collective Investment Management Company registered with SEBI, should be appointed upon the termination of agreement by the trustee within three months from the date of such termination. The Collective Investment Management Company so removed continues to act as such at the discretion of trustee or the trustee itself may act as Collective Investment Management Company till such time as new Collective Investment Management Company is appointed. The Collective Investment Management Company appointed should stand substituted as a party in all the documents to which the Collective Investment Management Company so removed was a party. The Collective Investment Management Company so removed should continue to be liable for all acts of omission and commissions notwithstanding such termination. If, none of the Collective Investment Management Company, registered under the regulations, consent to be appointed as Collective Investment Management Company within a further period of three months, then the trustee may wind up the scheme. An agreement for managing scheme property should be executed in favour of the new Collective Investment Management Company subject to all the rights and duties as specified in the regulations.

Procedure for launching of schemes

No scheme should be launched by the Collective Investment Management Company unless such scheme is approved by the Trustee and obtain rating from a credit rating agency and has been appraised by an appraising agency.

Disclosures in the offer document

The Collective Investment Management Company before launching any scheme file a copy of the offer document of the scheme with SEBI and pay filing fees as specified in the Second Schedule. The offer document should contain such information as specified. The offer document should also contain true and fair view of the scheme and adequate disclosures to enable the investors to make informed decision. SEBI may in the interest of investors require the Collective Investment Management Company to carry out such modifications in the offer document as it deems fit. In case no modifications are suggested by SEBI in the offer document within 21 days from the date of filing, the Collective Investment Management Company may issue the offer

document to public.

Advertisement material

Advertisements in respect of every scheme is required to be in conformity with the Advertisement Code as specified and should also disclose in addition to the investment objectives, the method and periodicity of valuation of scheme property.

Misleading Statements

The offer document and advertisement materials should not be misleading or contain any statement or opinion which are incorrect or false. Where an offer document or advertisement includes any statement or opinion which are incorrect or false or misleading, every person who is a director of the Collective Investment Management Company at the time of the issue of the offer document and who has issued the offer document and shall be punishable under the Act unless he proves either that the statement or opinion was immaterial or that he had reasonable ground to believe at the time of the issue of the offer document or advertisement that the statement was true.

Allotment of Units and refunds of moneys

The Collective Investment Management Company should specify in the offer document the minimum and the maximum subscription amount it seeks to raise under the scheme; and in case of oversubscription the process of allotment of the amount oversubscribed. The Collective Investment Management Company should refund the application money to the applicants, if the scheme fails to receive the minimum subscription amount. Any amount refundable should be refunded within a period of six weeks from the date of closure of subscription list, by Registered A.D. and by cheque or demand draft marked "A/C Payee" to the applicants. In the event of failure to refund the amounts within the period specified, the Collective Investment Management Company has to pay interest to the applicants at a rate of fifteen percent per annum on the expiry of six weeks from the date of closure of the subscription list.

Unit certificates

The Collective Investment Management Company should issue to the applicant whose application has been accepted, unit certificates as soon as possible but not later than six weeks from the date of closure of the subscription list. However if the units are issued through a depository, a receipt in lieu of unit certificate will be issued as per provisions of SEBI.

Transfer of units

A unit certificate issued under the scheme should be freely transferable. The Collective Investment Management Company on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production. However if the units are held in a depository such units shall be transferable in accordance with the provisions of SEBI.

The subscription amount received should be kept in a separate bank account in the name of the scheme and utilised for—

1. (a) adjustment against allotment of units only after the trustee has received

a statement from the registrars to the issue and share transfer agent regarding minimum subscription amount, as stated in the offer document, having been received from the public, or

b. for refund of money in case minimum subscription amount, as stated in the offer document, has not been received or in case of over-subscription.

2. The minimum subscription amount as specified in the offer document couldn't be less than the minimum amount, as specified by the appraising agency, needed for completion of the project for which the scheme is being launched.
3. The moneys credited to the account of the scheme should be utilised for the purposes of the scheme and as specified in the offer document.
4. Any unutilised amount lying in the account of the scheme should be invested in the manner as disclosed in the offer document.

Investments and segregation of funds

The Collective Investment Management Company should:

- a. not invest the funds of the scheme for purposes other than the objective of the scheme as disclosed in the offer document.
- b. segregate the assets of different schemes.
- c. not invest corpus of a scheme in other schemes.
- d. not transfer funds from one scheme to another scheme.

However it has been provided that inter scheme transfer of scheme property may be permitted at the time of termination of the scheme with prior approval of the trustee and SEBI.

Listing of schemes

The units of every scheme shall be listed immediately after the date of allotment of units and not later than six weeks from the date of closure of the scheme on each of the stock exchanges as mentioned in the offer document.

Winding up of scheme

A scheme should be wound up on the expiry of duration specified in the scheme or on the accomplishment of the purpose of the scheme. A scheme may also be wound up^{3/4}

- a. on the happening of any event which, in the opinion of the trustee, requires the scheme to be wound up and the prior approval of SEBI is obtained; or
- b. if unit holders of a scheme holding at least three-fourth of the nominal value of the unit capital of the scheme pass a resolution that the scheme be wound up and the approval of SEBI is obtained; or
- c. if in the opinion of SEBI, the continuance of the scheme is prejudicial to the interests of the unit-holders; or
- d. if in the opinion of the Collective Investment Management Company, the purpose of the scheme can not be accomplished and it obtains the approval of the trustees and also of the unit holders of the scheme holding atleast $\frac{3}{4}$ of the nominal value of the unit capital of the scheme with a resolution that the scheme be wound up and the approval of SEBI is obtained.

The trustee should dispose of the assets of the scheme concerned in the best interest of the unit holders of that scheme. The proceeds of sale realised

under clause(a), should be first utilised towards the discharge of such liabilities as are due and payable under the scheme and after making appropriate provision for meeting the expenses connected with such winding up, the balance shall be paid to the unit holders in proportion to their unit holding. After the completion of the winding up, the trustee should forward to SEBI and the unit holders—

- a. a report on the steps taken for realisation of assets of the scheme, expenses for winding up and net assets available for distribution to the unit holders and
- b. a certificate from the auditors of the scheme to the effect that all the assets of the scheme are realised and the details of the distribution of the proceeds.

The unclaimed money if any at the time of winding up should be kept separately in a bank account by the trustee for a period of three years for the purpose of meeting investors' claims and thereafter should be transferred to investor protection fund, as may be specified by SEBI.

Effect of commencement of winding up proceedings

The trustee or the Collective Investment Management Company as the case may be, shall cease to carry on any business activities in respect of the scheme so wound up on and from the date of the publication of notice. If, after the receipt of the report SEBI is satisfied that all the measures for winding up of the scheme have been complied with, the scheme should cease to exist.

General obligations

Every Collective Investment Management Company should keep and maintain proper books of accounts, records and documents, for each scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of the scheme and intimate to SEBI and the trustees the place where such books of accounts, records and documents including computer records are maintained. Every Collective Investment Management Company should continue to maintain and preserve, for a period of five years after the close of each scheme, its books of accounts, records, computer data and documents.

Statement of Accounts and Annual Report

The Collective Investment Management Company should not exceed the ceilings on expenses or fees in respect of the scheme as specified. It should prepare the accounts of the scheme in accordance with accounting norms as specified and comply with format of balance sheet and profit and loss accounts as specified. An annual report and annual statement of accounts of each scheme should be prepared in respect of each financial year. Every Collective Investment Management Company should within two months from the date of closure of each financial year forward to SEBI a copy of the Annual Report.

Auditor's Report

Every scheme should have the annual statement of accounts audited by an auditor who is empanelled with SEBI and who is not in any way associated with the auditor of the Collective Investment Management Company. The

auditor should be appointed by the trustee. The auditor should forward his report to the trustee and such report shall form part of the Annual Report of the scheme. The auditor's report should comprise the following certificate to the effect that:-

- i. he has obtained all information and explanations which, to the best of his knowledge and belief, were necessary for the purpose of the audit;
- ii. the balance sheet and the revenue account give a fair and true view of the scheme, state of affairs and surplus or deficit in the scheme for the accounting period to which the Balance Sheet or, as the case may be the Revenue Account relates;
- iii. the statement of account has been prepared in accordance with accounting policies and standards as specified.
- iv. any other matter which in the opinion of the auditor is vital and has a bearing on the schemes.

Functions of auditors of scheme

The auditor of the scheme should, as soon as possible, notify SEBI and the trustee in writing if he has reasonable grounds to suspect that a contravention of the regulations has occurred or if the schemes are not conducted on sound commercial principles. The auditor of the scheme should have a right of access at all reasonable times to the books of the scheme; and may require any employee of the Collective Investment Management Company to give the auditor information and explanations for the purposes of the audit.

Removal or Resignation of auditors

The trustee, after prior approval of the trustee and for reasons to be recorded in writing remove the auditor of the scheme for misconduct or inefficiency after giving the auditor a reasonable opportunity of hearing. However it has been provided that another auditor for the scheme is appointed by trustee immediately from auditors empanelled with SEBI. The auditor of the scheme may resign by giving a three months written notice to the Collective Investment Management Company and to the trustee.

Publication of Annual Report

The scheme wise annual report or an abridged form thereof should be published in a national daily as soon as possible but not later than two calendar months from the date of finalisation of accounts. The annual report shall contain details as specified and such other details as are necessary for the purpose of providing a true and fair view of the operations of the collective investment scheme. The report if published in abridged form should carry a note that full annual report shall be available for inspection at the Head Office and all branch offices of the Collective Investment Management Company.

Periodic and continual disclosures

The Collective Investment Management Company and the trustee, should make such disclosures or submit such documents as they may be called upon by SEBI to make or submit. The Collective Investment Management Company on behalf of the scheme shall furnish the following periodic reports to SEBI, namely:

- a. copies of the duly audited annual statements of accounts including the balance sheet and the profit and loss account in respect of each scheme,

- once a year;
- b. a copy of quarterly unaudited accounts;
- c. a quarterly statement of changes in net assets for each of the schemes.

Quarterly disclosures

A Collective Investment Management Company, on behalf of the scheme should before the expiry of one month from the close of each quarter that is 31st March, 30th June, 30th September and 31st December publish its unaudited financial results in one daily newspaper having nation wide circulation and in a newspaper published in the language of the region where the Head Office of the Collective Investment Management Company is situated. However it has been provided that the quarterly unaudited report should contain details as specified in the regulations and such other details as are necessary for the purpose of providing a true and fair view of the operations of the scheme.

Disclosures to the investors

The trustee should ensure that the Collective Investment Management Company should make such disclosures to the unit holders as are essential in order to keep them informed about any matter which may have an adverse bearing on their investments.

Inspection and audit

SEBI may appoint one or more persons as inspecting officer to undertake the inspection of the books of accounts, records, documents and infrastructure, systems and procedures or to investigate the affairs of the trustee and Collective Investment Management Company for any of the following purposes:

- a. to ensure that the books of accounts are being maintained by the Collective Investment Management Company in the manner specified in these regulations;
- b. to ascertain whether the provisions of the Act and these regulations are being complied with by the trustee and Collective Investment Management Company;
- c. to ascertain whether the systems, procedures and safeguards followed by the Collective Investment Management Company are adequate;
- d. to investigate into the complaints received from the investors or any other person on any matter having a bearing on the activities of the trustee and Collective Investment Management Company;

Notice before inspection and investigation

SBI should give ten days notice before ordering an inspection to the Collective Investment Management Company or trustee as the case may be and where SEBI is satisfied that in the interest of the investors no such notice is required to be given, it may, by an order in writing direct that such inspection or investigation be taken up immediately without any notice. During the course of inspection or investigation, the trustee or Collective Investment Management Company against whom the inspection or investigation is being carried out should be bound to discharge his obligations.

Obligations during inspection and investigation

It should be the duty of the trustee or Collective Investment Management

Company whose affairs are being inspected or investigated, and of every director, officer and employee thereof, to produce such books, accounts, records, and other documents in its custody or control and furnish him such statements and information relating to the activities as trustee or Collective Investment Management Company, as the inspecting officer may require, within such reasonable period as the inspecting officer may specify. It should allow the inspecting officer to have a reasonable access to the premises occupied by it or by any other person on its behalf and also provide necessary infrastructure for examining any books, records, documents, and computer data in the possession of the trustee and Collective Investment Management Company or such other person and also provide copies of documents or other materials which in the opinion of the inspecting officer are relevant for the purpose of the inspection.

Submission of report to SEBI

The inspecting officer shall, on completion of the inspection or investigation, submit a report to SEBI. However provided that if directed to do so by SEBI, he should submit interim reports. SEBI after considering the report communicate the findings to the trustee or Collective Investment Management Company as the case may be, and give him an opportunity of being heard within fourteen days from the date of receipt of such communication. SEBI upon receipt of the reply, if any, from the trustee or Collective Investment Management Company may call upon it to take such remedial measures as directed by SEBI.

Appointment of Auditor and recovery of expenses

SEBI has the power to appoint an auditor to inspect or investigate, as the case may be, into the books of accounts or the affairs of the trustee or Collective Investment Management Company in respect of schemes. However provided that the Auditor so appointed should have the same powers of the inspecting officer as stated in regulation and the obligation of the Collective Investment Management Company or trustee and their respective employees should be applicable to the inspection under this regulation.

Payment of inspection fees to SEBI

SEBI should be entitled to recover such expenses including fees paid to the auditors as may be incurred by it for the purposes of inspecting the books of accounts, records and documents of the trustee or Collective Investment Management Company.

Suspension of Certificate

The competent authority may suspend a certificate of registration granted to a Collective Investment Management Company if such company :-

- a. contravenes any provision of the Act or these regulations;
- b. for the purposes of these regulations furnishes any information which is false or misleading or suppresses any material information;
- c. does not co-operate in any inspection, investigation or inquiry conducted by SEBI under the Act or these regulations;
- d. fails to comply with any directions issued by SEBI under the Act or the regulations;

- e. fails to resolve the complaints of the investors or fails to furnish to SEBI a satisfactory reply in this behalf when called upon to do so by SEBI;
- f. commits a breach of any provision of the Code of Conduct as specified ;
- g. fails to pay the fees as specified ;
- h. commits a breach of the conditions of registration; or
- i. fails to make an application for listing or fails to list units of a scheme in a recognised stock exchange.

Cancellation of certificate

The competent authority may cancel the certificate of registration granted to a Collective Investment Management Company, if^{3/4}

- a. the company has been guilty of fraud or has been convicted of an economic offence;
- b. the company has been guilty of repeated defaults of the nature specified in regulation 59;
- c. the financial position of the company has deteriorated to such an extent that the competent authority is of the opinion that its continuance is not in the interest of the unit holders.
- d. the agreement for managing the scheme property has been terminated.
- e. The company has been declared insolvent or wound up.

Manner of making order of cancellation or suspension

No order of suspension or cancellation of certificate should be made by the competent authority against the Collective Investment Management Company except after holding an enquiry in accordance with the procedure specified in regulation. However it has been provided that the holding of an enquiry is not necessary in the following cases:

- a. where the company has been declared insolvent or wound up;
- b. where the company fails to pay fees to SEBI;
- c. where the agreement for managing the scheme property is terminated;
- d. where the company surrenders its certificate of registration to SEBI;
- e. where the company fails to maintain the net worth;
- f. where the number of independent directors falls below fifty percent of the total number of directors.

It has been further provided that an opportunity of hearing shall be given to Collective Investment Management Company before any action is taken under the first proviso to this regulation.

Show cause notice and order

The competent authority should issue to the Collective Investment Management Company, at its registered office or its principal place of business, a notice setting out the grounds on which the action is proposed to be taken against it and calling it to show cause against such action within a period of fourteen days from the date of receipt of the notice. The competent authority should give a reasonable opportunity of hearing to the Collective Investment Management Company to enable it to make submissions in support of his reply to its notice. The Collective Investment Management Company may either appear in person or through any person duly authorised on his behalf before the competent authority. However no advocate shall be permitted to represent the Collective Investment Management Company at

the personal hearing. It has been further provided that where an advocate has been appointed by SEBI as a presenting officer under sub-regulation (5) of this regulation, the company shall have the right to present its case through an advocate. If it is considered necessary, the competent authority may request SEBI to appoint a presenting officer to present its case. The Competent Authority, after considering the reply of the Collective Investment Management Company, the evidence on record, and the submissions at the time of the personal hearing, if any, pass such order as it deems fit, including an order for the suspension or cancellation of the certificate. Every order made should be self-contained and shall give reasons for the conclusions stated therein, including the justification for the penalty if any, imposed by that order.

Effect of suspension or cancellation of certificate of registration

The Collective Investment Management Company ceases to carry on any activity on and from the date of the suspension of the certificate, and should be subject to the directions of SEBI with regard to any records, documents, or assets that may be in its custody or control, relating to its activities.

Directions by SEBI

SEBI may, in the interests of the securities market and the investors may initiate action including initiation of criminal prosecution gives such directions as it deems fit in order to ensure effective observance of these regulations, including directions:

- a. requiring the person concerned not to collect any money from investors or to launch any scheme;
- b. prohibiting the person concerned from disposing of any of the properties of the scheme acquired in violation of these regulations;
- c. requiring the person concerned to dispose of the assets of the scheme in a manner as may be specified in the directions;
- d. requiring the person concerned to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme.
- e. prohibiting the person concerned from operating in the capital market or from accessing the capital market for a specified period.

Action against intermediaries

SEBI may initiate action for suspension or cancellation of registration of an intermediary registered with SEBI who fails to exercise due diligence in the performance of its functions or fails to comply with its obligations under these regulations. However no such certificate of registration should be suspended or cancelled unless the procedure specified in the regulations applicable to such intermediary is complied with.

LESSON ROUND UP

- The CIS is any scheme or arrangement made or offered by any company under which (a) the contributions, or payments made by the investors, by whatever name called, are pooled and utilised solely for the purposes of the scheme or arrangement; (b) 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; (c) the property, contribution or investment forming part of scheme or arrangement, whether identifiable or not, is managed on behalf of the investors; and (d) the investors do not have day to day control over the management and operation of the scheme or arrangement.

- A scheme should be constituted in the form of a trust and the instrument of trust should be in the form of a deed duly registered under the provisions of the Indian Registration Act, 1908 executed by the Collective Investment Management Company in favour of the trustees named in such an instrument.
- Collective Investment Management Company is regulated by SEBI (Collective Investment Scheme) Regulations, 1999.
- SEBI (Collective Investment Scheme) Regulations 1999 defines Collective Investment Management Company to mean a company incorporated under the Companies Act, 1956 and registered with SEBI under these regulations, whose object is to organise, operate and manage a collective investment scheme.
- The Collective Investment Management Company should not:
 - i. undertake any activity other than that of managing the scheme;
 - ii. act as a trustee of any scheme;
 - iii. launch any scheme for the purpose of investing in securities;
 - iv. invest in any schemes floated by it.
- The trustee have a right to obtain from the Collective Investment Management Company such information as is considered necessary by the trustee and to inspect the books of accounts and other records relating to the scheme.
- The units of every scheme shall be listed immediately after the date of allotment of units and not later than six weeks from the date of closure of the scheme on each of the stock exchanges as mentioned in the offer document.
- A scheme should be wound up on the expiry of duration specified in the scheme or on the accomplishment of the purpose of the scheme.
- SEBI may appoint one or more persons as inspecting officer to undertake the inspection of the books of accounts, records, documents and infrastructure, systems and procedures or to investigate the affairs of the trustee and Collective Investment Management Company.