

SECURITIES LAWS AND COMPLIANCES

PART A — SECURITIES LAWS

STUDY VII - STOCK EXCHANGES

LEARNING OBJECTIVES

The study will enable the students to understand

- Provisions of Securities Contract (Regulation) Act, 1956
- Securities Contract (Regulation) Rules, 1957
- Listing of Securities and provisions of Listing Agreement
- Corporate Governance through Listing Agreement
- Demutualisation of Stock Exchange
- Securities Contracts (Regulation) Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchange) Regulations, 2006

INTRODUCTION

Stock exchanges constitute the primary institution of the secondary market. The evolution and the development of various stock exchanges in India and abroad were presented briefly.

The stock exchange is a key institution facilitating the issue and sale of various types of securities. It is a pivot around which every activity of the capital market revolves. In the absence of the stock exchange, the people with savings would hardly invest in corporate securities for which there would be no liquidity (buying and selling facility). Corporate investments from the general public would have been thus lower.

Stock exchanges thus represent the market place for buying and selling of securities and ensuring liquidity to them in the interest of the investors. The stock exchanges are virtually the nerve centre of the capital market and reflect the health of the country's economy as a whole.

I. SECURITIES CONTRACTS (REGULATION) ACT, 1956

The Securities Contracts (Regulation) Act, 1956 was enacted by Parliament to prevent undesirable transactions in securities by regulating the business of dealing therein, and by providing for certain other matters connected therewith. The Act extends to the whole of India and came into force on 28th February, 1957. The Act defines various terms in relation to securities and provides the detailed procedure for the stock exchanges to get recognition from Government/SEBI, procedure for listing of securities of companies and operations of the brokers in relation to purchase and sale of securities on behalf of investors.

However, the provisions of this Act shall not apply to—

- a. the Government, the Reserve Bank of India, any local authority or any corporation set up by a special law or any person who has effected any transaction with or through the agency of any such authority as is referred to in this clause;
- b. any convertible bond or share warrant or any option or right in relation thereto, in so far as it entitles the person in whose favour any of the

foregoing has been issued to obtain at his option from the company or other body corporate, issuing the same or from any of its shareholders' or duly appointed agents, shares of the company or other body corporate, whether by conversion of the bond or warrant or otherwise, on the basis of the price agreed upon when the same was issued.

If the Central Government is satisfied that in the interest of trade and commerce or the economic development of the country, it is necessary or expedient so to do, it may, by notification in the Official Gazette, specify any class of contracts as contracts to which this Act or any provision contained therein shall not apply, and also the conditions, limitations or restrictions, if any, subject to which it shall not so apply.

Section 2 of this Act contains definitions of various terms used in the Act. Some of the important definitions are given below:

Securities include—

- i. shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or body corporate.
- ii. derivative.
- iii. units or any other instrument issued by any collective investment scheme to the Investors in such schemes.
- iv. security receipt as defined in clause (zg) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.
- v. units or any other such instrument issued to the investors under any mutual fund scheme.
- vi. any certificate or instrument (by whatever name called) issued to an investor by any issuer being a special purpose distinct entity which possess any debt or receivable, including mortgage debt, assigned to such entity, and acknowledging beneficial interest of such investor in such debt or receivable, including mortgage debt, as the case may be.
- vii. government securities.
- viii. such other instruments as may be declared by the Central Government to be securities and,
- ix. rights or interests in securities.

Contract means a contract for or relating to the purchase or sale of securities.

Spot delivery contract means a contract which provides for—

- a. actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
- b. transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

Stock Exchange means—

- a. any body of individuals, whether incorporated or not, constituted before

- corporatisation and demutualisation under Sections 4A and 4B, or
- b. a body corporate incorporated under the Companies Act, 1956 whether under a scheme of corporatisation or otherwise, for the purpose of assisting, regulating or controlling the business of buying, selling or dealing in securities.

Recognised Stock Exchange means a stock exchange which is for the time being recognised by the Central Government. No person shall, except with the permission of the Central Government, organise or assist in organising or be a member of any stock exchange (other than a recognised stock exchange) for the purpose of assisting in, entering into or performing any contracts in securities.

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

Member means a member of a recognised stock exchange.

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

A derivative includes—

- a. a security derived from a debt instrument, share, loan whether secured or unsecured, risk instrument or contract for differences or any other form of security and;
- b. a contract which derives its value from the prices or index of prices of underlying securities.

Section 2A provides that words and expressions used in this Act but not defined in this Act shall have the same meanings and definitions as found in the Companies Act, 1956, SEBI Act, 1992 and the Depositories Act, 1996.

Recognised Stock Exchanges

Section 3 lays down that any stock exchange, desirous of being recognised for the purposes of this Act may make an application in the prescribed manner to the Central Government.

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

- a. the governing body of such stock exchange, its constitution and powers of management and the manner in which its business is to be transacted;
- b. the powers and duties of the office bearers of the stock exchange;
- c. the admission into the stock exchange of various classes of members, the qualifications, for membership, and the exclusion, suspension, expulsion and re-admission of members therefrom or there into;
- d. the procedure for the registration of partnerships as members of the stock exchange in cases where the rules provide for such membership; and the nomination and appointment of authorised representatives and clerks.

Section 4 lays down that if the Central Government is satisfied after making such inquiry as may be necessary in this behalf and after obtaining such

further information, if any, as it may require;

- a. that the rules and bye-laws of a stock exchange applying for registration are in conformity with such conditions as may be prescribed with a view to ensure fair dealing and to protect investors;
- b. that the stock exchange is willing to comply with any other conditions (including conditions as to the number of members) which the Central Government, after consultation with the governing body of the stock exchange and having regard to the area served by the stock exchange and its standing and the nature of the securities dealt with by it, may impose for the purpose of carrying out the objects of this Act; and
- c. that it would be in the interest of the trade and also in the public interest to grant recognition to the stock exchange;

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

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

- i. the qualifications for membership of stock exchanges;
- ii. the manner in which contracts shall be entered into and enforced as between members;
- iii. the representation of the Central Government on each of the stock exchanges by such number of persons not exceeding three as the Central Government may nominate in this behalf; and
- iv. the maintenance of accounts of members and their audit by chartered accountants whenever such audit is required by the Central Government.

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

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

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

Corporatisation and demutualisation of stock exchanges

Section 4A of the Act provides that on and from the appointed date, all recognised stock exchanges (if not corporatised and demutualised before the appointed date) shall be corporatised and demutualised in accordance with the provisions contained in Section 4B:

Further the Securities and Exchange Board of India may, if it is satisfied that any recognised stock exchange was prevented by sufficient cause from being corporatised and demutualised on or after the appointed date, specify another appointed date in respect of that recognised stock exchange and such recognised stock exchange may continue as such before such

appointed date.

“Appointed date” for the purpose means the date which the Securities and Exchange Board of India may, by notification in the Official Gazette, appoint and different appointed dates may be appointed for different recognised stock exchanges:

Section 4B provides for procedure for corporatisation and demutualisation. All recognized stock exchanges referred to in Section 4A shall, within such time as may be specified by SEBI submit a scheme for corporatisation and demutualisation for its approval.

SEBI may, by notification in the Official Gazette, specify name of the recognised stock exchange, which had already been corporatised and demutualised, and such stock exchange shall not be required to submit the scheme under this Section.

On receipt of the scheme SEBI may, after making such enquiry as may be necessary in this behalf and obtaining such further information, if any, as it may require and if it is satisfied that it would be in the interest of the trade and also in the public interest, approve the scheme with or without modification.

No scheme shall be approved by the Securities and Exchange Board of India if the issue of shares for a lawful consideration or provision of trading rights in lieu of membership card of the members of a recognised stock exchange or payment of dividends to members have been proposed out of any reserves or assets of that stock exchange.

Where the scheme is approved the scheme so approved shall be published immediately by the Securities and Exchange Board of India in the Official Gazette; and by the recognised stock exchange in such two daily newspapers circulating in India, as may be specified by the Securities and Exchange Board of India.

Upon such publication, the scheme shall have effect and be binding on all persons and authorities including all members, creditors, depositors and employees of the recognised stock exchange and on all persons having any contract, right, power, obligation or liability with, against, over, to, or in connection with, the recognised stock exchange or its members.

However, where the SEBI is satisfied that it would not be in the interest of the trade and also in the public interest to approve the scheme, it may, by an order, reject the scheme and such order of rejection shall be published by it in the Official Gazette.

SEBI shall give a reasonable opportunity of being heard to all the persons concerned and the recognized stock exchange concerned before passing an order rejecting the scheme.

The Securities and Exchange Board of India may, while approving the scheme by an order in writing, restrict—

- a. the voting rights of the shareholders who are also stock brokers of the recognised stock exchange;
- b. the right of shareholders or a stock broker of the recognised stock exchange to appoint the representatives on the governing board of the stock exchange;
- c. the maximum number of representatives of the stock brokers of the

recognised stock exchange to be appointed on the governing board of the recognised stock exchange, which shall not exceed one-fourth of the total strength of the governing board.

The order shall be published in the Official Gazette.

Every recognised stock exchange, in respect of which the scheme for corporatisation or demutualisation has been approved, shall, either by fresh issue of equity shares to the public or in any other manner as may be specified by the regulations made by the SEBI, ensure that at least fifty-one per cent. of its equity share capital is held, within twelve months from the date of publication of the order by the public other than shareholders having trading rights:

SEBI on sufficient cause being shown to it and in the public interest, may extend the said period by another twelve months.

Section 5 deals with withdrawal of recognition. The section lays down that if the Central Government is of opinion that the recognition granted to a stock exchange under the provisions of this Act should, in the interest of the trade or in the public interest, be withdrawn, the Central Government may serve on the governing body of the stock exchange a written notice that the Central Government is considering the withdrawal of the recognition for the reasons stated in the notice and after giving an opportunity to the governing body to be heard in the matter, the Central Government may withdraw, by notification in the Official Gazette, the recognition granted to the stock exchange;

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

Where the recognised stock exchange has not been corporatised or demutualised or it fails to submit the scheme referred to in sub-Section (1) of Section 4B within the specified time therefor or the scheme has been rejected by the SEBI under sub-Section (5) of Section 4B, the recognition granted to such stock exchange under Section 4, shall, notwithstanding anything to the contrary contained in this Act, stand withdrawn and the Central Government shall publish, by notification in the Official Gazette, such withdrawal of recognition:

No such withdrawal shall affect the validity of any contract entered into or made before the date of the notification, and the Securities and Exchange Board of India may, after consultation with the stock exchange, make such provisions as it deems fit in the order rejecting the scheme published in the Official Gazette under sub-Section (5) of Section 4B.

It is to be noted that the powers under Section 4 (3), 4(5) and Section 5 have been delegated concurrently to SEBI also. Hence, SEBI may exercise these powers.

Power of Central Government to Call for Periodical Returns and make Direct Enquiries

Section 6 enjoins that every recognised stock exchange shall furnish to SEBI,

such periodical returns relating to its affairs as may be prescribed. Every such exchange and every member thereof shall maintain and preserve for such periods not exceeding five years such books of accounts, and other documents as the Central Government, after consultation with the stock exchange concerned, may prescribe in the interest of the trade or in the public interest, and such books of account, and other documents shall be subject to inspection to all reasonable times by the Securities and Exchange Board of India.

SEBI if it is satisfied that it is in the interest of the trade or in public interest so to do, may by order in writing—

- a. call upon a recognised stock exchange or any member thereof to furnish in writing such information or explanation relating to the affairs of the stock exchange or of the member in relation to the stock exchange as the Securities and Exchange Board of India may require; or
- b. appoint one or more persons to make an inquiry in the prescribed manner in relation to the affairs of the governing body of a stock exchange or the affairs of any of the members of the stock exchange in relation to the stock exchange and submit a report of the result of such inquiry to the Securities and Exchange Board of India within such time as may be specified in the order or, in the case of an inquiry in relation to the affairs of any of the members of a stock exchange, direct the governing body to make the inquiry and submit its report to the Securities and Exchange Board of India.

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

- a. every director, manager, secretary or other officer of such stock exchange;
- b. every member of such stock exchange;
- c. if the member of the stock exchange is a firm, every partner, manager, secretary or other officer of the firm; and
- d. every other person or body of persons who has had dealings in the course of business with any of the persons mentioned in clauses (a), (b) and (c) whether directly or indirectly; shall be bound to produce before the authority making the inquiry all such books of account, and other documents in his custody or power relating to or having a bearing on the subject-matter of such inquiry and also to furnish the authorities within such time as may be specified with any such statement or information relating thereto as may be required of him.

Every stock exchange shall furnish to the Central Government and to SEBI a copy of its annual report which shall contain such particulars as may be prescribed by Central Government/SEBI.

Power to make Rules Restricting Voting Rights etc.

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

- a. the restriction of voting rights to members only in respect of any matter placed before the stock exchange at any meeting;
- b. the regulation of voting rights in respect of any matter placed before the

stock exchange at any meeting so that each member may be entitled to have one vote only, irrespective of his share of the paid-up equity capital of the stock exchange;

- c. the restriction on the right of a member to appoint another person as his proxy to attend and vote at a meeting of the stock exchange; and
- d. such incidental, consequential and supplementary matters as may be necessary to give effect to any of the matters specified in clauses (a) (b) and (c).

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

Power to Central Government to make Rules or Direct Rules to be made in Respect of Recognised Stock Exchange

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

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

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

Powers have been delegated concurrently to SEBI also.

Clearing corporation

Section 8A(1) provides that a recognised stock exchange may, with the prior

approval of SEBI, transfer the duties and functions of a clearing house to a clearing corporation, being a company incorporated under the Companies Act, 1956, for the purpose of –

- a. the periodical settlement of contracts and differences thereunder;
- b. the delivery of, and payment for, securities;
- c. any other matter incidental to, or connected with, such transfer.

Sub-section (2) provides that every clearing corporation shall, for the purpose of transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-Section (1), make bye-laws and submit the same to the Securities and Exchange Board of India for its approval.

Sub-section (3) provides that SEBI may, on being satisfied that it is in the interest of the trade and also in the public interest to transfer the duties and functions of a clearing house to a clearing corporation, grant approval to the bye-laws submitted to it under sub-Section (2) and approve transfer of the duties and functions of a clearing house to a clearing corporation referred to in sub-Section (1).

Sub-section (4) provides that the provisions of Sections 4, 5, 6, 7, 8, 9, 10, 11 and 12 shall, as far as may be, apply to a clearing corporation referred to in sub-Section (1) as they apply in relation to a recognised stock exchange.

Power of Recognised Stock Exchanges

Any recognised stock exchange may, subject to the previous approval of the Securities and Exchange Board of India, make bye-laws for the regulation and control of contracts. In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for:

- a. the opening and closing of markets and the regulation of the hours of trade;
- b. a clearing house for the periodical settlement of contracts and differences thereunder, the delivery of and payment for securities, the passing on of delivery orders and the regulation and maintenance of such clearing house;
- c. submission to the Securities and Exchange Board of India by the clearing house as soon as may be after each periodical settlement of all or any of the following particulars as the Securities and Exchange Board of India may, from time to time, require, namely:
 - i. the total number of each category of security carried over from one settlement period to another;
 - ii. the total number of each category of security, contracts which have been squared up during the course of each settlement period;
 - iii. the total number of each category of security actually delivered at each clearing;
- d. the publication by the clearing house of all or any of the particulars submitted to the Securities and Exchange Board of India under clause (c) subject to the directions, if any, issued by the Securities and Exchange Board of India in this behalf;
- e. the regulation or prohibition of blank transfers;
- f. the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

- g. the regulation, or prohibition to badlas or carry-over facilities;
- h. the fixing, altering or postponing of days for settlements;
- i. the determination and declaration of market rates, including the opening, closing, highest and lowest rates for securities;
- j. the terms, conditions and incidents of contracts, including the prescription of margin requirements, if any, and conditions relating thereto, and the forms of contracts in writing;
- k. the regulation of the entering into making, performance, rescission and termination, of contracts, including contracts between members or between a member and his constituent or between a member and a person who is not a member, and the consequences of default or insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer, and the responsibility of members who are not parties to such contracts;
- l. the regulation of taravani business including the placing of limitations thereon;
- m. the listing of securities on the stock exchange, the inclusion of any security for the purpose of dealings and the suspension or withdrawal of any such securities, and the suspension or prohibition of trading in any specified securities;
- n. the method and procedure for the settlement of claims or disputes, including settlement by arbitration;
- o. the levy and recovery of fees, fines and penalties;
- p. the regulation of the course of business between parties to contracts in any capacity;
- q. the fixing of a scale of brokerage and other charges;
- r. the making, comparing, settling and closing of bargains;
- s. the emergencies in trade which may arise, whether as a result of pool or syndicated operations or concerning or otherwise, and the exercise of powers in such emergencies including the power to fix maximum and minimum prices for securities;
- t. the regulation of dealings by members for their own account;
- u. the separation of the functions of jobbers and brokers;
- v. the limitations on the volume of trade done by any individual member in exceptional circumstances;
- w. the obligation of members to supply such information or explanation and to produce such documents relating to the business as the governing body may require.

Punishments for contraventions

The bye-laws made under this section may;

- a. specify the bye-laws, the contravention of which shall make a contract entered into otherwise than in accordance with the bye-laws void under sub-section (1) of section 14;
- b. provide that the contravention of any of the bye-laws shall render the member concerned liable to one or more of the following punishments, namely;
 - i. fine,

- ii. expulsion from membership,
- iii. suspension from membership for a specified period,
- iv. any other penalty of a like nature not involving the payment of money.

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

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

Power of SEBI to make or amend Bye-Laws of Recognised Stock Exchanges

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

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

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

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

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

Power of Central Government to Supersede Companies of Stock Exchanges or Suspend Business Thereof

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

- a. the members of the governing body which has been superseded shall, as from the date of the notification of super session, cease to hold office as such members;
- b. the person or persons appointed under sub-section (1) may exercise and perform all the powers and duties of the governing body which has been superseded;
- c. all such property of the recognised stock exchange as the person or persons appointed under sub-section (1) may, by order in writing, specify in this behalf as being necessary for the purpose of enabling him or them to carry on the business of the stock exchange, shall vest in such person or persons.

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

The Central Government, may at any time before the determination of the period of office of any person or persons appointed under this section call upon the recognised stock exchange to reconstitute the governing body in accordance with its rules and on such re-constitution all the property of the recognised stock exchange which has been vested in, or was in the possession of, the person or persons appointed under sub-section (1), shall re-vest or vest, as the case may be, in the governing body so re-constituted; Provided that until a governing body is so re-constituted, the person or persons appointed under sub-section (1), shall continue to exercise and perform their powers and duties. If in the opinion of the Central Government an emergency, has arisen and for the purpose of meeting the emergency, the Central Government considers it expedient so to do, it may, by notification in the Official Gazette, for reasons to be set out therein, direct a recognised

stock exchange to suspend such of its business for such period not exceeding seven days and subject to such conditions as may be specified in the notification, and if, in the opinion of the Central Government, the interest of the trade or the public interest requires that the period should be extended, may, by like notification extend the said period from time to time;

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

Section 12A provides that if, after making or causing to be made an inquiry, the Securities and Exchange Board of India is satisfied that it is necessary—

- a. in the interest of investors, or orderly development of securities market; or
- b. to prevent the affairs of any recognised stock exchange, or, clearing corporation, or such other agency or person, providing trading or clearing or settlement facility in respect of securities, being conducted in a manner detrimental to the interests of investors or securities market; or
- c. to secure the proper management of any such stock exchange or clearing corporation or agency or person, referred to in clause (b),

it may issue such directions,—

- i. to any stock exchange or clearing corporation or agency or person referred to in clause (b) or any person or class of persons associated with the securities market; or
- ii. to any company whose securities are listed or proposed to be listed in a recognised stock exchange,

as may be appropriate in the interests of investors in securities and the securities market.

Contracts in Securities

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

It has been provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

- i. be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;
- ii. require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

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

Explanation—For the purposes of this section, ‘Additional Trading Floor

(ATF)' means a trading ring or trading facility offered by a recognised stock exchange outside its area of operation to enable the investors to buy and sell securities through such trading floor under the regulatory framework of that stock exchange.

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

- i. as respects the rights of any member of the recognised stock exchange who has entered into such contract in contravention of any such bye-laws, and also
- ii. as respects the rights of any other person who has knowingly participated in the transaction entailing such contravention.

Nothing in sub-section (1) shall be construed to affect the right of any person other than a member of the recognised stock exchange to enforce any such contract or to recover any sum under or in respect of such contract if such person had no knowledge that the transaction was in contravention of any of the bye-laws specified in clause (a) of sub-section (3) of section 9.

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

Provided that where the member has secured the consent or authority of such person otherwise than in writing he shall secure written confirmation by such person or such consent or authority within 3 days from the date of contract.

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

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

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

Licensing of Dealers in certain areas

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

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

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

Public Issue and Listing of Securities

Section 17A provides for public issue and listing of securities referred to in sub-clause (ie) of clause (h) of section 2.

Without prejudice to the provisions contained in this Act or any other law for the time being in force, no securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 shall be offered to the public or listed on any recognized stock exchange unless the issuer fulfils such eligibility criteria and complies with such other requirements as may be specified by regulations made by the Securities and Exchange Board of India.

Every issuer referred to in sub-clause (ie) of clause (h) of section 2 intending to offer the certificates or instruments referred therein to the public shall make an application, before issuing the offer document to the public, to one or more recognized stock exchanges for permission for such certificates or instruments to be listed on the stock exchange or each such stock exchange.

Where the permission applied for under sub-section (2) for listing has not been granted or refused by the recognized stock exchanges or any of them, the issuer shall forthwith repay all moneys, if any, received from applicants in pursuance of the offer document, and if any such money is not repaid within eight days after the issuer becomes liable to repay it, the issuer and every director or trustee thereof, as the case may be, who is in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at the rate of fifteen per cent per annum.

In reckoning the eighth day after another day, any intervening day which is a public holiday under the Negotiable Instruments Act, 1881 (26 of 1881), shall be disregarded, and if the eighth day (as so reckoned) is itself such a public holiday, there shall for the said purposes be substituted the first day thereafter which is not a holiday.

All the provisions of this Act relating to listing of securities of a public company on a recognized stock exchange shall, *mutates mutandis*, apply to the listing of the securities of the nature referred to in sub-clause (ie) of clause (h) of section 2 by the issuer, being a special purpose distinct entity.

Exclusion of Spot Delivery Contracts

If the Central Government is of opinion that in the interest of the trade or in the public interest, it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts

generally or in respect of spot delivery contract for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

Contracts in Derivatives

Notwithstanding anything contained in any other law for the time being in force, contracts in derivative shall be legal and valid if such contracts are—

- a. traded on a recognised stock exchange;
- b. settled on the clearing house of the recognised stock exchange, in accordance with the rules and bye-laws of such stock exchange.

Section 21 of the Act provides that where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Section 21A provides that a recognised stock exchange may delist the securities, after recording the reasons therefor, from any recognised stock exchange on any of the ground or grounds as may be prescribed under this Act.

The securities of a company shall not be delisted unless the company concerned has been given a reasonable opportunity of being heard.

A listed company or an aggrieved investor may file an appeal before the Securities Appellate Tribunal against the decision of the recognised stock exchange delisting the securities within fifteen days from the date of the decision of the recognised stock exchange delisting the securities and the provisions of Sections 22B to 22E of this Act, shall apply, as far as may be, to such appeals.

The Securities Appellate Tribunal may, if it is satisfied that the company was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding one month.

Right of Appeal against Refusal of Listing by Stock Exchanges

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 fifteen days from the date on which the reasons for such refusal are furnished to it, or
- b. where the stock exchange has omitted or failed to dispose of, within the time specified in sub-section (1A) of section 73 of the Companies Act, 1956 (hereafter referred to as the 'specified time'), the application for permission for the shares or debentures to be dealt with on the stock exchange, within fifteen days from the date of expiry of the specified time or within such further period, not exceeding one month, as the Securities 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, and thereupon the Securities Appellate Tribunal may, after giving the stock exchange, an opportunity of being heard,—

- i. vary or set aside the decision of the stock exchange; or
- ii. where the stock exchange has omitted or failed to dispose of the application within the specified time, grant or refuse the permission and where the Securities Appellate Tribunal sets aside the decision of the recognised stock exchange or grants the permission, the stock exchange shall act in conformity with the orders of the Securities Appellate Tribunal.

Every appeal under sub-section (1) shall be in such form and be accompanied by such fee as may be prescribed. The Securities Appellate Tribunal shall send a copy of every order made by it to the Board and parties to the appeal.

The appeal filed before the Securities Appellate Tribunal under sub-section (1) 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 and Powers of Securities Appellate Tribunal and Appeal against its Orders

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.

The Securities Appellate Tribunal shall have, for the purpose 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; and
- 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, 1860 and the Securities Appellate Tribunal shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

Any person aggrieved by any decision or order of the Securities Appellate Tribunal may file an appeal to the Supreme Court within sixty days from the date of communication of the decision or order of the Securities Appellate Tribunal to him on any question of fact or law arising out of such order;

Provided that the Supreme Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Penalties and Procedures under the Securities Contracts (Regulation) Act, 1956

The Act prescribes various penalties against persons who might be found guilty of offences under the Act. These offences are listed below—

Any person who—

- a. without reasonable excuse (the burden of proving which shall be on him) fails to comply with any requisition made under sub-section (4) of section 6; or
- b. enters into any contract in contravention of any of the provisions contained in section 13 or section 16; or
- c. contravenes the provisions contained in section 17 or section 19; or
- d. enters into any contract in derivative in contravention of section 18A or the rules made under section 30; or
- e. owns or keeps a place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act and knowingly permits such place to be used for such purposes; or
- f. manages, controls, or assists in keeping any place other than that of a recognised stock exchange which is used for the purpose of entering into or performing any contracts in contravention of any of the provisions of this Act or at which contracts are recorded or adjusted or rights or liabilities arising out of contracts are adjusted, regulated or enforced in any manner whatsoever; or
- g. not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17 willfully represents to or induces any person to believe that contracts can be entered into or performed under this Act through him; or
- h. not being a member of a recognised stock exchange or his agent authorised as such under the rules or bye-laws of such stock exchange or not being a dealer in securities licensed under section 17, canvasses, advertises or touts in any manner either for himself or on behalf of any other person for any business connected with contracts in contravention of any of the provisions of this Act; or
- i. joins, gathers or assists in gathering at any place other than the place of business specified in the bye-laws of a recognised stock exchange any person or persons for making bids or offers or for entering into or performing any contracts in contravention of any of the provisions of this Act,

shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, 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.

Any person who enters into any contract in contravention of the provisions

contained in section 15 or who fails to comply with the provisions of section 21 or section 21A or with the orders of or the Central Government under section 22 or with the Orders of the Securities Appellate Tribunal shall, without prejudice to any award of penalty by the Adjudicating Officer under this Act, on conviction, 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.

Penalty for failure to furnish information, return, etc.

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

- a. to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;
- b. to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, 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.

Penalty for failure by any person to enter into an agreement with clients

If any person, who is required under this Act or any bye-laws of a recognized stock exchange made thereunder, to enter into an agreement with his client, fails to enter into such an agreement, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for every such failure.

Penalty for failure to redress Investors' grievances

If any stock broker or sub-broker or a company whose securities are listed or proposed to be listed in a recognised stock exchange, after having been called upon by the Securities and Exchange Board of India or a recognised stock exchange in writing, to redress the grievances of the investors, fails to redress such grievances within the time stipulated by the Securities and Exchange Board of India or a recognised stock exchange, he or 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.

Penalty for failure to segregate securities or moneys of client or clients

If any person, who is registered under Section 12 of the Securities and Exchange Board of India Act, 1992 as a stock broker or sub-broker, fails to segregate securities or moneys of the client or clients or uses the securities or moneys of a client or clients for self or for any other client, he shall be liable to a penalty not exceeding one crore rupees.

Penalty for failure to comply with listing conditions or delisting conditions or grounds

If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.

Penalty for excess dematerialisation or delivery of unlisted securities

If any issuer dematerialises securities more than the issued securities of a company or delivers in the stock exchanges the securities which are not listed in the recognised stock exchange or delivers securities where no trading permission has been given by the recognised stock exchange, he shall be liable to a penalty not exceeding twenty-five crore rupees.

Penalty for failure to furnish periodical returns, etc.

If a recognized stock exchange fails or neglects to furnish periodical returns to the Securities and Exchange Board of India or fails or neglects to make or amend its rules or bye-laws as directed by the Securities and Exchange Board of India or fails to comply with directions issued by the Securities and Exchange Board of India, such recognised stock exchange shall be liable to a penalty which may extend to twenty-five crore rupees.

Penalty for contravention where no separate penalty has been provided

Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Power to adjudicate

1. For the purpose of adjudging under Sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the Securities and Exchange Board of India shall appoint any officer not below the rank of a Division Chief of the Securities and Exchange Board of India 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 shall have power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document, which in the opinion of the adjudicating officer, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, he is satisfied that the person has failed to comply with the provisions of any of the Sections specified in sub-Section (1), he may impose such penalty as he thinks fit in accordance with the provisions of any of those Sections.

Factors to be taken into account by the adjudicating officer

While adjudging the quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely—

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

Crediting sum realised by way of penalties to Consolidated Fund of India

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

Appeal to Securities Appellate Tribunal

1. Any person aggrieved, by the order or decision of the recognised stock exchange or the adjudicating officer or any order made by the Securities and Exchange Board of India under Section 4B, may prefer an appeal before the Securities Appellate Tribunal and the provisions of Sections 22B, 22C, 22D and 22E of this Act, shall apply, as far as may be, to such appeals.
2. Every appeal under sub-Section (1) shall be filed within a period of forty-five days from the date on which a copy of the order or decision is received by the appellant and it shall be in such form and be accompanied by such fee as may be prescribed:
Provided that the Securities Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.
3. On receipt of an appeal under sub-Section (1), the Securities Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
4. The Securities Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned adjudicating officer.
5. The appeal filed before the Securities Appellate Tribunal under sub-Section (1) 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.

Offences

1. Without prejudice to any award of penalty by the adjudicating officer under this Act, if any person contravenes or attempts to contravene or abets the contravention of the provisions of this Act or of any rules or regulations or byelaws made thereunder, for which no punishment is provided elsewhere in this Act, 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

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), any offence punishable under this Act, not being an offence punishable with imprisonment only, or with imprisonment and also with fine, may either before or after the institution of any proceeding, be compounded by a Securities Appellate Tribunal or a court before which such proceedings are pending.

Power to grant immunity

1. The Central Government may, on recommendation by the Securities and Exchange Board of India, if the Central Government is satisfied, that any

person, who is alleged to have violated any of the provisions of this Act or the rules or the regulations made thereunder, has made a full and true disclosure in respect of alleged violation, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act, or the rules or the regulations made thereunder or also from the imposition of any penalty under this Act with respect to the alleged violation.

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.

Further that the recommendation of the Securities Exchange Board of India under this sub-Section are not binding upon the Central Government.

2. An immunity granted to a person under sub-Section (1) may, at any time, be withdrawn by the Central Government, if it is satisfied that such person had, in the course of the proceedings, not complied with the condition on which the immunity was granted or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the contravention and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.

Offences by companies

1. Where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

2. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and is proved that the offence has been committed with the consent or connivance of, or is attributable to any gross negligence on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer of the company shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section,—

- a. 'company' means any body corporate and includes a firm or other association of individuals, and
- b. "director", in relation to—
 - i. a firm, means a partner in the firm;
 - ii. any association of persons or a body of individuals, means any

member controlling the affairs thereof.

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

Certain offences to be cognizable

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

Cognizance of offences by courts

1. No court shall take cognizance of any offence punishable under this Act or any rules or regulations or bye-laws made thereunder, save on a complaint made by the Central Government or State Government or the Securities and Exchange Board of India or a recognised stock exchange or by any person.
2. No court inferior to that of a Court of Session shall try any offence punishable under this Act.

Entitlement of the Investors to Dividend Declared by the Company

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

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

- i. in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the dividend;
- ii. in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
- iii. in case of delay in the lodging of any security and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.

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

- a. the right of a company to pay any dividend which has become due to any person whose name is for the time being registered in the books of the company as the holder of the security in respect of which the dividend has become due; or
- b. the right of the transferee of any security to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security in the name of the transferee.

Right to receive income from mutual fund

1. It shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain

any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferor has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due.

Explanation.—The period specified in this Section shall be extended—

- i. in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instrument issued by the mutual fund;
 - ii. in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof;
 - iii. in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay.
2. Nothing contained in sub-Section (1) shall affect—
- a. the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person whose name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by mutual fund has become due; or
 - b. the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the mutual fund in the name of the transferee.

Right of Investor to Receive Income from Collective Investment Scheme

It shall be lawful for the holder of any securities, being units or other instruments issued by collective investment scheme, whose name appears on the books of the collective investment scheme issuing the said security to receive and retain any income in respect of units or other instruments issued by the collective investment scheme declared by the collective investment scheme in respect thereof for any year, though the said security, being units or other instruments issued by collective investment scheme, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by collective investment scheme from the transfer or has lodged the security and all other

documents relating to the transfer which may be required by the collective investment scheme with the collective investment scheme for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the collective investments scheme became due.

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

- i. in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or other instruments issued by collective investment scheme;
- ii. in case of loss of the transfer deed by theft or any other cause beyond the control of the transferee, by the actual period taken for the replacement thereof; and
- iii. in case of delay in the lodging of any security, being units or other instruments issued by the collective investment scheme, and other documents relating to the transfer due to causes connected with the post, by the actual period of the delay. This shall not affect—
 - a. the right of a collective investment scheme to pay any income from units or other instruments issued by collective investment scheme which has become due to any person whose name is for the time being registered in the books of the collective investment scheme as the registered holder in the books of the collective investment scheme being units or other instruments issued by collective investment scheme in respect of which the income in respect of units or other instruments issued by collective scheme has become due; or
 - b. the right of transferee of any security, being units or other instruments issued by collective investment scheme, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the company has refused to register the transfer of the security being units or other instruments issued by the collective investment scheme in the name of the transferee.

Right to receive income from mutual fund

Section 27B provides that it shall be lawful for the holder of any securities, being units or other instruments issued by any mutual fund, whose name appears on the books of the mutual fund issuing the said security to receive and retain any income in respect of units or other instruments issued by the mutual fund declared by the mutual fund in respect thereof for any year, notwithstanding that the said security, being units or other instruments issued by the mutual fund, has already been transferred by him for consideration, unless the transferee who claims the income in respect of units or other instruments issued by the mutual fund from the transferor has lodged the security and all other documents relating to the transfer which may be required by the mutual fund with the mutual fund for being registered in his name within fifteen days of the date on which the income in respect of units or other instruments issued by the mutual fund became due.

The period specified in this Section may be extended—

- i. in case of death of the transferee, by the actual period taken by his legal representative to establish his claim to the income in respect of units or

- other instrument issued by the mutual fund;
- ii. in case of loss of the transfer deed by theft or any other cause beyond the control of transferee, by the actual period taken for the replacement thereof;
- iii. in case of delay in the lodging of any security, being units or other instruments issued by the mutual fund, and other documents relating to the transfer due to cause connected with the post, by the actual period of the delay.

Sub-section (2) provides that nothing contained in Sub-section (1) shall affect—

- a. the right of a mutual fund to pay any income from units or other instruments issued by the mutual fund which has become due to any person whose name is for the time being registered in the books of the mutual fund as the holder of the security being units or other instruments issued by the mutual fund in respect of which the income in respect of units or other instruments issued by mutual fund has become due; or
- b. the right of transferee of any security, being units or other instruments issued by the mutual fund, to enforce against the transferor or any other person his rights, if any, in relation to the transfer in any case where the mutual fund has refused to register the transfer of the security being units or other instruments issued by the mutual fund in the name of the transferee.

Power of Central Government to delegate or to make rules

Section 29A of the Securities Contracts (Regulation) Act, 1956 provides that the Central Government may, by order published in the Official Gazette, direct that the powers (except the power under section 30) exercisable by it under any provision of this Act shall, in relation to such matters and subject to such conditions, if any, as may be specified in the order, be exercisable also by the Securities and Exchange Board of India or the Reserve Bank of India constituted under section 3 of the Reserve Bank of India Act, 1934.

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

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

- a. the manner in which applications may be made, the particulars which they should contain and the levy of a fee in respect of such applications;
- b. the manner in which any inquiry for the purpose of recognizing any stock exchange may be made, the conditions which may be imposed for the grant of such recognition, including conditions as to the admission of members if the stock exchange concerned is to be the only recognised stock exchange in the area; and the form in which such recognition shall be granted;
- c. the particulars which should be contained in the periodical returns and annual reports to be furnished to the Central Government;
- d. documents which should be maintained and preserved under section 6 and the periods for which they should be preserved;
- e. manner in which any inquiry by the governing body of a stock exchange

shall be made under section 6;

- f. the manner in which the bye-laws to be made or amended under this Act shall before being so made or amended be published for criticism;
- g. the manner in which applications may be made by dealers in securities for licences under section 17, the fee payable in respect thereof and the period of such licences, the conditions subject to which licences may be granted, including conditions relating to the forms which may be used in making contracts, the documents to be maintained by licensed dealers and the furnishing of periodical information to such authority as may be specified and the revocation of licences for breach of conditions;
- h. the requirements which shall be complied with—
 - A. by public companies for the purpose of getting their securities listed on any stock exchange;
 - B. by collective investment scheme for the purpose of getting their units listed on any stock exchange; (ha) the form in which an appeal may be filed before the Securities Appellate Tribunal under section 22A and the fees payable in respect of such appeal.

(ha) the grounds on which the securities of a company may be delisted from any recognised stock exchange under sub-Section (1) of Section 21A;

(hb) the form in which an appeal may be filed before the Securities Appellate Tribunal under sub-Section (2) of Section 21A and the fees payable in respect of such appeal;

(hc) the form in which an appeal may be filed before the Securities Appellate Tribunal under Section 22A and the fees payable in respect of such appeal;

(hd) the manner of inquiry under sub-Section (1) of Section 23-I;

(he) the form in which an appeal may be filed before the Securities Appellate Tribunal under Section 23L and the fees payable in respect of such appeal

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

Every rule 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 both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power of Securities and Exchange Board of India to make regulations

Section 31 provides that without prejudice to the provisions contained in section 30 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India may, by notification in the Official Gazette, make regulations consistent with the provisions of this Act and the rules made thereunder to carry out the purposes of this Act.

In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for the manner, in which at least fifty-one per cent. of equity share capital of a recognised stock exchange is held, within

twelve months from the date of publication of the order under sub-section (7), of section 4B by the public other than shareholders having trading rights under sub-section (8) of that section.

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 regulation or both Houses agree that the regulation should not be made, the 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 regulation.

II. SECURITIES CONTRACTS (REGULATION) RULES, 1957

These rules were made by the Central Government in exercise of the powers conferred by Section 30 of the Securities Contracts (Regulation) Act, 1956 and notified on 21st February, 1957.

Under rules 3, it is laid down that an application under section 3 of the SCRA for recognition of a stock exchange shall be made to SEBI in Form A. This form is to be used for seeking recognition as well as renewal of recognition of a stock exchange. The annexure to form A requires the applicant stock exchange to furnish general information about itself and also details about its membership, governing body, trading and miscellaneous matters. A fee of Rs. 500 has to be paid in respect of every application and deposited in the nearest Government Treasury or the nearest branch of State Bank of India. However at Mumbai, Kolkata and Chennai, Kanpur the fees shall be deposited in RBI and credited to the Head XLVI-Miscellaneous-Other fees, fines and forfeitures.

The application shall be accompanied by 4 copies of the rules (including the memorandum and articles of association where the applicant stock exchange is an incorporated body) and bye-laws of the stock exchange applying for recognition and the receipt obtained for payment of fees.

Before granting recognition to a stock exchange, SEBI may make such enquiries and require such further information to be furnished as it deems necessary, in relation to the information furnished in the Annexure to the application.

Form of Recognition

The recognition granted to a stock exchange shall be in Form B and subject to the following conditions, namely—

- a. that the recognition unless granted on a permanent basis, shall be for such period not less than one year as may be specified in the recognition;
- b. that the stock exchange shall comply with such conditions as are or may be prescribed or imposed under the provisions of the Act and these rules from time to time. In case of a recognised stock exchange, renewal of such recognition should be sought from SEBI not later than 3 months before expiry of the period of recognition.

In case SEBI desires to withdraw recognition from a stock exchange, SEBI

shall first issue a show-cause notice in Form C and obtain information. Only after considering the submissions of the stock exchange SEBI can take a decision on withdrawal of recognition.

Qualification prescribed for Membership of a recognised Stock Exchange

Rule 8 contains detailed provisions on this subject and they are as follows:

No person shall be liable to be elected as a member if—

- a. he is less than twenty-one years of age;
- b. he is not a citizen of India;
However the governing body may in suitable cases relax this condition with the prior approval of the Securities and Exchange Board of India;
- c. he has been adjudged bankrupt or a receiving order in bankruptcy has been made against him or he has been proved to be insolvent even though he has obtained his final discharge;
- d. he has compounded with his creditors unless he has paid 100 paise in the rupee;
- e. he has been convicted of an offence involving fraud or dishonesty;
- f. he is engaged as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability unless he undertakes on admission to sever his connection with such business;
However no member may conduct business in commodity derivatives, except by setting up a separate company which shall comply with the regulatory requirements, such as, networth, capital adequacy, margins and exposure norms as may be specified by the Forward Market Commission, from time to time:
Provided further that nothing herein shall be applicable to any corporations, bodies corporate, companies or institutions referred to in items (a) to (k) of the proviso to sub-rule (4).
- g. he has been at any time expelled or declared a defaulter by any other stock exchange;
- h. he has been previously refused admission to membership unless a period of one year has elapsed since the date of such rejection.

No person eligible for admission as a member under sub-rule (1) shall be admitted as a member unless:

- a. he has worked for not less than two years as a partner with, or as an authorised assistant or authorised clerk or remisier or apprentice to, a member; or
- b. he agrees to work for a minimum period of two years as a partner or representative member with another member and to enter into bargains on the floor of the stock exchange and not in his own name but in the name of such other member; or
- c. he succeeds to the established business of a deceased or retiring member who is his father, uncle, brother or any other person who is, in the opinion of the governing body, a close relative;

However the rules of the stock exchange may authorise the governing body to waive compliance with any of the foregoing conditions if the person

seeking admission is in respect of means, position, integrity, knowledge and experience of business in securities, considered by the governing body to be otherwise qualified for membership;

No person who is a member at the time of application for recognition or subsequently admitted as a member shall continue as such if—

a. he ceases to be a citizen of India;

However this shall not affect those who are not citizens of India but who were members at the time of such application or were admitted subsequently under the provisions of clause (b) of sub-rule (1) of this rule, subject to their complying with all other requirements of this rule;

b. he is adjudged bankrupt or a receiving order in bankruptcy is made against him or he is proved to be insolvent;

c. he is convicted of an offence involving fraud or dishonesty;

d. he engages either as principal or employee in any business other than that of securities or commodity derivatives except as a broker or agent not involving any personal financial liability, provided that—

i. the governing body may, for reasons, to be recorded in writing, permit a member to engage himself as principal or employee in any such business, if the member in question ceases to carry on business on the stock exchange either as an individual or as a partner in a firm.

ii. in the case of those members who were under the rules in force at the time of such application permitted to engage in any such business and were actually so engaged on the date of such application, a period of three years from the date of the grant of recognition shall be allowed for severing their connection with any such business,

iii. nothing herein shall affect members of a recognised stock exchange which are corporations, bodies corporate, companies or institution referred to in item (a) to (i) of the proviso to sub-rule (4).

Corporate Membership

A company as defined in the Companies Act, 1956, shall be eligible to be elected as a member of a stock exchange if—

i. such company is formed in compliance with the provisions of section 322 of the said Act,

ii. a majority of the directors of such company are shareholders of such company and also members of that stock exchange; and

iii. the directors of such company, who are members of that stock exchange, have ultimate liability in such company;

However where the Securities and Exchange Board of India makes a recommendation in this regard, the governing body of a stock exchange shall, in relaxation of the requirements of this clause, admit as member the following corporations, bodies corporate, companies or institutions, namely—

a. the Industrial Finance Corporation, established under the Industrial Finance Corporation Act, 1948 (15 of 1948);

b. the Industrial Development Bank of India, established under the Industrial Development Bank Act, 1964 (18 of 1964);

c. the Life Insurance Corporation of India, established under the Life Insurance Corporation Act, 1956 (31 of 1956);

- d. the General Insurance Corporation of India constituted under the General Insurance Corporation (Nationalisation) Act, 1972 (57 of 1972);
- e. the Unit Trust of India, established under the Unit Trust of India Act, 1963 (52 of 1963);
- f. the Industrial Credit and Investment Corporation of India, a company registered under the Companies Act, 1956 (1 of 1956);
- g. the subsidiaries of any of the corporations or companies specified in (a) to (f) and any subsidiary of the State Bank of India or any nationalised bank set up for providing merchant banking services, buying and selling securities and other similar activities;
- h. any bank included in the second schedule to RBI Act, 1934 (2 of 1934).

A company as defined in the Companies Act, 1956, shall also be eligible to be elected as a member of a Stock Exchange if—

- i. such company is formed in compliance with the provisions of section 12 of the said Act;
- ii. such company undertakes to comply with such financial requirements and norms as may be specified by the Securities and Exchange Board of India for the registration of such company under sub-section (1) of section 12 of the Securities and Exchange Board of India Act, 1992;
- iii. the directors of the company are not disqualified for being members of a stock exchange under clause (1) except sub-clause (b) and sub-clause (f) thereof or clause (3) except sub-clause (a) and sub-clause (f) thereof and the Director of the company had not held the offices of the Director in any company which had been a member of the stock exchange and had been declared defaulter or expelled by the stock exchange; and
- iv. not less than two directors of the company are persons who possess a minimum two years' experience—
 - a. in dealing in securities; or
 - b. as portfolio managers; or
 - c. as investment consultants.

Where any member of a stock exchange is a firm, the provisions of sub-rules (1), (3) and (4), shall, so far as they can, apply to the admission or continuation of any partner in such firm.

Regulation of transaction in the stock exchange

All contracts between the members of a recognised stock exchange shall be confirmed in writing and shall be enforced in accordance with the rules and bye-laws of the stock exchange of which they are members. The Securities and Exchange Board of India may nominate one or more persons not exceeding three in number, as member or members of the governing body of every recognised stock exchange. Such member or members shall enjoy the same status and powers as other members of the governing body.

After receiving the report of the result of an enquiry made under clause (b) of sub-section (3) of Section 6 of the Act, the Securities and Exchange Board of India may take such action as they deem proper and, in particular, may direct the governing body of the stock exchange to take such disciplinary action against the offending member, including fine, expulsion, suspension or any other penalty of a like nature not involving the payment of money, as may be

specified by Securities and Exchange Board of India; notwithstanding anything to the contrary contained in the rules or bye-laws of the stock exchange concerned, the governing body shall give effect to the directions of Securities and Exchange Board of India in this behalf and shall not in any manner commute, revoke or modify the action taken in pursuance of such directions, without the prior approval of the Securities and Exchange Board of India. The Securities and Exchange Board of India may however, either on its own motion or on the representation of the member concerned, modify or withdraw its direction to the governing body.

Every member shall get his accounts audited by a chartered accountant whenever such audit is required by the Securities and Exchange Board of India.

Books and documents to be maintained and preserved

A. *By every recognised stock exchange*

Every recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years;

1. Minute books of the meetings of—

- a. members;
- b. governing body;
- c. any standing committee or committees of the governing body or of the general body of members.

Register of members showing their full names and addresses. Where any member of the stock exchange is a firm, full names and addresses of all partners shall be shown. Register of authorised clerks. Register of remisiers of authorised assistants. Record of security deposits.

Margin deposits book.

Ledgers.

Journals.

Cash Book.

Bank pass-book.

B. *By every member of a recognised stock exchange*

Every member of a recognised stock exchange shall maintain and preserve the following books of account and documents for a period of five years;

- a. Register of transactions (Sauda book).
- b. Clients' ledger.
- c. General ledger.
- d. Journals.
- e. Cash book.
- f. Bank pass-book.
- g. Documents register showing full particulars of shares and securities received and delivered.

Every member of a recognised stock exchange shall maintain and preserve the following documents for a period of two years;

- a. Members' contract books showing details of all contracts entered into by him with other members of the same exchange or counter-foils or duplicates of memos of confirmation issued to such other members.

- b. Counter-foils or duplicates of contract notes issued to clients.
- c. Written consent of clients in respect of contracts entered into as principals.

Manner of Enquiry in the Affairs of Stock Exchange

Rule 16 lays down that any enquiry in relation to the affairs of the governing body of a recognised stock exchange or the affairs of any member in relation to the stock exchange can be conducted only by the person or persons appointed by SEBI under section 6(3)(b) of the Act. The person or persons are so appointed are referred to as the inquiry authority.

The procedure relating to the conduct of inquiry is stated below—

- where the inquiring authority consists of two or more persons, one of them shall be appointed as the chairman or senior member thereof;
- the inquiring authority shall hand over a statement of issues to be inquired into to the governing body or the member concerned, as the case may be, who will be given a reasonable opportunity to state their or his side of the case;
- if any witness is called for examination, an opportunity shall be provided to the governing body or the member whose affairs are being inquired into, as the case may be, to cross-examine such witness;
- where the inquiring authority consists of more than one person, the views of the majority shall be deemed to represent the findings of such authority and, in the event of an equality of votes, the chairman or senior member shall have a casting vote;
- the inquiring authority shall submit its report in writing to the Securities and Exchange Board of India within the period specified in the order of appointment;
- temporary absence from any hearing or hearings of any member of the inquiring authority shall not vitiate its proceedings.

Where the Securities and Exchange Board of India had directed the governing body of a stock exchange to make an inquiry under clause (b) of sub-section (3) of section 6 of the Act, the governing body concerned shall appoint one or more members thereof to make the inquiry and the provisions of sub-rule (1) shall apply mutatis mutandis to such inquiry.

Submission of annual reports and periodical returns by stock exchanges to SEBI

These matters are regulated under rule 17 & 17A respectively.

Every recognised stock exchange shall (before the 31st day of January in each year or within such extended time as the Securities and Exchange Board of India may, from time to time, allow), furnish the Securities and Exchange Board of India annually with a report about its activities during the (proceeding calendar year), which shall inter alia contain detailed information about the following matters:

- a. changes in rules and bye-laws, if any;
- b. changes in the composition of the governing body;
- c. any new sub-committees set up and changes in the composition of existing ones;
- d. admissions, re-admissions, deaths or resignations of members;

- e. disciplinary action against members;
- f. arbitration of disputes (nature and number) between members and non-members;
- g. defaults;
- h. action taken to combat any emergency in trade;
- i. securities listed and de-listed; and
- j. securities brought on or removed from the forward list.

Every recognised stock exchange shall within one month of the date of the holding of its annual general meeting, furnish the Securities and Exchange Board of India with a copy of its audited balance sheet and profit and loss account for its preceding financial year.

Every recognised stock exchange shall furnish the Securities and Exchange Board of India periodical returns relating to—

- i. the official rates for the securities enlisted thereon;
- ii. the number of shares delivered through the clearing house;
- iii. the making-up prices;
- iv. the clearing house programmes;
- v. the number of securities listed and de-listed during the previous three months;
- vi. number of securities brought on or removed from the forward list during the previous three months; and
- vii. any other matter as may be specified by the Securities and Exchange Board of India.

Requirements of listing of securities with recognised stock exchanges

This is one of the most important and lengthy provision of the Securities Contracts (Regulation) Rules, 1957. Rule 19 provides for the complete procedure in this regard.

A public company as defined under the Companies Act, 1956, desirous of getting its securities listed on a recognised stock exchange, shall apply for the purpose to the stock exchange and forward along with its application the following documents and particulars:

- a. Memorandum and articles of association and, in the case of a debenture issue, a copy of the trust deed.
- b. Copies of all prospectuses or statements in lieu of prospectuses issued by the company at any time.
- c. Copies of offers for sale and circulars or advertisements offering any securities for subscription or sale during the last five years.
- d. Copies of balance sheets and audited accounts for the last five years, or in the case of new companies, for such shorter period for which accounts have been made up.
- e. A statement showing—
 - i. dividends and cash bonuses, if any, paid during the last ten years (or such shorter period as the company has been in existence, whether as a private or public company),
 - ii. dividends or interest in arrears, if any.
- f. Certified copies of agreements or other documents relating to arrangements with or between—

- i. vendors and/or promoters,
 - ii. underwriters and sub-underwriters,
 - iii. brokers and sub-brokers.
- g. Certified copies of agreements with—
 - i. managing agents and secretaries and treasurers.
 - ii. selling agents,
 - iii. managing directors and technical directors,
 - iv. general manager, sales manager, managers or secretary.
- h. Certified copy of every letter, report, balance sheet, valuation contract, court order or other document, part of which is reproduced or referred to in any prospectus, offer for sale, circular or advertisement offering securities for subscription or sale, during the last five years.
- i. A statement containing particulars of the dates of, and parties to all material contracts, agreements (including agreements for technical advice and collaboration), concessions and similar other documents (except those entered into in the ordinary course of business carried on or intended to be carried on by the company) together with a brief description of the terms, subject-matter and general nature of the documents.
- j. A brief history of the company since its incorporation giving details of its activities including any reorganization, reconstruction or amalgamation, changes in its capital structure (authorised, issued and subscribed) and debenture borrowings, if any.
- k. Particulars of shares and debentures issued (i) for consideration other than cash, whether in whole or part, (ii) at a premium or discount, or (iii) in pursuance of an option.
- l. A statement containing particulars of any commission, brokerage, discount or other special terms including an option for the issue of any kind of the securities granted to any person.
- m. Certified copies of—
 - i. acknowledgment card or the receipt of filing offer document with the Securities and Exchange Board of India;
 - ii. agreements, if any, with the Industrial Finance Corporation, Industrial Credit and Investment Corporation and similar bodies.
- n. Particulars of shares forfeited.
- o. A list of highest ten holders of each class or kind of securities of the company as on the date of application along with particulars as to the number of shares or debentures held by and the address of each such holder.
- p. Particulars of shares or debentures for which permission to deal is applied for;

Provided that a recognised stock exchange may either generally by its bye-laws or in any particular case call for such further particulars or documents as it deems proper.

Apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that;

- a. Its articles of association provide for the following among others—

- i. that the company shall use a common form of transfer;
- ii. that the fully paid shares will be free from all lien, while in the case of partly paid shares, the company's lien, if any, will be restricted to moneys called or payable at a fixed time in respect of such shares;
- iii. that any amount paid-up in advance of calls on any share may carry interest but shall not entitle the holder of the share to participate in respect thereof, in a dividend subsequently declared;
- iv. there will be no forfeiture of unclaimed dividends before the claim becomes barred by law;
- v. that option or right to call of shares shall not be given to any person except with the sanction of the company in general meeting;

Provided that a recognised stock exchange may provisionally admit to dealings the securities of a company which undertakes to amend its articles of association at its next general meeting so as to fulfill the foregoing requirements and agrees to act in the meantime strictly in accordance with the provisions of this clause.

- b. At least 10% of each class or kind of securities issued by a company was offered to the public for subscription through advertisement in newspapers for a period not less than two days and that applications received in pursuance of such offer were allotted subject to the following conditions:
 - a. minimum 20 lakhs securities (excluding reservations, firm allotment and promoters contribution) was offered to the public;
 - b. the size of the offer to the public i.e., the offer price multiplied by the number of securities offered to the public was minimum Rs. 100 crores; and
 - c. the issue was made only through book building method with allocation of 60% of the issue size to the qualified institutional buyers as specified by the Securities and Exchange Board of India:

Provided that if a company does not fulfil the conditions, it shall offer at least 25% of each class or kind of securities to the public for subscription through advertisement in newspapers for a period not less than two days and that applications received in pursuance of such offer were allotted; Provided further that a recognised stock exchange may relax any of the conditions with the previous approval of the Securities and Exchange Board of India, in respect of a Government Company within the meaning of section 617 of the Companies Act, 1956 (1 of 1956) and subject to such instructions as that Board may issue in this behalf from time to time.

Explanation—Where any part of the securities sought to be listed have been or are agreed to be taken up by the Central Government, a State Government, development or investment agency of a State Government. Industrial Credit and Investment Corporation of India Limited, Life Insurance Corporation of India, General Insurance Corporation of India and its subsidiaries, namely, the National Insurance Company Limited, the New India Assurance Company Limited, the Oriental Fire and General Insurance Company Limited and the United Fire and General Insurance Company Limited, or Unit Trust of India, the total subscription to the securities, whether by one or more of such bodies, shall not form part of

the twenty-five per cent of the securities to be offered to the public.

Conditions precedent to submission of application for listing by stock exchange

A company applying for listing shall, as conditions precedent, undertake *inter alia*—

- a. (i) that letters of allotment will be issued simultaneously and that, in the event of its being impossible to issue letters of regret at the same time, a notice to that effect will be inserted in the press so that it will appear on the morning after the letters of allotment have been posted.
 - ii. that letters of right will be issued simultaneously,
 - iii. that letters of allotment, acceptance or rights will be serially numbered, printed on good quality paper and, examined and signed by a responsible officer of the company and that whenever possible, they will contain the distinctive numbers of the securities to which they relate.
 - iv. that letters of allotment and renounceable letters of right will contain a proviso for splitting and that, when so required by the exchange, the form of renunciation will be printed on the back of or attached to the letters of allotment and letters of right.
 - v. that letters of allotment and letters of right will state how the next payment of interest or dividend on the securities will be calculated;
- b. to issue, when so required, receipts for all securities deposited with it whether for registration, sub-division, exchange or for other purposes; and not to charge any fees for registration of transfers, for sub-division and consolidation of certificates and for sub-division of letters of allotment, renounceable letters of right, and split consolidation, renewal and transfer receipts into denominations of the market unit of trading;
- (bb) to issue, when so required, consolidation and renewal certificates in denominations of the market unit of trading, to split certificates, letters of allotment, letters of right, and transfer, renewal, consolidation and split receipts into smaller units, to split call notices, issue duplicates thereof and not require any discharge on call receipts and to accept the discharge of members of stock exchange on split, consolidation and renewal receipts as good and sufficient without insisting on the discharge of the registered holders;
- c. when documents are lodged for sub-division or consolidation (or renewal) through the clearing house of the exchange;
 - i. to accept the discharge of an official of the stock exchange clearing house on the company's split receipts and (consolidation receipts and renewal receipts) as good and sufficient discharge without insisting on the discharge of the registered holders; and
 - ii. to verify when the company is unable to issue certificates or split receipt or (consolidation receipts or renewal receipts) immediately on lodgement whether the discharge of the registered holders, on the documents lodged for sub-division or consolidation (or renewal) and their signatures on the relative transfers are in order;
- d. on production of the necessary documents by shareholders or by

members of the exchange, to make on transfers an endorsement to the effect that the power of attorney or probate or letters of administration or death certificate or certificate of the Controller of Estate Duty or similar other document has been duly exhibited to and registered by the company;

- e. to issue certificates in respect of shares or debentures lodged for transfer within a period of one month of the date of lodgement of transfer and to issue balance certificates within the same period where the transfer is accompanied by a larger certificate;
- f. to advise the stock exchange of the date of the board meeting at which the declaration or recommendation of a dividend (or the issue or right or bonus share) will be considered;
- g. to recommend or declare all dividends and/or cash bonuses at least five days before the commencement of the closure of its transfer books or the record date fixed for the purpose and so advise the stock exchange in writing of all dividends and/or cash bonuses recommended or declared immediately after a meeting of the board of the company has been held to finalise the same;
- h. to notify the stock exchange of any material change in the general character or nature of the company's business;
- i. to notify the stock exchange of any change—
 - i. in the company's directorate by death, resignation, removal or otherwise,
 - ii. of managing director, managing agent or secretaries and treasurers,
 - iii. of auditors appointed to audit the books and accounts of the company;
- j. to forward to the stock exchange copies of statutory and annual reports and audited accounts as soon as issued, including directors' reports;
- k. to forward to the stock exchange as soon as they are issued, copies of all other notices and circulars sent to the shareholders including proceedings of ordinary and extraordinary general meetings of the company and to file with the stock exchange certified copies of resolutions of the company as soon as such resolutions become effective;
- l. to notify the stock exchange prior to intimating the shareholders, of any new issue of securities whether by way of right, privilege, bonus or otherwise and the manner in which it is proposed to offer or allot the same;
- m. to notify the stock exchange in the event of re-issue of any forfeited securities or the issue of securities held in reserve for future issue;
- n. to notify the stock exchange of any other alteration of capital including calls;
- o. to close the transfer books only for the purpose of declaration of dividend or issue of right or bonus shares or for such other purposes as the stock exchange may agree and to give notice to the stock exchange as many days in advance as the exchange may from time to time reasonably prescribe, stating the dates of closure of its transfer books (or, when the transfer books are not to be closed, the date fixed for taking a record of its shareholders or debenture holders) and specifying the purpose or purposes for which the transfer books are to be closed (or the record is to

- be taken) and in the case of a right or bonus issue to so close the transfer books or fix a record date only after the sanctions of the competent authority subject to which the issue is proposed to be made have been duly obtained, unless the exchange agrees otherwise;
- p. to forward to the stock exchange an annual return immediately after each annual general meeting of at least ten principal holders of each class of security of the company along with particulars as to the number of shares or debentures held by, and address of, each such holder;
 - q. to grant to shareholders the right of renunciation in all cases of issue of rights, privileges and benefits and to allow them reasonable time not being less than four weeks within which to record, exercise, or renounce such rights, privileges and benefits, and to issue, where necessary, coupons or fractional certificates or provide for the payment of the equivalent of the value of the fractional right in cash unless the company in general meeting or the stock exchange agrees otherwise;
 - r. to promptly notify the stock exchange—
 - i. of any action which will result in the redemption, cancellation or retirement in whole or in part of any securities listed on the exchange,
 - ii. of the intention to make a drawing of such securities, intimating at the same time the date of the drawing and the period of the closing of the transfer books (or the date of the striking of the balance) for the drawing;
 - iii. of the amount of securities outstanding after any drawing has been made;
 - s. to intimate the stock exchange any other information necessary to enable the shareholders to appraise the position of the company and to avoid the establishment of a false market in the shares of the company;
 - t. that in the event of the application for listing being granted, such listing shall be subject to the rules and bye-laws of the exchange in force from time to time and that the company will comply within a reasonable time, with such further listing requirements as may be promulgated by the exchange as a general condition for new listings.

Procedure for listing new issues by existing listed companies

A fresh application for listing will be necessary in respect of all new issues desired to be dealt in, provided that, where such new securities are identical in all respects with those already listed, admission to dealings will be granted on the company intimating to the stock exchange particulars of such new issues.

Explanation—Shares are identical in all respects only if—

- a. they are of the same nominal value and the same amount per share has been called up;
- b. they are entitled to dividend at the same rate and for the same period, so that at the next ensuing distribution, the dividend payable on each share will amount to exactly the same sum, net and gross; and
- c. they carry the same rights in all other respects.

Suspension or withdrawal of admission to dealings in securities on stock exchange

A recognised stock exchange may suspend or withdraw admission to dealings in the securities of a company or body corporate either for a breach of or non-compliance with, any of the conditions of admission to dealings or for any other reason, to be recorded in writing, which in the opinion of the stock exchange justifies such action;

Provided, however, that no such action shall be taken by a stock exchange without according to the company or body corporate concerned a reasonable opportunity by a notice in writing, stating the reasons, to show cause against the proposed action;

Provided further that where a recognised stock exchange has withdrawn admission to dealings in any security, or where suspension of admission to dealings has continued for a period exceeding three months, the company or body corporate concerned may appeal to the Securities and Exchange Board of India and the Securities and Exchange Board of India may, after giving the stock exchange an opportunity of being heard, vary or set aside the decision of the stock exchange and thereupon the orders of the Securities and Exchange Board of India shall be carried out by the stock exchange.

A recognised stock exchange may, either at its own discretion or shall in accordance with the orders of the Securities and Exchange Board of India under sub-rule (5) restore or re-admit to dealings any securities suspended or withdrawn from the list.

Procedure applicable to statutory corporations

All the requirements with respect to listing prescribed by these rules, shall, so far as they may be, also apply to a body corporate constituted by an Act of Parliament or any State legislature;

Provided that a recognised stock exchange may relax the requirement of offer to the public for subscription of at least twenty-five per cent of each class or kind of securities issued in respect of a body corporate referred to in this sub-rule with the previous approval of the Securities and Exchange Board of India and also subject to such instructions as that Board may issue in this behalf from time to time.

Discretionary exemption in enforcing listing requirements

The Securities and Exchange Board of India may, at its own discretion or on the recommendation of a recognised stock exchange, waive or relax the strict enforcement of any or all of the requirements with respect to listing prescribed by these rules.

III. SECURITIES CONTRACTS (REGULATION) (APPEAL TO SECURITIES APPELLATE TRIBUNAL) RULES, 2000

Under the earlier section 22A of the Securities Contracts (Regulation) Act, 1956 a company could refuse to register the transfer of any of its securities in the name of transferee on any one or more of the grounds listed thereunder. This old section has been omitted w.e.f. 20.9.95.

Under the new section 22A of the Securities Contracts (Regulation) Act, 1956 inserted by the Securities Laws (Second Amendment) at 1999, it is laid down that where a recognised stock exchange refuses to list the securities of any company, the company shall be entitled to be furnished with the reasons for such refusals and in terms of that new section appeal to the Securities

Appellate Tribunal against such refusal.

The procedure for such appeal is laid down in the Securities Contracts (Regulation) (Appeal to Securities Appellate Tribunal) Rules, 2000 notified on 18th February, 2000 by the Central Government in exercise of the powers conferred by Section 30 read with Section 22A of the Securities Contracts (Regulation) Act, 1956.

Definitions

In these rules, unless the context otherwise requires,—

- a. 'Act' means the Securities Contracts (Regulation) Act, 1956 (42 of 1956);
- b. 'Appeal' means an appeal filed under Section 21A or Section 22A or Section 23L of the Securities Contracts (Regulation) Act, 1956 or under Sub-rule (5) of Rule 19 or Sub-rule (5) of Rule 20 of the Securities Contracts (Regulation) Rules, 1957;
- c. 'Appellate Tribunal' means the Securities Appellate Tribunal constituted under section 15K of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- d. 'bye-laws' means bye-laws made by a stock exchange under the Act;
- e. 'form' means the form appended to these rules;
- f. 'member' means the member of the Securities Appellate Tribunal appointed under Section 15L of the Securities and Exchange Board of India Act, 1992;
- g. 'party' means a person who prefers an appeal before the Appellate Tribunal and includes respondent;
- h. 'Presiding Officer' means the Presiding Officer of the Securities Appellate Tribunal appointed under section 15L of the Securities and Exchange Board of India Act, 1992 (15 of 1992);
- i. 'Registrar' means Registrar of the appellate tribunal and includes an officer of such Appellate Tribunal appointed under Section 15L of SEBI Act 1992 (15 of 1992);
- j. 'registry' means the registry of the Appellate Tribunal;
- k. 'rules' means the rules made under the Act;
- l. 'recognised stock exchange' means a stock exchange defined under clause (f) of section 2 of the Act;
- m. 'stock exchange' means a stock exchange defined under clause (j) of section 2 of the Act.

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 (hereinafter in this rule referred to as the 'specified time'), 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.

Form and procedure of appeal

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

Sittings of Appellate Tribunal

The Appellate Tribunal is required 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 temporary absence of the Presiding officer, Government may authorise 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.

Language of Appellate Tribunal

The proceedings of the Appellate Tribunal should be conducted in English or Hindi. No appeal, application, representation, document or other matters contained in any language other than English or Hindi, should be accepted by Appellate Tribunal, unless the same is accompanied by a true copy of translation thereof in English or Hindi.

Appeal to be in writing

1. Every appeal, application, reply, representation or any document filed before the Appellate Tribunal should 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 shall be stitched together and every page is required to be consecutively numbered and filed in the manner provided in sub-rule (2).
2. The appeal under sub-rule (1) is required to be presented 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

1. The Registrar should endorse on every appeal the date on which it is presented under rule 4 or deemed to have been presented under that rule and should also sign endorsement.
2. If, on scrutiny, the appeal is found to be in order, it should be duly registered and given a serial number.
3. 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.

4. If 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.
5. An appeal against the order of the Registrar under sub-rule (4) 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 authorised under Sub-rule (2) of Rule 5, whose decision thereon shall be final.

Payment of fees

Every memorandum of appeal should be accompanied with a fee as provided in sub-rule (2) and such fee may be remitted in the form of crossed demand draft drawn on a nationalised bank in favour of 'The Registrar, Securities Appellant Tribunal' payable at the station where the registry is located.

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

<i>Amount of Penalty imposed</i>	<i>Amount of fee payable</i>
1. Less than rupees ten thousand	Rs. 500
2. Rupees ten thousand or more but less than one lakh	Rs. 1200
3. Rupees one lakh or more	Rs. 1200 plus Rs. 500 for every additional one lakh of penalty or fraction thereof subject to a maximum of Rs. 1,50,000

Contents of memorandum of appeal

Every memorandum of appeal filed under rule 4 shall set for the contents under distinct heads, the grounds of such appeal without any argument or narrative, and such ground should be numbered consecutively and shall be in the manner provided in sub-rule (1) of rule 7. It should not be necessary to present separate memorandum of appeal to seek interim order or direction if in the memorandum of appeal, the same is prayed for.

Documents to accompany memorandum of appeal

Every memorandum of appeal should be in five copies and also accompany with copies of the order, at least one of which should 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.

Plural remedies

A memorandum of appeal should not seek relief or reliefs therein against more than one order unless the reliefs prayed for are consequential.

Notice of appeal to the respondent

A copy of the memorandum of appeal and paper book should be served by the Registrar on the respondent as soon as they are registered in the registry, by hand delivery, or by Registered Post or Speed Post.

Filing of reply to the appeal and other documents by the respondent

1. 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.
2. Every reply, application or written representation filed before the Appellate Tribunal should be verified in the manner provided for, in the Form.
3. A copy of every application, reply, document or written material filed by the respondent before the Appellate Tribunal should be forthwith served on the appellant, by the respondent. The Appellate Tribunal, may in its discretion, on application by the respondent allow the filing of reply referred to in sub-rule (1) after the expiry of the period referred to therein.

Date of hearing to be notified

The appellate Tribunal should notify the parties the date of hearing of the appeal in such manner as the Presiding Officer may by general or special order direct.

Hearing of appeal

1. On the day fixed or on any other day to which the hearing may be adjourned, the appellant should be heard in support of the appeal. The Securities Appellate Tribunal should also, 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.

In case of temporary absence of the presiding officer or of the member authorised by the Government under Sub-rule (2) of Rule 5, the presiding officer can authorise the other member present on that day to hear the Board or authorised representative against the appeal.

2. 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 it has been provided that where an appeal has been disposed of as provided above and the appellant appears afterwards and satisfies the Securities Appellate Tribunal that there was sufficient cause for his not appearing, when the appeal was called for hearing, the Securities Appellate Tribunal should make an order setting aside the ex-parte order and restore the appeal.

Order to be signed and dated

Every order of the Appellate Tribunal should be signed and dated by the Presiding Officer and the two other members. The Presiding Officer will have powers to pass interim orders or injunctions, subject to reasons to be recorded in writing, which it considers necessary in the interest of justice. The order should also be pronounced in the sitting of the Appellate Tribunal by the member authorised under sub-rule (2) of Rule 5.

Publication of orders

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.

Communication of orders

A certified copy of every order passed by the Appellate Tribunal should be communicated to the Board, the Adjudicating Officer and to the parties, as the case may be.

Orders and directions in certain cases

The Appellate Tribunal may make such orders or give such directions as may be necessary or expedient to give effect to its orders or to prevent abuse of its process or to secure the ends of justice.

Fee for inspection of records and obtaining copies thereof

A fee of rupees twenty, for every hour or part thereof inspection subject to a minimum of rupees one hundred should be charged for inspecting the records of a pending appeal by a party thereto. 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 shall be charged for providing copies of the records of an appeal, to a party thereto.

Seal and emblem

The official seal and emblem of the Appellate Tribunal should be as specified by the Central Government.

IV. SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

Section 2(1) (b) of the Securities Contracts (Regulation) (Procedure For Holding Inquiry And Imposing Penalties by adjudicating Officer) Rules, 2005 defines “adjudicating officer” as the officer appointed by the Securities and Exchange Board of India as adjudicating officer under section 23-I of Securities Contracts (Regulation) Act, 1956 (SCRA).

Holding of inquiry

Rule 4 provides that in holding an inquiry for the purpose of adjudging under sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H whether any person has committed contraventions as specified in any of the sections 23A, 23B, 23C, 23D, 23E, 23F, 23G and 23H, the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him. Every notice shall indicate the nature of offence alleged to have been committed by him.

If after considering the cause, if any, shown by such person, the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative. On the date fixed, the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or

regulations in respect of which contravention is alleged to have taken place. The adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872. It has been provided that the personal hearing may be waived, at the request of the person concerned. While holding an inquiry under this rule the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating officer may be useful for or relevant to the subject matter of the inquiry.

If any person fails, neglects or refuses to appear before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so.

Order of the adjudicating officer

Rule 5 provides that if, upon consideration of the evidence produced before the adjudicating officer, the adjudicating officer is satisfied that the person has become liable to penalty under any of the sections specified in sub-section (1) of the section 23-I of the SCRA, he may, by order in writing, impose such penalty as he thinks fit in accordance with the provisions of the relevant section or sections specified in section 23-I of SCRA. While adjudging the quantum of penalty under section 23-I of the Act, the adjudicating officer shall have due regard to the following factors, namely—

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

Every order is to be dated and signed by the adjudicating officer and shall specify the provisions of the Act in respect of which default has taken place and shall contain brief reasons for such decisions.

Service of notices and orders

The adjudicating officer has to send a copy of every order made under rules by it to the person concerned and to SEBI. Rule 7 provides that a notice or an order issued under these rules shall be served on the person in the following manner—

- a. by delivering or tendering it to that person or his duly authorised agent;
- b. by sending it to the person by registered post with acknowledgement due to the address of his place of residence or his last known place of residence or the place where he carried on, or last carried on, business or personally works, or last worked, for gain; or
- c. if it cannot be served under clause (a) or clause (b), by affixing it on the outer door or some other conspicuous part of the premises in which that person resides or is known to have last resided, or carried on business or personally works or last worked for gain and that written report thereof should be witnessed by two persons.

V. LISTING OF SECURITIES

Listing of securities with stock exchange is a matter of great importance for companies and investors, because this provides the liquidity to the securities in the market.

The prices at which the securities are traded in the stock exchange are published in the News Papers. Investors are able to know these price trends from such publications. Compared to listed securities the trading of unlisted securities is difficult. The price trends in respect of unlisted securities are seldom known to the investors and the contract between the seller and buyer takes places mostly on one to one basis.

Thus, in order to avail of the benefit of listing the company seeking such listing should be applied as per conditions of listing agreement entered into with stock exchange. It is open to companies to get their securities listed in their Regional stock exchanges and one or more of the other stock exchanges in the country under this Act. Company seeking listing with stock exchanges in other countries shall have to follow the rules and regulations of those exchanges.

Only public companies are allowed to list their securities in the stock exchange. Private Limited companies cannot get listing facility. They should first convert themselves into public limited companies and their Articles of Association should also contain prohibitions as laid down in the listing agreement and as applicable to public limited companies.

Types of Listing

Listing of securities falls under 5 groups—

1. *Initial Listing:* If the shares or securities are to be listed for the first time by a company on a stock exchange is called initial listing.
2. *Listing for Public Issue:* When a company whose shares are listed on a stock exchange comes out with a public issue of securities, it has to list such issue with the stock exchange.
3. *Listing for Rights Issue:* When companies whose securities are listed on the stock exchange issue securities to existing shareholders on rights basis, it has to list such rights issues on the concerned stock exchange.
4. *Listing of Bonus Shares:* Shares issued as a result of capitalisation of profit through bonus issue shall list such issues also on the concerned stock exchange.
5. *Listing for merger or amalgamation:* When new shares are issued by an amalgamated company to the shareholders of the amalgamating company, such shares are also required to be listed on the concerned stock exchange.

Benefits of Listing

The following benefits are available when securities are listed by a company in the stock exchange—

1. Public image of the company is enhanced.
2. The liquidity of the security is ensured making it easy to buy and sell the securities in the stock exchange.
3. Tax concessions are made available both to the investors and the companies.

4. Listing procedure compels company management to disclose important information to the investors enabling them to make crucial decisions with regard to keeping or disposing of such securities.
5. Listed companies command better support such as loans and investments from Banks and FIs.

Multiple Listing

A company with a paid up capital of over Rs. 5 crores should list its securities or have its securities permitted for trading, on atleast one stock exchange having nationwide Trading Terminals. Multiple listing provides arbitrage opportunities to the investors, whereby they can make profit based on the difference in the prices prevailing in the said exchanges.

Legal provisions on listing

As per Section 73(1) of the Companies Act, 1956, (as amended by 1988 Act), every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus is required to make an application to one or more recognised stock exchanges before such issue for permission for the securities intending to be so offered to be dealt with in the Stock Exchange(s).

As per Section 73(1A) of the Companies Act, 1956, prospectus should state the names of the stock exchanges where application for listing has been made and any allotment of securities made on the basis of such prospectus should be void if permission of listing is not granted by the stock exchange(s) before the expiry of 10 weeks from the closure of the issue.

As per Section 73(2), if the application for listing is not made or if permission is not granted, the company should forthwith repay without interest all money received from the applicants within 8 days. If the money is not refunded within 8 days as stated, the company and its every officer in default should, from the expiry of 8th day, be jointly and severally liable to repay that money with interest (presently @15% per annum).

As per Section 4 of the Securities Contracts (Regulation) Act, 1956, every recognised stock exchange has the powers to make bye-laws for the listing of securities on the stock exchange, inclusion of any security for the purpose of dealings and suspension or withdrawal of securities and the prohibition of trading in any specified security, subject to SEBI approval.

Every company while submitting its application for listing with the stock exchange(s) should produce a number of documents as enclosures to satisfy the requirements of the concerned stock exchange. It should also give a number of undertakings as a condition precedent before listing as sought by the concerned stock exchange. Finally when the stock exchange(s) agree(s) to list the securities, the company shall execute a listing agreement with the stock exchange(s). The listing agreements of different stock exchanges have classes ranging from 50 to 60.

When a company signs a listing agreement with a stock exchange, it means it has entered a legally binding contract with that exchange and it has to ensure compliance of each and every term and condition in the listing agreement.

For failure to ensure such compliance the stock exchange can take an action against the company after giving an opportunity of being heard.

Listing of Securities on Indian Stock Exchanges, thus, is essentially governed by the provisions in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulation) Rules, 1957, Rules, bye laws, regulations of concerned stock exchange, the listing agreement entered into by the issuer and stock exchange and circulars/guidelines issued by the Central Government and SEBI.

Compliances under the Listing Agreement

Major Compliances ought to be followed pursuant to the Listing Agreement are given hereunder :

<i>Reference</i>	<i>Subject Matter</i>	<i>Requirement</i>
Clause 1	Share allotment— Regret Letters— Notification in Press —	Rejection letters if any, to be posted simultaneously with allotment letters. OR Publish in English morning daily newspaper the next day to the date of despatch of letters of allotment
Clause 13	Notification of any attachment or prohibiting orders against transfer of securities.	(a) Notify any attachment or prohibitory orders restraining transfer of securities (b) Furnish particulars of the number of securities so affected, the distinctive numbers of such securities and the names of the registered holders thereof
Clause 16	Book closure/Record Date	(a) Atleast once in a year the books should be closed. (b) Gap between two book closures and/or record dates would be atleast 30 days. (c) Intimate atleast 21 days (15 days in case of demat shares) before book closure/record date. (d) Intimate atleast 30 days before corporate actions like mergers, de-mergers, splits and bonus shares in case of company whose stock derivatives are available or whose stocks form part of an Index on which derivatives are available.
Clause 19	Convening of a Board Meeting for Declaration/Decision regarding: (a) Dividend (b) Bonus shares if forming part of Agenda. (c) Issue of rights shares.	(a) Intimate atleast 7 days in advance about the convening of a board meeting to decide the matters (a) to (g) alongside. No prior intimation is required about board meeting in respect of issue of bonus shares if the issue is not in the Agenda of board meeting. (b) Undertakes to recommend to declare all dividend and/or cash bonuses at least 5 days before the commencement of the closure of its transfer books or the record date fixed for that purpose.

	(d) Issue of convertible debentures (e) Issue of debentures carrying a right to subscribe to equity shares. (f) Passing over of dividend (g) Buy-back of securities	
Clause 20 & 22	Decision regarding declaration of dividend, bonus interest payment buy-back of securities, rights, re-issue of forfeited shares, calls to be made.	Furnish information to the Stock Exchanges within 15 minutes of the closure of the Board Meeting.
Clause 21	Payment of dividend on shares, interest on debentures/bonds, redemption amount of redeem-able shares or debentures/bonds	Intimate atleast 21 days in advance, of the date on and from which the amounts will be paid.
Clause 25	Granting options to purchase any shares of the company	Notify all the listed Exchanges (a) Number of shares covered by such options, of the terms thereof and of the time within which they may be exercised. (b) Subsequent changes or cancellation or exercise of such options
Clause 27	Any action resulting in redemption, cancellation or retirement in	Notify all the listed exchanges : (a) of such action, or (b) of intention to make a drawing. Simultaneously intimate the date of the withdrawal and the period of closing of transfer books (or the date of striking of the balance) for the drawing,

	whole or in part of listed securities, or intention to make withdrawal of such securities	and (c) of the amount of securities outstanding after the drawing.
Clause 28	Change in the form or nature of listed securities or change in the rights/privileges thereof	(a) Give 21 days prior notice to the exchange. (b) Apply to exchange for listing of the securities as changed, if exchange so requires.
Clause 29 & 30	(a) Change in general characters or nature of company's business (b) Change in the companies directors (c) Change of Managing Director (d) Change of Auditors	Promptly notify the exchange of these changes.
Clause 31	Further issue of Securities and other documents to be forwarded	To forward to the exchange six copies of the Annual Reports, notices, resolutions and circulars relating to new issue of capital, three copies of all the notices, call letters etc. including notices of meetings convened u/s 391 or section 394 read with section 391 of the Companies Act, 1956, copy of the proceedings at all Annual and Extraordinary General Meetings of the Company, three copies of all notices, circulars, etc., issued or advertised in the press either by the Company, or by any company which the Company proposes to absorb or with which the Company proposes to merge or amalgamate, or under orders of the court or any other statutory authority in connection with any merger, amalgamation, re-construction, reduction of capital, scheme or arrangement.
Clause 32	Cash Flow Statement in the Annual Report,	(a) Companies to prepare Cash Flow Statement in accordance with AS-3 of ICAI and present it under the indirect method. Companies to send a statement

	Consolidated Financial Statement and related party disclosures	<p>containing the salient features of the Balance Sheet, P&L A/c and Auditors' Report to each share holder. Unabridged Annual report to be sent to member of listed exchange on his request. Company will publish Consolidated Financial Statements duly audited by the statutory auditors and file the same with Stock Exchange.</p> <p>(b) Company will also make related party disclosures in its Annual Reports.</p>
Clause 35	Shareholding pattern containing details of promoters holding and non-promoters holding	File with the exchange the shareholding pattern in the prescribed form within 21 days from the end of the quarter on a quarterly basis.
Clause 36	Decision regarding issue of shares, forfeiture of shares, alteration of shares, cancellation of declared dividend, merger, amalgamation, de-merger, hiving off, voluntary delisting and other material decisions.	Immediately disclose all material information simultaneously to all the Stock Exchanges, where the Securities of the company are listed.
Clause 40A & 40B	Conditions for continued listing and Takeover offer	<p>(a) To maintain on a continuous basis, public shareholding of at least 25% of the total number of issued shares.</p> <p>(b) To maintain on a continuous basis, public shareholding of at least 10% Where the company offers or has in the past offered a particular class or kind of its shares to the public to the extent of at least 10%.</p> <p>(c) To maintain on a continuous basis, public shareholding of at least 10% if the number of outstanding listed shares of any class or kind of the</p>

		<p>company are two crore or more and the market capitalization of such company in respect of shares of such class or kind is Rs. 1000 crores or more.</p> <p>(d) To increase public shareholding to 25% or 10%, as the case may be, within such period as may be approved by the Specified Stock Exchange (SSE) but not exceeding two year if the public shareholding is less than 25% or 10%, as the case may be.</p> <p>(e) Not to dilute in any way its public shareholding or not to make any allotment of its shares to its promoters or entities belonging to its promoter group except for supervening extraordinary events, including, but not limited to events specified below:</p> <ol style="list-style-type: none"> Issuance or transfer of shares in compliance with directions of a regulatory or statutory authority or court or tribunal; Issuance or transfer of shares in compliance with the SEBI (Sub-stantial Acquisition of Shares and Takeovers) Regulations, 1997; Re-organization of capi-tal by way of a scheme of arrangement; and Issuance or transfer of shares under a restructuring plan approved in compliance with the Corporate Debt Restructuring System laid down by the Reserve Bank of India, <p>(f) Not to make any offer to buyback its shares or buy its shares for the purpose of making sponsored issuance of depository receipts or take any other step, including issuance of depository receipts, if it results in reducing the public shareholding below the minimum level of 25% or 10%, as the case may be.</p>
Clause 41	Preparation and Submission of Financial Results.	<p>To submit quarterly year to date and annual financial results to the stock exchange in the manner prescribed.</p> <p>To submit audited or unaudited quarterly and year to date financial results to the stock exchange within one month of end of each quarter (other than the last quarter), subject to the following:</p> <ol style="list-style-type: none"> To submit a copy of the limited review report to the stock exchange within two months from end of the quarter, in case the company opts to submit unaudited financial results Financial results to be accompanied by auditors report in case the company opts to submit audited financial results <p>To submit unaudited financial results for the quarter within one month of end of the financial year or to</p>

		<p>submit audited financial results for the entire financial year within three months of end of the financial year, subject to the following:</p> <ul style="list-style-type: none"> — To submit audited financial results for the entire financial year, as soon as they are approved by the Board, in case the company opts to submit unaudited financial results for the last Quarter — To intimate the option to the stock exchange in writing within one month of end of the financial year, in case the company opts to submit audited financial results for the entire financial year.
		<p>Companies having subsidiaries may, in addition to submitting quarterly and year to date stand alone financial results to the stock exchange also submit quarterly and year to date consolidated financial results; and while submitting annual audited financial results prepared on stand-alone basis, it shall also submit annual audited consolidated financial results to the stock exchange.</p>
		<p>To submit financial results to the stock exchange within fifteen minutes of conclusion of the meeting of the Board or Committee in which they were approved.</p>
	<p>Manner of approval and authentication of the financial results</p>	<p>The quarterly financial results submitted shall be approved by the Board of Directors of the company or by a committee thereof, other than the audit committee.</p> <p>Provided that when the quarterly financial results are approved by the Committee they shall be placed before the Board at its next meeting:</p> <p>Provided further than while placing the financial results before the Board, the Chief Executive Officer and Chief Financial Officer of the company, by whatever name called, shall certify that the financial results do not contain any false or misleading statement or figures and do not omit any material fact which may make the statements or figures contained therein misleading.</p> <p>The Committee mentioned above shall consist of not less than one third of the directors and shall include the managing director and at least one Independent director.</p> <p>The financial results submitted to the stock exchange shall be signed by the Chairman or managing director, or a whole time director. In the absence of all of them, it shall be signed by any other director of the company who is duly authorized by the Board to sign the</p>

		<p>financial results.</p> <p>The limited review report to be placed before the Board of directors or the Committee before being submitted to the stock exchange.</p> <p>Provided that when the limited review report is placed before the Committee they shall also be placed before the Board at its next meeting.</p> <p>The annual audited financial results shall be approved by the Board of Directors of the company and shall be signed.</p>
	Intimation of Board Meeting	<p>To give prior intimation of the date and purpose of meetings of the Board or Committee in which the financial results will be considered at least seven clear calendar days prior to the meeting (excluding the date of the intimation and date of the meeting).</p> <p>To issue a public notice in at least in one English daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the company is situated.</p>
	Other requirements as to financial results	<p>Where there is a variation between the unaudited quarterly or year to date financial results and the results amended pursuant to limited review for the same period, and –</p> <ol style="list-style-type: none"> i. the variation in net profit or net loss after tax is in excess of 10% or Rs.10 lakhs, whichever is higher; or ii. the variation in exceptional or extraordinary items is in excess of 10% or Rs.10 lakhs, whichever is higher - <p>the company shall submit to the stock exchange an explanation of the reasons for variations, while submitting the limited review report. The explanation of variations so submitted shall be approved by the Board of Directors:</p> <p>If the auditor has expressed any qualification or other reservation in respect of audited financial results submitted or published under this clause, the company shall disclose such qualification or other reservation and impact of the same on the profit or loss, while publishing or submitting such results.</p> <p>If the auditor has expressed any qualification or other reservation in his audit report or limited review report in respect of the financial results of any previous financial year or quarter which has an impact on the profit or loss of the reportable period, the company</p>

	<p>shall include as a note to the financial results –</p> <ol style="list-style-type: none"> i. how the qualification or other reservation has been resolved; or ii. if it has not been resolved, the reason therefor and the steps which the company intends to take in the matter. <p>If the company has changed its name suggesting any new line of business, it shall disclose the net sales or income, expenditure and net profit or loss after tax figures pertaining to the said new line of business separately in the financial results and shall continue to make such disclosures for the three years succeeding the date of change in name.</p> <p>If the company had not commenced commercial production or commercial operations during the reportable period, the company shall, instead of submitting financial results, disclose the details of amount raised, the portions thereof which is utilized and that remaining unutilized, the details of investment made pending utilisation, brief description of the project which is pending completion, status of the project and expected date of commencement of commercial production or commercial operations.</p>
Publication of financial results in newspapers	<p>The company shall, within 48 hours of conclusion of the Board or Committee meeting at which the financial results were approved, publish a copy of the financial results which were submitted to the stock exchange in at least in one English daily newspaper circulating in the whole or substantially the whole of India and in one daily newspaper published in the language of the region, where the registered office of the company is situated:</p> <p>Provided that where the company has opted to submit audited financial results, it shall also publish the qualifications or reservations, if any, expressed by the auditor together with the audited results.</p> <p>Where the company has submitted consolidated financial results in addition to stand-alone financial results, it shall have an option to publish either stand-alone financial results or consolidated financial results in the newspapers, subject to the following:</p> <ol style="list-style-type: none"> i. If it is desirous of publishing consolidated financial results alone, it shall exercise the option in the first quarter of the financial year and such option shall not be changed during the financial year; ii. In case the company changes its option in any subsequent year, it shall furnish comparable

		<p>figures for the previous year in accordance with the option exercised for the current year.</p> <p>iii. If the company opts to publish only consolidated financial results, it shall give a reference in the newspaper publication, to the places, such as the company's website and stock exchanges' websites, where the standalone results will be available for perusal.</p> <p>iv. If the company opts to publish only stand-alone financial results, it shall also publish consolidated figures for turnover, net profit after tax and earnings per share.</p>
Clause 43A	Filing of deviations in the use of public issue proceeds	Filing of deviations in the use of public issue proceeds and to appoint monitoring agency to monitor utilisation of proceeds etc.
Clause 47	Appointment of Company Secretary as Compliance Officer	Appoint a Company Secretary to act as compliance officer responsible for monitoring the Share Transfer process and report to the Company's Board in each Meeting. Compliance officer will directly liaise with the authorities such as SEBI, Stock Exchanges, ROC etc. and investors with respect to implementation of various clauses, rules, regulations and other directives of such authorities and investor service and compliances of related matter.
	Registration of share Transfer	<p>(i) Obtain certificate from Company Secretary in Practice, on half yearly basis, that the securities lodged for transfer have been registered and despatched within 30 days from the date of lodgment with the company within 15 days from the end of half year.</p> <p>(ii) Send a copy of the same within 24 hrs of the time of receipt to all listed exchanges.</p> <p>(iii) Intimate all the exchanges within 48 hrs from the time of receipt of information of loss of certificate/closure time of Board (Committee) meeting.</p>
Clause 49	Corporate Governance	<p>(a) Board of Directors and composition of Board</p> <p>(b) Code of conduct of Directors to be published on the website</p> <p>(c) Audit committee and its composition and frequency of its meeting</p> <p>(d) Mandatory review of certain information by Audit Committee</p> <p>(e) Subsidiary Companies</p> <p>(f) Disclosures</p> <p>(g) CEO/CFO Certification</p>

		(h) Report on Corporate Governance, Quarterly compliance report (i) Compliance Certificate from Practising Company Secretary or Company's auditor (j) Monitoring report/Monitor-ing Agency (k) Advertisement in respect of adverse comments.
Clause 50	Accounting Standards	Company should comply with all the accounting standards issued by the Institute of Chartered Accountants of India.
Clause 51	EDIFAR (Electronic Data Information Filing and Retrival)	Companies need not file on the EDIFAR website, any information, statement or report which has already been filed on the Corporate Filing and Dissemination System in pursuance of clause 52.
Clause 52	CFDS	All the listed companies are required to file information with the stock exchange only through Corporate Filing and Dissemination System (CFDS) which is put in place jointly by BSE and NSE at the www.corpfiling.co.in . The compliance officer, appointed under Clause 47(a) and the company shall be responsible for ensuring the correctness, authenticity and comprehensive-ness of the information, statements and reports filed under this clause and also for ensuring that such information is in conformity with the applicable laws and listing agreement. [Clause 52(1)(b)]

CORPORATE GOVERNANCE THROUGH LISTING AGREEMENT

Corporate governance denotes the process, structure and relationship through which the Board of Directors oversees what the management does. It is also about being answerable to different stakeholders.

CII constituted a Committee to recommend a Code of Corporate Governance to be observed by corporates in their functioning. The Committee further recommended a Code popularly known as "Desirable Corporate Governance Code" which defined Corporate Governance as follows:

"Corporate governance deals with laws, procedures, practices and implicit rules that determine a company's ability to take informed managerial decisions vis-à-vis its claimants – in particular, its shareholders, creditors, customers, the State and employees. There is a global consensus about the objective of 'good' corporate governance: *maximising long-term shareholder value*."

The Kumar Mangalam Birla Committee Constituted by SEBI has observed that: "Strong corporate governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high-quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure."

N.R. Narayana Murthy Committee on Corporate Governance constituted by

SEBI has observed that:

“Corporate Governance is the acceptance by management of the inalienable rights of shareholders as the true owners of the corporation and of their own role as trustees on behalf of the shareholders. It is about commitment to values, about ethical business conduct and about making a distinction between personal and corporate funds in the management of a company.”

The Institute of Company Secretaries of India has also defined the term Corporate Governance as under:

“Corporate Governance is the application of best management practices, compliance of law in true letter and spirit and adherence to ethical standards for effective management and distribution of wealth and discharge of social responsibility for sustainable development of all stakeholders.”

Good Governance in capital market has always been high on the agenda of SEBI. Corporate Governance is looked upon as a distinctive brand and benchmark in the profile of Corporate Excellence. This is evident from the continuous updation of guidelines, rules and regulations by SEBI for ensuring transparency and accountability. In the process, SEBI had constituted a Committee on Corporate Governance under the Chairmanship of Shri Kumar Mangalam Birla. The Committee in its report observed that “the strong Corporate Governance is indispensable to resilient and vibrant capital markets and is an important instrument of investor protection. It is the blood that fills the veins of transparent corporate disclosure and high quality accounting practices. It is the muscle that moves a viable and accessible financial reporting structure.”

Based on the recommendations of the Committee, the SEBI had specified principles of Corporate Governance and introduced a new clause 49 in the Listing agreement of the Stock Exchanges in the year 2000. These principles of Corporate Governance were made applicable in a phased manner and all the listed companies with the paid up capital of Rs 3 crores and above or net worth of Rs 25 crores or more at any time in the history of the company, were covered as of March 31, 2003.

SEBI, as part of its endeavour to improve the standards of corporate governance in line with the needs of a dynamic market, constituted another Committee on Corporate Governance under the Chairmanship of Shri N. R. Narayana Murthy to review the performance of Corporate Governance and to determine the role of companies in responding to rumour and other price sensitive information circulating in the market in order to enhance the transparency and integrity of the market. The Committee in its Report observed that “the effectiveness of a system of Corporate Governance cannot be legislated by law, nor can any system of Corporate Governance be static. In a dynamic environment, system of Corporate Governance need to be continually evolved.”

With a view to promote and raise the standards of Corporate Governance, SEBI on the basis of recommendations of the Committee and public comments received on the report and in exercise of powers conferred by Section 11(1) of the Securities and Exchange Board of India Act, 1992 read with section 10 of the Securities Contracts (Regulation) Act 1956, revised the existing clause 49 of the Listing agreement vide its circular SEBI/MRD/SE/31/2003/26/08 dated August

26, 2003.

The Securities and Exchange Board of India vide circular number SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004 again revised the existing Clause 49 of the Listing Agreement directing all the Stock Exchanges to amend the Listing Agreement by replacing the existing Clause 49 of the Listing Agreement. The provisions of the revised Clause 49 shall be implemented as per the schedule of implementation given below:

- a. For entities seeking listing for the first time, at the time of seeking in-principle approval for such listing.
- b. For existing listed entities which were required to comply with Clause 49 which is being revised i.e. those having a paid up share capital of Rs. 3 crores and above or net worth of Rs. 25 crores or more at any time in the history of the company, by April 1, 2005.

Companies complying with the provisions of the existing Clause 49 at present (issued vide circulars dated 21st February, 2000, 9th March 2000, 12th September 2000, 22nd January, 2001, 16th March 2001 and 31st December 2001) shall continue to do so till the revised Clause 49 of the Listing Agreement is complied with or till March 31, 2005, whichever is earlier.

However noticing that large number of companies are still not in the state of preparedness to be fully compliant with the requirements of revised Clause 49 of the listing agreement, SEBI allowed more time to corporates to conform to Clause 49 of the listing agreement and extended the date for ensuring compliance with the revised Clause 49 of the listing agreement to December 31, 2005. Now as on date, Revised Clause 49 is applicable.

HIGHLIGHTS OF CLAUSE 49

Definition of Independent Director

‘Independent director’ shall mean non-executive director of the company who –

- a. apart from receiving director’s remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its directors, its senior management or its holding company, its subsidiaries and associates which may affect the independence of the director;
- b. is not related to promoters or persons occupying management positions at the board level or at one level below the board;
- c. has not been an executive of the company in the immediately preceding three financial years;
- d. is not a partner or an executive or was not partner or an executive during the preceding three years, of any of the following:
 - i. the statutory audit firm or the internal audit firm that is associated with the company;
 - ii. the legal firm(s) and consulting firm(s) that have a material association with the company.
- e. is not a material supplier, service provider or customer or a lessor or lessee of the company which may effect the independence of the director; and
- f. is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.

Nominee Directors to be treated as Independent Director

The clause provides that Nominee directors appointed by an institution which

has invested in or lent to the company shall be deemed to be independent directors. The Explanation clarifies that “Institution’ for this purpose means a public financial institution as defined in Section 4A of the Companies Act, 1956 or a “corresponding new bank” as defined in section 2(d) of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 or the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 [both Acts].

Non executive directors’ compensation and disclosures

The clause provides that all fees/compensation, if any paid to non-executive directors, including independent directors, shall be fixed by the Board of Directors and require previous approval of shareholders in general meeting. The requirement of obtaining prior approval of shareholder in general meeting is not applicable to payment of sitting fees to non-executive directors, if made within the limits prescribed under the Companies Act, 1956 for payment of sitting fees, without approval of the Central Government.

Limits on Membership of Committees

For the purpose of considering the limit of the committees on which a director can serve, Chairmanship/membership of the Audit Committee and the Shareholders’ Grievance Committee alone are to be considered.

Declaration to be signed by CEO

The clause states that all Board members and senior management personnel shall affirm compliance with the code on an annual basis and the Annual Report of the company shall contain a declaration to this effect signed by the CEO.

Board Meetings

The Board shall meet at least four times a year with a maximum time gap of three months between any two meetings.

Audit Committee

- i. The requirement of giving terms of reference of the Audit Committee is a must.
- ii. The requirement that all members of the Audit Committee shall be non-executive directors has been dispensed with.
- iii. It further provides that 2/3rd of the members of audit committee shall be independent directors.
- iv. The clause provides that all members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- v. The clause provides that the term “financially literate” means the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.
- vi. It further provides that a member will be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer, or other senior officer with financial oversight responsibilities.
- vii. Calling of executives is optional.
- viii. The words ‘external auditor’ have been replaced with the words ‘statutory

auditor’.

Meetings and Role of Audit Committee

There is requirement of holding atleast four meetings in a year. The revised clause also provides that not more than four months shall elapse between the two meetings of audit committee.

The role of the audit committee include the following:

1. Oversight of the company’s financial reporting process and the disclosure of its financial information to ensure that the financial statement is correct, sufficient and credible.
2. Recommending to the Board, the appointment, re-appointment and, if required, the replacement or removal of the statutory auditor and the fixation of audit fees.
3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors.
4. Reviewing, with the management, the annual financial statements before submission to the board for approval, with particular reference to:
 - a. Matters required to be included in the Director’s Responsibility Statement to be included in the Board’s report in terms of clause (2AA) of section 217 of the Companies Act, 1956
 - b. Changes, if any, in accounting policies and practices and reasons for the same
 - c. Major accounting entries involving estimates based on the exercise of judgment by management
 - d. Significant adjustments made in the financial statements arising out of audit findings
 - e. Compliance with listing and other legal requirements relating to financial statements
 - f. Disclosure of any related party transactions
 - g. Qualifications in the draft audit report.
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval.
6. Reviewing, with the management, performance of statutory and internal auditors, adequacy of the internal control systems.
7. Reviewing the adequacy of internal audit function, if any, including the structure of the internal audit department, staffing and seniority of the official heading the department, reporting structure coverage and frequency of internal audit.
8. Discussion with internal auditors any significant findings and follow up there on.
9. Reviewing the findings of any internal investigations by the internal auditors into matters where there is suspected fraud or irregularity or a failure of internal control systems of a material nature and reporting the matter to the board.
10. Discussion with statutory auditors before the audit commences, about the nature and scope of audit as well as post-audit discussion to ascertain any area of concern.
11. To look into the reasons for substantial defaults in the payment to the

depositors, debenture holders, shareholders (in case of non payment of declared dividends) and creditors.

12. To review the functioning of the Whistle Blower mechanism, in case the same is existing.
13. Carrying out any other function as is mentioned in the terms of reference of the Audit Committee

Review of Information by Audit Committee

The Audit Committee is required to mandatorily review the following information:

- a. Management discussion and analysis of financial condition and results of operations;
- b. Statement of significant related party transactions (as defined by the audit committee), submitted by the management
- c. Management letters/letters of internal control weaknesses issued by statutory auditors
- d. Internal audit reports relating to internal control weaknesses
- e. The appointment, removal and terms of remuneration of the Chief internal auditor shall be subject to review by the Audit Committee.

Subsidiary Company

- i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of material non-listed Indian subsidiary company.
- ii. The Audit Committee of the listed holding company shall also review the financial statements, in particular the investments made by the unlisted subsidiary company.
- iii. The minutes of the Board meetings of the unlisted subsidiary company is required to be placed at the Board meeting of the listed holding company.
- iv. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.
- v. The term “material non-listed Indian subsidiary” means an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.
- vi. The term “significant transaction or arrangement” means any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.
- vii. Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions also apply to the listed subsidiary insofar as its subsidiaries are concerned.

Related Party Transactions

- i. A statement in summary form of transactions with related parties in the ordinary course of business is required to be placed periodically before the Audit Committee.

- ii. Details of material individual transactions with related parties which are not in the normal course of business are also required to be placed before the audit committee.
- iii. Details of material individual transactions with related parties or others, which are not on an arm's length basis should be placed before the audit committee, together with Management's justification for the same.

Disclosures

The following disclosures are required to be made under the revised clause:

- i. Basis of related Party Transactions
- ii. Disclosure of Accounting Treatment
- iii. Risk Management
- iv. Proceeds from public issues, Rights issues, preferential issues etc.
- v. Remuneration of Directors
- vi. Management
- vii. Shareholders

CEO/CFO Certification

The CEO, i.e. the Managing Director or Manager appointed in terms of the Companies Act, 1956 and the CFO i.e. the whole-time Finance Director or any other person heading the finance function discharging that function shall certify to the Board that:

- a. They have reviewed financial statements and the cash flow statement for the year and that to the best of their knowledge and belief :
 - i. these statements do not contain any materially untrue statement or omit any material fact or contain statements that might be misleading;
 - ii. these statements together present a true and fair view of the company's affairs and are in compliance with existing accounting standards, applicable laws and regulations.
- b. There are, to the best of their knowledge and belief, no transactions entered into by the company during the year which are fraudulent, illegal or violative of the company's code of conduct.
- c. They accept responsibility for establishing and maintaining internal controls for financial reporting and that they have evaluated the effectiveness of the internal control systems of the company pertaining to financial reporting and they have disclosed to the auditors and the Audit Committee, deficiencies in the design or operation of such internal controls, if any, of which they are aware and the steps they have taken or propose to take to rectify these deficiencies.
- d. They have indicated to the auditors and the Audit committee —
 - i. significant changes in internal control over financial reporting during the year;
 - ii. significant changes in accounting policies during the year and that the same have been disclosed in the notes to the financial statements; and
 - iii. instances of significant fraud of which they have become aware and the involvement therein, if any, of the management or an employee having a significant role in the company's internal control system over financial reporting.

Report on Corporate Governance

The companies shall submit a quarterly compliance report to the stock exchanges within 15 days from the close of quarter as per the format prescribed in the clause. The report is required to be signed either by the Compliance Officer or the Chief Executive Officer of the company.

Compliance Certificate

The practising Company Secretaries have also been recognised to issue Certificate of Compliance of Conditions of Corporate Governance. The clause provides that the company shall obtain a certificate from either the auditors or practicing company secretaries regarding compliance of conditions of corporate governance as stipulated in this clause and annex the certificate with the directors' report, which is sent annually to all the shareholders of the company. The same certificate shall also be sent to the Stock Exchanges along with the annual report filed by the company.

Non Mandatory Requirements

The following non-mandatory requirements have additionally been provided:

1. The Board

A non-executive Chairman may be entitled to maintain a Chairman's office at the company's expense and also allowed reimbursement of expenses incurred in performance of his duties.

Independent Directors may have a tenure not exceeding, in the aggregate, a period of nine years, on the Board of a company.

2. Remuneration Committee

i. The board may set up a remuneration committee to determine on their behalf and on behalf of the shareholders with agreed terms of reference, the company's policy on specific remuneration packages for executive directors including pension rights and any compensation payment.

ii. To avoid conflicts of interest, the remuneration committee, which would determine the remuneration packages of the executive directors may comprise of at least three directors, all of whom should be non-executive directors, the Chairman of committee being an independent director.

iii. All the members of the remuneration committee could be present at the meeting.

iv. The Chairman of the remuneration committee could be present at the Annual General Meeting, to answer the shareholder queries. However, it would be up to the Chairman to decide who should answer the queries.

3. Shareholder Rights

A half-yearly declaration of financial performance including summary of the significant events in last six-months, may be sent to each household of shareholders.

Audit qualifications

Company may move towards a regime of unqualified financial statements.

Training of Board Members

A company may train its Board members in the business model of the company as well as the risk profile of the business parameters of the company, their responsibilities as directors, and the best ways to discharge them.

Mechanism for evaluating non-executive Board Members

The performance evaluation of non-executive directors could be done by a peer group comprising the entire Board of Directors, excluding the director being evaluated and Peer Group evaluation could be the mechanism to determine whether to extend/continue the terms of appointment of non-executive directors.

Whistle Blower Policy

The company may establish a mechanism for employees to report to the management concerns about unethical behaviour, actual or suspected fraud or violation of the company's code of conduct or ethics policy. This mechanism could also provide for adequate safeguards against victimization of employees who avail of the mechanism and also provide for direct access to the Chairman of the Audit committee in exceptional cases. Once established, the existence of the mechanism may be appropriately communicated within the organization.

IV. DEMUTUALISATION OF STOCK EXCHANGES

The process of demutualization is to convert the traditional "not for-profit" stock exchanges into a "for profit" company and this process is to transform the legal structure from a mutual form to a business corporation form. SEBI had set up a committee under the Chairmanship of Justice Kania for the same which came up with report on demutualization of Stock Exchanges through uniform scheme prescribed. Accordingly, SEBI issued scheme of demutualization to BSE and other Regional Stock Exchanges.

The important features of the demutualisation exercise are as follows:

1. The board of a stock exchange should consist of 75% public interest/ shareholder directors and only 25% broker directors, and
2. 51% shareholding of the stock exchange should be divested to public/ investors other than trading member brokers and only 49% of shareholding can remain with the trading member brokers. This will transform our broker-owned stock exchanges into professionally-run corporate stock exchanges.

The options prescribed for divestment/dilution of brokers' shareholding in a stock exchange are as follows:

1. Offer for sale, by issue of prospectus, of shares held by trading member brokers.
2. Private placement of shares (either of the shares held by the member brokers or new shares by the exchange) to any person or group of persons subject to the prior approval of SEBI and the maximum limit of 5% to any single person/group of persons.
3. Fresh issue of shares to the public through an IPO.

The purpose of demutualisation is as follows:

1. Stock exchanges owned by members tend to work towards the interest of members alone, which could on occasion be detrimental to rights of other stakeholders. Division of ownership between members and outsiders can lead to a balanced approach, remove conflicts of interest, create greater management accountability.
2. Publicly owned stock exchanges can enter into capital market for expansion of business.

3. Publicly owned stock exchange would be more professionally managed than broker owned.
4. Demutualisation enhances the flexibility of management.

SECURITIES CONTRACTS (REGULATION) (MANNER OF INCREASING AND MAINTAINING PUBLIC SHAREHOLDING IN RECOGNISED STOCK EXCHANGES) REGULATIONS, 2006

The Securities Contracts (Regulation) (Manner of Increasing and Maintaining Public Shareholding in Recognised Stock Exchanges) Regulations, 2006 came into force w.e.f. 13th November, 2006.

The Regulations are applicable to all recognised stock exchanges in respect of which the scheme for corporatisation or demutualisation has been approved by the SEBI under section 4B of the Securities Contracts (Regulation) Act, 1956.

Regulation 2(i) defines “scheme” as the scheme for corporatisation or demutualisation of a recognised stock exchange approved by the SEBI under section 4B of the Securities Contracts (Regulation) Act, 1956.

As per Regulation 2(b) “associate” in relation to a shareholder having trading rights in a recognised stock exchange means a person –

- i. who directly or indirectly, by himself or in combination with other persons, exercises control over such shareholder or holds substantial shares entitling not less than fifteen per cent of the voting rights in such shareholder being a body corporate; or
- ii. over whom such shareholder, directly or indirectly, by itself or in combination with other persons, exercises control; or
- iii. whose director or partner is also a director or a partner of such shareholder, being a body corporate or a partnership firm, as the case may be; or
- iv. who is a holding company or subsidiary company of such shareholder or a company under the same management as such shareholder; or
- v. who is a relative of the shareholder being a natural person under Schedule IA of the Companies Act, 1956 (1 of 1956); or
- vi. who is a sub-broker of the shareholder in that stock exchange; or
- vii. who acts in accordance with instructions of such shareholder in the exercise of voting rights and other rights in the recognised stock exchange, directly or indirectly.

Manner of increasing the public shareholding

Regulation 4 of Chapter II of the Regulations provides that subject to the provisions section 4B(8) of the Securities Contracts (Regulation) Act, 1956 and the scheme, the recognised stock exchange shall ensure that at least fifty-one percent of its equity share capital is held by the public, either by fresh issue of equity shares to the public through issue of prospectus or in the following manner: -

- a. offer for sale, by issue of prospectus, of shares held by shareholders having trading rights therein;
- b. placement of shares held by shareholders having trading rights to such persons or institutions as may be shortlisted by the recognised stock exchange with the approval of the Board;

- c. issue of equity shares on private placement basis by the recognised stock exchange to any person or group of persons not being shareholders having trading rights or their associates subject to the approval of the Board; or
- d. any combination of the above.

Procedure for fresh issue of equity shares or offer for sale to the public

Regulation 5 provides that any fresh issue of equity shares or offer for sale to the public through a prospectus shall be in compliance with the provisions of the Companies Act, 1956 and Guidelines or Regulations of the SEBI relating to issue of capital. Where any fresh issue of equity shares or offer for sale to the public is made under clause (a) of regulation 4, an application for listing thereof shall be made to the same recognised stock exchange or any other recognised stock exchange and section 73 of the Companies Act, 1956 shall apply to such application and the provisions of the Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 relating to public issue shall as far as may apply to such offer for sale. Listing of equity shares or other securities of a recognised stock exchange on the same recognised stock exchange shall be in compliance with such conditions as may be specified by the Board.

Private placement

As per Regulation 6, where a recognised stock exchange whose shares are not listed on any recognised stock exchange makes a private placement for the purposes of clause (c) of regulation 4, such private placement shall be in compliance with applicable legal provisions, including those of the Companies Act, 1956 and the Unlisted Public Companies (Preferential Allotment) Rules, 2003. It provides that where a placement is made under sub-regulation (1) or sub-regulation (2) to fifty or more persons, it shall be in compliance with provisions of the Companies Act, 1956 and Guidelines or Regulations of the SEBI relating to public issue of capital.

Confirmation of compliance with sub-section (8) of section 4B

When SEBI is satisfied that any recognised stock exchange has complied with the provisions sub-section (8) of section 4B read with this Chapter, it shall issue a confirmation to the recognised stock exchange to that effect.

Shareholding and transferability restrictions

Regulation 8 provides that no person shall, directly or indirectly, acquire or hold more than five per cent in the paid up equity capital of a recognised stock exchange at any time after commencement of these regulations. Any person holding equity shares in a recognised stock exchange in excess of the limits specified in this regulation at the commencement of these regulations shall reduce his holding to ensure compliance with this regulation within the time specified in sub-section (8) of section 4B of the Act or the time extended under the proviso thereto. No shareholder having trading rights in a recognised stock exchange shall, prior to issuance of the confirmation under regulation 7, transfer his shares in such recognised stock exchange to any person otherwise than in accordance with Chapter II.

Eligibility criteria for persons acquiring or holding more than one per cent equity shares in a recognised stock exchange

Regulation 9 provides that no person shall, either individually or together with persons acting in concert with him, acquire and/or hold more than one per cent of the paid up equity capital of a recognised stock exchange after commencement of these regulations, unless he is a fit and proper person and has taken prior approval of the Board for doing so. A person is deemed to be a fit and proper person if –

- i. such person has a general reputation and record of fairness and integrity, including but not limited to—
 - a. financial integrity;
 - b. good reputation and character; and
 - c. honesty.
- ii. such person has not incurred any of the following disqualifications—
 - a. the person or any of its whole time directors or managing partners has been convicted by a Court for any offence involving moral turpitude or any economic offence, or any offence against the securities laws;
 - b. an order for winding up has been passed against the person;
 - c. the person or any of its whole time directors or managing partners has been declared insolvent and has not been discharged;
 - d. an order, restraining, prohibiting or debarring the person, or any of its whole time directors or managing partners from dealing in securities in the capital market or from accessing the capital market has been passed by the Board or any other regulatory authority and a period of three years from the date of the expiry of the period specified in the order has not elapsed;
 - e. any other order against the person or any of its whole time directors or managing partners which has a bearing on the capital market, has been passed by the Board or any other regulatory authority and a period of three years from the date of the order has not elapsed;
 - f. the person has been found to be of unsound mind by a Court of competent jurisdiction and the finding is in force; and
 - g. the person is financially not sound.

If any question arises as to whether a person is a fit and proper person, the Board's decision on such question shall be final.

Dematerialization

Regulation 10 provides that a recognised stock exchange which has issued equity shares or whose equity shares are offered for sale in the manner provided in these regulations shall—

- a. enter into an agreement with the depositories for dematerialization of the equity shares proposed to be issued or proposed to be sold; and
- b. it shall give an option to the subscribers or transferees to receive the share certificate or hold the shares in dematerialized form with a depository.

Obligations of the recognised stock exchange

Under Regulation 11, a recognised stock exchange is required to monitor and ensure that no transfer or issue of equity shares therein is made otherwise than in accordance with these regulations and that at least fifty-one per cent of its equity share capital is continuously held by the public; and that the restrictions contained in regulations 8 and 9 are complied with in respect of

the shareholding therein.

Without prejudice to the provisions of the Act and the rules made thereunder, the recognised stock exchanges shall submit a report to the Board disclosing the following on a quarterly basis within fifteen days from the end of each quarter:-

- a. the names of ten largest shareholders along with the number of shares held by them and their percentage shareholding;
- b. the names of the shareholders falling under regulation 8 who had acquired shares in that quarter;
- c. the shareholding pattern in the recognised stock exchange in such format as may be specified by the Board.

The recognised stock exchange is required to submit an undertaking confirming the compliance of the provisions of sub-regulation (1) to SEBI on a quarterly basis within fifteen days from the end of each quarter. SEBI may from time to time call for any information from the recognised stock exchange, any shareholder having trading rights or any transferee of shares held by such shareholder, under the provisions of Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder. The recognised stock exchange shall maintain and preserve all the books, registers, other documents and records relating to, the issue or sale of equity shares under these regulations for a period of ten years.

POWERS OF THE BOARD

Power of Inspection

Regulation 12 provides that SEBI may at any time undertake inspection, conduct inquiries and audit of any recognised stock exchange or any shareholder having trading rights therein or any associate of such shareholder, in accordance with the provisions of the Securities and Exchange Board of India Act, 1992, the Act and the rules made thereunder. Where an inspection of any recognised stock exchange or any shareholder having trading rights therein or any associate of such shareholder is undertaken by the Board, every manager, managing director, officer and other employee of such recognised stock exchange or shareholder or associate shall co-operate with SEBI.

Action in case of default (Regulation 13)

Without prejudice to power to impose monetary penalty, initiate prosecution or issue directions under the provisions of the Act or the Securities and Exchange Board of India Act, 1992, the Board may, issue such directions as it deems fit, including—

- a. directing disinvestment of shares held by shareholders having trading rights in breach of sub-section (8) of section 4B of the Act, in such manner as may be specified in the direction;
- b. directing a person holding equity shares in a recognised stock exchange in contravention of regulations 8 or 9 to divest his holding, in such manner as may be specified in the direction;
- c. directing transfer of any proceeds or securities to the investors protection fund of a recognised stock exchange;
- d. debarring any recognised stock exchange, any shareholder having trading

rights therein, any associate of such shareholder or any transferee of shares from such shareholder from accessing the capital market or dealing in securities for such period as may be determined by the Board.

LESSON ROUND-UP

- Stock exchanges constitute the primary institution of the secondary market.
- The Securities Contracts (Regulation) Act, 1956 was enacted by Parliament to prevent undesirable transactions in securities by regulating the business of dealing therein, and by providing for certain other matters connected therewith.
- Listing of securities with stock exchange is a matter of great importance for companies and investors, because this provides the liquidity to the securities in the market.
- Listing of Securities on Indian Stock Exchanges, thus, is essentially governed by the provisions in the Companies Act, 1956, the Securities Contracts (Regulation) Act, 1956, the Securities Contracts (Regulation) Rules, 1957, Rules, bye laws, regulations of concerned stock exchange, the listing agreement entered into by the issuer and stock exchange and circulars/guidelines issued by the Central Government and SEBI.